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Federal Register

MONDAY, OCTOBER 30, 1978

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Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
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CSA	CSC		CSA	CSC
	LABOR			LABOR
	HEW/FDA			HEW/FDA

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

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

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S. 3412..... Pub. L. 95-512
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H.J. Res. 1147 ..... Pub. L. 95-513
Authorizing and requesting the President to designate the seven-day period beginning on May 28, 1979, as "Vietnam Veterans Week". (Oct. 25, 1978; 92 Stat. 1802). Price: $.60.

H.R. 10587 ..... Pub. L. 95-514
"Public Rangelands Improvement Act of 1978". (Oct. 25, 1978; 92 Stat. 1803). Price: $.70.

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H.R. 10161 ..... Pub. L. 95-516
For the relief of Eastern Telephone Supply and Manufacturing, Incorporated, and other matters. (Oct. 25, 1978; 92 Stat. 1816). Price: $.60.

H.R. 11945 ..... Pub. L. 95-517
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S. 1626..... Pub. L. 95-519
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rules and regulations

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

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

[3410-05-M]

Title 7—Agriculture

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[Amdt. 4]

PART 1435—SUGAR

Subpart—Price Support Loan Program for 1977 Crop Sugar beets and Sugarcane

RELOCATING 1977 CROP LOAN SUGAR

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule sets forth the terms and conditions under which the cost of relocating 1977 crop loan sugar may be borne by the Commodity Credit Corporation (CCC).

CCC will reimburse processors for their cost of transferring 1977 crop loan sugar, intended for forfeiture, to alternate storage space when the present storage space is needed for storage of 1978 crop sugar. The alternate storage space must be (1) arranged for by the processor; (2) determined by CCC to be safe for the storage of loan sugar; (3) available to CCC, under terms acceptable to CCC, for the storage of CCC owned sugar upon maturity of the loan; (4) not needed for the storage of the 1978 crop of sugar; and (5) located, to the extent possible, between the production and marketing areas for such sugar. Such relocation must be made prior to the loan maturity date. The processor must reimburse CCC for relocation costs paid by CCC, plus interest thereon, with respect to any quantity of loan sugar subsequently redeemed.

EFFECTIVE DATE: September 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Laurence E. Ackland, ASCS, PSD, 202-447-5647, P.O. Box 2415, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: Section 902 of the Food and Agriculture Act of 1977 (Pub. L. 95-113, 91 Stat. 949, effective October 1, 1977) amended section 201 of the Agricultural Act of 1949 to provide that the price of the 1977 and 1978 crops of sugar beets and sugarcane shall be supported through loans or purchases with respect to the processed products thereof.

On November 11, 1977, a final rule was published in the FEDERAL REGISTER (42 FR 58734) implementing a program effective as of November 8, 1977, to support prices in the marketplace for producers of 1977 crop sugar beets and sugarcane through nonrecourse loans made to sugar processors. The price support loan program for the 1977 crop was amended on May 17, 1978 (43 FR 21317), on August 23, 1978 (43 FR 37419), and on August 30, 1978 (43 FR 38686).

Florida and Texas processors who have put 1977 crop raw cane sugar under loan have done so to the maximum possible extent of their existing physical storage capacity. Loan sugar presently in storage totals about 330,000 tons in Florida and 50,000 tons in Texas. None of the 1977 crop loans will mature before November 30, 1978, and most will mature by March 31, 1979. With the harvest of the 1978 sugarcane crop due to begin in early November, Florida and Texas processors have become increasingly concerned about storage space for new crop sugar.

Indications are that, because of low prices and a lack of market opportunity, about 250,000 tons of Florida loan sugar and 50,000 tons of Texas loan sugar will not be redeemed by existing maturity dates. About 100,000 tons of refined beet sugar is in the same category, but the storage problem is not believed to be as critical in the beet area.

The regulations permit CCC to take delivery at processor's place of storage of unredeemed sugar upon maturity of loans. No additional outlays are incurred when CCC assumes costs of relocating sugar intended to be forfeited since such sugar would have to be moved from processor storage at CCC expense when forfeited. By assuming such costs prior to loan maturity, CCC outlays will only be incurred at an earlier date.

The need in certain areas for storage space for the 1978 crop of sugar became so pressing that it was determined the implementation of this action did not permit compliance with applicable rulemaking requirements.

In accordance with Executive Order 12044, dated March 23, 1978, a final impact analysis of this action has been prepared. An approved final Impact Analysis is available from Laurence E. Ackland, rrom 5761, South Building, USDA, Washington, D.C. 20250.

Accordingly, 7 CFR 1435.22 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding a new paragraph (a)(2) to read as follows:

* * * * *

§ 1435.22 Loan Maintenance and liquidation.

(a)(1) *Maintenance of the commodity under loan.* * * *

(a)(2) *Relocation of loan sugar intended for forfeiture.* A processor may, with prior approval of the loan-making office, relocate sugar under loan, which is in storage space needed for the storage of 1978 crop sugar, to other eligible storage space not needed for the storage of 1978 crop sugar. In addition to the requirements of § 1435.19(d), the eligibility of such alternate space shall depend upon the ability of CCC to enter into a contract permitting the storage of sugar in the same space subsequent to loan maturity of the sugar to be relocated to such space. To the extent possible, such storage space must be located between the production and marketing areas for the sugar relocated. For that portion of the quantity of loan sugar which the processor declares an intention to forfeit on maturity of the loan and which is relocated in accordance with the above conditions, CCC shall pay the loading-out, transportation, and loading-in expenses incurred by the processor in the relocation of such sugar: *Provided, however,* That such expenses, plus interest thereon at 6 percent per annum, must be repaid to CCC by the processor for any relocated sugar upon its redemption from loan.

* * * * *

(Secs. 201, 401 *et seq.*, Agricultural Act of 1949, as amended (7 U.S.C. 1446, 1421 *et seq.*))

NOTE.—It is hereby certified that a regulatory analysis of this action has been prepared in accordance with Executive Order 12044.

Signed at Washington, D.C., on October 24, 1978.

BOB BERGLAND,
Secretary.

[FR Doc. 78-30504 Filed 10-25-78; 10:57 am]

[3410-05-M]

[Amdt. 3]

PART 1435—SUGAR

Subpart—Price Support Loan Program for 1978 Crop Sugar Beets and Sugarcane

ESTABLISHMENT OF LOCATION DIFFERENTIALS

AGENCY: Commodity Credit Corp., USDA.

ACTION: Final rule.

SUMMARY: On June 7, 1978, there was published in the FEDERAL REGISTER (43 FR 24663) a final rule setting forth the terms and conditions under which prices to domestic producers of 1978 crop sugar beets and sugarcane would be supported. The sugar beet and sugarcane support prices and the basic loan rates for refined beet sugar and raw cane sugar established in the rule were based on "estimated" July 1978 parity. The Department stated upon issuance of the rule that after announcement of July parity prices the support prices and loan rates would be increased if necessary to achieve the statutory minimum support level of 52.5 percent of parity.

The rule also established differential loan rates for sugar produced and stored in Hawaii and Puerto Rico. The locational discounts to be applied to the basic loan rate for cane sugar, raw value, were based on the estimated ocean freight and shore risk, marine and war risk insurance charges from Hawaii or Puerto Rico to the processor's normal market outlet on the mainland. At the same time, the Department stated that it was also giving consideration to establishing location differentials with respect to the loan rates for sugar produced on the mainland, and solicited views, data and recommendations on how it might be done.

This amendment to the final rule (1) increases the support prices for sugar beets and sugarcane and the basic loan rates for refined beet sugar and cane sugar, raw value, to reflect 52.5 percent of the announced July 1978 parity prices for sugar beets and sugarcane; and (2) establishes differential loan rates for both offshore and mainland sugar based on the estimated average costs of transporting sugar from the processing region to destination.

EFFECTIVE DATE: October 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Laurence E. Ackland, ASCS, PSD, 202-447-5647, P.O. Box 2415, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: Section 902 of the Food and Agriculture Act of 1977 (Pub. L. 95-1113, 91 Stat. 949, effective October 1, 1977) amended section 201 of the Agricultural Act of 1949 to provide that the price of the 1977 and 1978 crops of sugar beets and sugarcane shall be supported through loans or purchases with respect to the processed products thereof at a level not in excess of 65 percent nor less than 52.5 percent of the parity price therefor. Section 201 also directs the Secretary of Agriculture, in carrying out the program, to establish minimum wage rates for agricultural employees engaged in the production of sugar crops.

On November 11, 1977, a final rule was published in the FEDERAL REGISTER (42 FR 58734) implementing a program effective as of November 8, 1977, to support prices in the marketplace for producers of 1977 crop sugar beets and sugarcane through loans made to sugar processors. The price support loan program for the 1977 crop was amended on May 17, 1977 (43 FR 21317), on August 23, 1978 (43 FR 37419), and on August 30, 1978 (43 FR 38686).

A final rule implementing a price support loan program for the 1978 crop of sugar beets and sugarcane was published in the FEDEARL REGISTER on June 7, 1978 (43 FR 24663). Amendments to the 1978 crop program were published on August 23, 1978 (43 FR 37419) and on August 30, 1978 (43 FR 38686).

On January 10, 1978, a final rule was published in the FEDERAL REGISTER (43 FR 1476) establishing minimum wage rates for fieldworkers engaged on and after November 8, 1977, in the production, cultivation, and harvesting of the 1977 and 1978 crops of sugar beets and sugarcane.

The support prices per net ton of sugar beets and sugarcane and the basic loan rates for refined beet sugar and raw cane sugar, as established in the regulations governing the 1978 crop program, were based upon an estimate of what 52.5 percent of parity would be as of July 1978. A July survey by the USDA Economics, Statistics, and Cooperatives Service of prices received for 1977 crop sugar beets and sugarcane resulted in upward adjustments in both the sugarbeet parity price (from the estimated $45.40 per net ton to $47.10) and the sugarcane parity price (from the estimated $35.70 per net ton to $35.90). Parity prices based on data for July 1978 were published in *Agricultural Prices* on July 31, 1978.

At 52.5 percent of parity, the average support price per net ton of sugar beets is $24.73. For sugarcane, an average price of $18.85 per net ton is equal to the statutory minimum support level. After deducting 57 cents per net ton from the sugarcane support price to reflect the value of molasses (computed on the basis of average USDA quoted molasses prices at New Orleans for the time span of 1975 through the first seven months of 1978, less appropriate discounts), and applying appropriate pricing and quality factors, a basic loan rate of 14.73 cents per pound for cane sugar, raw value, was computed as necessary to achieve 52.5 percent of parity to sugarcane producers. The basic loan rate for refined beet sugar of 16.99 cents per pound is a function of the raw cane sugar loan rate—14.73 cents per pound times 1.10 (the historical relationship between refined beet sugar net selling prices and raw cane sugar prices) plus .79 cent per pound for fixed marketing expenses.

The initial regulations with respect to the 1978 crop sugar loan program established differential loan rates for sugar stored in Puerto Rico and Hawaii based on the estimated cost of ocean transport and marine risk insurance. The basic loan rate for raw sugar stored on the mainland was set at 14.65 cents per pound, with that rate to be discounted 0.46 cent (to 14.19 cents per pound) for sugar stored in Hawaii and 1.29 cents (to 13.36 cents per pound) for sugar stored in Puerto Rico. At the same time, the Department stated that it was also giving consideration to establishing locational differentials for sugar produced on the mainland. The public was invited to submit comments and recommendations on the matter of differential loan rates, and producers and processors were encouraged to submit data to document historic differences in the market prices of sugar at the various producing and processing locations.

The Department received 12 responses to its request for comments and recommendations. None of the respondents submitted data to support their recommendations, except for one or two specific examples to illustrate the recommendations made. Of the total, seven were opposed and four were in support of location differentials. One of the four in support, an association of sugar beet producers and processors, recommended a premium

loan rate for beet sugar processors located in the Eastern area, plus an additional premium for packaged sugar under loan. One other respondent supported differential loan rates provided that loans be supplemented with direct payments equal to the cost of shipping and handling. Those opposed to differentials (one cooperative refiner and six sugar processors) stated legal objections, considerations of equity, and the likelihood that their ability to pay producers would suffer. In general, users and refiners recommended discounts equal to freight expense, while processors were opposed.

One of the respondents classified as being in opposition did not take a direct stand against location differentials but stated an awareness of the philosophy behind the establishment of differentials for sugar stored offshore and reasoned that sugar produced and marketed in Puerto Rico should be eligible for the full basic loan rate since transportation and insurance costs for delivery to the mainland would not be incurred. The respondent said that the following two categories of sugar in Puerto Rico should not be subject to a location discount: (1) Sugar already marketed under contract for future delivery to a purchaser on the Island, and (2) sugar to be sold for local consumption on a demand basis to independent distributors. This sugar would be used as loan collateral with redemption taking place as delivery occurred. This recommendation has not been adopted. Since it would be the processors' intention to redeem the entire quantity of such sugar placed under loan, the Department believes it to be of no substantial consequence to the processor if the loan rate is discounted. If the full basic loan rate was provided there would be no assurance to CCC that the processor would not forfeit a portion of the collateral, particularly with respect to the second category of sugar.

The recommendation that a premium loan rate be provided for packaged beet sugar has also not been adopted. The Department feels that the processor has the opportunity to use either bulk or bagged sugar as collateral for a loan and should not receive a premium just because bagged sugar is placed under loan.

In considering the recommendations and available data, the Department felt that the decision on whether to adopt loan rates incorporating location differentials turned on two questions. First, is it the intent to support the price to producers equally at every factory, or to vary that support with differentials consistent with normal market values? Second, are differential loan rates based on the costs of transporting sugar from the production area to destination representative of the true value of the sugar to the Commodity Credit Corporation (CCC) in the event of takeover? The Department believes that the price support program is intended to support producers' prices consistent with historical market values. This is consistent with most other commodity programs. It also reduces the probability of CCC takeover in areas where the cost of transporting sugar to market is quite high. This was the basis of the Department's initial decision to establish location differentials for sugar stored offshore.

The CCC is similarly affected by sugar stored on the mainland. The regulations as originally issued would encourage processors with high delivery costs to forfeit sugar even though the effective market price was equal to the national average loan rate plus accrued interest. In explanation of the previous statement, it is important to note that when a processor markets his sugar he incurs costs associated with delivery to the buyer. If the processor "markets" his sugar to CCC (forfeits the loan collateral), he avoids those costs. The Department believes that the processor will consider that in his decision to forfeit or redeem, and that unless loan rates incorporating location differentials are established the processor will make a decision that takes into account only his location, all other conditions being equal.

Accordingly, it is hereby determined that differential loan rates which are based on the estimated average costs of transporting sugar from the processing region to destination, should be established for all sugar offered for loan. Since processors must, on weighted average, be provided the basic loan rate of 16.99 cents for refined beet sugar or 14.73 cents for cane sugar, raw value, if the statutory minimum support level of 52.5 percent of parity is to be achieved, the loan rate established by this amendment for each location is equal to the applicable basic loan rate plus the weighted national average, cost of transporting sugar to destination (computed separately for refined beet sugar and raw cane sugar) less the average cost of transporting as computed for the processing region. Producers as a group will achieve the minimum support price of $24.73 per net ton of sugar beets or $18.85 per net ton of sugarcane, although some will receive more and others less depending on locational loan rates and traditional sharing relationships between processors and producers.

Some loans on 1978 crop sugar have already been made, and additional requests are expected in the future. In view of this situation, it is essential that these actions be implemented so that final announcement of the 1978 crop support prices and loan rates will not be unduly delayed. Accordingly, it is hereby determined that any further compliance with applicable proposed rulemaking requirements is impracticable and contrary to the public interest.

In accordance with Executive Order 12044, dated March 23, 1978, a final impact analysis of this action has been prepared. An approved final impact analysis is available from Laurence E. Ackland, Room 5761, South Building, USDA, Washington, D.C. 20250.

Accordingly, 7 CFR Part 1435 is amended as follows:

Subpart—Price Support Loan Program for 1978 Crop Sugar Beets and Sugarcane

1. By revising paragraphs (c) and (d) of § 1435.37 to read as follows:

§ 1435.37 Level and method of support and loan rates.

* * * * *

(c) *Loan rates.* The basic (weighted average) loan rates for the 1978 crop shall be 16.99 cents per pound for refined beet sugar and 14.73 cents per pound for cane sugar, raw value, including the cane sugar, raw value, equivalent contained in cane syrup and edible molasses.

(d) *Locational differentials.* (1) The loan rate applicable to eligible sugar shall be the rate specified in subparagraphs (2) and (3) of this paragraph for the region in which such sugar was processed: *Provided,* That in the case of refined or specialty sugar made from raw cane sugar which would otherwise be eligible for loan except that it is no longer in its raw form, the loan rate shall be the appropriate regional loan rate applied to the cane sugar, raw value, equivalent of the refined or specialty sugar. Such sugar must have been manufactured by a cane sugar refining facility that is cooperatively owned by its raw cane sugar processors or by a processor of sugarcane who is also a refiner.

(2) The processing regions and applicable loan rates for refined beet sugar shall be as listed below:

Region number and description	Centers per pound
1—Michigan and Ohio	17.68
2—Minnesota and the eastern half of North Dakota.	16.89
3—Northeastern quarter of Colorado; northwestern quarter of Kansas; Nebraska; and the southeastern quarter of Wyoming.	16.48
4—Southeastern quarter of Colorado; and Texas.	17.08
5—Montana and the northwestern quarter of Wyoming.	16.59
6—That part of Idaho east of the eastern boundary of Owyhee county and of such boundary extended northward; and Utah.	16.67

Region number and description	Cents per pound
7—That part of Idaho west of the eastern boundary of Owyhee county and of such boundary extended northward; Oregon; and Washington.	16.76
8—Arizona and California	17.39

(3) The processing regions and applicable loan rates for cane sugar, raw value, shall be as listed below, except that for such sugar processed in Hawaii or Puerto Rico but placed under loan on the mainland of the United States the applicable loan rate shall be 14.73 cents per pound:

Region	Cents per pound
Florida	14.98
Louisiana	15.04
Texas	14.66
Hawaii	14.66
Puerto Rico	13.44

2. By revising paragraph (b) of § 1435.38 to read as follows:

§ 1435.38 Eligibility requirements.

* * * * *

(b) Eligible processors for the 1978 crop are those who pay to all eligible producers who deliver to them for processing sugar beets and sugarcane of average quality in the following locations, not less than:

(1) For sugar beets in the regions described in paragraph (d)(2) of § 1435.37, the following rates per net ton:

Region 1, $23.51.
Region 2, $24.86.
Region 3, $24.26.
Region 4, $25.14.
Region 5, $24.42.
Region 6, $24.54.
Region 7, $24.67.
Region 8, $25.60.

(2) For sugarcane in Florida, $20.36 per net ton;

(3) For sugarcane in Louisiana, $17.57 per net ton;

(4) For sugarcane in Texas, the amount determined by multiplying 8.796 cents times the average pounds of cane sugar, raw value, recovered per ton from the sugarcane delivered to the processor by all producers, as adjusted by the processor to reflect the quality of the juice (normal juice sucrose and normal juice purity) extracted from the individual producer's sugarcane;

(5) For sugarcane in Hawaii, where the delivery point is at the mill, the amount determined by multiplying 9.6756 cents times the total pounds of cane sugar, raw value, recovered per ton from the sugarcane delivered to the processor by the individual producer; and

(6) For sugarcane in Puerto Rico, that price determined in accordance with the provisions of Puerto Rico Law No. 426—also known as the Puerto Rico Sugar Law—and the rules issued thereunder by the Sugar Board of Puerto Rico;

Provided, however, That the foregoing prices may be adjusted for sugar beets or sugarcane of nonaverage quality on the method agreed upon by the producer and processor, subject to prior approval of the Executive Vice President, CCC, or his designee.

* * * * *

(Secs. 201, 401 et seq, Agricultural Act of 1949, as amended (7 U.S.C. 1446, 1421 et seq))

NOTE.—It is hereby certified that a regulatory analysis of this action has been prepared in accordance with Executive Order 12044.

Signed at Washington, D.C., on October 24, 1978.

BOB BERGLAND,
Secretary.

[FR Doc. 78-30505 Filed 10-25-78; 10:57 am]

[4910-13-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 78-CE-19-AD; Amdt. 39-3329]

PART 39—AIRWORTHINESS DIRECTIVES

Beech 50, 65, 70, 90, 99, and 100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, supersedure of existing Airworthiness Directive.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech 50, 65, 70, 90, 99, and 100 series airplanes, which supersedes AD 70-18-02. The new AD requires a one-time visual inspection of certain elevator control push rods for bends, nicks, cracks or corrosion; a dye penetrant inspection for cracks; and application of an internal corrosion preventative treatment to untreated rods. These requirements will alleviate the need for AD 70-18-02. Approximately 510 additional airplanes not presently covered by AD 70-18-02 are added to the applicability statement of this AD. This action will assure continued structural integrity of elevator control push rods and preclude possible failures which would have an adverse effect on aircraft controllability.

DATES: Effective date November 6, 1978. Compliance schedule—As prescribed in the body of the AD.

ADDRESS: Beechcraft Service Instructions No. 0334-152, Revision III, applicable to this AD, may be obtained from local Beechcraft Aviation and Aero Centers or Beech Aircraft Corp., Commercial Service Department, 9709 East Central, Wichita, Kans. 67201. A copy of the service instructions cited above is contained in the Rules Docket, Office of the Regional Counsel, room 1558, 601 East 12th Street, Kansas City, Mo. 64106 and at room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

William L. (Bud) Schroeder, Aerospace Engineer, Engineering and Manufacturing Branch, FAA, Central Region, 601 East 12th Street, Kansas City, Mo. 64106, telephone 816-374-3446.

SUPPLEMENTARY INFORMATION: Amendment 39-907 (35 FR 305) as amended by amendments 39-1074 (35 FR 13722-13723) and 39-1879 (39 FR 21120), AD 70-18-02, currently requires repetitive inspections of elevator control push rods on certain Beech 50, 65, 70, and 90 series airplanes for bends, nicks, cracks or corrosion in accordance with Beechcraft Service Instructions 0334-152, Revision I.

Subsequent to the issuance of AD 70-18-02, it was determined that the elevator control push rod cracks are caused by corrosion inside the control rod tubes. The manufacturer has now begun applying a corrosion preventative treatment to the inside of current production rods. This treatment eliminates the internal corrosion problem and negates the need for mandatory repetitive inspections to assure continued structural integrity of the elevator control push rods. Also, subsequent to the issuance of AD 70-18-02, the manufacturer ascertained that certain 99 and 100 series airplanes, which are not affected by AD 70-18-02, have similar elevator control push rods that are susceptible to internal corrosion. To correct this problem on in-service airplanes, the manufacturer issued Beechcraft Service Instructions Number 0334-152, Revision II, superseding revision I of the same service instructions. Revision II recommended a one-time inspection and corrosion treatment for elevator control push rods on all airplanes currently affected by AD 70-18-02 plus certain Beech 99 and 100 series airplanes. In addition, revision II included cutoff serial numbers for various models of airplanes delivered with elevator control push rods that do not have the corrosion preventative treatment. Before AD 70-18-02 could be amended to re-

flect the changes included in revision II of service instructions No. 0334-152, the manufacturer discovered that some airplanes were delivered with elevator control push rods that were identified as having received the corrosion preventative treatment when in fact they had not. As a result, Beechcraft Service Instructions No. 0334-152, Revision III, has now been issued to correct this problem. The repetitive inspections recommended by revision I of Beechcraft Service Instructions No. 0334-152, and made mandatory by AD 70-18-02, are no longer required after accomplishment of the inspection and corrosion preventative treatment recommended by revision III of the service instructions.

Accordingly, the FAA has decided to supersede AD 70-18-02 with a new AD applicable to certain Beech 50, 65, 70, 90, 99, and 100 series airplanes making compliance with the recommendations in Beechcraft Service Instructions No. 0334-152, Revision III mandatory.

Since this AD is in part relieving in nature and since a situation exists that requires the expeditious adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

ADOPTION OF THE AMENDMENT

In consideration of the foregoing, and pursuant to the authority delegated to me by the administrator, § 39.13 of part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

BEECH. Applies to the following models and serial number airplanes, certificated in all categories:

Model	Serial No.
50	H-1 through H-11.
B50, C50	CH-12 through CH-360.
D50, D50A, D50B, D50C and D50E.	DH-1 through DH-347.
E50	EH-1 through EH-70.
F50	FH-71 through FH-93, FH-95, FH-96.
G50	GH-94, GH-97 through GH-119.
H50	HH-120 through HH-149.
J50	JH-150 through JH-176.
65, A65, A65-8200	L-1, L-2, L-6, LF-7, LF-8, LC-1 through LC-335.
70	LB-1 through LB-35.
65-80, 65-A80, 65-A80-8800, 65-B80.	LD-1 through LD-511.
65-88	LP-1 through LP-28, LP-30 through LP-47.
65-90, 65-A90, B90, C90.	LJ-1 through LJ-797.
E90	LW-1 through LW-297.
99, 99A, A99A, B99	U-1 through U-164.
100, A100	B-1 through B-247.
B100	BE-1 through BE-55.

COMPLIANCE: Required as indicated unless already accomplished.

To prevent partial loss of elevator control due to possible failure of elevator control push rods, in accordance with instructions set forth herein and in Beechcraft Service Instructions No. 0334-152, Revision III, or later approved revisions, accomplish the following:

(A) On the following airplanes:

Model	Serial No.
50	H-1 through H-11.
B50 and C50	CH-12 through CH-360.
D50, D50A, D50B, D50C, and D50E.	DH-1 through DH-347.
E50	EH-1 through EH-70.
F50	FH-71 through FH-93, FH-95 and FH-96.
G50	GH-94 and GH-97 through GH-119.
H50	HH-120 through HH-149.
J50	JH-150 through JH-176.
65, A65 and A65-8200.	L-1, L-2, L-6, LF-7, LF-8 and LC-1 through LC-335.
70	LB-1 through LB-35.
65-80, 65-A80, 65-A80-8800 and 65-B80.	LD-1 through LD-511.
65-88	LP-1 through LP-28 and LP-30 through LP-47.
65-90, 65-A90, B90 and C90.	LJ-1 through LJ-716.
E90	LW-1 through LW-222.
99, 99A, A99A and B99.	U-1 through U-164.
100, A100	B-1 through B-233.
B100	BE-1 through BE-23.

Upon the accumulation of 1,050 hours total time-in-service for airplanes with less than 1,000 hours total time-in-service on the effective date of this AD,

Within 50 hours time-in-service after the effective date of this AD, for airplanes with more than 1,000 hours total time-in-service on the effective date of this AD, that have not complied with AD 70-18-02, or

Within 500 hours time-in-service after the last inspection in accordance with AD 70-18-02, for airplanes with more than 1,000 hours total time-in-service that have complied with AD 70-18-02:

1. Review the airplane maintenance records for entries showing that Beechcraft Service Instructions No. 0334-152, Revision II, has been complied with. If revision II of the service instructions has not been complied with, accomplish paragraph (A)2 of this AD. If revision II of the service instructions has been complied with, accomplish paragraph (A)3 of this AD within an additional 100 hours time-in-service after this finding.

2. Gain access to the elevator control push rods (reference figures I and II of this AD) and visually inspect for the words "Corrosion Proofed" ink stamped near the center of the rods. If the words "Corrosion Proofed" are ink stamped on a rod, no further action on that rod is required by this AD. If the words "Corrosion Proofed" are not ink stamped on the rods, remove the elevator control push rods, clean, dye penetrant and visually inspect, check for bows, apply corrosion preventative treatment, identify and reinstall, all in accordance with Part I of Beechcraft Service Instructions No. 0334-152, Revision III, or later approved revisions.

3. Gain access to the elevator control push rods (reference figures I and II of this AD) and visually inspect for the words "Corrosion Proofed" ink stamped near the center of each rod. If the words "Corrosion Proofed" are ink stamped on a rod, then no further action on that rod is required by this AD. If the words "Corrosion Proofed" are not ink stamped on any rod and new rods were not installed during compliance with revision II of the service instructions, paint a black stripe around the center of each rod in accordance with Part II of Beechcraft Service Instructions No. 0334-152, Revision III, or later approved revisions. If any new rods were installed during compliance with revision II of the service instructions and the new rods are not ink stamped "Corrosion Proofed", on each new rod so installed, remove the elevator control push rod, disassemble, inspect for corrosion preventative treatment and alignment, and if not found accomplished, apply the corrosion preventative treatment, identify, reassemble and reinstall, all in accordance with Part III of Beechcraft Service Instructions No. 0334-152, Revision III, or later approved revisions.

(B) On the following airplanes:

Model	Serial No.
C90	LJ-717 through LJ-797.
E90	LW-223 through LW-297.
A100	B-234 through B-247.
B100	BE-24 through BE-55.

Within 100 hours time-in-service after the effective date of this AD:

1. Gain access to the elevator control push rods (reference figures I and II of this AD) and visually inspect for the words "Corrosion Proofed" ink stamped near the center of the rods. If the words "Corrosion Proofed" are ink stamped on a rod, no further action on that rod is required by this AD. If the words "Corrosion Proofed" are not ink stamped on the rods, remove the elevator control push rod tubes, disassemble, inspect for corrosion preventative treatment and alignment, and if not found accomplished, apply the corrosion preventative treatment, identify, reassemble and reinstall, all in accordance with Part III of Beechcraft Service Instructions No. 0334-152, Revision III, or later approved revisions.

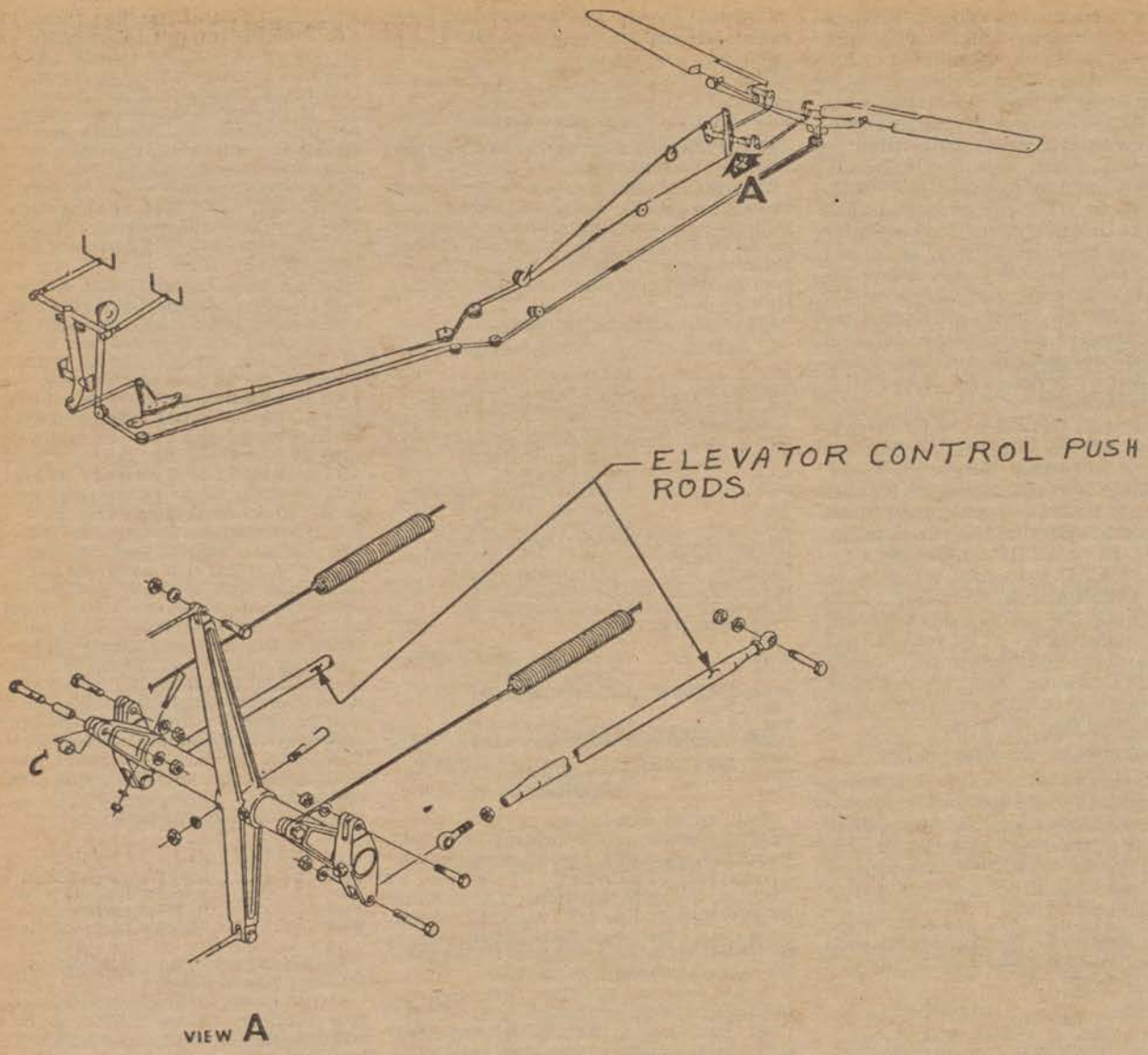

FIGURE I

TYPICAL 50, 65, 70, 80, 88 AND 90 SERIES

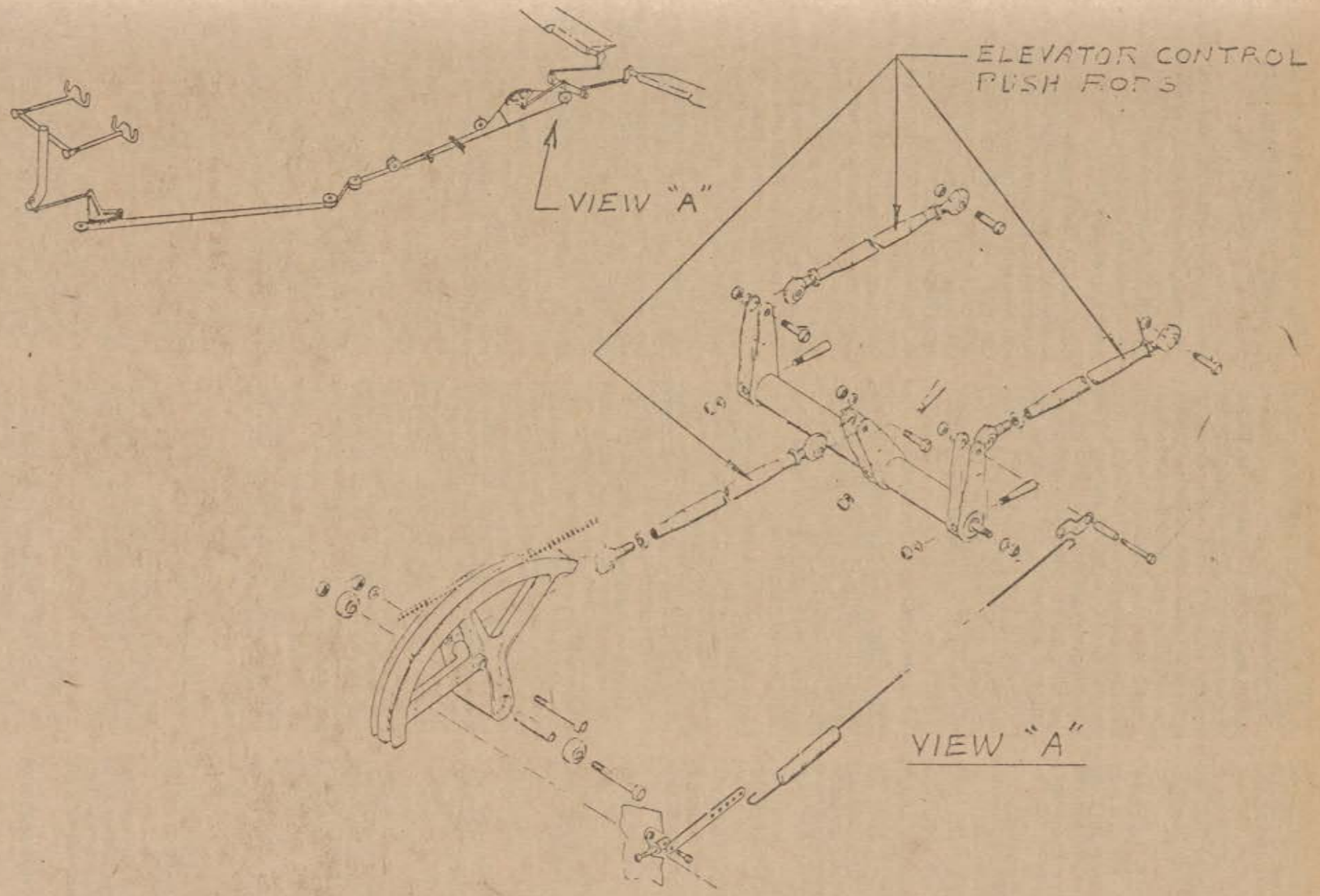

FIGURE II
TYPICAL 99 AND 100 SERIES

(C) On all airplanes affected by this AD, replace any elevator control push rods found cracked or otherwise unserviceable during any inspection required by this AD with serviceable rods that comply with the requirements of this AD prior to returning the airplane to service.

(D) Any equivalent means of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region.

This AD supersedes AD 70-18-02, Amendment 39-907 (35 FR 305) as amended by Amendments 39-1074 (35 FR 13722 and 13723) and 39-1879 (39 FR 21120). This amendment becomes effective November 6, 1978.

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

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

Issued in Kansas City, Mo. on October 20, 1978.

WM. JACK SASSER,
Acting Director, Central Region.

[FR Doc. 78-30570 Filed 10-27-78; 8:45 am]

[4910-13-M]

[Docket No. 78-EA-77, Amdt. 39-3326]

PART 39—AIRWORTHINESS DIRECTIVES

General Dynamics

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to General Dynamics (Convair) 340, 440, 640, 580 type airplanes altered by STC SA896EA, emergency exit window interior trim panel, and requires replacement or removal of the trim panel so as to prevent entrapment of the operator's hand during release of the window.

EFFECTIVE DATE: November 1, 1978. Compliance is required within the next 10 hours in service.

ADDRESSES: Service bulletins may be acquired from the manufacturer at Magee Plastics Co./Magee Systems Co., 535 Rochester Road, Pittsburgh, Pa. 15237.

FOR FURTHER INFORMATION CONTACT:

M. Schoenberger, Aircraft Modification Section, AEA-219, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, N.Y. 11430, telephone 212-995-3348.

SUPPLEMENTARY INFORMATION: During removal of the emergency window exit, the trim panel can shift upward making it difficult to extricate the hand from the latch access area.

Since this is a condition existing in airplanes of the referenced type design, an AD is being issued which will require replacement or removal of the trim panel. Since this deficiency concerns emergency exit from an airplane, safety is affected so that notice and public procedure hereon are impractical and good cause exists for making the rule effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

GENERAL DYNAMICS. Applies to models 340 and 440 airplanes, including those modified for turbopropeller power in accordance with STC SA1096WE and SA4-1100, which have been modified to incorporate interiors in accordance with STC SA896EA, certificated in all categories.

Compliance required as indicated.

To assure release of the operator's hand after removal of the emergency exit window, accomplish the following:

a. Within the next 10 hours in service after the effective date of this airworthiness directive, unless previously accomplished, remove the emergency exit interior trim panel Magee Plastic Co., P/N 9675-WPE. If a replacement trim panel is installed, it must be P/N 9675-WPE-1 or an equivalent approved by the Chief, Engineering and Manufacturing Branch/FAA, Eastern Region.

b. Special flight permits may be issued in accordance with FAR 21.197 to authorize operation of the aircraft to a base for the accomplishment of the modifications required by this AD.

NOTE.—Magee Plastics Co. Service Letter dated Aug. 11, 1978, entitled "Magee Mashell Interior Kit for the Convair Part No. 96123-STC SA896EA" pertains to this subject.

Effective date: This amendment is effective November 1, 1978.

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

Issued in Jamaica, N.Y., on October 18, 1978.

WILLIAM E. MORGAN,
Director, Eastern Region.

[FR Doc. 78-30568 Filed 10-27-78; 8:45 am]

[4910-13-M]

[Docket No. 78-NW-17-AD, Amdt. 39-3327]

PART 39—AIRWORTHINESS DIRECTIVES

Hiller Model UH-12D, UH-12E Helicopters Soloy Turbine Conversions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive which requires that the integrated collective and N_2 engine control system on Hiller UH-12D and UH-12E helicopters which have been turbine converted by supplemental type certificates SH177WE or SH178WE respectively, be modified to allow full movement of the collective control in the event that the N_2 engine control cable or its associated linkage becomes jammed.

There have been cases where N_2 engine control cable icing has resulted in the loss of collective control movement. These cases resulted in the issuance of telegraphic AD 76-20-06 (Amendment 39-2740, 41 FR 44153) on September 8, 1976. Although AD 76-20-06 required modification of the powerplant cable assemblies to prevent jamming due to icing, it has been determined that the cables can jam from other causes. This airworthiness directive will result in the ability to enter into autorotation in the event the N_2 engine control system becomes jammed due to any cause. In addition, to reduce the likelihood of engine cable jamming which results in the loss of engine control, this airworthiness directive requires certain N_1 and N_2 engine control cable assemblies which have exhibited an excessive in-service failure rate to be replaced with assemblies shown to be more reliable.

DATES: Effective date November 30, 1978. Compliance date on or before January 1, 1979.

ADDRESSES: The Soloy Service Bulletin specified in this directive may be obtained upon request to Soloy Conversions, Ltd., P.O. Box 60, Chehalis, Wash. 98532. This document may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Wash. 98108.

FOR FURTHER INFORMATION CONTACT:

James R. Haynes, Airframe Section, ANW-212, or Daniel I. Cheney, Propulsion Section, ANW-214, Engineering and Manufacturing Branch, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Wash. 98108, telephone 206-767-2516.

SUPPLEMENTARY INFORMATION: Interested persons were invited to participate in the making of this rule by notice of proposed rulemaking issued on July 17, 1978 (43 FR 32432). No comments were received on the proposal by September 1, 1978, which was the close of the comment period. The notice of proposed rulemaking proposed modification of the collective and N_2 engine control system to achieve full collective movement in the event of a jammed N_2 engine control system.

The normal reaction to these types of failures is rapid entry into autorotation which may not be possible with the current design. In addition, the FAA has determined that certain N_1 and N_2 engine control assemblies are unsafe, since they exhibited an unacceptably high rate of jamming or otherwise failing, resulting in inability to continue powered flight.

Since these conditions are likely to exist on other helicopters of the same type design, this airworthiness directive requires modification of the integrated collective and N_2 engine control system and replacement of certain N_1 and N_2 engine control cable assemblies, unless already accomplished on Hiller UH-12D and UH-12E helicopters that have been turbine converted in accordance with supplemental type certificates SH177WE or SH178WE respectively.

These problems with collective isolation and control cable reliability do not exist on Hiller UH-12D and UH-12E helicopters that have not been turbine converted.

ADOPTION OF THE AMENDMENT

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

HILLER AVIATION: Applies to Model UH-12D and UH-12E helicopters, including the UH-12E 4-place configurations, which have been converted to turbine power in accordance with Soloy Conversions, Ltd., STC Nos. SH177WE and SH178WE respectively, certificated in all categories. Compliance required on or before January 1, 1979.

Since the proposal was issued, Soloy Conversions, Ltd., has developed a modification, consisting of an isolation device, which will achieve the results stated in the proposal. FAA has determined the modification is an acceptable means of compliance, and it is included in the airworthiness directive.

During the comment period, it was determined that another related problem existed concerning reliability of both the N_1 and N_2 cable assemblies supplied by a certain manufacturer. There have been numerous cases of these cables jamming or otherwise failing resulting in loss of engine control. Although none of the failures have been so severe as to result in loss of collective control, the loss of engine control is considered to be an unsafe condition. Since Soloy Conversions is providing new, more reliable, cables available in the same modification kit and service bulletin as the isolation device, it was determined to be in the public interest to prescribe replacement of these suspect N_1 and N_2 engine control cables under the same airworthiness directive action rather than issuing a separate airworthiness directive for the cable replacements.

The FAA has determined that the collective and N_2 control system design on Hiller Model UH-12D and UH-12E helicopters, as modified by supplemental type certificates SH177WE or SH178WE respectively, is unsafe, since a jammed N_2 engine control assembly would prevent entry into autorotation. A jammed N_2 control could result from icing, powerplant fire, cable lockout, or mechanical failure of the fuel control mechanism.

To prevent loss of flight control or engine control, accomplish the following:

(a) Modify the integrated collective and N_2 engine control system in accordance with Soloy Conversions, Ltd., Service Bulletin 06-560 dated October 6, 1978, or later FAA approved revision.

(b) Unless already accomplished, remove from service certain N_1 and N_2 engine control cables as identified in Soloy Conversions, Ltd., Service Bulletin 06-560 dated October 6, 1978, or later FAA approved revisions. Install replacement cables in accordance with the same bulletin.

(c) An equivalent modification may be approved by the Chief, Engineering and Manufacturing Branch, FAA, Northwest Region.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received this document from the manufacturer, may obtain copies upon request to Soloy Conversions, Ltd., P.O. Box 60, Chehalis, Wash. 98532. This document may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Wash. 98108.

This amendment becomes effective November 30, 1978.

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

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

Issued in Seattle, Wash., on October 18, 1978.

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

NOTE.—The incorporation by reference provisions in the document were approved by the Director of the FEDERAL REGISTER on June 19, 1967.

[FR Doc. 78-30569 Filed 10-27-78; 8:45 am]

[4910-13-M]

[Docket No. 78-EA-62; Amdt. 39-3325]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends airworthiness directive (AD) 76-06-09 applicable to Piper PA-31P type airplanes, and requires additional serial numbered airplanes to be subject to the AD and substitutes another permanent alteration which permits cessation of the 50-hour inspection.

EFFECTIVE DATE: October 31, 1978. Compliance is required within 50 hours in service.

ADDRESSES: Piper service bulletins may be acquired from the manufacturer at Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pa. 17745.

FOR FURTHER INFORMATION CONTACT:

P. Perrotta, Propulsion Section, AEA-214, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, N.Y. 11430, telephone 212-995-2894.

SUPPLEMENTARY INFORMATION: Recent reports have indicated that the replacement design V-band coupling specified in the AD has not given satisfactory service whereas the Piper one-piece clamp coupling was a better substitute. AD 76-06-09 is being amended so as to delete the present paragraph (d) and substitute the one piece coupling as an alternative and also to cover additional aircraft.

Since the incorporation of additional aircraft has an effect on air safety, notice and public procedure hereon are impractical and good cause exists for making the amendment effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Avi-

ation Regulations (14 CFR 39.13) is amended, by amending AD 76-06-09, as follows:

PROPOSED REVISION TO AD 76-06-09—PIPER (REFERENCE AMENDMENT 39-2559, EFFECTIVE MARCH 31, 1976)

Revise applicability statement of paragraph (a) to read:

On airplanes serial Nos. 31P-1 through 31P-7730003 within 50 hours after the effective date of this amendment, and every 50 hours thereafter * * *

Revise paragraph (d) to read:

On airplanes serial Nos. 31P-1 through 31P-7730003 the repetitive inspections of paragraph (a) shall be accomplished until the replacement one-piece turbine tailpipe clamp coupling P/N 556053 is installed in accordance with the "Instructions" sheet in Piper Service Bulletin No. 534 and vibration isolators installed in accordance with Piper Service Bulletin No. 492.

NOTE.—When replacing the turbine tailpipe clamp coupling, preload the tailpipe against the turbine flange as specified in Piper Service Bulletin Nos. 534 and 462A.

Effective date: This amendment is effective October 31, 1978.

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

Issued in Jamaica, N.Y., on October 17, 1978.

WILLIAM E. MORGAN
Director, Eastern Region.

[FR Doc. 78-30567 Filed 10-27-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-SO-63]

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

Alteration of Greeneville, Tenn., Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the Greeneville, Tenn., transition area, by deleting holding pattern airspace northeast of the Greene County nondirectional radio beacon. The need for protected airspace in this quadrant no longer exists.

EFFECTIVE DATE: November 15, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: This alteration deletes holding pattern airspace northeast of the Greene County nondirectional radio beacon. The standard instrument approach procedure for which airspace was necessary has been canceled. Since this alteration is minor in nature, notice and public procedure hereon are not considered necessary.

ADOPTION OF AMENDMENT

Accordingly, part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective November 15, 1978, as hereinafter set forth:

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

* * * that airspace extending upward from 700 feet above the surface within a 9-mile radius of Greeneville Municipal Airport (lat. 36°11'30" N., long. 82°49'01" W.); excluding the portion within the Tri-City, Tenn., transition area * * *.

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

Issued in East Point, Ga., on October 19, 1978.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc. 78-30572 Filed 10-27-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-EA-80]

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

Alteration of Terminal Control Area: New York, N.Y.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule will amend the area's description by reincorporating a small area in area A and J of the New York terminal control area. This alteration results from an error which occurred when docket No. 78-EA-8 was published, altering the terminal area. At that time, the small area, the subject of this docket, was inadvertently deleted.

EFFECTIVE DATE: October 30, 1978.

FOR FURTHER INFORMATION CONTACT:

M. Rosen, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, N.Y. 11430, telephone 212-995-3391.

SUPPLEMENTARY INFORMATION: The rule is minor in nature and does not impose any additional burden on any person. In view of the foregoing, notice and public procedure hereon are unnecessary and the rule may be made effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, subpart K of part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, October 30, 1978, as follows:

1. Amend § 71.401 of part 71, Federal Aviation Regulations, as follows:

NEW YORK, N.Y. TERMINAL CONTROL AREA

AREA A

In the text, delete "thence direct to the intersection of the Clearview Expressway and the LaGuardia 093° radial; direct to the southern edge of Bowne Park, direct to the southern edge of Leavitts Park; thence direct to the JFK VORTAC 340° radial 9 mile DME fix; direct to the JFK VORTAC 341° radial 10 mile DME fix; thence direct to the point of beginning "and substitute therefor, "thence westerly to the intersection of the Clearview Expressway with a line extending from the LaGuardia 093° radial 6 mile DME fix to the southern edge of Bowne Park; thence to the southern edge of Leavitts Park; thence direct to the JFK VORTAC 340° radial 9 mile DME fix; direct to the JFK VORTAC 341° radial 10 mile DME fix; thence direct to the point of beginning.".

AREA J

In the text, delete "thence easterly to the intersection of LaGuarida 093° radial with the Clearview Expressway, thence northerly along the Clearview Expressway to the north stanchion of the Throgs Neck Bridge." and substitute therefor, "thence easterly to the intersection of the Clearview Expressway with a line extending from the south edge of Bowne Park to the LaGuardia 093° radial 6 mile DME fix; thence northerly along the Clearview Expressway to the north stanchion of the Throgs Neck Bridge.".

(Secs. 307(a), 313(a) Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(c)); sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.69.)

Issued in Jamaica, New York, on October 16, 1978.

LOUIS J. CARDINALI,
Acting Director, Eastern Region.

[FR Doc. 78-30573 Filed 10-27-78 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-ASW-38]

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

Designation of Transition Area: Clarendon, Tex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is to designate a transition area at Clarendon, Tex. The intended effect of the action is to provide controlled airspace for aircraft executing a proposed instrument approach procedure to the Clarendon Municipal Airport. The circumstance which created the need for the action was a requirement to provide capability for flight under instrument flight rules (IFR) procedures to the airport.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Ken Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101, telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

HISTORY

On August 24, 1978, a notice of proposed rulemaking was published in the FEDERAL REGISTER (43 FR 37705) stating that the Federal Aviation Administration proposed to designate the Clarendon, Tex., transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes, this amendment is that proposed in the notice.

THE RULE

This amendment to subpart G of part 71 of the Federal Aviation Regulations (14 CFR Part 71) designates the Clarendon, Tex., transition area. This action provides controlled airspace from 700 feet above the ground for the protection of aircraft executing instrument approach procedures to the Clarendon Municipal Airport utilizing the nondirectional radio beacon (NDB).

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, subpart G of part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 440) is amended, effective 0901 G.m.t., December 28, 1978, as follows:

In subpart G, § 71.181 (43 FR 440), the following transition area is added:

CLARENDON, TEX.

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of Clarendon Municipal Airport (lat. 34°54'34" N., long. 100°52'20" W.), and within 3.5 miles each side of the 209° bearing from the NDB (lat. 34°54'37" N., long. 100°52'03" W.), extending from the 5.5-mile radius area to 11.5 miles southwest of the NDB.

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

NOTE.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 3, 1978).

Issued in Fort Worth, Tex., on October 18, 1978.

PAUL J. BAKER,
Acting Director, Southwest Region.

[FR Doc. 78-30574 Filed 10-27-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-ASW-40]

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

Designation of Transition Area: Crosbyton, Tex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is to designate a transition area at Crosbyton, Tex. The intended effect of the action is to provide controlled airspace for aircraft executing a proposed instrument approach procedure to the Crosbyton Municipal Airport. The circumstance which created the need for the action is the establishment of a navigational aid (NDB) at the airport to provide capability for flight under instrument weather conditions to the airport.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Ken Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101, telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

HISTORY

On August 24, 1978, a notice of proposed rulemaking was published in the FEDERAL REGISTER (43 FR 37707) stating that the Federal Aviation Administration proposed to designate the Crosbyton, Tex., transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received and one commentor objected to the proposal.

DISCUSSION OF COMMENTS

The Department of Air Force representative objected to the proposed rule. The commentor expressed concern because of the effect the proposal may have on Olive Branch IFR military training route (OB-55) and future plans to convert the OB-55 route to an IFR military training route (IR). Instrument flight rules (IFR) traffic in controlled airspace will be separated by the appropriate air traffic control facility. Military flights on the OB-55 can be conducted under visual flight rules (VFR) only when weather conditions are equal to or better than 3,000' ceiling and 5 miles' visibility. Under these conditions, both civil and military aircraft are governed by the "see and be seen" concept in accordance with Federal Aviation Regulations. The Federal Aviation Administration has determined that any effect will be minimal. Except for editorial changes, this amendment is that proposed in the notice.

THE RULE

This amendment to subpart G of part 71 of the Federal Aviation Regulations (14 CFR Part 71) designates the Crosbyton, Tex., transition area. This action provides controlled airspace from 700 feet above the ground for the protection of aircraft executing instrument approach procedures to the Crosbyton Municipal Airport.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, subpart G of part 71 of the Federal Aviation Regulations (14 CFR Part

71) as republished (43 FR 440) is amended, effective 0901 G.m.t., December 28, 1978, as follows.

In subpart G, § 71.181 (43 FR 440), the following transition area is added:

CROSBYTON, TEX.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Crosbyton Municipal Airport (lat. 33°37'30" N., long. 101°14'30" W.), and 3.5 miles each side of the 189° bearing from the Crosbyton NDB (lat. 33°37'25" N., long. 101°14'17" W.), extending from the 7-mile radius to 11.5 miles south of the NDB.

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

NOTE.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and critieria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 3, 1978).

Issued in Fort Worth, Tex., on October 19, 1978.

PAUL J. BAKER,
Acting Director,
Southwest Region.

[FR Doc. 78-30576 Filed 10-27-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-ASW-39]

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

Alteration of Transition Area: Jonesboro, La.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is to alter the transition area at Jonesboro, La. The intended effect of the action is to realign controlled airspace for aircraft executing instrument approach procedures to the Jonesboro Municipal Airport. The circumstances which created the need for the action were relocation of the Jonesboro navigational aid (NDB) located on the airport and realignment of instrument approach procedures designated on the facility.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Ken Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101, telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

HISTORY

On August 24, 1978, a notice of proposed rulemaking was published in the FEDERAL REGISTER (43 FR 37706) stating that the Federal Aviation Administration proposed to alter the Jonesboro, La., transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes this amendment is that proposed in the notice.

THE RULE

This amendment to subpart G of part 71 of the Federal Aviation Regulations (14 CFR part 71) alters the Jonesboro, La., transition area. This action realigns controlled airspace from 700 feet above the ground for the protection of aircraft executing instrument procedures established for the Jonesboro Municipal Airport.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, subpart G of part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 440) is amended, effective 0901 G.m.t., December 28, 1978, as follows.

In subpart G, § 71.181 (43 FR 440), Jonesboro, La., transition area is as follows:

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Jonesboro Municipal Airport, Jonesboro, La. (lat. 32°12'10" N., long. 92°44'10" W.) and within 3.5 miles each side of the 202° bearing from the Jonesboro NDB (lat 32°12'10" N., long. 92°43'45" W.) extending from the 6.5-mile radius area to 12 miles south of the NDB.

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

NOTE.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (49 FR 9582; March 3, 1978).

Issued in Fort Worth, Tex., on October 18, 1978.

PAUL J. BAKER,
Acting Director,
Southwest Region.

[FR Doc. 78-30575 Filed 10-27-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-ASW-41]

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

Designation of Transition Area: Levelland, Tex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is to designate a transition area at Levelland, Tex. The intended effect of the action is to provide controlled airspace for aircraft executing instrument procedures to the Levelland Municipal Airport, Levelland, Tex. The circumstance which created the need for the action is the scheduled establishment of a navigational aid (NDB) at the airport to provide capability for flight under instrument weather conditions to the airport.

EFFECTIVE DATE: December 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Ken Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101, telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION: On August 24, 1978, a notice of proposed rulemaking was published in the FEDERAL REGISTER (43 FR 37708) stating that the Federal Aviation Administration proposed to designate the Levelland, Tex., transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes, this amendment is that proposed in the notice.

THE RULE

This amendment to subpart G of part 71 of the Federal Aviation Regulations (14 CFR 71) designates the Levelland, Tex., transition area. This action provides controlled airspace from 700 feet above the ground for the protection of aircraft executing instrument procedures at the Levelland Municipal Airport.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, subpart G of part 71 of the Feder-

al Aviation Regulations (14 CFR Part 71) as republished (43 FR 440) is amended, effective 0901 G.m.t., December 28, 1978, as follows:

In subpart G, § 71.181 (43 FR 440), the Levelland, Tex., transition area is added as follows:

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Levelland Municipal Airport (lat. 33°33'32" N., long. 102°22'20" W.), and within 3.5 miles each side of the 170° bearing from the Levelland NDB (lat. 33°33'20" N., long. 102°22'29" W.), extending from the 7-mile radius to 11.5 miles southwest of the RBN.

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

NOTE.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 3, 1978).

Issued in Fort Worth, Tex., on October 18, 1978.

PAUL J. BAKER,
Acting Director,
Southwest Region.

[FR Doc. 78-30571 Filed 10-27-78; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-WE-16]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: In a rule published in the FEDERAL REGISTER of September 11, 1978, (43 FR 40215) the alteration of Restricted Area R-2507, Chocolate Mountains, Calif., was incorrectly specified as being subdivided into R-2507A and R-2507B. This action corrects that error by changing R-2507A to R-2507 North and R-2507B to R-2507 South.

EFFECTIVE DATE: October 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: 202-426-8525.

SUPPLEMENTARY INFORMATION: FEDERAL REGISTER Document 78-25440 was published on September 11, 1978, (43 FR 40215) and amended the description of Restricted Area R-2507. An error in the description of the subdivisions was made and this action corrects that mistake.

ADOPTION OF THE CORRECTION

Accordingly, pursuant to the authority delegated to me by the Administrator, FR Doc. 78-25440 as published in the FEDERAL REGISTER on September 11, 1978, (43 FR 40215) is amended as follows:

"R-2507A Chocolate Mountains, Calif." is deleted and "R-2507 North Chocolate Mountains, Calif." is substituted therefor.

"R-2507B Chocolate Mountains, Calif." is deleted and "R-2507 North Chocolate Mountains, Calif." is substituted therefor.

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

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

Issued in Washington, D.C., on October 26, 1978.

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

[FR Doc. 78-30682 Filed 10-27-78; 8:45 am]

[6355-01-M]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

SUBCHAPTER B—CONSUMER PRODUCT SAFETY ACT REGULATIONS

PART 1201—SAFETY STANDARD FOR ARCHITECTURAL GLAZING MATERIALS

Extension of Effective Date; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Correction and renumbering of rule.

SUMMARY: The Commission renumbers sections of the safety standard for architectural glazing materials so that the effective date provisions appear in one section of the standard. The Commission also corrects an error in date and section references appearing in the effective date provisions.

EFFECTIVE DATE: The effective date provisions are presently in effect. The correction is effective October 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Allen Brauninger, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207, telephone 301-492-6629.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of January 6, 1977, the Commission issued a safety standard for architectural glazing materials (16 CFR Part 1201). In the FEDERAL REGISTERS of June 20, 1977 (42 FR 31164), December 7, 1977 (42 FR 61859), and June 22, 1978 (43 FR 26699), the Commission amended the effective date of the standard as it applies to glazing material that complies with the voluntary industry glazing standard ANSI Z97.1. In issuing the amendment of December 7, 1977, the amendment was inadvertently included as part of § 1201.2 of the standard § 1201.2(e)), which contains definitions used in the standard, rather than in § 1201.7, which concerns the effective date of the standard. Moreover, when the amendments published in the FEDERAL REGISTER of December 7 were codified in the Code of Federal Regulations (CFR), subsection numbers different from those appearing in the FEDERAL REGISTER were used.[1] In referring to the corrections discussed below, the CFR citations are used since the CFR is the official codification of rules issued by the Commission. So that the public can better understand the various effective dates of the glazing standard, the Commission is republishing below the various effective dates contained in the standard. In addition, the Commission is transferring the effective dates included in § 1201.2 to § 1201.7.

In addition to the foregoing, a member of the glazing industry has pointed out to the Commission that the amendment of December 7, 1977 contains two errors. In 16 CFR 1201.2(f), the date December 3, 1977 should be July 5, 1978. The December 3 date is incorrect because 16 CFR 1201.2(e) allows laminated glass manufactured on or after July 6, 1977 through December 3, 1977, to be incorporated into category II products through July 5, 1978 under the conditions specified. The purpose of 16 CFR 1201.2(f) is to allow those products manufactured through July 5, 1978, with glazing manufactured between July 6, 1977 and December 3, 1977, to

[1] In the FEDERAL REGISTER of Dec. 20, 1977, the amendments appeared as § 1201.2 (d) and (e) of the standard. These provisions were subsequently codified as § 1201.2 (e) and (f) of the Code of Federal Regulations.

be sold without restriction. The date December 3, 1977 should be July 5, 1978 in order to accomplish that purpose.

The industry member also pointed out that in 16 CFR 1201.2(f), the reference to 16 CFR 1201.7(d) should be 1201.2(e). The Commission has considered these suggested corrections and has determined that the changes are appropriate.

Accordingly, 16 CFR Part 1201 is amended as follows:

§ 1201.2 [Amended]

Section 1201.2 (e) and (f) are deleted.

Section 1201.7 is revised to read as follows:

§ 1201.7 Effective date.

The effective date of this part 1201 shall be July 6, 1977 except:

(a) For glazing materials used in doors or other assemblies subject to this part 1201 and intended to retard the passage of fire when such doors or other assemblies are required by a Federal, State, or local or municipal fire ordinance, the effective date shall be January 6, 1980.

(b) Architectural glazing materials manufactured before July 6, 1977 may be incorporated into architectural products listed in § 1201.1(a) through July 5, 1978 if:

(1) The architectural glazing material conforms to ANSI Z97.1-1972 or 1975, and

(2) The architectural glazing material is permanently labeled to indicate it conforms to ANSI Z97.1-1972 or 1975 or is accompanied by a certificate certifying conformance to ANSI Z97.1-1972 or 1975.

(c) Tempered glass manufactured before July 6, 1977 may be incorporated into architectural products listed in § 1201.1(a) through July 5, 1981 if:

(1) The tempered glass conforms to ANSI Z97.1-1972 or 1975; and

(2) The tempered glass is permanently labeled to indicate it conforms to ANSI Z97.1-1972 or 1975 or is accompanied by a certificate certifying conformance to ANSI Z97.1-1972 or 1975.

(d) Laminated glass manufactured on or after July 6, 1977 through December 3, 1977 may be incorporated into category II products as defined in § 1201.2(a)(4) through July 5, 1978 if:

(1) The laminated glass conforms to ANSI Z97.1-1972 or 1975; and

(2) The laminated glass is permanently labeled to indicate that it conforms to ANSI Z97.1-1972 or 1975 or is accompanied by a certificate in accordance with section 14(a) of the CPSA certifying conformance to ANSI Z97.1-1972 or 1975.

(e) Architectural products manufactured between July 6, 1977 and July 5, 1978 incorporating glazing material in accordance with § 1201.7(b), may be distributed and sold without restriction.

(f) Architectural products manufactured between July 6, 1977 and July 5, 1981 incorporating tempered glass in accordance with § 1201.7(c), may be distributed and sold without restriction.

(g) Architectural products identified in § 1201.2(a)(4) manufactured between July 6, 1977 and July 5, 1978 incorporating laminated glass in accordance with § 1201.7(d) may be distributed and sold without restriction.

Dated: October 25, 1978.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 78-30622 Filed 10-27-78; 8:45 am]

[8010-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15249]

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations governing delegation of authority to delegate authority to the Director of the Division of Market Regulation to approve amendments to the joint industry plan governing the consolidated transaction reporting system..

EFFECTIVE DATE: October 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Parker, Division of Market Regulation, Room 391, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, 202-755-8949.

SUPPLEMENTARY INFORMATION: The Commission is amending its regulations governing delegation of authority with respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) to delegate authority under rule 17a-15 (17 CFR 240.17a-15) to the Director of the Division of Market Regulation to approve amendments to the joint industry plan governing the consolidated transaction reporting system declared effective by the Commission on May 10, 1974, pursuant to such rule.

Accordingly, 17 CFR 200.30-3 is amended by adding a new paragraph (a)(28) as follows:

§ 200.30-3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(28) To approve amendments to the joint industry plan governing the consolidated transaction reporting system declared effective by the Commission on May 10, 1974, pursuant to rule 17a-15.

* * * * *

The Commission finds, in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)), that the foregoing amendment relates solely to agency organization, procedure or practice and that notice and procedure pursuant to the Administrative Procedure Act are therefore not necessary and that such amendment shall be adopted, effective immediately.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 20, 1978.

[FR Doc. 78-30564 Filed 10-27-78; 8:45 am]

[4710-06-M]

Title 22—Foreign Relations

CHAPTER I—DEPARTMENT OF STATE

SUBCHAPTER E—VISAS

[Dept. Reg. 108.758]

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

Optional Methods of Establishing Prearranged Employment Offer

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department's regulations regarding aliens ineligible to receive visas are amended to remove the requirement that an offer of prearranged employment presented to establish an alien's eligibility under the public charge provisions of the law (section 212(a)(15) of the Immigration and Nationality Act) must be made on a form prescribed by the Department.

Optional methods of establishing the prearranged employment offer are permitted.

EFFECTIVE DATE: October 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Gerald M. Brown 202-632-1983.

SUPPLEMENTARY INFORMATION:

The mandatory use of a prescribed form to confirm an offer of prearranged employment of an alien has proven to be unduly restrictive and the form has not accomplished its intended purpose of minimizing spurious employment offers. This amendment will afford an alien the option of using the prescribed form or any other document which confirms the essential elements of the employment offer and has been similarly executed.

In § 42.91(a), paragraph (a)(15)(ii) is amended to read as follows:

§ 42.91 Aliens ineligible to receive visas.

(a) * * *

(15) *Public charge.* (i) * * *

(ii) An alien relying on an offer of prearranged employment to establish eligibility under section 212(a)(15) of the Act, other than an offer of employment certified by the Department of Labor pursuant to section 212(a)(14) of the Act, must establish the offer of employment on a form prescribed for that purpose by the Department or by some other document which confirms the essential elements of the employment offer. Any document presented to confirm the employment officer must be sworn to and subscribed to before a notary public by the employer or an authorized employee or agent of the employer. The signer's printed name and position or other relationship with the employer must accompany the signature.

* * * * *

Compliance with the provisions of section 533 of title 5 of the United States Code (80 Stat. 383) as to notice of proposed rulemaking and delayed effective date is unnecessary in this instance because the amendment relieves a restriction on the type of documentary evidence required to establish eligibility for a visa.

(Sec. 104, 66 Stat. 174.(8 U.S.C. 1104).)

Dated: October 13, 1978.

HUME A. HORAN,
Acting Assistant Secretary for Consular Affairs.

[FR Doc. 78-30602 Filed 10-27-78; 8:45 am]

[4210-01-M]

Title 24—Housing and Urban Development

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

[Docket No. R-78-583]

PART 841—PUBLIC HOUSING PROGRAM; DEVELOPMENT PHASE

Appendix A—Prototype Cost Limits for Low Income Housing—Region IX, California

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development.

ACTION: Interim rule.

SUMMARY: On June 22, 1978, the Department published a revised schedule A, "Prototype Cost Limits for Low-Income Housing," to Part 841. Revisions are necessary after consideration of subsequent factual data for detached and semidetached dwellings in four northern California prototype areas; after consideration of additional data justifying establishment of complete schedules for two new prototype areas, Eureka and Santa Rosa; and to correct an omission for the Oakland-Marin prototype area.

DATES: Effective Date: October 30, 1978. Comment due date: All comments received on or before November 29, 1978, will be considered.

ADDRESSES: Send comments to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

Mr. Jack R. VanNess, Chief, Construction Cost Branch, Office of Technical Support—Room 6282, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5880 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

These cost limits established pursuant to section 6(b) of the U.S. Housing Act of 1937, represent per unit cost schedules for low-income public housing and are required to be published at least annually in the FEDERAL REGISTER.

Section 6(b) of the Act provides that prototype cost shall be effective on the date of publication in the FEDERAL REGISTER. However, timely written comments will be considered and additional amendments will be published if the Department determines that acceptance of the comments is appropriate. Comments with respect to cost limits for a given location should be sent to the address indicated above.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969, has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the address specified above.

Accordingly, 24 CFR, Part 841, Appendix A, Prototype Cost Limits for Low-Income Housing, is amended as follows:

1. At 43 FR 27046, revise the prototype per unit cost schedule for detached and semidetached dwellings as shown on the prototype per unit cost schedules, Region IX, San Francisco, Fresno, Modesto and San Jose, Calif.

2. At 43 FR 27046, revise the prototype per unit cost schedules for detached and semidetached, row, walkup, and elevator dwellings as shown on the prototype per unit cost schedules, Region IX, Oakland-Marin, Calif.

3. At 43 FR 27046, add prototype per unit cost schedules for detached and semidetached, row, walkup, and elevator dwellings, Region IX, Eureka and Santa Rosa, Calif.

(Sec. 7(d), Department of HUD Act, (42 U.S.C. 3535(d)); sec. 6(b), U.S. Housing Act of 1937 (42 U.S.C. 1437(d)).

Issued at Washington, D.C., on October 26, 1978.

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

REGION IX 5

San Francisco	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.	22,300	26,900	33,300	39,600	47,750	53,100	55,500
Row Dwellings							
Walk-Up							
Elevator-Structure							

Fresno	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.	18,000	21,400	26,600	31,600	38,200	42,400	44,400
Row Dwellings							
Walk-Up							
Elevator-Structure							

Modesto	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.	18,900	22,850	28,100	33,400	40,300	44,750	46,900
Row Dwellings							
Walk-Up							
Elevator-Structure							

Oakland-Marin	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.	19,200	23,200	28,500	33,950	40,850	45,450	47,550
Row Dwellings	16,100	19,350	23,950	28,450	34,150	38,100	39,800
Walk-Up	16,450	20,350	25,800	30,500	35,400	39,000	40,800
Elevator-Structure	28,550	33,250	41,950				

San Jose	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.	17,450	20,900	25,850	30,800	37,100	41,350	43,200
Row Dwellings							
Walk-Up							
Elevator-Structure							

REGION IX 6

Eureka	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.	19,450	23,300	28,850	34,350	41,400	46,100	48,200
Row Dwellings	14,850	18,000	22,100	26,400	31,650	35,350	36,850
Walk-Up	15,250	18,900	23,950	28,250	32,800	36,100	37,800
Elevator-Structure	26,550	30,750	38,800				

Santa Rosa	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.	18,600	22,300	27,550	32,850	39,550	44,100	46,100
Row Dwellings	14,850	18,000	22,100	26,400	31,650	35,350	36,850
Walk-Up	15,250	18,900	23,950	28,250	32,800	36,100	37,800
Elevator-Structure	26,550	30,750	38,800				

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.							
Row Dwellings							
Walk-Up							
Elevator-Structure							

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.							
Row Dwellings							
Walk-Up							
Elevator-Structure							

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.							
Row Dwellings							
Walk-Up							
Elevator-Structure							

[FR Doc. 78-30720 Filed 10-27-78; 8:45 am]

[4210-01-M]

[Docket No. R-78-582]

PART 867—PHA-OWNED PROJECTS—PERSONNEL POLICIES AND COMPENSATION

Regulation Change for Certification of Housing Managers

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This amendment (1) clarifies the criteria by which HUD approves organizations which may certify individuals as housing managers or assistant housing managers; (2) specifies the conditions under which certificates issued by an organization before it was approved by HUD may be considered as meeting HUD certificate requirements; and (3) extends the deadline by which housing managers of 75 or more dwelling units must receive HUD approved certification.

EFFECTIVE DATE: October 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Wayne Hunter, Office of Assisted Housing Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-6460 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Under the present rule, § 867.303 describes the process by which an organization may become an approved certifying organization.

Section 867.303 of the present rule on certification of housing managers describes procedures for (a) approval of certifying organizations; (b) describes the role of the HUD Certification Review Committee; (c) details the process for notification of denial of certifying organization approval; (d) sets forth periodic review of HUD approvals; (e) provides for publication of names and standards and criteria of approved certifying organizations; (f) establishes standards and criteria used for evaluation of information submitted by an organization applying for approved certifying organization status and (g) provides for incorporation and recognition of persons holding certificates issued prior to the HUD-approved certification program.

The Department of Housing and Urban Development has determined that an environmental impact statement is not required with respect to this rule. A copy of the finding of inapplicability is available for public inspection during regular business hours in the office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

This regulation extends the deadline by which housing managers of 75 or more dwelling units must receive HUD approved certification. The current deadline is January 1, 1979. Housing managers not certified after this date, if the deadline is not extended, may not have their salary considered an eligible operating expenditure for purposes of calculating HUD operating subsidy. In addition, private certifying organizations have already expended great effort and expense in preparation for seeking certification under this revised regulation. Accordingly, the Department has determined that notice and public comment with respect to this regulation are contrary to the public interest, and that good cause exists for making this regulation effective immediately.

Accordingly, the Department amends Chapter VIII of Title 24 of the Code of Federal Regulations by amending §§ 867.303 (f) and (g) and 867.304 (a) as follows:

§ 867.303 HUD approval of certifying organizations.

* * * * *

(f) *Criteria and standards.* (1) All criteria and standards for qualifying for certification shall be reasonably related to job requirements.

(2) The assessment methodology used to determine whether an individual is qualified for certification (e.g., written examination) shall be based on and relate to a valid analysis of the tasks performed by housing managers and shall be fair, objective, and free of ethnic and cultural bias. HUD approval of assessment methodology may be granted on the basis of a written statement by an organization or individual acceptable to HUD as being qualified in the field of assessment methodology.

(3) As an alternative to an assessment methodology, an approved certifying organization may issue a certification solely on the basis of satisfactory on-the-job performance in the housing management field for not less than 4 years. However, such certification shall be valid only if granted prior to January 1, 1981.

(g) *Incorporation of former certificate holders into HUD approved certification program.* (1) Immediately upon receiving notification from HUD that its application to become an approved certifying organization has been approved and no longer than 60 days following that notification, an approved certifying organization may submit to HUD a list of all individuals who already possess a certification from the organization provided:

(i) The certification is reasonable evidence that the certificate holder is qualified as a housing manager; and

(ii) The certification is currently recognized by the approved certifying organization at the time the list of names is tendered to HUD.

(2) Upon receiving this list, HUD will notify the approved certifying organization that the certifications issued to the listed individuals may be considered as satisfying the certification requirements of this part.

§ 867.304 Requirement for certification.

(a) *Housing managers of 75 or more units.* Subject to paragraph (c) of this section as of January 1, 1981, any person employed as a housing manager of 75 or more dwelling units shall be required to have certification as a housing manager from an approved certifying organization.

* * * * *

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d); sec. 6(c)(4), United States Housing Act of 1937, as amended (42 U.S.C. 1437d); sec. 201(b), Housing and Community Development Act of 1974 (42 U.S.C. 1437 note).)

Issued at Washington, D.C., October 26, 1978.

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

[FR Doc. 78-30721 Filed 10-27-78; 8:45 am]

[4210-01-M]

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

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. R-78-577]

PART 1911—INSURANCE COVERAGE AND RATES

Waiting Period—Standard Flood Insurance Policy

AGENCY: Federal Insurance Administration, HUD.

ACTION: Interim rule.

SUMMARY: This rule shortens the waiting period before which flood insurance coverage becomes effective under the Standard Flood Insurance Policy. The present rule provides for a 15-day waiting period which tends to delay and disrupt conventional, VA, and FHA mortgage closings by lenders

attempting to comply with the program's legislative requirements.

EFFECTIVE DATE: October 30, 1978.

COMMENTS DUE: November 29, 1978.

ADDRESS: Send comments to Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 5218, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Under the authority contained in the Act, the Federal Insurance Administrator is revising § 1911.11 of part 1911 of title 24 of the Code of Regulations to shorten the waiting period before which flood insurance coverage becomes effective under the Standard Flood Insurance Policy.

Under the present rule, there is no waiting period for new or added coverage during the initial 30 days of community eligibility in both the emergency and regular programs. Following this 30-day period, however, there is a 15-day waiting period beginning on the date the flood insurance is applied for before coverage is effective. The revised rule shortens the waiting period so that flood insurance benefits can be made available as soon as possible after the flood insurance policy application has been made. Also, under present procedures, where ownership of insured property is transferred, the new owner must arrange beforehand for an assignment of the previous owner's flood insurance for the coverage to continue uninterrupted. If, instead, the new owner applies for a new policy, or seeks additional coverage, under the present rule he must wait 15 days for coverage to become effective. This procedure delays mortgage closings by lenders attempting to comply with the flood insurance purchase requirements of section 102 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234). The lender's alternative—closing the loan without the property being insured, is in conflict with sound lending practices. The amendment also addresses this problem by making the coverage effective when the ownership of the property changes hands.

In addition, a rule is being established under which the time of 12:01 a.m. on the day after the date of the application for flood insurance constitutes, where there is no waiting period or change of ownership to insurable property involved, the time at which flood insurance coverage becomes effective. Where there is a waiting period under the revised rule, the day of application is the first day counted in calculating the waiting period.

The Department has determined that notice and public procedure are contrary to the public interest since the primary purpose of the program is to reduce Federal disaster relief expenditures through the insurance mechanism and sound flood plain management, and because of the importance to the consumer of the new benefits being provided. Since the rule relieves a restriction, this amendment is being made effective upon publication. However, interested persons are invited to submit comments with respect to this amendment and all such comments will be considered before a final rule becomes effective. Comments should be addressed to the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 5218, 451 Seventh Street SW., Washington, D.C. 20410. All comments should be received by the Rules Docket Clerk on or before November 29, 1978. Copies of all comments received will be available for inspection and copying at the above address.

The Department has determined that an environmental impact statement is not required for this rule. A copy of the finding of inapplicability is available for inspection at the above address.

Accordingly, 24 CFR Part 1911 is amended as follows:

PART 1911—INSURANCE COVERAGE AND RATES

Section 1911.11 is revised to read as follows:

Section 1911.11, "Adding coverage while policy is in force" is amended to read as follows:

§ 1911.11 Effective date and time of coverage under the Standard Flood Insurance Policy.

(a) The effective date and time of any new or added or increase in the amount of flood insurance coverage shall be 12:01 a.m. of the day following the application date and the presentment of payment of premium in the following cases:

(1) During the 30-day period which follows a community's initial eligibility for flood insurance under the emergency program;

(2) During the 30-day period which follows a community's initial eligibility for flood insurance under the regular program;

(3) At any time as to any application for additional coverage or increased limits made in connection with a policy then in force.

(b) Where title to property is conveyed, any new or added coverage or increase in the amount of coverage with respect to the property shall be effective as of the time title to the property is transferred to the purchaser when:

(1) The flood insurance policy is applied for and the presentment of payment of premium is made at or prior to the transfer of title; or

(2) The existing flood insurance policy on the property was assigned to the purchaser at or before the transfer of title to the property.

(c) Except as provided by (a) or (b) the effective date and time of any new policy shall be 12:01 a.m. (local time) on the 5th calendar day after the application date and the presentment of payment of premium; for example, a flood insurance policy applied for with the payment of the premium on April 1 to cover property located in a community that has been participating in the program longer than 30 days will become effective at 12:01 a.m. on April 6.

(d) Adding new coverage or increasing the amount of coverage in force is permitted during the term of any policy. The additional premium for any new coverage or increase in the amount of coverage shall be calculated pro rata in accordance with the rates currently in force, with a minimum premium of $4.

(National Flood Insurance Act of 1968 (title XIII of the 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, February 24, 1978).)

Issued at Washington, D.C., October 25, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30629 Filed 10-27-78; 8:45 am]

[4210-01-M]

SUBCHAPTER C—FEDERAL CRIME INSURANCE PROGRAM

[Docket No. R-78-580]

PART 1930—DESCRIPTION OF PROGRAM AND OFFER TO AGENTS

PART 1931—PURCHASE OF INSURANCE AND ADJUSTMENT OF CLAIMS

Citizens of Virgin Islands

AGENCY: Federal Insurance Administration, HUD

ACTION: Final Rule.

SUMMARY: This rule will extend to the citizens of the Virgin Islands eligibility to purchase Federal crime insurance policies against burglary and rob-

bery losses under the Federal crime insurance program. The rule also provides for a technical revision of the regulatory provision which designates Safety Management Institute, Federal Crime Insurance as the servicing company for the program.

DATES: October 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. James M. Rose, Jr., Assistant Administrator, for Urban Property Insurance—Riot and Crime, 451 Seventh Street SW., Washington, D.C. 20410, telephone 755-6555.

SUPPLEMENTARY INFORMATION: This action is being taken under the authority of 12 U.S.C. 1749bbb-10a on the basis of evidence obtained through a continuing review of the market availability situation in each of the several States and particularly upon the conclusions and recommendations of the Insurance Commissioner and the Legislature of the Virgin Islands who requested that their citizens be made eligible for Federal crime insurance.

The Federal crime insurance program commenced operation in August 1971 and approximately 50,000 policies are currently in force in the District of Columbia, Puerto Rico, and 22 States eligible for Federal crime insurance. The program enables residents and businesses to obtain affordable policies of burglary and robbery insurance which will not be cancelled or nonrenewed because of losses. Applicants are required to meet minimum protective device requirements designed to reduce their vulnerability to crime losses. Since 1971, the program has grown from the District of Columbia, and nine States to a current total of the District of Columbia, Puerto Rico, and 22 States. The Insurance Commissioner and the Legislature of the Virgin Islands, after considering the insurance needs of their citizens have requested that their citizens be made eligible to purchase Federal crime insurance. With the addition of this territory, the Federal crime insurance program will be available to residents and businesses in the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and 22 States. Accordingly, on the basis of the Administrator's continuing review of the crime insurance availability situation, and on the basis of findings and recommendations by the Commissioners of Insurance and Governors, it has been determined that a critical market unavailability situation exists in the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and States set forth in revised § 1931.1 and that as of the effective date of this regulation, October 30, 1978 these jurisdictions will be made eligible for the sale of crime insurance, or continued to be eligible for such sale. Because the increased availability of Federal crime insurance is beneficial to the public, and has no adverse affect upon any person, it is unnecessary to provide for notice and public procedure, and good cause exists for making these amendments effective on October 30, 1978. A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD regulations published at 38 FR 19182, 19186. A copy of this Finding of Inapplicability is available for public inspection during regular business hours at the following address:

Rules Docket Clerk, Department of Housing and Urban Development, Room 5218, 451 Seventh Street SW., Washington, D.C. 20410.

Accordingly, Subchapter C of Chapter X of Title 24 is amended as follows:

1. Section 1930.6 is revised to read as follows:

§ 1930.6 Name and address of servicing company

The following company has been designated to act as servicing company for the Federal crime insurance program: Safety Management Institute, Federal Crime Insurance, P.O. Box 41033, Washington, D.C. 20014. SMI's toll-free number is 800-638-8780. In Washington, D.C. metropolitan area call 652-2637. In Maryland, outside the Washington, D.C. metropolitan area, and in Puerto Rico and the Virgin Islands call collect, 301-652-2637.

2. Paragraph (b) of § 1931.1 is revised to read as follows:

§ 1931.1 Jurisdictions eligible for sale of crime insurance.

* * * * *

(b) On the basis of the information available, the Administrator has determined that the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and the States set forth in this paragraph have an unresolved critical market availability situation that requires the operation of the Federal crime insurance program therein as of October 30, 1978. Accordingly, the program is in operation in the following jurisdictions:

Alabama, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kansas, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Puerto Rico, Rhode Island, Tennessee, Virgin Islands, and Virginia.

* * * * *

(Sec. 7(d), 79 Stat. 670; (42 U.S.C. 3535(d)); sec. 1103, 82 Stat. 466, 12 U.S.C. 1749bbb-17)

Issued at Washington, D.C., October 26, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30718 Filed 10-30-78; 8:45 am]

[6570-06-M]

Title 29—Labor

CHAPTER XIV—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PART 1601—PROCEDURAL REGULATIONS

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission published its procedural regulations in final form on September 22, 1977, 42 FR 47828, and republished them with minor amendments because of organizational changes on October 14, 1977, 42 FR 55388. In reviewing those regulations it has come to the attention of the Commission that the substance of § 1601.12(b)(1)(v)(A) of the previous regulations, 40 FR 3210N, January 20, 1975, was not explicitly carried over to the current § 1601.13(d)(2). This omission is corrected with the subject amendment.

EFFECTIVE DATE: October 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Constance L. Dupre, Associate General Counsel, Legal Counsel Division, Office of the General Counsel, Room 2254, EEOC, 2401 E Street NW., Washington, D.C. 20506, 202-634-6595.

SUPPLEMENTARY INFORMATION: This amendment corrects the omission of the substance of the previous § 1601.12(b)(1)(v)(A) from the present § 1601.13(d)(2). It explicitly apprises the public of the Commission's policy of accepting for jurisdictional purposes charges of discrimination when filed more than 180 days after but within 300 days after the alleged act of discrimination where there exists a State or local agency, as described in section 706(c) of title VII, 42 U.S.C. 2000e-5(c), in the jurisdiction where the charge arises. Section 1601.12(b)(1)(v)(A) had been upheld in *Doski* v. *M. Goldseker Co.*, 539 F. 2d 1326 (4th Cir. 1976), 12 E.P.D. para. 11,051, 12 F.E.P. Cases 1751; and *Williamson* v. *Chevron Research Co.*, — F. Supp. — (D. Calif. 1976), 12 F.E.P. Cases 95. The amendment signifies no change in Commission policy. Section 1601.13 (d)(2)(iii) presumed the acceptance of all charges filed more than 180

days but within 300 days after the alleged act of discrimination. However, it was felt that this presumption might not be clear and that the public might therefore be misled.

Accordingly, § 1601.13(d)(2) of the Commission's procedural regulations, 42 FR 55390, is hereby amended to insert after § 1601.13(d)(2)(ii) a new subsection (d)(2)(iii) as set forth below.

Current § 1601.13(d)(2)(iii) and (d)(2)(iv) are hereby redesignated §§ 1601.13(d)(2) (iv) and (v). This amendment is effective October 30, 1978, since it is not a significant regulation and does not require regulatory analysis under E.O. 12044.

Signed at Washington, D.C., this 24th day of October 1978.

For the Commission,
ELEANOR HOLMES NORTON,
Chair.

In § 1601.13(d), paragraph (d)(2)(iii) and (d)(2)(iv) are redesignated as (d)(2)(iv) and (d)(2)(v), and a new paragraph (d)(2)(iii) is added to read as follows:

§ 1601.13 Filing; deferrals to State and local agencies.

* * * * *

(d) * * *

(2) * * *

(i) * * *

(ii) * * *

(iii) Where the document is submitted to the Commission more than 180 days from the date of the alleged violation but within 300 days and within the period of limitation of the appropriate 706 agency, the Commission shall process the document in accordance with paragraph (d)(1) of this section and shall assume jurisdiction 60 (or where appropriate, 120) days after the 706 agency proceedings have been commenced, except that where the Commission is earlier notified of the termination of the State proceedings, it shall immediately assume jurisdiction upon receipt of such notice.

(iv) * * *

(v) * * *

[FR Doc. 78-30618 Filed 10-27-78; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E—PESTICIDE PROGRAMS

[FRL 997-3; PP 7E1974/R179]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Carbaryl

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of carbaryl on chestnuts. The regulation was requested by the Interregional Research Project No. 4. This rule establishes a maximum permissible level for residues of carbaryl on chestnuts.

EFFECTIVE DATE: October 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Mrs. Patricia Critchlow, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460, 202-755-4851.

SUPPLEMENTARY INFORMATION: On August 14, 1978, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (43 FR 35963) in response to a pesticide petition (PP 7E1974) submitted to the Agency by the Interregional Research Project No. 4 (IR-4), New Jersey State Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, N.J. 08903, on behalf of the IR-4 Technical Committee and the U.S. Department of Agriculture. This petition proposed that 40 CFR 180.169 be amended by the establishment of a tolerance for residues of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate) including its hydrolysis product 1-naphthol, calculated as carbaryl, in or on the raw agricultural commodity chestnuts at 1 part per million (ppm). No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.169 should be adopted without change, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, by November 29, 1978, file written objections with the Hearing Clerk, Environmental Protection Agency, Room M-3708, 401 M Street SW., Washington, D.C. 20460. Such objections should be submitted and should specify both the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective on October 30, 1978, part 180, subpart C, § 180.169 is amended by adding a tolerance for residues of carbaryl on chestnuts at 1 ppm as set forth below.

Dated October 23, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

(Sec. 408(e), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).)

Part 180, subpart C, § 180.169 is amended by alphabetically inserting the tolerance of 1 ppm on chestnuts in the table to read as follows:

§ 180.169 Carbaryl; Tolerance for residues.

* * * * *

Commodity:	*Parts per million*
* * * * *	
Chestnuts	1
* * * * *	

[FR Doc. 78-30493 Filed 10-27-78; 8:45 am]

[4310-10-M]

Title 41—Public Contracts and Property Management

CHAPTER 14—DEPARTMENT OF THE INTERIOR

PART 14-3—PROCUREMENT BY NEGOTIATION

PART 14-63—AUDIT

Determinations and Findings and Audit of Proposals

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This rule makes amendments to the Interior Procurement Regulations and implements recent changes to the Federal Procurement Regulations concerning preaward audit of contract proposals.

EFFECTIVE DATE: November 29, 1978.

FOR FURTHER INFORMATION CONTACT:

William Opdyke, 202-343-5914.

SUPPLEMENTARY INFORMATION: The primary author of this rule is William Opdyke, Division of Procurement and Grants, Office of Administrative and Management Policy, Department of the Interior, 202-343-5914.

NOTE.—The Department of the Interior has determined that this document does not contain a major rule requiring preparation of an inflation impact statement under Executive Order 11821 or OMB Circular A-107.

It is the general policy of the Department of the Interior to allow time for interested parties to take part in the rulemaking process. However, the amendments contained herein are entirely administrative in nature. Therefore, the public rulemaking process is waived.

Accordingly, pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301, 41 CFR is amended as stated below.

Dated: October 19, 1978.

RICHARD R. HITE,
Deputy Assistant Secretary of the Interior.

Subpart 14-3.3—Determinations, Findings, and Authorities

1. Section 14-3.305-51 is amended by deleting "(g) [Reserved]"; by adding paragraph (g) and by revising paragraph (i). As amended, paragraphs (g) and (i) read as follows:

§ 14-3.305-51 Summary of required determinations and findings.

* * * * *

(g) *Other types of contracts.* The use of a time and materials contract or a labor-hour contract pursuant to §§ 1-3.406-1 and 1-3.406-2 of this title requires a determination and findings signed by the contracting officer.

* * * * *

(i) *Waiver of audit of proposals.* The determination and findings required to waive the audit of proposals pursuant to § 1-3.809(b) of this title will be signed by the contracting officer.

* * * * *

Subpart 14-63.1—Audit of Contractor's Records

2. Section 14-63.103 is amended by revising paragraphs (a) and (e) to read as follows:

§ 14-63.103 Requirements.

(a) A preaward audit of proposals shall be made as required by § 1-3.809 of this title, for each negotiated contract and modification which is firm fixed-price or fixed-price with economic adjustment where the cost to the government exceeds or may exceed $100,000 or negotiated contract and modification of any other type where the cost to the Government exceeds or may exceed $250,000.

* * * * *

(e) Contracts and contract modifications aggregating more than the amounts stated in paragraph (a) of this § 14-63.103 shall not be divided into separate transactions to avoid the audit requirements.

3. At the end of paragraph (c) of § 14-63.103, the words "Office of Management Services" are amended to read "Office of Administrative and Management Policy."

4. In the first line of paragraph (d) of § 14-63.103, the phrase "of the clause § 14-63.104-1" is amended to read "of the clause in § 14-63.104-1."

[FR Doc. 78-30638 Filed 10-27-78; 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

[Public Land Order 5652; C-24228]

COLORADO

Modification of Public Land Orders No. 1637 and No. 1800

AGENCY: Bureau of Land Management (Interior).

ACTION: Final rule.

SUMMARY: Modification of PLO's No. 1637 and No. 1800 to permit an exchange of certain national forest lands. The lands remain withdrawn under the mining laws (30 U.S.C., Ch. 2).

EFFECTIVE DATE: October 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Keith Corrigall, 202-343-8731.

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

1. Public Land Orders No. 1637 and No. 1800 of May 16, 1958, and February 19, 1959, respectively, which withdrew certain public lands within the Arapaho National Forest from all forms of appropriation under the public land laws, including the mining laws, are hereby modified to delete the following words: "From all forms of appropriation under the public land laws, including," so far as they relate to the following described lands:

ARAPAHO NATIONAL FOREST

SIXTH PRINCIPAL MERIDIAN

Snake River Campground

T. 5 S., R 76 W.,
Sec. 18, S½SE¼SW¼;
Sec. 19, NW¼NW¼NE¼, N½SW¼NW¼NE¼, N½NE¼NW¼, NE¼NW¼NW¼, SE¼NW¼NW¼, SW¼NE¼NW¼, SE¼NE¼NW¼ (EXCEPTING THOSE PORTIONS WITHIN HES No. 110).
Containing 81.50 acres, more or less.

Tenderfoot Campground

T. 5 S., R. 77 W.,
Sec. 13, S½S½SW¼, W½SW¼SW¼SE¼ (EXCEPTING THAT PORTION WITHIN HES No. 110);
Sec. 24, N½N½NW¼, SE¼NE¼NW¼, N½NE¼SE¼NW¼, W½W½NW¼NE¼, NW¼NW¼SW¼NE¼ (EXCEPTING THOSE PORTIONS WITHIN HES No. 110).
Containing 109 acres, more or less.

The above described lands aggregate 190.50 acres in Summit County.

2. Effective immediately the above described lands shall be open to applications for the disposal of the lands under the General Exchange Act of March 20, 1922, 42 Stat. 465, as amended, 16 U.S.C. 485, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. The lands remain withdrawn under the mining laws, 30 U.S.C., Ch. 2.

GUY R. MARTIN,
Assistant Secretary of the Interior.

OCTOBER 24, 1978.

[FR Doc. 78-30625 Filed 10-27-78; 8:45 am]

[6730-01-M]

Title 46—Shipping

CHAPTER IV—FEDERAL MARITIME COMMISSION

SUBCHAPTER A—GENERAL PROVISIONS

[General Order 16, Amdt. 26]

PART 502—RULES OF PRACTICE AND PROCEDURE

Time for Review by the Commission in Absence of Exceptions or Appeal

AGENCY: Federal Maritime Commission.

ACTION: Final rules.

SUMMARY: The rules of practice and procedure are amended to eliminate the current confusion regarding the time within which the Commission on its own initiative may determine to review initial decisions or orders of dismissal of administrative law judges or settlement officers in agency proceedings. The change is necessary because

under the current rules it is unclear whether the time limit is 30 or 45 days. These amendments clearly establish the period as 30 days.

EFFECTIVE DATE: October 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Francis C. Hurney, Secretary, 1100 L Street NW., Washington, D.C. 20573, 202-523-5725.

SUPPLEMENTARY INFORMATION: The Commission recently published amendments to its rules of practice regarding time limits for filing of exceptions or appeal of decisions of the administrative law judges and of settlement officers, and review by the Commission in the absence of such filings (43 FR 33721; August 1, 1978). The Commission provided therein that review by the Commission in the absence of exceptions or appeal *shall not be accomplished* unless such review is requested by an individual Commissioner within 30 days of the decision or order (emphasis ours). Any such request would be sufficient to bring the matter before the Commission. The amendment further stated that decisions of the administrative law judge or settlement officer would become the decision of the Commission in the absence of exceptions or appeal unless within 45 days the Commission decides on its own motion to review the decision.

These two provisions are inconsistent and confusing. One would limit accomplishment of review to actions of the Commission taken within 30 days and the other would seem to permit review upon an action taken within 45 days. In order to rectify this confusion appropriate changes are hereby being made in the Commission's rules of practice to prescribe 30 days as the time within which such determinations to review may be accomplished.

Therefore, pursuant to section 43 of the Shipping Act, 1916 (46 U.S.C. 841a) and 5 U.S.C. 553, part 502 of title 46 CFR is amended as follows:

1. The fourth sentence of paragraph (a) of § 502.227 is revised to read: "Whenever the officer who presided at the reception of the evidence, or other qualified officer, makes an initial decision, such decision shall become the decision of the Commission 30 days after date of service thereof (and the Secretary shall so notify the parties), unless within such 30-day period, or greater time as enlarged by the Commission for good cause shown, request for review is made in exceptions filed or a determination to review is made by the Commission on its own initiative."

2. The last sentence of paragraph (a) of § 502.227 is amended by deleting the phrase "within 45 days after date of service of the initial decision" which appears at the end thereof.

3. Paragraph (c) of § 502.227 is amended by changing all references to "45 days" to read "30 days."

4. The reference in the second sentence of § 502.304(g) to "45 days" is amended to read "30 days."

5. The reference in § 502.318 to "45 days" is amended to read "30 days."

Effective date: Notice, opportunity to comment on these amendments and delayed effective date are not necessary because the amendments involve internal agency procedural matters. The amendments shall be effective October 30, 1978, and will apply to initial decisions, settlement officer decisions, and orders of dismissal served after that date.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-30620 Filed 10-27-78; 8:45 am]

[7555-02-M]

Title 47—Telecommunications

CHAPTER II—NATIONAL SECURITY AND EMERGENCY PREPAREDNESS TELECOMMUNICATIONS

ESTABLISHMENT OF NEW CHAPTER

AGENCY: Office of Science and Technology Policy.

ACTION: Notice of Amendments.

SUMMARY: Executive Order 12046 (March 29, 1978, 43 FR 13349 et seq.) abolished the Office of Telecommunications Policy (OTP) and transferred certain telecommunications emergency preparedness responsibilities to the National Security Council (NSC) and to the Director, Office of Science and Technology Policy (OSTP). These amendments to 47 CFR Chapter II document the transfer of telecommunications responsibilities.

DATES: Effective Date: March 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Wayne G. Kay, 395-3272.

AMENDMENTS

1. Chapter II is retitled to read as set forth above, consisting of Parts 201 through 215.

PARTS 201—210 [RESERVED]

2. Parts 201 and 202 are revoked. Parts 201 through 210 are reserved.

3. Parts 211, 212, 213, 214, and 215 are revised to read as set forth below.

FRANK PRESS,
Director, Office of Science and Technology Policy.

PART 211—EMERGENCY RESTORATION PRIORITY PROCEDURES FOR TELECOMMUNICATIONS SERVICES

Sec.
211.0 Purpose.
211.1 Authority.
211.2 Definitions.
211.3 Scope and coverage.
211.4 Policy.
211.5 Priorities.
211.6 Submission and processing of restoration priority requests.
211.7 Obligation of carriers.

AUTHORITY: 84 Stat. 2083 and Executive Order 12046, FR 43, 13349 et seq., March 29, 1978.

§ 211.0 Purpose.

This part establishes policies and procedures under which government and private entities will be furnished restoration priorities to insure that leased intercity private line telecommunications services vital to the national interest will be maintained during the continuance of a war in which the United States is engaged. It supersedes the Director of Telecommunications Management Order of January 15, 1967 (32 FR 791, 47 CFR 201), which is hereby canceled. To assure the effective ability to implement its provisions, and also in order that government and industry resources may be used effectively under all conditions ranging from national emergencies to international crises, including nuclear attack, a single set of rules and procedures is essential, and they must be applied on a day-to-day basis so that the priorities they establish can be implemented at once when the occasion arises. As provided for in Part 18 of Executive Order 11490, as amended (3 CFR, 1966-1970 Comp., p. 820), policies, plans, and procedures developed pursuant to that Executive order shall be in consonance with the plans and policies contained in this part.

§ 211.1 Authority.

(a) Authority to direct priorities for the restoration of communications services in national emergencies is vested in the President, including authority conferred by section 103 of the National Security Act of 1947, as amended (50 U.S.C. 404), section 101 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2070), section 201 of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281), section 1 of Reorganization Plan No. 1 of 1958, as amended (3

CFR, 1954-1958 Comp., p. 447), and section 606 of the Federal Communications Act of 1934, as amended. (47 U.S.C. 606).

(b) Authority to develop plans policies, and procedures for the establishment of such restoration priorities has been delegated to the National Security Council, by Executive Orders 11051, 11490, and by the President's Memorandum of August 21, 1963 (28 FR 9413, 3 CFR Part 858 (1959-63 comp.)), all as amended by Executive Order 12046, (FR 43, 13349 et seq).

§ 211.2 Definitions.

The following definitions apply herein—

(a) "Communications common carrier" or "carrier" means any person engaged in communications common carriage for hire, in intrastate, interstate, or international telecommunications.

(b) "Circuit" means a carrier's specific designation of the overall facilities provided between, and including, terminals for furnishing service. When service involves network switching, "circuit" includes those circuits between subscriber premises and switching centers (access lines) and those between switching centers (trunks).

(c) "Station" means transmitting or receiving equipment or combination transmitting and receiving equipment, at any location, on any premise, connected for private line service.

(d) "Private line service" means leased intercity private line service provided by carriers for intercity domestic and international communications over integrated communications pathways, and includes interexchange facilities, local channels, and station equipment which may be integral components of such communications service.

(e) "Restoration" means the recommencement of service by patching, rerouting, substitution of component parts, and other means, as determined necessary by a carrier.

(f) "Government" means Federal, foreign, State, county, municipal, and other local government agencies. Specific qualifications will be supplied whenever reference to a particular level of government is intended, e.g., "Federal Government," "State government." "Foreign Government" includes coalitions of governments secured by treaty, including NATO, SEATO, OAS, UN, and associations of governments or government agencies, including the Pan American Union, International Postal Union, and International Monetary Fund. "Quasi-government" includes eleemosynary relief organizations, such as the Red Cross organizations.

(g) "National Communications System (NCS)" means that system established by the President's Memorandum of August 21, 1963, "Establishment of a National Communications System" (28 FR 9413, 3 CFR, 1959-1963 Comp., p. 858).

(h) "Executive Agent" means the Executive Agent of the National Communications System.

(i) "Commission" means the Federal Communications Commission.

§ 211.3 Scope and coverage.

(a) The priority system and procedures established by this part are applicable to:

(1) U.S. domestic leased intercity private line services, including private line switched network services;

(2) U.S. international leased private line services to the point of foreign entry;

(3) Foreign extensions of U.S. international leased private line services to the extent possible through agreement between U.S. carriers and foreign correspondents;

(4) International leased private line services terminating in or transiting the United States;

(5) Federal Government-owned and leased circuits.

(b) The priority system and procedures established by this part are not applicable to operational circuits or order wires of the carriers needed for circuit reactivation and maintenance purposes, which shall have priority of restoration over all other circuits and shall be exempt from interruption for the purpose of restoring priority services.

§ 211.4 Policy.

During the continuance of a war in which the United States is engaged and when the provisions of this part are invoked, all communications common carriers shall comply with the following principles insofar as possible:

(a) Whenever necessary to maintain or restore a service having a designated priority, services having lower priority, lower subpriority, or no priority, will be interrupted in the reverse order of priority starting with nonpriority services.

(b) When services are interrupted to restore priority services, carriers will endeavor if feasible to notify users of the reason for the preemption.

(c) When public correspondence circuits are needed to satisfy requirements for priority services, idle circuits will be selected first. A minimum number of public correspondence circuits shall at all times be kept available so as to provide for the transmission of precedence-type messages and calls.

(d) Communications common carriers will not interrupt conversations having priority classification except insofar as necessary to restore services of higher priority.

(e) It is recognized that as a practical matter in providing for the maintenance or restoration of a priority service or services operating within a multiple circuit-type facility (such as a carrier band, cable, or multiplex system), lower priority, lower subpriority, or nonpriority services on paralleled channels within a band or system may be restored concurrently with higher priority services. Such reactivation shall not, however, interfere with the expedited restoration of other priority services.

(f) The Executive Agent is authorized to instruct the carriers on the percentage of government-switched network intermachine trunks to be restored to provide capacity for priority access line traffic.

(g) The carriers are authorized to honor NCS-certified priorities from other authorized carriers for leased facilities.

(h) The carriers are authorized to honor restoration priorities certified by the Executive Agent.

(i) To ensure the effectiveness of the system of restoration priorities established by this part it is essential that rigorous standards be applied. Users are requested and directed to examine their private line service requirements in light of the criteria specified in this part and with regard to the availability of alternate communications facilities such as public correspondence message services, and Government-owned emergency communications systems.

§ 211.5 Priorities.

There are hereby established four levels of restoration priority. Within each level, subpriorities may be established by the Executive Agent, with the concurrence of the National Security Council, for both government and nongovernment services. The subpriority categories currently in use, which have been established by the Executive Agent will remain in effect until modified. Compatibility of subcategories applicable to government and nongovernment users is essential to achieve the objective of a single restoration priority system.

(a) *Priority 1.* Priority 1 shall be the highest level of restoration priority, and shall be afforded only to Federal and Foreign Government private line services, and to Industrial/Commercial services which are designated for prearranged voluntary participation with the Federal Government in a national emergency. Circuit requirements in this level of priority shall be limited to those essential to national survival if nuclear attack occurs for:

(1) Obtaining or disseminating critical intelligence concerning the attack,

or immediately necessary to maintain the internal security of the United States;

(2) Conducting diplomatic negotiations critical to the arresting or limiting of hostilities;

(3) Executing military command and control functions essential to defense and retaliation;

(4) Giving warning to the U.S. population;

(5) Maintaining Federal Government functions essential to national survival under nuclear attack conditions.

(b) *Priority 2.* Priority 2 shall be the second highest level of restoration priority, and shall be afforded only to Federal and Foreign Government private line services, and to Industrial/Commercial services which are designated for prearranged voluntary participation with the Federal Government in a national emergency. Circuit requirements in this level shall be limited to those essential, at a time when nuclear attack threatens, to maintain an optimum defense posture and to give civil alert to the U.S. population. These are circuit requirements whose unavailability would present serious danger of:

(1) Reducing significantly the preparedness of U.S. defense and retaliatory forces;

(2) Affecting adversely the ability of the United States to conduct critical preattack diplomatic negotiations to reduce or limit the threat of war;

(3) Interfering with the effectual direction of the U.S. population in the interest of civil defense and survival;

(4) Weakening U.S. capability to accomplish critical national internal security functions;

(5) Inhibiting the provision of essential Federal Government functions necessary to meet a preattack situation.

(c) *Priority 3.* Priority 3 shall be the third highest level of restoration priority and shall be afforded to government, quasi-government, and Industrial/Commercial private line services: *Provided, however,* That Priority 3 will be afforded circuits serving Industrial/Commercial, State, county, municipal, and quasi-state and local government agencies only where, during an emergency, at least one station in the circuit (or in connected circuits if switched service is involved) will be manned continually, or where such circuits are automated and will be under constant surveillance from a remote location. Circuit requirements in this level shall be limited to those necessary for U.S. military defense and diplomacy, for law and order, and for national health and safety in a national emergency involving heightened possibility of hostilities. These are curcuit requirements needed to:

(1) Insure performance of critical logistic functions, public utility services, and administrative-military support functions;

(2) Inform key diplomatic posts of the situation and of U.S. intentions;

(3) Secure and disseminate urgent intelligence;

(4) Distribute essential food and other supplies critical to health;

(5) Provide for critical damage control functions;

(6) Provide for hospitalization;

(7) Continue critical Government functions;

(8) Provide transportation for the foregoing activities.

(d) *Priority 4.* Priority 4 shall be the fourth highest restoration priority and shall be afforded to government, quasi-government, and Industrial/Commercial private line services: *Provided, however,* That Priority 4 will be afforded circuits serving Industrial/Commercial, State, county, municipal, and quasi-state and local government agencies only where, during an emergency, at least one station in the circuit (or in connected circuits if switched service is involved) will be manned continually, or where such circuits are automated and will be under constant surveillance from a remote location. Circuit requirements in this level shall be limited to those necessary for the maintenance of the public welfare and the national economy in a situation short of nuclear attack, or during reconstitution after attack. These include circuit requirements needed to continue the more important financial, economic, health, and safety activities of the Nation.

§ 211.6 Submission and processing of restoration priority requests.

(a) Except as otherwise provided below, all requests for restoration priority assignments will be submitted to the Executive Agent in the format prescribed by him for processing and certification.

(b) Priority 3 and 4 applications from county and municipal governments, quasi-state and local government agencies and private entities shall be forwarded to the Federal Communications Commission for its approval and for certification to the carriers. These submissions will be in the form prescribed by the Commission.

(c) Industrial/Commercial entities designated for prearranged voluntary participation with the Federal Government in a national emergency should submit separate applications to the Commission when requesting the assignment of priorities in category 1 or 2. Such assignments will require the approval of the National Security Council in order to continue to be effective during a war emergency. In all cases the justification for restoration priorities will contain a validation statement from the Government agency with whom participation is prearranged.

(d) Requests for restoration priority assignments made by Foreign Government agencies, except for NATO, NATO national military authority, and such other requests as the Executive Agent may be designated, will be submitted to the Department of State for initial evaluation and review. The Department will forward to the Executive Agent for processing and approval such of these requests as it finds acceptable.

(e) Requests for restoration priority assignments made by NATO, NATO national military authority, and such other requests as the Executive Agent may designate, will be forwarded through established Allied Long Lines Agency (ALLA) channels to the Secretary of Defense. The Secretary will forward to the Executive Agent for processing and approval such of these requests as he finds acceptable pursuant to approved NATO/U.S. procedures.

(f) Requests for temporary upgrading of restoration priority assignments occasioned by special critical conditions, including natural disasters, heightened diplomatic and political tenseness, and tracking and control of manned space operations, may be submitted to the Executive Agent together with such information as he may require for expedited processing decision.

(g) All assignments, denials and changes of restoration priorities and subpriorities are subject to review and modification by the National Security Council.

(h) When requesting service from the carriers the user must include the certified restoration priority on the service authorization.

§ 211.7 Obligation of carriers.

(a) During the continuance of a war in which the United States is engaged, and when the provisions of this part are invoked, all carriers shall accord restoration priority assignments certified pursuant to this part priority over all other circuits.

(b) To promote the national interest and defense preparedness, carriers shall:

(1) Maintain such records of restoration priority assignments certified pursuant to this part as may be necessary to enable prompt implementation;

(2) Enter into agreements, to the extent possible, with their foreign correspondents to effect restoration of the foreign portion of leased international services in accordance with this part;

(3) Notify the Executive Agent of foreign correspondent procedures affecting Federal Government services that are not reasonably consistent with the priority requirements of this part.

PART 212—PROCEDURES FOR OBTAINING INTERNATIONAL TELECOMMUNICATION SERVICE FOR USE DURING A NATIONAL EMERGENCY

Sec.
212.0 Authority.
212.1 Purpose.
212.2 Scope.
212.3 Circuit restoration procedures.
212.4 Responsibilities.
212.5 Other requirements.
212.6 Coordination of requirements.
212.7 Implementation.

AUTHORITY: E.O. 10995, E.O. 11084, 3 CFR 1959–1963 Comp., pp. 535 and 719; Memorandum of Aug. 21, 1963, 3 CFR 1959–1963 Comp., p. 858, E.O. 12046, 43 FR 13349, Mar. 29, 1978.

§ 212.0 Authority.

(a) Authority to prescribe procedures for obtaining telecommunication resources during an emergency is contained in Executive Order 12046 (FR 43, 13349 et seq.), and the President's National Communications Memorandum of August 21, 1963 (28 FR 9413, 3 CFR, 1959–1963 Comp., p. 858).

(b) These procedures are applicable to the communications common carriers and non-Federal Government users under the President's authority contained in subsection 606(a) of the Communications Act of 1934, as amended. The authority under subsection 606(a) has been delegated by Executive Order 12046 to the Director of the Office of Science and Technology Policy. This authority may be exercised only during the continuance of a war in which the United States is engaged.

§ 212.1 Purpose.

The purpose of this part is to replace Annex 2 of EMO 3000.1, 32A CFR, Chap. I, and to provide specific guidance to Government and private entities who may have new requirements for international telecommunication service during national emergencies.

§ 212.2 Scope.

The procedures in this part provide guidance for the submission of emergency requirements for telecommunication channels between the United States and overseas or foreign points. Guidance on this subject was previously contained in Annex 2 of DMO 3000.1 and Mobilization Plan IX-3. Mobilization Plan IX-3 has been canceled.

§ 212.3 Circuit restoration procedures.

The restoration priority procedures for these emergency requirements shall be in accordance with the order entitled "Priority System for the Use and Restoration of Leased Intercity Private Line Services During Emergency Conditions," FCC Order 67-51.

§ 212.4 Responsibilities.

(a) Executive departments and agencies of the United States, whether or not components of the National Communications System (NCS), shall submit their international emergency telecommunications requirements to the Executive Agent, National Communications System, for coordination and consolidation of mobilization requirements.

(b) The Department of Defense shall coordinate NATO requirements in consonance with approved NATO/U.S. procedures for subsequent processing by the Executive Agent, National Communications System.

(c) The Department of State shall coordinate and approve foreign government circuit requirements and then forward them to the Executive Agent, NCS, for further processing.

§ 212.5 Other requirements.

Those entities, other than Executive department and agencies of the United States, having need for emergency international telecommunication service shall present their requirements to the Federal Communications Commission (FCC).

§ 212.6 Coordination of requirements.

(a) The NCS and FCC shall meet periodically to review the total mobilization requirements and to evaluate the impact of these requirements upon the common carriers' capability. If the situation develops in which emergency requirements cannot be provided by the communications common carriers, the Executive Agent, NCS, or the FCC, as appropriate, shall immediately notify the Director of the Office of Telecommunications Policy of that situation.

(b) The Director of the Office of Science and Technology Policy will assume the responsibility for coordinating and integrating mobilization requirements which are presented to him, making use of the knowledge, information, and advice of the FCC. These requirements shall be evaluated with due regard to facilities which must remain under the control of the commercial companies and those which must be generally available to the public and the Government.

§ 212.7 Implementation.

Executive departments and agencies of the United States are authorized to issue such additional orders as are necessary to effect implementation of this part.

PART 213—GOVERNMENT AND PUBLIC CORRESPONDENCE TELECOMMUNICATIONS PRECEDENCE SYSTEM

Sec.
213.0 Authority.
213.1 Background and purpose.
213.2 Scope.
213.3 Cancellation.
213.4 Definitions.
213.5 Precedence designators.
213.6 Criteria.
213.7 Policies.
213.8 Implementation.

AUTHORITY: Sec. 606, 48 Stat. 1104; 47 U.S.C. 606, E.O. 10705, 3 CFR, 1954–1958 Comp. E.O. 10995, 3 CFR, 1959–1963 Comp., President's Memorandum of August 21, 1963; 3 CFR, 1959–1963 Comp., p. 858; E.O. 12046, 43 FR 13349, Mar. 29, 1978.

§ 213.0 Authority.

(a) The voice and message precedence procedures for departments and agencies of the Federal Government prescribed by this part are prescribed pursuant to Executive Order No. 12046 (43 FR 13349 et. seq.) and the President's Memorandum of August 21, 1963, which established the National Communications System (28 FR 9413; 3 CFR, 1959–1963 Comp., p. 858).

(b) The procedures applicable to communications common carriers and non-Federal Government users prescribed by this part are prescribed by authority conferred upon the President by subsection 606(a) of the Communications Act of 1934, as amended, and delegated to the National Security Council by Executive Order 12046. That authority under section 606(a) may be exercised only during the continuance of a war in which the United States is engaged.

§ 213.1 Background and purpose.

(a) The National Security Council and the Federal Communications Commission have agreed upon a precedence system for the expeditious handling of messages and calls transmitted over Government and public correspondence facilities in all types of situations from peacetime to massive nuclear attack. Effectuation of that system requires that the Director issue a circular and that the Commission concurrently issue an order prescribing the standards, procedures, policies, and regulations that together, constitute this single integrated precedence system.

(b) In conformity with that agreement the National Security Council is issuing this circular the purpose of which is to prescribe, on behalf of the President, that part of those standards, procedures, policies, and regulations which are within the cognizance of the NSC.

No significance should be attached to the fact that slightly different terms are used in this circular from those used in the companion order of the FCC. Those differences result from differences in terms in the basic legal authorities of the Director and the Commission rather than from an intent to denote a distinction in purpose or effect.

§ 213.2 Scope.

The precedence system contained herein is applicable to:

(a) Users of Government service facilities, whether owned or leased.

(b) Users of public correspondence service facilities of the communication common carriers, to U.S. domestic and international communication common carriers, and to the extent possible by agreement between the latter and their foreign correspondents.

§ 213.3 Cancellation.

This circular cancels:

(a) Attachments A and B to Annex 3 of DMO 3000.1, dated November 8, 1963 (28 FR 12273).

(b) That portion of the memorandum of the Special Assistant to the President for Telecommunications, dated August 27, 1964, pertaining to message precedences.

§ 213.4 Definitions.

As used herein:

(a) Public correspondence services means those services offered to the general public for communications between all points served by a carrier or by interconnected carriers on a nonexclusive message by message or call by call basis, as differentiated from leased private line services.

(b) The term "precedence" means the order in which messages and calls are processed. Transmission of information and call completion is therefore to be accomplished in the order required by the precedence designator. Any such properly categorized communications precede noncategorized communications.

(c) The term "Government" where used alone means Federal, foreign, State, county, or municipal government agencies. Specific reference will be made whenever it is intended to apply to less than the whole, e.g., "State Government," "Federal Government," etc.

(d) The term "Foreign Government" includes those foreign diplomatic and consular establishments and those coalitions or associations of governments such as NATO, SEATO, OAS, UN, and associations of governments or governmental agencies such as Pan American Union, International Postal Union, International Monetary Fund, and similar organizations.

(e) The term "message" means a written or other form of record communication prepared for transmission and delivery at the destination.

(f) The term "call" means a request from a user for a connection to another station whether for telephone or record communication.

§ 213.5 Precedence designators.

(a) The following precedence designators are available for Govérnment and public correspondence users:

Federal Government	*Domestic public correspondence and international telephone calls*
Flash	Flash emergency.
Immediate	Immediate emergency.
Priority	Priority emergency.
Routine	(No domestic equivalent.)

(b) Government and non-Government users of public correspondence services will handle their international messages in accordance with current ITU Telegraph Regulations. Government users should note that, generally, the only precedence designator available for their use for international messages sent over public correspondence circuits is Etat Priorite. The ITU Regulations do not contain precedence designators which equate to Flash, Immediate, or Priority. Accordingly, Government messages whether Flash, Immediate, or Priority precedence when sent over international public correspondence circuits will be handled as Etat Priorite messages. Thus, Priority messages will receive the same treatment in transmission and processing as Immediate or Flash messages. Conversely, Etat Priorite messages received in the United States shall be transmitted and processed in the order of receipt, to the extent possible. The precedence designator available for non-Government users of public correspondence services is Urgent. The Urgent designator is limited for use only during wartime conditions, as declared pursuant to section 606 of the Communications Act of 1934.

(c) Domestic and International U.S. common carriers, insofar as practicable by agreement with their foreign correspondents, shall endeavor to arrange the proper level of precedence handling of international messages and calls originating, terminating in, or transiting the United States: *Provided, however,* That insofar as international messages are concerned the level of precedence shall be consistent with the International Telecommunication Conventions and regulations thereunder.

(d) The Government designators shall be used throughout the Federal Government. All messages and telephone calls sent via public correspondence services shall use domestic or international public correspondence designators as appropriate. Thus, the responsibility is on Government and public correspondence users to recognize and use the appropriate designators when using public correspondence services.

(e) On international telephone calls the carrier's operator will convert to the appropriate international designator.

§ 213.6 Criteria.

(a) *Flash, Flash Emergency.* (1) This is the highest order of precedence and shall be strictly limited to Federal and Foreign Government agencies.

(2) Flash, or Flash Emergency telephone calls or messages shall be handled in the order received and ahead of all calls or messages except as indicated for international messages in ITU Regulations. When necessary to obtain a circuit for a Flash, or Flash Emergency call any call in progress of a lesser precedence will be interrupted, if feasible. Any message of a lesser precedence in the process of transmission will be halted, if feasible, to clear the channel for the Flash or Flash Emergency transmission. Flash or Flash Emergency precedence shall be reserved for calls and messages having an immediate bearing on:

(i) Command and control of military forces essential to defense and retaliation.

(ii) Critical intelligence essential to national survival.

(iii) Conduct of diplomatic negotiations critical to the arresting or limiting of hostilities.

(iv) Dissemination of critical civil alert information essential to national survival.

(v) Continuity of Federal governmental functions essential to national survival.

(vi) Fulfillment of critical U.S. internal security functions essential to national survival.

(vii) Catastrophic events of national or international significance, such as Presidential Action Notices essential to national survival during attack or preattack conditions.

(b) *Immediate, Immediate Emergency, Urgent.* Immediate, Immediate Emergency, or Urgent telephone calls or messages shall be handled as fast as possible and ahead of all other calls or messages except those having a higher precedence. Any message or call of a lower precedence in the process of transmission will be halted, if feasible, to clear the channel for this transmission. It will be reserved generally for calls or messages pertaining to:

(1) Situations which gravely affect the security of national and allied forces.

(2) Reconstitution of forces in a postattack period.

(3) Intelligence essential to national security.

(4) Conduct of diplomatic negotiations to reduce or limit the threat of war.

(5) Implementation of Federal Government actions essential to national survival.

(6) Situations which gravely affect the internal security of the United States.

(7) Civil defense actions concerning direction of our population and its survival.

(8) Disasters or events of extensive seriousness having an immediate and detrimental effect on the welfare of the population.

(9) Vital information having an immediate effect on aircraft, spacecraft, or missile operations.

(c) *Priority, Priority Emergency, Urgent.* Priority, Priority Emergency, or Urgent messages and calls shall take precedence over messages or calls designated "Routine," or in the case of common carriers, over all nonprecedence traffic. Priority, Priority Emergency, or Urgent precedence is generally reserved for calls or messages which require expeditious action. Examples are calls or messages pertaining to:

(1) Information on locations where attack is impending or where fire or air support will soon be placed.

(2) Air-ground integrated operations.

(3) Important intelligence.

(4) Important diplomatic information.

(5) Important information concerning the launch, operation, or recovery of spacecraft or missiles.

(6) Movement of naval, air, and ground forces.

(7) Coordination between governmental agencies concerning the performance of emergency preparedness functions.

(8) Major civil aircraft accidents.

(9) Maintaining the public health, safety, and the welfare of our population.

(10) Critical logistic functions, provisions of critical public utility services, and administrative military support functions.

(11) Distributing essential food and supplies critical to health.

(12) Accomplishing tasks necessary to insure critical damage control functions.

(13) Preparations for adequate hospitalization.

(14) Continuity of critical Government functions.

(15) Arranging minimum transportation for accomplishing the aforesaid functions.

(16) Continuing or reestablishing our more important financial, economic, health, and safety activities. Producing, procuring, and distributing food materials and supplies which are considered necessary to the immediate support of a war effort, the national defense, or for expediting the means of meeting the effects of natural disasters.

(17) Prompt delivery of information by press representatives to news media organizations and newspapers covering news of national or widespread disasters.

(d) *Routine; no domestic equivalent.* Routine precedence designation applies to those normal day-to-day communications which require rapid transmission by telephone or message, but do not require urgent or preferential handling.

§ 213.7 Policies.

(a) Calls and messages in each precedence classification above shall have no precedence over others within the same classification, except where, within the same classification, they cannot be handled simultaneously. Then, they shall be handled in the order of their receipt.

(b) Individuals whose requirements qualify them to use the precedence system share the responsibility for insuring its effectiveness. Users must familiarize themselves with the purposes to be served by the use of each precedence designator. It must be remembered that the entire system will operate successfully only if the use of the precedence designator is limited strictly to the intended purposes. Each user must consider whether each message or call requires any special precedence and exercise care not to specify a higher precedence than circumstances require.

(c) For public correspondence message services, the domestic or international precedence designators shall be shown in full by the sender as the first word preceding the name of the addressee.

(d) For public correspondence call services, the user should first attempt to complete the call in the normal manner. In the event the user is unable to complete the call and the type of communication falls within one of the precedence categories listed herein, the call should be filed with an operator for completion and the user must specify the required precedence handling by stating that this is a Flash Emergency, Immediate Emergency, or Priority Emergency call, whichever the case may be.

(e) Any apparent misuse of precedence indicators by non-Federal Government activities brought to the attention of the communication common carriers shall be referred to the FCC on an after-the-fact basis.

(f) Any apparent misuse by Federal Government activities brought to the attention of the communication common carriers shall be referred to the Executive Agent, National Communications System. The Executive Agent will refer any matter which cannot be resolved with the cognizant Government activity to the National Security Council, for decision.

(g) It is essential to provide public message and call capability for the transmission of military, governmental, and essential non-Government precedence messages and calls. Private line services for military, governmental, and other essential users are protected under a Priority System for Intercity Private Line Services promulgated by the FCC (FCC Order 67-51) and the National Security Council. However, during national emergencies, military, governmental, and other essential users will have additional requirements for prompt completion of precedence traffic over public correspondence communication common carrier facilities. Therefore, notwithstanding the provisions of the above-described Priority System for Intercity Private Line Services, communication common carriers shall have available a minimum number of public correspondence circuits at all times so as to provide for the transmission of precedence type messages and calls. Normally, the communication common carriers shall use their judgment in determining this minimum number of circuits required for public correspondence precedence traffic. However, the authority is reserved to the National Security Council or the Federal Communications Commission, as appropriate to the time and situation, to revise the decisions of the carriers respecting the allocation of circuits, and to resolve any questions which are referred to them by the carriers or the users.

§ 213.8 Implementation.

Federal departments and agencies are authorized to issue such additional orders as are necessary to effect implementation of this circular.

PART 214—PROCEDURES FOR THE USE AND COORDINATION OF THE RADIO SPECTRUM DURING A NATIONAL EMERGENCY

Sec.

214.0 Authority.
214.1 Purpose.
214.2 Scope.
214.3 Assumptions.
214.4 Planned actions.
214.5 Responsibilities.
214.6 Postattack procedures and actions.

AUTHORITY: 84 Stat. 2083 and E.O. 12046 (43 FR 13349 et seq., Mar. 29, 1978.)

§ 214.0 Authority.

The provisions of this Part 214 are issued pursuant to Reorganization Plan No. 1 of 1970, 84 Stat. 2083, and Executive Order 12046 (43 FR 13349 et seq.). This Part 214 replaces Annex 1 of DMO 3000.1, dated November 8, 1963. (28 FR 12273).

§ 214.1 Purpose.

The purpose of this part is to provide guidance for the use of the radio spectrum in a period of war, or a threat of war, or a state of public peril or disaster or other national emergency.

§ 214.2 Scope.

This part covers procedures for the use of radio frequencies upon proclamation by the President that there exists war, or a threat of war or a state of public peril or disaster or other national emergency or in order to preserve the neutrality of the United States. These procedures will be applied in the coordination, application for, and assignment of radio frequencies upon order of the Director, OSTP. These procedures are intended to be consistent with the provisions and procedures contained in emergency plans for use of the radio spectrum.

§ 214.3 Assumptions.

When the provisions of this part become operative, Presidential emergency authority, including Executive Order 11490, 12046 (3 CFR, 1966-1970 Comp., p. 820), and other emergency plans regarding the allocation and use of national resources will be in effect. In a postattack period, the Director, OSTP, will have authority to make new or revised assignments of radio frequencies in accordance with authority delegated by the President.

§ 214.4 Planned actions.

(a) Whenever it is determined necessary to exercise, in whole or in part, the President's emergency authority over telecommunications, the Director, OSTP, will exercise that authority as specified in Executive Order 12046, FR 43, 13349 et seq.

(b) In this connection, and concurrently with the war or national emergency proclamation by the President, the Director will:

(1) Authorize the continuance in force of all outstanding frequency authorizations issued by the Director, OSTP, and the Federal Communications Commission (FCC), except as those authorization may be modified by emergency plans for use of the radio spectrum and except as they may otherwise be modified or revoked by the Director in the national interest;

(2) Redelegate to the Secretary of Defense authority necessary to control the use of the radio spectrum in areas of active combat, where such control is necessary to the support of U.S. military operations;

(3) Close all non-Government radio stations in the international broadcasting service as defined in the FCC rules and regulations, except those carrying or scheduled to carry U.S. Government-controlled radio broadcasts;

(4) Close all amateur radio stations, except those operating as a part of the Radio Amateur Civil Emergency Service (RACES).

§ 214.5 Responsibilities.

(a) The Director, OSTP, will issue such policy guidance, rules, regulations, procedures, and directives as may be necessary to assure effective frequency usage during war or national emergency conditions.

(b) The FCC shall issue appropriate rules, regulations, orders, and instructions and take such other actions not inconsistent with the actions of the Director, OSTP, as may be necessary to ensure the immediate availability of the frequencies and facilities between 10 and 25,000 kHz provided for in emergency plans for use of the radio spectrum.

(c) The FCC shall assist the Director in the preparation of emergency plans pursuant to Part 18, Executive Order 11490 (3 CFR, 1966-1970 Comp., p. 820).

(d) Each Federal Government agency concerned shall develop and be prepared to implement its own plans, and shall make necessary preemergency arrangments with non-Government entities for the provision of desired facilities or services, all subject to the guidance and control of the Director.

§ 214.6 Postattack procedures and actions.

(a) The frequency management staff supporting the Director, OSTP, will be comprised of predesignated personnel from the frequency management staffs of the government user agencies and the FCC, will have proceeded to the OSTP relocation site in accordance with alerting orders in force.

(b) Government agencies having need for new radio frequency assignments or for modification of existing assignments involving a change in the frequency usage pattern shall unless otherwise provided submit applications therefor to the Director, OSTP, by whatever means of communication are available and appropriate, together with a statement of any preapplication coordination accomplished. The Director, OSTP, will review such applications, accomplish the necessary additional coordination insofar as practicable, consider all pertinent views and comments, and grant or deny, as he shall determine, the assignment of such frequencies. All concerned will be informed promptly of his decisions.

(c) Non-Government entities having need for new radio frequency assignments or for modifications of existing assignments will continue to submit applications therefor to the FCC, or in accordance with FCC instructions. Such applications shall be coordinated with the Director, OSTP, and granted subject to the approval of the Director, OSTP, or his delegate.

(d) All changes of radio frequency usage within U.S. military theaters of operation will be coordinated with the Director, OSTP, where harmful interference is likely.

(e) Where submission to the Director, OSTP, is impracticable, the applicant shall:

(1) Consult emergency plans for use of the radio spectrum and the Frequency Assignment Lists;

(2) Accomplish such coordination as appropriate and possible;

(3) Act in such manner as to have a minimum impact upon established services, accepting the responsibility entailed in taking the temporary action required:

(4) Advise the Director, OSTP, as soon as possible of the action taken, and submit an application for retroactive approval.

PART 215—FEDERAL GOVERNMENT FOCAL POINT FOR ELECTROMAGNETIC PULSE (EMP) INFORMATION

Sec.

215.0 Purpose and authority.
215.1 Background.
215.2 Assignment of responsibilities.

AUTHORITY: 84 Stat. 2083, and E.O. 12046, 43 FR 13349, March 29, 1978.

§ 215.0 Purpose and authority.

The purpose of this part is to designate a focal point within the Federal Government for electromagnetic pulse (EMP) information concerning telecommunications. It is issued pursuant to the authority of Reorganization Plan No. 1 of 1970, 84 Stat. 2083, Executive Order 12046 (43 FR 13349 et seq.) and the President's memorandum of August 21, 1963, "establishment of a National Communications System." (28 FR 9413, 3 CFR, 1959-1963 Comp., p. 858).

§ 215.1 Background.

(a) The nuclear electromagnetic pulse (EMP) is part of the complex environment produced by nuclear explo-

sions. It consists of transient voltages and currents which can cause malfunctioning and serious damage to electrical and electronic equipment.

(b) The Defense Nuclear Agency (DNA) is the overall technical coordinator for the Army, Navy, Air Force, and DOE laboratories on matters concerning nuclear weapons, nuclear weapons effects, and nuclear weapons testing. It acts as the focal point between the service laboratories and other agencies. The Defense Communications Agency (DCA) maintains a data base for telecommunications for the National Communications System (NCS) and provides a capability for conducting telecommunications survivability studies for civil and military departments and agencies.

(c) In order to disseminate among affected Federal agencies information concerning the telecommunications effects of EMP and available protective measures, and in order to avoid duplication of research efforts, it is desirable to designate a focal point within the Federal Government for telecommunications EMP matters.

§ 215.2 Assignment of responsibilities.

The Executive Agent, NCS, shall be the focal point within the Federal Government for all EMP technical data and studies concerning telecommunications. It shall provide such data and the results of such studies to all appropriate agencies requesting them. It shall coordinate and approve EMP telecommunications tests and studies, and shall keep the National Security Council informed regarding such tests and studies being conducted and planned.

[FR Doc. 78-30649 Filed 10-27-78; 8:45 am]

[4910-22-M]

Title 49—Transportation

CHAPTER III—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

[BMCS Docket No. MC-69-2, Admt. No. 78-2]

PART 395—HOURS OF SERVICE OF DRIVERS

Driver's Daily Log and Multiday Log, Extension of Use

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment deletes sections of the Federal Motor Carrier Safety Regulations (FMCSR) which were previously added and which provided a time extension for using the driver's daily log and multiday log forms. Action is taken because the Office of Management and Budget (OMB) has authorized the use of these forms for a short term and may continue extending this authorization in the future. This amendment provides information on the current status of these forms.

EFFECTIVE DATE: October 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Gerald Davis, Chief, Driver Requirements Branch, Regulations Division, Bureau of Motor Carrier Safety, 202-426-9767; Mr. Gerald Tierney, Office of Chief Counsel, 202-426-0346, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.s.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) has advised the Department of Transportation that driver's daily log (form MCS-59) and multiday log (forms MCS-139 and 139A) have been authorized for continued use through June 1979. Further extensions may continue to be granted, provided the Bureau meets certain requirements as specified by OMB. Therefore, sections 395.8(u) and 395.9(x) of the Federal Motor Carrier Safety Regulations are being deleted to eliminate the necessity of future rulemaking, should OMB grant further extensions.

Because this action is procedural in nature and contains no substantive changes, notice and comments are unnecessary.

Accordingly, 49 CFR chapter III is amended as follows:

1. Section 395.8 is amended by revising paragraph (a) to delete reference to paragraph (u).

§ 395.8 Driver's daily log.

(a) Except as provided in § 895.9 and paragraph (t) of this section, every motor carrier shall require that a driver's daily log, form MCS-59, shall be made in duplicate by every driver used by the carrier and every driver who operates a motor vehicle shall make such a log. Failure to make logs, failure to make required entries therein, falsification of entries, or failure to preserve logs shall make both the driver and the carrier liable to prosecution. Driver's logs shall be prepared and retained in accordance with the provisions of paragraphs (b) through (s) of this section.

* * * * *

§§ 395.8 and 395.9 [Amended]

2. Sections 395.8(u) and 395.9(x) of the FMCSR are being deleted.

NOTE: The Federal Highway Administration has determined that this doument does not contain a significant proposal according to the criteria established by the Department of Transportation pursuant to Executive Order 12044.

(49 U.S.C. 304; 49 CFR 1.48, 301.60.)

Issued on October 19, 1978.

KENNETH L. PIERSON,
Acting Director,
Bureau of Motor Carrier Safety.

[FR Doc. 78-30621 Filed 10-27-78; 8:45 am]

[4910-59-M]

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket 71-18, Notice 11; Docket 25, Notice 27]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

PART 575—CONSUMER INFORMATION REGULATIONS

Uniform Tire Quality Grading and Temperature for Tire Testing

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: This notice amends the uniform tire quality grading (UTQG) standards to revise the grading symbols used to indicate traction grades and responds to a petition for reconsideration of the effective dates for the information requirement regarding first purchasers of motor vehicles. The notice, further, responds to petitions for reconsideration submitted by the Rubber Manufacturers Association and the Goodyear Tire & Rubber Co., regarding an amendment of the tire testing temperature employed in the UTQG regulation and the non-passenger-car tire safety standard, which established a single test temperature for the performance requirements of the two standards. The notice also withdraws a NHTSA proposal to modify the tread label requirements of the uniform tire quality grading standard. These actions are intended to aid consumer understanding of the UTQG grading system and facilitate industry tire testing.

EFFECTIVE DATE: October 23, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. F. Cecil Brenner, Office of Auto-

motive Ratings, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-1740.

SUPPLEMENTARY INFORMATION: On July 17, 1978 (43 FR 30542), NHTSA republished the UTQG standards (49 CFR 575.104) to assist the consumer in the informed purchase of passenger car tires. (Docket No. 25, notice 24.) The standard requires that manufacturers and brand name owners provide simple comparative data on tire performance, which can be considered by purchasers in selecting between competing tire lines. Concurrently, with issuance of the final rule, the agency proposed modifications of the standard's provisions relating to traction grading symbols and tread labels (43 FR 30586; July 17, 1978).

Traction Grading Symbols

The notice of proposed rulemaking (43 FR 30586), issued concurrently with the republished final rule, proposed revision of the symbols used to denote tire traction grades. The agency invited comment on the use of an A, B, C hierarchy of traction grades in place of the **, *, 0 system now required by paragraph (d)(2)(ii).

The Automobile Club of New York commented that the proposed traction grading symbols would be "far more meaningful to consumers" than the asterisks and zeros used in the existing regulation. The National Tire Dealers & Retreaders Association viewed the letter grading proposal as an improvement, and, in response to notice 24, the Metropolitan Dade County, Fla., Office of the Consumer Advocate approved of an A, B, C grading system as falling within the experience of all consumers.

The only negative comment came from Atlas Supply Co. which expressed concern that, if consumers are warned, as to the rule requires, that tires with a C traction grade may have poor traction performance, they may assume that a C temperature resistance grade likewise denotes poor temperature resistance qualities. Atlas recommended that the lowest traction grade be abolished completely and that only the symbols A and B be used to represent traction grades.

In fact, the agency is currently considering promulgation of a tire traction safety standard which would set a minimum performance level such that tires falling within the lowest UTQG traction performance grade would not comply with the safety standard (43 FR 11100; Mar. 16, 1978, and 38 FR 31841; Nov. 19, 1973). Pending issuance of such a standard, however, consumers should not be mislead as to the nature of the C temperature grade, since the explanation of the grading system, to be furnished under the standard, specifically states that the C grade indicates a level of performance which meets the applicable Federal safety standard.

The agency has concluded that the A, B, C grading symbols for traction performance will be an aid to consumer understanding of the UTQG system due to the general familiarity with letter grading systems and the hierarchy inherently associated with these symbols. Consumer comprehension of the grading system will also be improved by eliminating the need to use three different sets of symbols. The symbols A, B, and C are, therefore, adopted to represent traction grades under the UTQG standard.

Tread Label Requirements

The existing UTQG regulation provides that each passenger car tire, other than one sold as original equipment on a new vehicle, shall have affixed to its tread surface a label indicating the specific treadwear, traction, and temperature grades for that tire, as well as a general explanation of the grading system. In its July 17, 1978, notice of proposed rulemaking (43 FR 30586), the agency proposed to amend section 575.104(d)(1)(i)(B) of the standard, to require only general grading information on the tread label, while retaining a separate requirement that specific grades be molded on the tire sidewall. The tread label would have been modified to include a statement referring the consumer to the tire sidewall for the actual grades of the particular tire. The notice also proposed that specific tire grades be supplied, at the manufacturer's option, on either tread labels or on the sidewall during the 6-month period prior to the effective dates of the molding requirement.

In commenting on the notice, Goodyear argued that provision of specific grading information on the tread label would not be feasible and would add to the cost of implementation of the standard. American Motors Corp. commented that provision of specific grades in two places would be redundant and an unnecessary expense.

However, Michael Peskoe, an individual involved in early development of the standard, argued that the tread labeling requirement is not redundant, since tire sidewall molding was intended primarily to supply a permanent record of the tire grades, to be considered when replacing the tires, rather than to convey information to the prospective purchaser. He also stated that, with regard to cost and feasibility considerations, tire specific identification labels, bearing information such as tire line and size, are already in widespread use within the industry to aid in the distribution of tires. Therefore, the burden of adding the specific UTQG grades for the particular tire classification should be minimal.

The Automobile Club of New York and Mr. Peskoe commented that provisions of specific tire grades only on the sidewall would hinder use of the information in the situation, common in tire dealerships and service stations, where tires are displayed on racks, sidewall to sidewall. Tires would have to be removed from the display rack before the grades molded on the sidewall could be observed. The problem would be compounded where the purchaser wishes to compare the grades on several tires.

While NHTSA is concerned with keeping the cost of the UTQG regulation at a minimum, existing tire labeling and marketing practices lead the agency to the conclusion that tread labels containing specific tire grading information should continue to be required for replacement tires. The agency had earlier determined that identification of specific tire grades on tread labels is feasible and involves a very limited cost to manufacturers and consumers. Tire-specific tread labels have been demonstrated to be an integral and necessary part of the regulation's plan for getting useful information to tire purchasers. The proposal to require only general grading information on tire tread labels is, therefore, withdrawn.

Effective Dates for Point of Sale Information

Notice 24, set March 1, 1979, in the case of bias-ply tires and September 1, 1979, in the case of bias-belted tires, as effective dates for all UTQG requirements except the molding requirements of paragraph (D)(1)(i)(A). The molding requirements applicable to bias and bias-belted tires were made effective September 1, 1979, and March 1, 1980, respectively.

The purpose of this delayed phasein schedule for tire sidewall molding is to provide manufacturers with extra time to prepare new tire molds containing grading information. However, the delay in effective dates for tire molding had the unintended effect of creating a 6-month interval between the time vehicle manufacturers must provide point of sale information on tire quality grading to prospective purchasers, and first purchasers of motor vehicles (49 CFR 575.104(d)(1) (ii) and (iii)) and the date on which grading information actually must appear on the tires sold. In the case of information to be furnished to first purchasers under paragraph (d)(1)(iii), potential for confusion exists since consumers will be referred to the tire sidewall for specific tire grades, when in many cases, molds will not yet have been

modified for the tire lines being supplied.

To correct this situation, American Motors Corp. has petitioned NHTSA to reconsider the effective dates for paragraph (d)(1)(iii). American Motors has recommended that the effective dates for paragraph (d)(1)(iii) be amended to correspond to those of paragraph (d)(1)(i)(A), the molding requirement. The agency has already recognized the difficulties involved in providing specific grades for original equipment tires through the use of tread labels (39 FR 1037; Jan. 4, 1974), or point of sale information (43 FR 30547; July 17, 1978). To better coordinate the availability of specific tire grading information on tire molds and the provision of explanatory information through vehicle owner's manuals, American Motors' petition for reconsideration is granted. The effective dates for paragraph (d)(1)(iii) are changed to September 1, 1979, for bias-ply tires and March 1, 1980, for bias-belted tires.

Paragraph (d)(1)(ii) of the regulation requires that vehicle and tire manufacturers furnish to prospective purchasers an explanation of the UTQG grading system. Although this provision also takes effect 6 months prior to the tire molding requirements, the agency has concluded that no corresponding change in effective dates is necessary. Paragraph (d)(1)(ii) provides for the availability of valuable information to prospective tire purchasers, since specific grading information will be available on replacement tires sold during the 6-month phasein period. Further, the paragraph contains no potentially confusing reference to the tire sidewall as does paragraph (d)(1)(iii). Prospective vehicle purchasers who obtain the information prior to the sidewall molding effective dates will be given the opportunity to familiarize themselves in advance with the new grading system.

TEMPERATURE FOR TIRE TESTING

On March 3, 1977 (42 FR 12207), NHTSA proposed to amend Standard No. 119, New Pneumatic Tires for Vehicles Other Than Passenger Cars (49 CFR 571.119), and the UTQG Standards to establish the same ambient temperature for tire testing in both standards, to allow more efficient use of tire test facilities. The notice proposed "any temperature up to 95° F" and "100±5° F" as alternative means of phrasing the new, identical test temperature.

After consideration of comments, the agency determined that the ambient test temperature should be expressed as "any temperature up to 95°F" (43 FR 30541; July 17, 1978). NHTSA received petitions for reconsideration from the Rubber Manufacturers Association (RMA) and The Goodyear Tire & Rubber Co., recomending that the test temperatures for standard No. 119 and the UTQG regulation include tolerances and be specified as "100° F±5° F." As NHTSA has frequently stated in past notices on these and other standards (e.g., 40 FR 47141; October 8, 1975), such a recommendation reflects a misunderstanding of the legal nature of motor vehicle standards. NHTSA standards are not instructions to test engineers, but performance levels that vehicles and equipment must be capable of meeting. The use of a tolerance range in this context is confusing since it creates ambiguity as to the performance level required.

Establishment of a precise performance requirement, expressed without a tolerance, still recognizes that measurement techniques cannot be controlled perfectly. Given a specified performance level, manufacturer's can design their tests to assure compliance in at least two ways: (1) By using a test procedure that conforms so closely to the specified measurement that no significant variations could occur, or (2) by determining which side of the specified level is adverse to the product being tested, and targeting test conditions so that any deviation will occur on the adverse side. In this case, a tire manufacturer may use an ambient temperature slightly above 95° F to demonstrate, through adverse conditions, that its tire would comply at the specified temperature.

In its petition for reconsideration, Goodyear commented that all test laboratories should employ the same ambient temperature conditions. However, such uniformity is not advantageous in a regulatory context, since government compliance testing and manufacturers' laboratory evaluations are undertaken for different purposes.

Goodyear also argued that a fixed 95° F test temperature and a "100±5° F" tolerance range to not establish "in effect the same test temperature", as stated in the agency's July 17, 1978, notice (43 FR 30541). A fixed 95° F requirement is, in fact, from the manufacturers' prospective, identical to a "100±5° F" provision, since, given a controlled variation in test conditions of 5° F in either direction from the target temperature, manufacturers seeking to assure compliance with a 95° F requirement will set their test target temperature at 100° F. For these reasons, the petitioners' recommendation of a "100±5° F" test temperature is rejected.

The RMA and Goodyear petitions noted that the open-ended nature of the requirement "any temperature up to 95° F" appeared to require that tires be capable of attaining specified performance levels when tested at temperatures ranging from 95° F to subzero conditions. The RMA petition stated as its primary concern the possibility, under the UTQG system, that a tire could be conditioned at a higher temperature than that at which it is tested for temperature resistance. Such inconsistency could, the RMA suggested, result in the tire being underinflated during testing.

The agency has concluded that the ambient temperature specification "at 95° F" more accurately describes the fixed temperature which the agency intended to establish than does the open-ended provision "any temperature up to 95° F." Standard No. 119 and the UTQG Standards are, therefore, amended by substitution of a fixed temperature requirement of 95° in place of "any temperature up to 95° F."

To the extent that the RMA and Goodyear petitions for reconsideration are to granted by this amendment, the petitions are denied.

In accordance with departmental policy encouraging analysis of the impact of regulatory actions upon the public and private sector, the agency has determined that these actions will have no appreciable negative impact on safety. Since the modification of effective dates relieves a restriction, and the change in grading symbols will result in no new burdens, no additional costs will be imposed on manufacturers or the consumer. Withdrawal of the trend labeling proposal imposes no new costs not contemplated in issuance of the UTQG standards. The new temperature phraseology has absolutely no effect on the tire performance requirements, but will eliminate any possible ambiguity in the standards' meaning. For these reasons, the agency hereby finds that this notice does not have significant impact for purposes of the internal review.

Effective date: In view of the need for a fixed temperature requirement to allow tire performance testing to proceed, and the ongoing preparation by the industry for implementation of the UTQG system, the agency finds that an immediate effective date for the amendments to standard No. 119 and the UTQG regulation is in the public interest.

In consideration of the foregoing, the following amendments are made in parts 571 and 575 of Title 49, Code of Federal Regulations:

§ 575.104 [Amended]

1. Paragraphs (d)(2)(ii), (d)(2)(ii)(A), (d)(2)(ii)(B), and (d)(2)(ii)(C), and figures 1 and 2 of 49 CFR 575.104 are amended by substitution of the letters "A", "B", and "C" in place of the symbols "**", "*", and "0", respectively, wherever they appear.

2. Paragraphs (d)(1)(iii), (g)(2) and (g)(5) of 49 CFR 575.104 are revised to read as follows:

§ 575.104 Uniform tire quality grading standards.

(d) * * * (1) * * *

(iii) In the case of information required in accordance with § 575.6(a) to be furnished to the first purchaser of a new motor vehicle, other than a motor vehicle equipped with bias-ply tires manufacturered prior to September 1, 1979, and a motor vehicle equipped with bias-belted tires manufactured prior to March 1, 1980, each manufacturer of motor vehicles shall as part of the information list all possible grades for traction and temperature resistance and restate verbatim the explanation for each performance area specified in figure 2. The information need not be in the format of figure 2, but it must contain a statement referring the reader to the tire sidewall for the specific tire grades for the tires with which the vehicle is equipped.

* * * * *

(g) * * *

(2) Condition the tire-rim assembly to a temperature of 95° F for at least 3 hours.

* * * * *

(5) During the test, including the pressure measurements specified in paragraphs (g)(1) and (g)(3) of this section, maintain the temperature of the ambient air, as measured 12 inches from the edge of the rim flange at any point on the circumference on either side of the tire at 95° F. Locate the temperature sensor so that its readings are not affected by heat radiation, drafts, variations in the temperature of the surrounding air, or guards or other devices.

* * * * *

§ 571.119 [Amended]

4. Paragraph S7.1.2. of 49 CFR 571.119 is amended to read as follows:

* * * * *

S7.1.2 The tire must be capable of meeting the requirements of S7.2 and S7.4 when conditioned to a temperature of 95° F for 3 hours before the test is conducted, and with an ambient temperature maintained at 95° F during all phases of testing. The tire must be capable of meeting the requirements of S7.3 when conditioned at a temperature of 70° F for 3 hours before the test is conducted.

* * * * *

The program official and lawyer principally responsible for the development of this rulemaking document are Dr. F. Cecil Brenner and Richard Hipolit, respectively.

(Sec. 103, 112, 119, 201, 203, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1421, 1423); delegation of authority at 49 CFR 1.50).)

Issued on October 23, 1978.

JOAN CLAYBROOK,
Administrator.

[FR Doc. 78-30368 Filed 10-24-78; 12:18 pm]

[3510-22-M]

Title 50—Wildlife and Fisheries

CHAPTER VI—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 611—FOREIGN FISHING

Incremental Apportionment of Total Allowable Level of Foreign Fishing

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Amendment to regulations.

SUMMARY: Under the provisions of the preliminary management plan (PMP) for trawl fisheries and herring gillnet fishery of the eastern Bering Sea and Northeast Pacific, the National Marine Fisheries Service will continually monitor U.S. fisheries, periodically reevaluate U.S. processing and catching capacities and make appropriate changes. This amendment revises the total allowable level of foreign fishing for Pacific cod and sablefish in the Bering Sea. The effect of the amendment will be to make available the surpluses of U.S. capacity estimates to foreign nations desiring additional fishery allocations.

EFFECTIVE DATE: October 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Harry L. Rietze, Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99801, telephone 907-586-7221.

SUPPLEMENTARY INFORMATION: On September 6, 1977, the National Marine Fisheries Service (NMFS) published a notice of availability of a supplement to the final environmental impact statement for the preliminary fishery management plan for the trawl fisheries and herring gillnet fishery of the eastern Bering Sea and Northeast Pacific (PMP) (42 FR 9298), which in section 2.3.1.1 stated that:

> Periodic reevaluation of the U.S. capacity will be required to determine what portions of the reserves are required by the U.S. or what portions of the reserves and the stated U.S. capacities are surplus to U.S. needs. The NMFS will continually monitor U.S. fisheries, periodically reevaluate U.S. processing and catching capacities, and make appropriate changes in U.S. capacities, appropriate distribution of reserves, and appropriate increases in TALFF's. Notice of the incremental apportionments of the reserve between U.S. capacities and TALFF's will be published in the FEDERAL REGISTER within 7 days after the end of March, June, August, and October. Those publications will provide the mechanism for the Secretary of State to allocate to foreign nations those portions of U.S. capacities and reserves surplus to U.S. needs.

The Director of the Alaska regional office has reassessed the U.S. capacity to harvest sablefish and Pacific cod and has determined that domestic fishermen will harvest only 200 mt of sablefish and 1,000 mt of cod in the eastern Bering Sea and Northeast Pacific fisheries. In keeping with the intent of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.), as amended (FCMA), the resulting surpluses of U.S. capacity estimates should be made available to foreign nations desiring additional fishery allocations.

The Assistant Administrator for Fisheries (Assistant Administrator), for good cause, has determined: (1) That the U.S. capacity estimate of sablefish in the eastern Bering Sea and Northeast Pacific is reduced from 600 mt to 200 mt, and the resulting surplus of 400 mt of the sablefish reserve is added to the TALFF, and (2) that the U.S. capacity estimate of Pacific cod in the eastern Bering Sea and Northeast Pacific is reduced from 1,500 mt to 1,000 mt, and the resulting surplus of 500 mt of the Pacific cod reserve is added to the TALFF.

Accordingly, the PMP is (further) amended as follows:

1. The original sablefish TALFF of 5,000 mt which appeared in table 18 (42 FR 9325), on February 15, 1977, for areas I, II, and III combined, was reduced to 2,400 mt with a 600 mt reserve in the supplemental environmental impact statement (42 FR 60945) on November 30, 1977. That 600 mt reserve is hereby reduced to 200 mt, and the TALFF for sablefish in areas I, II, and III combined is increased to 2,800 mt.

2. The original Pacific cod TALFF of 58,000 mt which also appeared in table 18 was reduced to 56,500 mt with a 1,500 mt reserve on November 30, 1977. That 1,500 mt reserve is hereby reduced to 1,000 mt, and the TALFF for Pacific cod is increased to 57,000 mt.

This amendment does not modify the optimum yield for those species established in the PMP, nor does it ad-

versely affect the conservation of the resource.

Notice of this amendment was published in the FEDERAL REGISTER on October 5, 1978 (43 FR 46054), and public comments were invited until October 15, 1978. No comments were received on the proposed amendment. This action involves no change in the optimum yield of species caught in the trawl fisheries and herring gillnet fishery of the eastern Bering Sea and Northeast Pacific and is consistent with the PMP for those fisheries.

The Assistant Administrator has determined that: (1) Because no preparation on the part of foreign fishermen is required to take advantage of the liberalized regulations, and (2) because without quick action the increased TALFF's may be unutilized or underutilized, and (3) because this action is not controversial, the 30-day waiting period required by the Administrative Procedure Act should be waived. The Assistant Administrator also finds:

1. These changes should have no impact on the U.S. sablefish or Pacific cod fisheries or on future supplies of these species;

2. This action does not require the preparation of an economic impact analysis under Executive Orders 11821 and 11949, and OMB Circular A-107; and

3. This action does not require a regulatory impact analysis. The Assistant Administrator has approved this document pursuant to delegation of authority from the Secretary.

Signed in Washington, D.C., this 23d day of October 1978.

WINFRED H. MEIBOHM,
Acting Executive Director, National Marine Fisheries Service.

§ 611.20 [Amended]

Amend 50 CFR 611.20(c) by revising Table I as follows:

Lines 24 and 31 are revised to read:

Species code	"Species"	"Ocean area"	"Amend TALFF (mt)"
006	Cod, Pacific	Aleutians and Bering Sea	57,000
*	* *	* *	
007	Sablefish	Bering Sea	2,800

§ 611.93 [Amended]

Amend 50 CFR 611.93(b) by revising Table I as follows:

1. In column one, bottom line, add words "and revised" between the words "initial" and "TALFF."

2. In column seven headed "Sablefish, Areas I-III" strike "2,400," substitute "2,800."

In column nine headed "Pacific Cod," strike "56,500," substitute "57,000."

(16 U.S.C. 1801 et seq.)

[FR Doc. 78-30524 Filed 10-27-78; 8:45 am]

[3510-22-M]

PART 652—SURF CLAM AND OCEAN QUAHOG FISHERIES

Adjustment to Effort Restrictions

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Notice of reduction of fishing time per week.

SUMMARY: This document is notice that 50 percent of the quota of surf clams for the fourth quarter of 1978 has been taken. Consequently, beginning October 30, 1978, all vessels engaging in the surf clam fishery in the fishery conservation zone will be restricted to 24 hours fishing time per week until December 31, 1978.

EFFECTIVE DATE: 12:01 (0001 hours), October 30, 1978, through 12 midnight (2400 hours), December 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. William G. Gordon, Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Mass. 01930, telephone 617-281-3600.

SUPPLEMENTARY INFORMATION: Regulations were published on February 17, 1978 (43 FR 6952), implementing the surf clam and ocean quahog fishery management plan. Section 652.7(a)(3) of those regulations provides that when 50 percent of the allowable quarterly quota of surf clams has been taken, the Regional Director, if he determines that the quarterly quota probably will be exceeded, may reduce the number of days per week during which fishing for surf clams will be permitted during that quarter. This reduction becomes effective upon publication in the FEDERAL REGISTER by the Assistant Administrator pursuant to § 672.7(a)(s) of the regulations. Accordingly, notice is hereby given that available information indicates that 50 percent (193,917 bushels) of the adjusted quarterly surf clam quota (387,834 bushels) established by § 652.6(a) of the regulations was taken by the end of the fishing day on October 25, 1978. The Regional Director has determined that the quota established for surf clams landed from the fishery conservation zone (FCZ) during the fourth quarter of 1978 (387,834 bushels) will be exceeded if the present level of effort continues for the remainder of the quarter. To reduce the likelihood that the quota will be exceeded during this period, or that a lengthy closure of the fishery would be required, vessels harvesting surf clams from the FCZ will be permitted to fish for surf clams only 24 hours per week beginning 12:01 (0001 hours), October 30, 1978. Vessels will be allowed to fish for surf clams during the periods indicated on their letter of authorization.

In light of the public comments received on this issue both in writing and expressed to the Regional Director, and the conservation needs of the surf clam stocks, the Assistant Administrator for Fisheries has determined that notice and public comment on the subject rulemaking is unnecessary, impractical, and contrary to the public interest.

Signed in Washington, D.C., on this the 24th day of October 1978.

(16 U.S.C. et seq. 1801.)

WINFRED H. MEIBOHM,
Acting Executive Director, National Marine Fisheries Service.

[FR Doc. 78-30525 Filed 10-27-78; 8:45 am]

[3510-22-M]

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 652—SURF CLAM AND OCEAN QUAHOG FISHERIES

Adjustment of Quota

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Notice of Surf Clam Quota Adjustment.

SUMMARY: This notice revises the fourth quarter surf clam quota by increasing it. The increase of 37,834 bushels is made possible because the entire surf clam quota for the third

quarter (July 1 through September 30), was not harvested.

EFFECTIVE DATE: October 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. William G. Gordon, Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Mass. 01930, telephone; 617-281-3600.

SUPPLEMENTARY INFORMATION: The surf clam quota of 523,394 bushels established for the third quarter of 1978 (July 1 through September 30) was not completely harvested. The Regional Director has determined that 485,560 bushels of surf clams were taken during the third quarter, creating a surplus of 37,834 bushels. Section 652.6(a)(2) authorizes the Regional Director to add the amount of shortfall to the next succeeding quarter.

Therefore, this regulation amends the quota of 350,000 bushels established for the fourth quarter of 1978 (October 1 through December 31), by adding 37,834 bushels. Pursuant to § 652.6(a)(2), the Assistant Administrator for Fisheries is publishing this adjustment of the fourth quarter quota.

Signed in Washington, D.C., this the 24th day of October 1978.

(16 U.S.C. 1801 et seq.)

WINFRED H. MEIBOHM,
Acting Executive Director, National Marine Fisheries Service.

[FR Doc. 78-30604 Filed 10-27-78; 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.

[6720-01—M]

FEDERAL HOME LOAN BANK BOARD

[12 CFR Part 563]

[No. 78-561]

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Proposed Amendment Relating to Restrictions on Real Property Transactions With Affiliated Persons

OCTOBER 25, 1978.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The proposed amendment would provide an exception to the current restrictions on real property transactions between FSLIC-insured institutions and affiliated persons. The exception would allow an insured institution or its subsidiary to sell a single-family dwelling to an affiliated person for use as his/her personal residence.

DATE: Comments must be received on or before November 27, 1978.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552. Comments available for the public inspection at this address.

FOR FURTHER INFORMATION CONTACT:

Harry W. Quillian, Associate General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552. 202-377-6440.

SUPPLEMENTARY INFORMATION: Section 563.41 of the regulations for the Federal Home Loan Bank System (12 CFR 563.41) currently prohibits an insured institution or its subsidiary from selling any interest in real property to an affiliated person. This regulation operates to prevent the conflict of interest and potential for abuse inherent in an insider's purchase of real porperty from an insured institution.

There is, however, a recurring sale situation in which the potential for harm from insider advantage appears slight; the current regulation, in this specific situation, extends protection where none appears necesssary or warranted. The proposed exception, closely aligned with those governing loans to affiliated persons, would remove this unnecessary restriction.

Therefore, the Bank Board proposes to except from the regulation cases involving the sale of real property to an affiliated person where the purchaser intends to use the property as his or her personal residence and the terms of sale are identical to those offered to the general public.

Accordingly, the Bank Board hereby proposes to amend §§ 563.41(b) and 563.45, form AR, item 6(e), Instruction 4 of the Rules and Regulations of the Federal Savings and Loan Insurance Corporation to read as set forth below.

1. Amend § 563.41(b) by adding new paragraph (5) as follows:

§ 563.41 Restrictions on real property transactions with affiliated persons.

* * * * *

(b) *Restrictions.* * * *

* * * * *

(5) a sale to an affiliated person of real eastate for use as a single family dwelling owned and occupied by the affiliated person as his/her principal residence, if the terms of sale are identical to those offered to the general public.

2. Amend § 563.45, form AR, item 6(e), instruction 4 by adding new paragraph (f) as follows:

§ 563.45 Disclosure.

* * * * *

Form AR (Annual Report Form)

* * * * *

Item 6

(e) *Transactions where certain persons have a material interest.*

* * * * *

4. No information need be given in answer to this item as to any transaction where

* * * * *

(f) The transaction involves a sale to an affiliated person of real estate for use as a single-family dwelling owned and occupied by the affiliated person as his/her personal residence, in accordance with § 563.45(b)(5).

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730). Sec. 5A, 47 Stat. 727, as amended by sec. 1, 64 Stat. 256, as amended, sec. 17, 47 Stat 736, as amended (12 U.S.C. 1425(a), 1437). Sec. 5 48 Stat. 132, as amended (12 U.S.C. 1464). Reorg. Plan No. 3 of 1947, 172 FR 4891, 3 CFR, 1943-48 Comp., 1071.)

By the Federal Home Loan Bank Board.

J. J. FINN,
Secretary.

[FR Doc. 78-30624 Filed 10-27-78; 8:45 am]

[4910-13-M]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 18425]

AIRWORTHINESS DIRECTIVES

Short Brothers Ltd. Model SD3-30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to adopt an Airworthiness Directive (AD) that would require replacement of life limited wing flap control rods on Short Bros. Ltd. Model SD3-30 airplanes. The manufacturer's fatigue testing program has established that failure of the control rods could occur if they are left in service beyond 10,000 flights. Failure of the rod could result in loss of aircraft control.

DATES: Comments must be received on or before December 29, 1978.

ADDRESSES: Send comments on the proposal in duplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC-24) Docket No. 18425, 800 Independence Avenue SW., Washington, D.C. 20591.

The applicable service bulletin may be obtained from: Manager—Spares Support, Production Support Department, Short Bros. Ltd., P.O. Box 241—Airport Road, Belfast BT3 9DZ, Northern Ireland.

A copy of the service bulletin is contained in the Rules Docket, room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

D. C. Jacobsen, Chief, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Region, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, telephone 513.38.30.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the rules docket.

The FAA has determined that failure of the flap control rods, part Nos. SD3-45-1853 and SD3-45-1855 could occur on early production Short Bros. Ltd. Model SD3-30 airplanes if they are left in service beyond 10,000 flights. The life-limit has been established by the manufacturer as a part of its continuing fatigue testing program. Since this condition is likely to exist or develop on other airplanes of the same type design, an AD is being proposed which would require replacement of the original flap control rods with new rods of the same part number prior to accumulating 10,000 flights.

THE PROPOSED AMENDMENT

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

SHORT BROS. LTD. Applies to all Model SD3-30 airplanes, certificated in all categories.

Compliance is required prior to the accumulation of 10,000 flights or prior to the accumulation of 25 flights after the effective date of this AD, whichever occurs later, unless already accomplished; and thereafter at intervals not to exceed 10,000 flights.

To prevent fatigue failure of the flap control rods, replace flap control rods, part Nos. SD3-45-1853 and SD3-1855 located immediately aft of wing center section rear spar and part of inner flap mechanism, with new rods of identical part numbers in accordance with section 2, "Accomplishment Instructions" of Short Bros. Ltd. Service Bulletin SD3-27-14, dated April 28, 1978, or an FAA-approved equivalent. For purposes of complying with this AD, a flight is defined as one takeoff and one landing.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.85.)

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

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

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc. 78-30566 Filed 10-27-78; 8:45 am]

[4910-13-M]

[14 CFR Part 75]

[Airspace Docket No. 78-SO-49] [1]

RESCISSION OF JET ROUTES

Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to rescind J-81 which extends from Miami, Fla., to Orlando, Fla., and to realign a segment of J-20 to extend from Orlando to Fort Lauderdale, Fla., via the INT of Orlando 154° T and M and Fort Lauderdale 339° T and M radials. This action will eliminate a jet route that is no longer required and will designate a radar vector route as a jet route, thus reducing chart clutter and possible confusion in the use of the radar vector route.

DATES: Comments must be received on or before November 29, 1978.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Southern Region, Attention: Chief, Air Traffic Division, Docket No. 78-SO-49, P.O. Box 20636, Atlanta, Ga. 30320. The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-24), Room 916, 800 Independence Avenue SW., Washington, D.C. 20591. An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320. All communications received on or before November 29, 1978, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling 202-426-8058. Communications must identify the docket number of this NPRM. Persons interest in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

THE PROPOSAL

The FAA is considering an amendment to part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign J-20 from Orlando to Fort Lauderdale via the INT of Orlando 154° and Fort Lauderdale 339° radials, and to rescind J-81 which extends from Miami to Orlando. The route from Orlando to Fort Lauderdale via the BOYEL INT is presently used as a vector route. By designating this route as a jet route, the communication and flight planning time will be reduced. J-81 is no longer required. Rescission of J-81 will help to reduce chart clutter.

THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 75.100 of part 75 of the Federal Aviation Regulations (14 CFR Part 75) as republished (43 FR 714) as follows:

Under jet route No. 20, all after "Orlando, Fla., 306° radials; Orlando;" is deleted and

[1] Map filed as part of original.

"INT Orlando 154° and Fort Lauderdale, Fla., 339° radials to Fort Lauderdale." is substituted therefor.

Jet route No. 81, title and text is deleted.

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.65.)

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

Issued in Washington, D.C., on October 23, 1978.

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

[FR Doc. 78-30565 Filed 10-27-78; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[Docket No. 9078]

NATIONAL SYSTEMS CORP. AND NORTH AMERICAN CORRESPONDENCE SCHOOLS, T/A NORTH AMERICAN SCHOOL OF CONSERVATION, ETC., 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 dismiss the complaint against National Systems Corp. and individually named corporate officers, and require North American Correspondence Schools, a Newport, Calif. firm offering correspondence courses in various fields, to cease misrepresentating enrollment prerequisites; school accreditation; testimonials; and the potential earnings, employment opportunities, and demand for its graduates. Prior to contracting, customers would have to be furnished with information regarding the employment success of former students; informed of their right to cancellation and refund; and provided with a seven-day colling-off period. The order would additionally require the company to make restitution to former eligible students, in a specified manner; maintain records; and institute a surveillance program designed to ensure compliance with the terms of the order.

DATE: Comments must be received on or before December 26, 1978.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Harvey Saferstein, Director, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Boulevard, Los Angeles, Calif. 90024, 213-824-7575.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f), 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 veiws will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(140)).

In the matter of National Systems Corp., a corporation, North American Correspondence Schools, a corporation doing business as North American School of Conservation, North American School of Advertising, North American School of Drafting, North American School of Travel, North American School of Systems and Procedures, North American School of Recreation and Park Management, North American School of Surveying and Mapping, North American School of Accounting, North American School of Motorcycle Repair, North American School of Hotel-Motel Management, and John J. McNaughton, individually and as chairman of the board of directors of National Systems Corp., Maurice H. Sherman, individually and as an officer of North American Correspondence Schools, Eugene Auerbach and Richard C. Parsons, individually and as employees of North American Correspondence Schools, and Wallace O. Laub, individually and as a member of the board of directors of North American Correspondence Schools.

AGREEMENT CONTAINING ORDER TO CEASE AND DESIST

The Agreement herein, by and between North American Correspondence Schools, a corporation doing business as North American School of Conservation, North American School of Advertising, North American School of Drafting, North American School of Travel, North American School of Systems and Procedures, North American School of Recreation and Park Management, North American School of Surveying and Mapping, North American School of Accounting, North American School of Motorcycle Repair, and North American School of Hotel-Motel Management ("respondent"); and counsel for the Federal Trade Commission (the "Commission"), is entered into in accordance with the Commission's rules governing consent order procedure.

1. Respondent has been served with a copy of the Complaint in this proceeding, together with a form of Order.

2. Respondent admits all the jurisdictional facts set forth in said Complaint.

3. Respondent waives:

(a) Any further procedural steps;

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

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

4. This Agreement shall not become 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 a copy of the Complaint issued herein, 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 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 respondent that the law has been violated as alleged in the Complaint.

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 respondent, issue its Decision containing the following Order to Cease and Desist in disposition of the proceeding and make information public in respect to the Complaint, the Answer filed thereto, and this Decision. 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 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. Respondent has read the Complaint and Order herein, and understands that once the Order has been issued, it will be required to file one or more compliance reports that it has fully complied with the Order, and that it may be liable for a civil penalty in the amount provided by law for each violation of the Order after it becomes final.

8. It is agreed that the relief set forth herein fully satisfies any claims which the Commission has against North American Correspondence Schools under §§ 5 and 19 of the Federal Trade Commission Act, as amended, arising out of the acts and practices alleged in the Complaint. By its final acceptance of this Agreement, with such modifications, if any, which the parties may agree upon prior to said final acceptance, the Commission waives its right to commence a civil action under § 19 of the Federal Trade Commission Act, as amended, with respect to the acts and practices of North American Correspondence Schools alleged in the Commission's Complaint.

9. It is agreed that the Complaint will be dismissed with respect to: National Systems Corp., a corporation; John J. McNaughton, individually and as chairman of the board of directors of National Systems Corp.; Maurice H. Sherman, individually and as an officer of North American Correspondence Schools; Eugene Auerbach and Richard C. Parsons, individually and as employees of North Anmerican Correspondence Schools; and Wallace O. Laub, individually and as a member of the board of directors of North American Correspondence Schools.

ORDER I

It is ordered, That respondent North American Correspondence Schools (hereinafter "respondent"), a corporation and a subsidiary of National Systems Corp., doing business as North American School of Conservation, North American School of Advertising, North American School of Drafting, North American School of Travel, North American School of Systems and Procedures, North American School of Recreation and Park Management, North American School of Surveying and Mapping, North American School of Accounting, North American School of Motorcycle Repair, and North American School of Hotel-Motel Management, its successors and assigns, and respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promoting, offering for sale, sale or distribution of courses of instruction in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, orally, visually, in writing or in any other manner, directly or by implication that:

(a) There is a need or demand of any size, proportion or magnitude for persons completing any of the courses offered by respondent in the field of conservation or any other field, or otherwise representing that opportunities for employment, or opportunities of any size, figure or number are available to such persons, or that persons completing any such courses will or may earn any specified amount of money, or otherwise representing by any means the prospective earnings of such persons, unless respondent possesses, and relies upon at the time such representation is made, a reasonable basis for such representation, which may consist of a statistically valid and reliable survey, a reliable study, a government or industry publication or other data or material which would be relied upon by an individual generally recognized as qualified as an expert on the subject matter pertaining to the representation in question.

(b) Completion of respondent's courses of instruction in conservation by itself will enable a person to secure employment in conservation from government agencies or private institutions, associations or groups; or, misrepresenting in any manner the importance or significance of any of the courses offered by respondent for qualifying any person for employment in any field with any firms.

(c) Graduates of respondent's conservation courses qualify for employment in conservation of a kind normally requiring a junior or senior college degree; or, misrepresenting in any manner that persons completing any of the courses offered by respondent will qualify for employment of a kind normally requiring a junior or senior college degree.

(d) Graduates of respondent's conservation courses qualify for employment in conservation irrespective of age, physical fitness, formal educational training or job experience; or, misrepresenting in any manner the employment qualifications for conservation or any other field.

(e) Respondent's School of Conservation, or any other school of respondent, is an accredited institution of higher learning, or that credits therefrom are transferable to accredited institutions of higher learning, unless such is the case.

(f) Respondent's courses of instruction in conservation, or in any other field, are approved or recommended by any persons, groups, or organizations knowledgeable in the field of conservation, or in any other field, unless said persons, groups, or organizations have in fact approved or recommended such courses.

2. Representing orally, visually, in writing or in any other manner, including but not limited to the use of photographs or testimonials, the positions or salaries obtained by graduates of respondent's courses, or the employers who have hired such graduates, unless respondent possesses and relies upon at the time such representation is made, a reasonable basis for such representation, which may consist of a statistically valid and reliable survey, a reliable study, a government or industry publication or other data or material which would be relied upon by an individual generally recognized as qualified as an expert on the subject matter pertaining to the representation in question.

3. Altering or omitting any part of the text of a testimonial used in respondent's advertising in a manner which is likely to deceive members of the public as to the benefits to be obtained from any of the courses offered by respondent; or, misrepresenting in any manner the content of any testimonial used by respondent in any of its advertising.

4. Failing to state, clearly and conspicuously, in conjunction with any testimonial used in respondent's advertising, that it has been solicited, or it required, as part of the course work, or that the entity giving such testimonial has received remuneration therefor, when such is the case.

5. Failing to obtain, at least twenty-four (24) hours prior to an interview or visit in the home or residence of a prospective student, the prospective student's consent to an interview or visit in her (his) home; failing to disclose to said prospective student, at the outset of any telephone call or other contact intended to solicit her (his) consent to an interview or visit in her (his) home, that the purpose of the contact is to request an opportunity to interview or visit the prospective student at her (his) home, and that the purpose of such interview or visit would be to sell an enrollment in one of the courses of instruction offered by respondent.

6. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective student of any course of instruction offered by respondent, the following information in the format prescribed in Appendix A:

(a) the percentage of graduates from respondent's course available for employment and employed in the field to which the course relates, as shown by respondent's most recent survey conducted in the manner required or approved by the Veterans Administration (VA) pursuant to 38 U.S.C. §§ 1673 and 1723, as amended, and all applicable regulations and circulars; and

(b) the percentage of students in respondent's course during the time period covered by the VA survey used as the basis for the disclosure required by subparagraph (a) of this Paragraph who, after having commenced the course, cancelled their enrollment or were terminated by respondent before completion of the course.

Provided, however, That this Paragraph shall be inapplicable:

(a) to any school newly established by respondent in a metropolitan area or county, whichever is larger, where it previously did not operate a school, until such time as the school has graduated the number of students sufficient to conduct a valid survey under the applicable VA regulations and circulars and has conducted such a survey at the earliest possible time; or

(b) to any course newly introduced by respondent, until such time as the course has graduated the number of students sufficient to conduct a valid survey under the applicable VA regulations and circulars and has conducted such a survey at the earliest possible time; or

(c) to any school or course of instruction whose advertising or marketing does not entail employment or earnings claims.

However, in the instance of (a) and (b) above, the following statement, and no other, shall be made in lieu of the Appendix A Disclosure Form required by this Paragraph:

DISCLOSURE NOTICE

This school [or course, as the case may be] has not been in operation long enough to indicate what, if any, actual employment or salary may result upon graduation from this school [course].

7. (a) Contracting for the sale of any course of instruction in the form of a sales contract or any other agreement which does not contain in close proximity to the space reserved in the contract for the signature of the prospective student, in a clear and concise manner, and in type that is readable and conspicuous and not smaller than the majority of type used on the enrollment form, the following statement:

You may cancel this transaction at any time prior to midnight of the seventh (7th) calendar day after the date you sign this contract. See enclosed notice of cancellation form for an explanation of this right.

(b) Failing to furnish each prospective student, at the time she (he) is furnished the enrollment enclosed immediately after the enrollment contract, containing the following information and statements:

NOTICE OF CANCELLATION

You may cancel this transaction, without any penalty or obligation, within seven (7) calendar days from the date you sign the enrollment application.

If you cancel, any payments made by you under the contract or sale, and any note or other evidence of indebtedness executed by you will be returned within seven (7) calendar days following receipt by the school of your cancellation notice, and any security interest arising out of the transaction will be canceled. If you cancel, the school may ask that you return any materials delivered to you as part of the course, at the school's expense and risk.

To cancel this transaction, sign, date and mail or deliver this cancellation notice or any other written notice, or send a telegram to North American Correspondence Schools at [address] not later than midnight of the seventh (7th) calendar day after you sign the enrollment application. I hereby cancel this transaction.

.....
(Date)

.....
(Student's signature)

(c) Where a sales representative is involved in the enrollment process, failing to inform orally each prospective student of her (his) right to cancel at the time she (he) signs a contract or agreement for the sale of any course of instruction.

(d) Misrepresenting in any manner the prospective student's right to cancel.

(e) Failing or refusing to honor any valid notice of cancellation by a prospective student and, within seven (7) calendar days after the receipt of such notice, to: (i) refund all payments made under the contract or sale and return any check not cashed or deposited; (ii) return any goods or property traded in, in substantially as good condition as when received by respondent; (iii) cancel and return any note or other evidence of indebtedness executed by the prospective student in connection with the contract or sale.

(f) During the cancellation period described herein, respondent shall not initiate oral contacts with such contracting persons other than contacts permitted by this Paragraph, and such contracting persons shall not receive any written materials from respondent before expiration of the cancellation period.

(g) Provided, however, that the above statement and cancellation notice may be omitted from enrollment contracts signed during or following an interview or sales presentation in a person's home or residence by a sales representative if, in such circumstances, respondent complies with Paragraph I(8) of this Order.

8. Failing to mail, by certified mail return receipt requested, to each person who signs an enrollment contract during or immediately following an interview or sales presentation in her (his) home or residence by a sales representative, a form in duplicate, printed in bold face type of at least ten (10) points and containing the following language:

AFFIRMATION STATEMENT

The enrollment contract that you have signed with North American School of ——— on [date] to enroll in [name of course] is not effective or valid unless you first sign this statement and mail it to the school within ten (10) days from the time that you received this statement. You are free to cancel your enrollment and receive a full refund of any moneys you have paid to the school by not signing or mailing this statement within ten (10) days. At the expiration of this ten (10) day period the school has ten (10) business days to send you your refund (if any) and to cancel and return to you any evidence of indebtedness that you signed. However, if you want to enroll in the school, you should sign your name below and mail this statement to the school within ten (10) days. Keep the duplicate copy for your own records.

I want to enroll in the North American School of ———.

.....
(Date)

.....
(Signature)

9. Failing to inform orally each person interviewed or visited at home or in such person's residence by a sales representative, in the course of any such interview or visit, that any enrollment contract signed by such person will not be effective or valid unless and until that person signs and mails an Affirmation Statement that she (he) will receive from the school in the mail, and that she (he) is free to cancel the contract by simply not mailing the affirmation Statement back to the school within ten (10) days of its receipt.

10. Treating any enrollment contract signed during or immediately following an interview or sales presentation in a person's home or residence by a sales representative as effective or valid, or sending course materials to any such person, unless and until the Affirmation Statement described in Paragraph I(8) of this Order is signed and mailed within the prescribed affirmation period; failing to treat any such contract for which an Affirmation Statement is not signed and mailed within the affirmation period as null and void; and failing within ten (10) business days of the expiration of the affirmation period, to return all moneys received, and to cancel and return all evidence of indebtedness, relating to any such unaffirmed contract.

11. Representing orally through sales representatives that respondent accepts only qualified candidates for enrollment in its conservation courses; or misrepresenting in any manner the prerequisites or qualifications for enrollment in any of the courses of instruction offered by respondent.

12. Representing orally through sales representatives that respondent's qualification questionnaire is utilized to determine a prospective student's enrollment qualifications; or misrepresenting in any manner the purpose or use of respondent's qualification questionnaire.

13. Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which the public may be misled or de-

ceived in the manner, or by the acts and practices, prohibited by this Order.

II

1. *It is further ordered,* That:

(a) Respondent herein deliver a copy of this Decision and Order to each of its sales representatives, and to all personnel having oral contact with prospective students of the courses offered by respondent or otherwise directly engaged in the promotion, offering for sale, sale or distribution of any course of instruction included within the scope of this Order;

(b) Respondent herein provide each person so described in subparagraph (a) of this Paragraph with a form returnable to the respondent clearly stating her (his) intention to conform her (his) business practices to the requirements of this Order; retain said statement during the period said person is so engaged; and make said statement available to the Commission's staff for inspection and copying upon request;

(c) Respondent herein inform each person described in subparagraph (a) of this Paragraph that respondent will not use or engage, or will terminate the use or engagement of, any such person unless such person agrees to and does file notice with the respondent that she (he) will conform to the provisions contained in this Order;

(d) If a person described in subparagrah (a) of this Paragraph will not agree to file the notice set forth in subparagraph (b) above with the respondent and conform to the provisions of this Order, the respondent shall not use or engage or continue the use or engagement of such person to promote, offer for sale, sell or distribute any course of instruction included within the scope of this Order;

(e) Respondent herein inform the persons described in subparagraph (a) above that the respondent is obligated by this Order to discontinue dealing with or to terminate the use or engagement of persons who continue on their own the deceptive acts or practices prohibited by this Order;

(f) Respondent herein institute a program of continuing surveillance designed to reveal whether the business practices of each said person described in subparagraph (a) above conform to the requirements of this Order;

(g) Respondent herein discontinue dealing with or terminate the use or engagement of any person described in subparagraph (a) above, who continues on her (his) own any act or practice prohibited by this Order as revealed by the aforesaid program of surveillance;

(h) Respondent herein maintain files containing all inquiries or complaints from any source relating to acts or practices prohibited by this Order, for a period of two (2) years after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondent's business for inspection and copying.

2. *It is further ordered,* That respondent herein present to each interested applicant or prospective student immediately prior to the commencement of any interview or sales presentation during which the purchase of or enrollment in any course of instruction offered by respondent herein is discussed or solicited in such person's home or residence, a 5" x 7" card containing only the following language:

"You will be talking to a salesperson."

3. *It is further ordered,* That respondent forthwith distribute a copy of this Order to each of its operating divisions.

4. *It is further ordered,* That respondent shall, for a period of twenty (20) years following the effective date of this Order, notify the Commission at least thirty (30) days prior to any proposed change in the corporate structure of respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the respondent which may affect compliance obligations arising out of this Order.

5. *It is further ordered,* That should the Federal Trade Commission promulgate a Trade Regulation Rule governing the advertising or promotion of educational courses of instruction subject to this Order, provisions of this Order relating to practices, requirements or prohibitions covered by such a Rule shall automatically be replaced by the provisions of such a Rule relating to the same kind of practices, requirements or prohibitions, to the extent covered by such provisions, and any such replacement provisions of the Rule shall be incorporated in this Order, on the date such Rule becomes effective; but shall remain so incorporated only as long as the Rule remains effective. If such replacement provisions of the Rule should be rescinded or otherwise invalidated, the original provisions of the Order herein shall then become effective.

III

It is further ordered, That:

1. Within twenty-one (21) days after the date this Order is served on respondent (hereinafter "date of service"), respondent shall employ an independent contractor (hereinafter "contractor") acceptable to the Commission.

2. Within thirty (30) days after the date of service, respondent shall compile and give to the contractor a list containing the information described in this paragraph. For each person (a) whose enrollment application was accepted and registered by respondent for any of respondent's conservation courses (whether consisting of one hundred and fifty (150) or one hundred (100) lessons; hereinafter "the course") from March 26, 1973, through March 25, 1976, inclusive; and, (b) who, on or before June 30, 1977, either (1) completed all the lessons is the course (but need not have submitted the final examination or received a diploma) and paid in full the tuition for the course, or (2) cancelled the course or was terminated by the school (for academic reasons or because of lack of communication from the student for two hundred and twenty (220) days) after having completed at least ten (10) examinations in the course and paid at least the pro rata portion of the tuition attributable to ten (10) examinations (hereinafter "student"), respondent shall provide the following information:

(a) Name;

(b) Last known home address;

(c) Name and address of the nearest relative of the student, or if no such address appears in respondent's files relating to such student, then the student's last known business address if such information is contained in respondent's files relating to such student;

(d) Date student's enrollment application was accepted and registered by respondent;

(e) Date student completed the course (but need not have submitted a final examination or received a diploma) or date she (he) canceled the course or was terminated by respondent for academic reasons or for failure to communicate with respondent for two hundred and twenty (220) days;

(f) Total tuition paid by or for the student to respondent;

(g) Total amount of any tuition refund (s) paid by respondent to the student;

(h) Total amount of any deficiency in the student's pro rata tuition payments; and

(i) If known, the total amount of tuition paid on behalf of, or reimbursed to, the student by any government agency or department (other than the Veterans Administration), or any private business or other organization.

3. On the sixtieth (60th) day after the date of service, the contractor shall send, via first class mail, to each student at her (his) last known home address (as it appears in the section of the list referred to in Paragraph III (2) (b) of this Order) an envelope which bears the contractor's return address and contains:

(a) A copy of the letter and the Eligibility Questionnaire (hereinafter "questionnaire") in the language, manner, and form shown in Appendices B and C respectively; and

(b) A first class postage-prepaid envelope addressed to the contractor.

4. With respect to each student whose mailed inquiry (as described in Paragraph III (3)) is returned to the contractor undelivered or from whom no response has been received within one hundred and five (105) days after the date of service, then, within one hundred and ten (110) days after the date of service, the contractor shall do either of the following:

(a) Solicit a more recent address by sending via first class mail to the name and address of the student's nearest relative shown on the list referred to in Paragraph III (2), an envelope which bears the contractor's return address and contains both a letter in the language, manner, and form shown in Appendix D and a first-class, postage-pre-

paid envelope addressed to the contractor; if informed of an address more recent than the address referred to in Paragraph III(2), then within five (5) business days of receiving said address, the contractor shall send, via first class mail, to the student at said address, an envelope bearing the contractor's return address and containing the same letter, questionnaire, and return envelope referred to in Paragraph III(3) of this Order; or

(b) If there is no name or address of a relative on the list referred to in Paragraph III(2), send via first class mail to the student's last known business address if and as it appears on said list an envelope bearing the contractor's return address and containing the same letter, questionnaire, and return envelope that were previously mailed to the student's home address.

5. (a) On the one hundred and fifth (105th) day after the date of service, the contractor shall transmit to the Commission a list containing the name of each student whose envelope is returned to the contractor, or from whom no response has been received within one hundred and five (105) days after the date of service, and for whom neither a business address nor a relative's address appears on the list referred to in Paragraph III(2) of this Order;

(b) The Commission shall have up to one hundred and forty-five (145) days from the date of service to obtain and transmit to the contractor more recent addresses for the students whose names appear on the list described in Paragraph III(5)(a) of this Order;

(c) With respect to each student for whom a more recent address is transmitted to the contractor by the Commission pursuant to the provisions of Paragraph III(5)(b) of this Order, the contractor shall, on the one hundred and fiftieth (150) day after the date of service, send, via first class mail, an envelope which bears the contractor's return address and contains the questionnaire, letter, and return envelope described in Paragraph III(3) (a) and (b) of this Order.

6. If a student marks more than one answer to questions 2 and/or 4 (see appendix C) when at least one answer would be a qualifying answer and the other a disqualifying answer under the eligibility criteria enumerated in Paragraph III(8)(a-e) in this Order, and if the student is not disqualified on the basis of an answer to any other question, the contractor within five (5) days shall send to such student via first class mail an envelope bearing the contractor's return address and containing: A Letter as depicted in Appendix E; an unmarked copy of the question(s) to which the student had given inconsistent answers; and a first-class, postage-prepaid envelope addressed to the contractor.

7. On the two hundredth (200th) day after the date of service, the contractor shall transmit to respondent and to the Commission a copy of each completed questionnaire in the contractor's possession, custody, or control. No student whose questionnaire is received by the contractor after that day will be considered for eligibility.

8. Within two hundred and ten (210) days after the date of service, the contractor shall make an initial determination of those students who are "eligible class members" pursuant to the criteria enumerated in this Paragraph, Paragraph 9 and the guidelines set forth in Appendix H of this Order, and shall transmit to the respondent and to the Commission a list of the names of students who are eligible class members and the most current address for each such student known to the contractor. An "eligible class member" is defined as that person:

(a) Whose enrollment application was accepted and registered by respondent between March 26, 1973, and March 25, 1976, inclusive;

(b) Who enrolled in the course to enable her (him) to get a job in the conservation or ecology field;

(c) Who failed to obtain employment in the conservation or ecology field (1) within two (2) years after completing or terminating the course, or (2) by the date of receipt of the questionnaire, whichever is earlier;

(d) Who has demonstrated her (his) eligibility by her (his) responses to the questionnaire and any subsequent questionnaire or inquiry mailed by the contractor pursuant to the provisions of this Order; and the contractor has received all such responses before two hundred (200) days after the date of service; and

(e) Who falls into one of the following groups:

(1) That person who completed all the lessons in the course (but may not have submitted the final examination or been issued a diploma) and paid in full the tuition for the course on or before June 30, 1977, and made three (3) "meaningful attempts" (as defined in Paragraph 9) to find a job in the conservation or ecology field at least one (1) of which was either a written application for a job or a personal visit to an agency or employer for the purpose of finding a job; or

(2) That person who cancelled her (his) enrollment in the course or was terminated by respondent (for academic reasons or because of lack of any communication from the student for two hundred and twenty (220) days) and made at least two (2) "meaningful attempts" (as defined in Paragraph 9) to find a job in the conservation or ecology field.

9. For the purposes of Paragraph III(8)(e) (1) and (2), a "meaningful attempt" to find a job in the conservation or ecology field is one in which the student:

(a) Filed a written application for employment with an agency or other employer in the conservation or ecology field, and can reasonably identify the agency or employer to which, and the approximate date on which, application was made;

(b) Wrote to an agency or employer in the conservation or ecology field to inquire about employment but did not file a written application for employment, and can reasonably identify the agency or employer to which, and the approximate date on which, the inquiry was sent;

(c) Contacted the North American School of Conservation for assistance in getting a job in the conservation or ecology field;

(d) Telephoned an employer in the conservation or ecology field to inquire about the availability of a conservation or ecology job but failed to apply for a conservation or ecology job because (1) she (he) was ineligible to apply, (2) she (he) chose not to apply because the salary was too low, or (3) she (he) was advised that no jobs were available; and can reasonably identify the agency or employer contacted and the approximate date of the contact; or

(e) Personally visited an employer in the conservation or ecology field to inquire about the availability of a conservation or ecology job but failed to apply for a conservation or ecology job because (1) she (he) was ineligible to apply, (2) she (he) chose not to apply because the salary was too low, or (3) she (he) was advised that no jobs were available; and can reasonably identify the agency or employer contacted, the person to whom she (he) spoke (name, position, title, or description), and the approximate date of the contact.

10. Within two hundred and forty (240) days after the date of service, respondent shall present to the contractor any challenge respondent may wish to make to the contractor's initial determinations of eligibility, and respondent shall present to the contractor simultaneously with its challenge any substantiating materials in its possession, custody, or control. On the same day that respondent presents its challenges to the contractor, it shall transmit copies of all challenges and substantiating materials constituting said presentation to the Commission.

11. (a) Within two hundred and seventy (270) days after the date of service, the contractor shall, after considering all of respondent's challenges to the contractor's initial determinations of eligibility, make its final determinations of those students who are eligible class members. Also within two hundred and seventy (270) days after the date of service, the contractor shall notify respondent and the Commission simultaneously of said final determinations by transmitting to each of them a list of the names and most current addresses of students who are eligible class members, a report explaining the basis for upholding or denying any challenge(s) and copies of all materials considered by the contractor in upholding or denying any challenge.

(b) In resolving disputes about whether particular students are eligible class members, the contractor shall consider all evidence presented to it that bears on the appropriateness and reasonableness of the contractor's interpretation of responses to the questionnaire and all evidence presented to it that bears on the accuracy or verac-

ity of a student's responses to the questionnaire pursuant to the guidelines set forth in Appendix H of this Order. The contractor's decision in upholding or denying any challenge shall be fair and impartial. No financial or other material benefit shall accrue to the contractor contingent upon the nature of the outcome of her (his) decision.

12. Within two hundred and eighty (280) days after the date of service, respondent shall file, under Rule 3.61(d) of the Commission's rules of practice, a written request for advice as to whether the contractor's final determinations of eligible class members comply with the terms of this Order. The Commission shall render its advice to respondent within three hundred and forty (340) days after the date of service.

13. Within three hundred and sixty-five (365) days after the date of service, respondent shall send, via registered mail, return receipt requested, an envelope to each of the eligible class members at the address on the list prepared by the contractor pursuant to Paragraph III(11)(a) of this Order containing a letter in the language, manner, and form shown in Appendix F and:

(a) In the case of a student who has completed all the lessons in the course (but may not have submitted the final examination or been issued a diploma) and paid in full the tuition for the course, on or before June 30, 1977, a check for the lesser of the following amounts:

(1) Two hundred dollars ($200.00);

(2) The amount by which the tuition paid by or for the student exceeds the amount paid on behalf of, or reimbursed to, the student by any government agency or department (other than the Veterans Administration) or any private business or other organization (excluding loans); or

(b) In the case of a student whose enrollment has been cancelled or terminated as described in Paragraph III(8)(e)(2) of this Order, a check for the lesser of the following amounts:

(1) One hundred dollars ($100.00);

(2) The amount by which the tuition paid by or for the student exceeds the amount paid on behalf of, or reimbursed to, the student by any government agency or department (other than the Veterans Administration) or any private business or other organization;

provided, however, that if the student had not paid for all of the lessons completed prior to cancellation or termination of her (his) enrollment, the pro rata cost of the lessons she (he) completed but for which she (he) had not paid will be deducted from the refund to which she (he) is otherwise entitled.

14. On the same day that respondent mails envelopes containing refund checks to eligible class members, pursuant to Paragraph III(13) of this Order, respondent shall send, via first class mail, an envelope which bears respondent's return address and contains a letter in the language, manner, and form shown in Appendix G and a copy of this Order to the last known home address of each student who was determined on the basis of her (his) returned questionnaire to be ineligible for a refund under Part III of this Order.

15. On the four hundred and twenty-fifth (425th) day after the date of service, respondent shall file with the Commission a report in writing setting forth the manner and form in which it has complied with Part III of this Order. This report shall contain a listing of the names, addresses, and refund amounts of those eligible class members whose refund checks were returned by the United States Postal Service.

16. The Federal Trade Commission shall have one hundred and eighty (180) days from the date of receipt of the report described in Paragraph III(15) of this Order to locate such eligible class members and to notify respondent of such members' most recent addresses, if found.

17. Within five (5) days of receiving the notification referred to in Paragraph III(16) of this Order, respondent shall send, via registered mail, return receipt requested, an envelope to each of the eligible class members whom the Federal Trade Commission has located, at the address found by the Commsission, which bears respondent's return address and contains the letter and check referred to in Paragraph III(13) of this Order.

18. Any administrative costs incurred by respondent in carrying out the provisions of this Part III, including the cost of employing the contractor, shall be borne by respondent.

19. If any duty required to be performed on a certain day under Part III of this Order falls upon a non-business day, the respondent herein shall perform such duty on the next following business day.

IV

It is further ordered, That:

1. Respondent shall maintain records and documents for two (2) years after the filing of the report referred to in Paragraph III(15) of this Order, which demonstrate that respondent has complied with Part III of this Order, and shall further maintain all documents and other materials relied upon in compliance with Parts I and II of this Order for a period of two (2) years following the last date such documents and materials were relied upon. Such records, documents and materials demonstrating compliance with this Order shall be made available for inspection and copying by the Commission during normal business hours.

2. In addition to all other reports required by this Order, respondent shall file with the Commission within sixty (60) days after sevice upon it of this Order, a report, in writing, setting forth in detail the manner and form in which it has complied with Parts I and II of this Order.

Signed this——day of———1977.

———————,

NORTH AMERICAN CORRESPONDENCE SCHOOLS.

APPENDIX A

DISCLOSURE FORM

(Name of School)

EMPLOYMENT AND COMPLETION RECORD FOR (NAME OF COURSE) FOR THE PERIOD OF (DATE) TO (DATE)

1. (Name of school) recently conducted a survey, pursuant to regulations of the Veterans Administration,* of students who graduated from the (name of course) between (date) and (date). (Number) questionnaires were mailed; (number) were returned. The survey shows that among the graduates who responded to the questionnaire, (percentage of graduates available for employment actually obtained jobs in the (name of field) or a related field.

2. (Percentage) of the students who enrolled in (name of course) between (date) and (date) completed the course; (percentage) of the students who enrolled in that period cancelled their enrollment or were terminated by the school before completion of the course; (percentage) of the students who enrolled in that period are still studying the course.

APENDIX B

(Name)
(Address)

DEAR (Name): In settlement of a proceeding brought by the United States Federal Trade Commission, North American Correspondence Schools has agreed to a Consent Order. Under that Order, North American is undertaking to make tuition adjustments for some former students of its Conservation course, if they meet certain requirements.The purpose of the enclosed questionnaire is to help determine your eligibility for such an adjustment.

You are under no obligation to fill out or send in this questionnaire. You must return this questionnaire, however, if you wish to have your eligibility determined, You may already have received and sent in other questionnaires relating to the Conservation course Those questionnaires were used for other purposes and do not contain sufficient information to determine your eligibility.

DIRECTIONS: Please read each question carefully and mark or fill in the appropriate spaces on the questionnaire enclosed. After you have answered every applicable question, take the questionnaire to a notary public. Sign and swear to the affidavit in the presence of the notary public, who will then notarize it. If you do not live within twenty-five (25) miles of a notary public, you may sign and swear to the affirmation

*[The following disclaimer shall be inserted if the course has not been approved by the Veterans Administration: "This course is not approved for veterans benefits."]

before three persons who are not related to you and who are at least eighteen (18) years of age, each of whom must attest that he or she has witnessed your signing of the Affirmation statement.

If you decide to send in this questionnaire, you must follow the directions and answer all questions which apply to you completely and truthfully to the best of your knowledge. Questionnaires which are incomplete or improperly filled out could result in the loss of eligibility. Please keep in mind that you can be exposed to criminal penalties if you knowingly give false information.

Please return the completed, signed, and notarized (or witnessed) questionnaire in the enclosed stamped addressed envelope. You should fill out and mail in this questionnaire no later than [insert day 30 days after contractor mailed questionnaire]. If you should misplace the envelope provided, please mail your questionnaire to [insert contractor's name and address].

APPENDIX C

ELIGIBILITY QUESTIONNAIRE

Please type or carefully print your answers.

_____

Name Address

1. Did you enroll in the North American School of Conservation? ——Yes ——No

2. What was the MOST IMPORTANT reason why you enrolled? (MARK ONE BOX ONLY. Be sure to read all of the alternatives below before marking *the one* that applies to you.)

——Primarily to increase my knowledge and further my education.
——Primarily to enable me to get a job in the conservation or ecology field.
——Primarily to get a promotion in my present job.
——Primarily to help me decide if I wanted to go into the conservation or ecology field.
——Primarily to enhance my enjoyment of the outdoors.
——Other (please explain)
_____
_____
_____

3. Generally speaking, were you satisfied with the course? ——Yes ——No ——Somewhat satisfied, but not entirely.

4. If you *completed* the course, skip this question. If you did *not* complete the course, please give the MOST IMPORTANT reason why you did not complete the course. (MARK ONE BOX ONLY. Be sure to read all of the alternatives below before marking *the one* that applies to you.)

——Primarily because I could no longer afford the course for financial reasons.
——Primarily because I changed my career goal.
——Primarily because I became convinced that the course would not help me get a job in the conservation or ecology field.
——Primarily because I did not have enough time to study or I found the course materials too difficult.
——Primarily because I was drafted or enlisted in the military service.
——Primarily because I went to college or other schooling.
——Primarily because I married, started a family, or stopped taking the course for other personal reasons, such as illness or relocation.
——Other (please explain):
_____
_____
_____

5. Did you try to get a job in the conservation or ecology field? ——Yes ——No (If no, skip to question 8.)

6. (a) Please list as many agencies or employers that you can recall where you filled out or submitted a *written application* for employment in the conservation or ecology field and the approximate date of your application. (If you need more space, please use the back of this page or add more pages.)

Agency or Employer and Approximate Date

_____
_____
_____

(b) Please list as many agencies or employers that you can recall you *wrote to* about employment in the conservation or ecology field, but to which you did *not* make written application for a job. *Also,* please give the approximate date when you wrote, and a brief summary of the reply you received. (If you need more space, please use the back of this page or add more pages.)

Agency or Employer: _____
Approximate Date: _____
The reply I received was: _____
_____
_____

Agency or Employer: _____
Approximate Date: _____
The reply I received was: _____
_____
_____

Agency or Employer: _____
Approximate Date: _____
The reply I received was: _____
_____
_____

(c) Please list as many agencies or employers that you can recall you *personally visited* to seek employment in the conservation or ecology field and the approximate date that you visited. *Also,* please identify the person you spoke with and give a brief summary of what happened. Tell what questions you asked and what you were told. (If you need more space, please use the back of this page or add more pages.)

Agency or Employer: _____
Approximate Date: _____
Name, title, position, or description of person you spoke with: _____
_____
The questions I asked and the answers I received were: _____
_____
_____
Agency or Employer: _____
Approximate Date: _____
Name, title, position or description of person you spoke with: _____
_____
_____
The questions I asked and the answers I received were: _____
_____
_____
Agency or Employer: _____
Approximate Date: _____
Name, title, position or description of person you spoke with: _____
_____
_____
The questions I asked and the answers I received were: _____
_____
_____

(d) Please list as many agencies or employers that you can recall you *telephoned* with regard to employment in the conservation or ecology field and the approximate date that you telephoned. *Also,* please give a brief summary of what happened. Tell what questions you asked and what you were told. (If you need more space, please use the back of this page or add more pages.)

Agency or Employer: _____
Approximate Date: _____
The questions I asked and the answers I received were: _____
_____
_____
Agency or Employer: _____
Approximate Date: _____
The questions I asked and the answers I received were: _____
_____
_____
Agency or Employer: _____
Approximate Date: _____
The questions I asked and the answers I received were:
_____
_____

(e) Did you contact North American School of Conservation for assistance in getting a job? ——Yes ——No
If yes, approximately when? _____

7. Did you get a job in the conservation or ecology field within 2 years of completing or dropping out of the course? ——Yes ——No

8. (a) Did any private business or other organization, or any government agency or department other than the Veterans Administration, pay any of the tuition for the course in which you enrolled? (Do not include any loan which you have repaid, are repaying, or are obligated to repay.) ——Yes ——No.

(b) If yes, how much of your tuition was paid by each private business, or organization, or government agency or department? (Do not include any loan which you have repaid, are repaying, or are obligated to repay.) Amount $———

In order for you to be eligible for any tuition adjustment, you must, after completing the questionnaire, sign the following Affidavit in the presence of a Notary Public.

However, if there is not a Notary Public within twenty-five (25) miles of the place you live, you may sign the Affirmation in the presence of three (3) witnesses who are not related to you and who are eighteen (18) years of age or older.

Also, in order for you to be eligible for any tuition adjustment, you must mail us the completed questionnaire promptly. Please mail the questionnaire by [insert date 30 days after contractor mailed questionnaire]. If you misplace the enclosed postage-prepaid envelope, you should mail the completed questionnaire to [insert contractor's name and address].

WARNING: It is a federal crime for anyone to knowingly and willfully make a false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of any department or agency of the United States. (18 U.S.C. 1001.)

AFFIDAVIT

I hereby affirm that I am the person to whom this questionnaire was sent and that I have answered the above questions completely and truthfully, to the best of my knowledge.

.....
Signature

Subscribed and sworn to before me this——day of——,—.

.....
Notary Public

My commission expires: ————————

If and only if you live more than 25 miles away from a Notary Public, you may sign this before 3 witnesses other than your spouse or relative; but all 3 witnesses must fill in the blanks below.

AFFIRMATION

I hereby affirm that I am the person to whom this questionnaire was sent and that I have answered the above questions completely and truthfully, to the best of my knowledge.

.....
Signature

We affirm that we witnessed

.....
(name of student)

sign the above statement; that we are not related to

.....
(name of student)

by blood or marriage; that we are each at least eighteen (18) years of age; and that we hereby sign our names as attesting witnesses.

1. ————————
Signature
———————— ————————
Address Date

2. ————————
Signature
———————— ————————
Address Date

3. ————————
Signature
———————— ————————
Address Date

APPENDIX D

(Name)
(Address)

DEAR (Name): Pursuant to an Order of the Federal Trade Commission, agreed to by this company, you are requested to provide us with the last known address of [insert name of student].

It is believed that this person was a student in the North American School of Conservation between 1973 and 1976. The Federal Trade Commission has determined that it is necessary to collect information from certain North American Conservation students to implement the terms of an Order which, among other things, requires the company to make tuition adjustments for certain students, possibly including the person named above.

If you know the current address of the person named above, please write it in the place provided at the bottom of this page and return it to us in the enclosed postage prepaid envelope as soon as possible, but *not later than* [insert date representing the one hundred and thirtieth (130) day after the date of service].

Your cooperation will be appreciated.

Sincerely,

.....
(current address of person listed above)

APPENDIX E

(Name)
(Address)

DEAR (Name): This letter relates to the questionnaire about your enrollment in the North American School of Conservation which you recently returned to us. We cannot evaluate your response because you marked more than one answer to Question[s] [2 and/or 4]. In order for us to evaluate your response you must return the enclosed copy of Question[s] [2 and/or 4] with ONLY ONE answer marked under [that, those] question[s]. You may not receive a tuition adjustment unless you mark ONLY ONE answer to [the, each] question.

Select the ONE answer for Question(s) [2 and/or 4] that best applies to you. You are reminded that your answer[s] must be truthful to the best of your knowledge. Although your response to this inquiry need not be notarized or witnessed, you can be subjected to the same criminal penalties for an untruthful answer as you would be for untruthful answers to the Eligibility Questionnaire itself.

Your answer, on the enclosed copy of Question[s] [2 and/or 4] must be mailed to us not later than [insert date representing the earlier of the twenty-first (21st) day after contractor mails this letter or the one hundred and ninetieth (190) day after the date of service]. If you misplace the enclosed postage-prepaid envelope, mail your answer[s] in an envelope addressed to [independent contractor's address].

By ————————

Enclosures.

APPENDIX F

(Name)
(Address)

DEAR (Name): Persuant to a Consent Order issued by the Federal Trade Commission, the North American School of Conservation has agreed to make a partial tuition adjustment for certain former students in its Conservation courses.

The Order of the Commission contains the provisions identifying the class of persons eligible for adjustments, and the procedures for making adjustments. (You may obtain a copy of the Order without charge by writing to the Federal Trade Commission, Public Reference Branch, Room 130, Washington, D.C. 20580. Refer to National Systems Corp., et al., Docket No. 9078.)

In accordance with the provisions of the Order, it has been determined that you are entitled to a tuition adjustment of $————. A check for this amount is enclosed.

NORTH AMERICAN SCHOOL OF CONSERVATION,
By————————.

APPENDIX G

IMPORTANT NOTICE

Pursuant to an Order of the Federal Trade Commission issued on ————, the North American School of Conservation agreed to make a partial tuition adjustment for certain former students in its Conservation courses. The Order of the Commission contains provisions identifying the class of persons eligible for adjustments and the procedures for making adjustments.

In accordance with Part III of the Order, it has been determined, based upon your responses to the "Eligibility Questionnaire," that you are not eligible for an adjustment. A copy of this Order is enclosed.

NORTH AMERICAN SCHOOL OF CONSERVATION,
By————————.

APPENDIX H

INSTRUCTIONS TO INDEPENDENT CONTRACTOR

Respondent North American Correspondence Schools (NACS) shall require the independent contractor referred to in Part III of the Order to comply with the following instructions:

Determination of Eligible Class Members

The contractor shall receive the responses to the Appendix C Eligibility Questionnaire. From these responses, the contractor will determine all eligible class members, and, supplemented by NACS's records, the amount of refund to which each member is entitled, pursuant to the terms of Part III of this Order. All references regarding question numbers refer to the questions on the Appendix C Eligibility Questionnaire.

a. Vocational Intent Requirement. By checking the second response to question 2, the respondent to the questionnaire shall have met the requirement that she (he) enrolled in a NACS conservation course to enable her (him) to get a job in the conservation or ecology field. The contractor shall evaluate any answers to the sixth response to question 2 in order to make a reasonable determination as to whether the respondent to the questionnaire met this requirement. If the respondent to the questionnaire checks two or more responses, one of which is a qualifying answer and one or more others is (are) disqualifying answer(s), and the respondent is not disqualified on the basis of an answer to any other question, then the contractor shall follow the procedure set forth in Paragraph III(6) of the Order. That is, within five (5) days after receiving the questionnaire, the contractor

shall send, via first class mail, an envelope to the student bearing the contractor's return address and containing (a) a letter in the language, manner and form shown in Appendix E to the Order; (b) a copy, from an unanswered questionnaire, of that question or those questions to which the student had given inconsistent answers in her (his) first response; and (c) a first class postage-prepaid envelope addressed to the contractor.

b. Question 3. The contractor shall ignore the answers to question 3 in her (his) initial determination of eligibility.

c. Dropouts. Question 4 is to be answered only by those who did not complete NACS's conservation course. By checking the third response to question 4, the respondent to the questionnaire shall have met the requirement that the reason for not completing the course was that she (he) did not believe the course would help in getting employment in the conservation or ecology field. The contractor shall evaluate any answers to the eighth response to question 4 in order to make a reasonable determination as to whether the respondent to the questionnaire met this requirement. If the respondent to the questionnaire checks a qualifying answer and one or more disqualifying answer(s), but is not otherwise disqualified on the basis of an answer to any other question, then the contractor shall follow the procedure set forth in Paragraph III(6) of the Order. That is, within five (5) days after receiving the questionnaire, the contractor shall send, via first class mail to the student, an envelope bearing the contractor's return address and containing (a) a letter in the language, manner and form shown in Appendix E to the Order; (b) a copy, from an unanswered questionnaire, of that question or those questions to which the student had given inconsistent answers in her (his) first response; and (c) a first class postage-prepaid envelope addressed to the contractor.

d. Meaningful Attempts To Find a Job. Those who completed NACS's course in conservation must have made three meaningful attempts to find a job in conservation or ecology at least one of which was either a written application or a personal visit. Those who did not complete said course must have made two meaningful attempts. An attempt may be made in person, in writing, or by telephone. A "yes" answer to question 6(e) establishes the fact of one meaningful attempt. In determining whether any other action or effort constitutes a meaningful attempt, the contractor shall be governed by the criteria set forth in Pargraph III(9) of the Order. That is, a meaningful attempt is one in which the student:

(a) Filed a written application for employment with an agency or other employer in the conservation or ecology field, and can reasonably identify the agency or employer to which, and the approximate date on which, application was made;

(b) Wrote to an agency or employer in the conservation or ecology field to inquire about employment, and can reasonably identify the agency or employer to which, and the approximate date on which, the inquiry was sent;

(c) Contacted the North American School of Conservation for assistance in getting a job in the conservation or ecology field;

(d) Telephoned an employer in the conservation or ecology field to inquire about the availability of a conservation or ecology job but failed to apply for a conservation or ecology job because (1) she (he) was ineligible to apply, (2) she (he) chose not to apply because the salary was too low, or (3) she (he) was advised that no jobs were available; and can reasonably identify the agency or employer contacted and the approximate date of the contact; or

(e) Personally visited an employer in the conservation or ecology field to inquire about the availability of a conservation or ecology job but failed to apply for a conservation or ecology job because (1) she (he) was ineligible to apply, (2) she (he) chose not to apply because the salary was too low, or (3) she (he) was advised that no jobs were available; and can reasonably identify the agency or employer contacted, the person to whom she (he) spoke (name, position, title or description), and the approximate date of the contact.

A student who completed the course must have provided a total of at least three (3) acceptable responses under these criteria to questions 6(a) through 6(e) of the Eligibility Questionnaire, of which at least one (1) must have been an acceptable response under these criteria to question 6(a) or 6(c).

A student who did not complete the course must have made two (2) meaningful attempts to find a job; thus, such student must have provided a total of at least two (2) acceptable responses under these criteria to questions 6(a) through 6(e) of the questionnaire.

e. Obtained Employment. A student who obtained employment in the conservation or ecology field within two (2) years after completing, cancelling or being terminated from the course is not eligible for a tuition refund. Therefore, any student who answered "yes" to question 7 shall be deemed ineligible.

f. Out-of-Pocket Payments for Tuition. In determining the amount of refund to which an eligible class member is entitled, the contractor shall be guided by the provisions of Paragraph III(13) of the Order. Where an eligible class member's tuition was paid by a private business or organization or by a state or federal agency (other than the Veterans Administration) in whole or in part, that member shall not receive an amount greater than the amount not paid for by such business, organization or agency. To determine the amount of such tuition assistance an eligible class member received, the contractor shall contact NACS for any records it may have indicating the nature and amount of such assistance. If NACS does not have such records, then the contractor may refer to the response to question 8 of the questionnaire in determining the amount to be paid to the eligible class members.

If NACS's records indicate that an eligible class member had not paid for all of the lessons completed prior to cancellation or termination of her (his) enrollment, the contractor shall deduct from the refund to which the student is otherwise entitled the pro rata cost for the lessons she (he) competed but for which she (he) had not paid. Thus, for example, if a student had enrolled in the one hundred (100) lesson course with a total tuition cost of five hundred dollars ($500.00), and had completed sixty (60) lessons (for which the pro rata cost would be $300.00), but paid only two hundred and fifty dollars ($250.00) in tuition, that student would have fifty dollars ($50.00) deducted from the refund to which she (he) would otherwise be entitled.

g. Affidavit and Affirmation Forms. If a questionnaire is not properly sworn or witnessed, the contractor shall photostat and promptly return the original questionnaire to the respondent of the questionnaire along with new Affidavit and Affirmation forms and the following notice:

"We are returning your questionnaire because you did not properly sign it. Enclosed is a new Affidavit which you must sign before a notary public. *But* if you live more than twenty-five (25) miles from the nearest notary public, then sign the enclosed Affirmation before three witnesses (spouse and relatives don't count). Please sign the proper form and mail it along with the questionnaire within 2 weeks to (*name and address*). If you fail to do so, you will be ineligible for a tuition adjustment."

If respondent challenges the eligibility of a student initially determined to be eligible on the ground that the student signed before three witnessess rather than before a notary public notwithstanding the fact that the student lives within twenty-five (25) miles of a notary public, and respondent furnishes evidence that the student in fact lives within twenty-five (25) miles of a notary public, the contractor shall photostat and promptly return the original questionnaire to the student along with a new Affidavit and the following notice:

"We are returning the questionnaire because you did not properly sign it. Since you live within twenty-five (25) miles of a notary public, you should have signed the Affidavit before a notary public rather than the Affirmation before three witnesses. Enclosed is a new Affidavit which you must sign before a notary public. Please sign it and mail it along with the questionnaire within 2 weeks to (*name and address*). If you fail to do, you will be ineligible for a tutition adjustment."

h. Resolution of challenges. In resolving challenges to the contractor's initial determinations of eligibility, the contractor shall be governed by the provisions of Part III(11)(b) of the Order. That is, the contractor shall consider all evidence presented to it that bears on the appropriateness and reasonableness of the contractor's interpretation of responses to the questionnaire and all evidence presented to it that bears on the accuracy or veracity of a student's responses to the questionnaire. Such evidence may include, inter alia, (1) evidence that the student has answered a question on the questionnaire in a manner inconsistent with the student's answer or answers to a previous questionnaire or inquiry, (2) evidence that the student did not in fact file a written application or otherwise contact an agency or employer listed on the questionnaire, and (iii) the student's failure to have the questionnaire notarized or affirmed in compliance with the questionnaire's instructions. The contractor's decision in upholding or denying any challenge shall be fair and impartial. No financial or other material benefit shall accrue to the contractor contingent upon the nature of the outcome of her (his) decision.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an Agreement to a proposed Consent Order from North American Correspondence Schools.

The proposed Consent Order has been placed on the public record for 60 days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

THE COMPLAINT

The Complaint named as respondents National Systems Corp., North American Correspondence Schools, John T. McNaughton, Maurice H. Sherman, Eugene Auerbach, Richard C. Parsons, and Wallace O. Laub, all doing business in Newport Beach, Calif. It alleged that respondents violated section 5 of the Federal Trade Commission Act in connection with the offering for sale of vocational school correspondence courses by misrepresenting the availability of and the demand for jobs in the fields for which respondents purport to train their students; the potential salary range and entry level of available jobs; and the purpose of the sales persons' calls or solicitations. In addition, the Complaint alleged that respondents failed to disclose such material facts as the schools' dropout and job placement rate.

THE PROPOSED CONSENT ORDER

The proposed Consent Order prohibits North American Correspondence Schools alone from representing without substantiation: That there is a need or demand for persons completing any of respondent's courses; that opportunities for employment of any size are available to such persons; or that persons completing any such courses will or may earn any specified amount of money. It also prohibits respondent from making any representations about the salaries or positions obtained by graduates of respondent's courses, unless respondent possesses and relies upon a reasonable basis for the representations. The proposed Consent Order further prohibits respondent from misrepresenting: The value of any of respondent's courses in qualifying any person for employment in any field; the employment qualifications for conservation or any other field; the content of any testimonial used by respondent in any of its advertising; the prerequisites or qualifications for enrollment in any of respondent's courses; the purpose or use of respondent's qualification questionnaire; and the opportunities of persons completing any of respondent's courses in obtaining employment normally requiring a junior or senior college degree.

In addition, respondent may not represent that credits from its schools are transferrable to accredited institutions of higher learning, unless such is the case. Respondent is also required to: State that any testimonial was solicited, required, or paid for, when such is the case; obtain, at least 24 hours in advance, a prospective student's consent to a sales interview; disclose information about the employment of graduates; and provide each student with a cancellation notice and a cooling-off period.

Finally, the proposed Order requires that respondent pay restitution to eligible students who enrolled in respondent's North American School of Conservation between March 26, 1973 and March 25, 1976 and who either graduated or dropped out by June 30, 1977. Qualified graduates are entitled to $200 each; drop-outs, $100. To be eligible for such refunds, the student must also complete an eligibility questionnaire and have:

(1) After paying in full and completing all the course lessons, made three "meaningful attempts" (as defined in the Order) to find a job in the conservation or ecology field, at least one of which was either a written job application or a personal visit to an agency or employer for the purpose of finding a job; or

(2) After completing at least 10 examinations and paying a pro rata portion of the tuition, canceled her (his) enrollment in the course (or had her (his) enrollment terminated by respondent) and made at least two "meaningful attempts" to find a job in the conservation or ecology field.

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

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-30523 Filed 10-27-78; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-4669]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for Minnehaha County, S. Dak.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in Minnehaha County, S. Dak. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the lobby of the Courthouse, Minnehaha County, S. Dak. Send comments to: Mr. Nils Aspaas, Chairman of the County Board of Commissioners of Minnehaha County, Dakota State Bank, Baltic, S. Dak. 57003.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for Minnehaha County, S. Dak. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Big Sioux River	Downstream State Route 38.	1,289
	U.S. Route 16	1,293
	Chicago Northwestern RR. bridge.	1,301
	Burlington Northern RR. bridge.	1,307
	County Route 121	1,310
	State Route 38A	1,431
	Interstate Route 90	1,433
	County Route 130	1,440
Skunk Creek	U.S. Route 29	1,419
	Marion Rd	1,425
	U.S. Route 16	1,432
	County Route 139	1,442
	County Route 142	1,447

(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. 78-30040 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4670]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Bruceville-Eddy, McLennan County, Tex.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Bruceville-Eddy, McLennan County, Tex.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the office of the Bruceville-Eddy Fire Department, Bruceville-Eddy, Tex.

Send comments to: Hon. Richard Relyea, Mayor of Bruceville-Eddy, P.O. Box 9, Eddy, Tex. 76524.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Bruceville-Eddy, McLennan County, Tex. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Hoolia Creek	Upstream corporate limits.	687
	West frontage road (upstream).	667
	Downstream corporate limits.	667
Tributary to Hoolia Creek.	Upstream corporate limits.	677
	West frontage road (upstream).	673
	East frontage road (upstream).	672
	Old farm to Market Road 107 (upstream).	666
Tributary to Hoolia Creek.	Downstream corporate limits.	653
South Cow Bayou, Lusk Branch.	Upstream corporate limits.	583
	Centerline of Soil Conservation Service structure No. 5 (upstream).	583

(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. 78-30041 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4671]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Lehi, Utah County, Utah

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Lehi, Utah County, Utah.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 51 North Center, Lehi, Utah. Send comments to: Hon. Kenneth Blaine Singleton, Mayor, city of Lehi, City Hall, 51 North Center, Lehi, Utah 84043.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Lehi, Utah, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Dry creek	300 West—80,ft*	4,560
	200 West—50 ft*	4,563
	400 North—50 ft*	4,564
	100 West—70 ft*	4,566
	500 North—90 ft*	4,567
	600 North—90 ft*	4,570
	U.S. Highway 91—40 ft*	4,581
	Union Pacific RR. Culvert—30 ft*.	4,587
	Interstate 15—50 ft*	4,593
	Frontage road—50 ft*	4,594
Waste ditch diversion.	denver & Rio Grande RR.—50 ft*.	4,551
	400 West—50 ft*	4,557
	300 West—70 ft*	4,564
	200 West—30 ft*	4,567
	600 North—50 ft*	4,589
	U.S. Highway 91—50 ft*.	4,581

Source of flooding	Location	Depth, in ft above ground
Dry creek	At intersection of 200 East and 960 North (shallow flooding).	1
	At intersection of 200 East and Union Pacific RR. (shallow flooding).	1

*Upstream from centerline.

(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. 78-30042 Filed 10-27-78; 8:45 am]

[4210-01—M]

[24 CFR Part 1917]

[Docket No. FI-4672]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Windsor, Windsor County, Vt.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Windsor, Windsor County, Vt. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Office, 147 Main Street, Windsor, Vt. Send comments to: Mr. Raymond Morris, Chairman, Board of Selectmen, Town of Windsor, Town Office, 147 Main Street, Windsor, Vt. 05089.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Windsor, Vt. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Connecticut River	Central Vermont RR.—100 ft*.	324
	Cornish covered bridge—100 ft*.	324
Mill Brook	Central Vermont RR. bridge—20 ft*.	324
	Broken dam 340 ft upstream of Main St.—30 ft**.	330
	20 ft*	341
	1st crossing Union St.—30 ft*.	345
	2d crossing Union St.—20 ft*.	349
	Mill pond dam—50 ft**	351
	Mill pond dam—20 ft*	387

*Upstream of centerline.
**Downstream of centerline.

(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. 78-30043 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4673]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Hopewell, Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Hopewell, Va. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Hopewell Muncipal Building, 300 North Main Street, Hopewell, Va. 23860. Send comments to: Mr. Clinton Strong, City Manager of Hopewell, 300

North Main Street, Hopewell, Va. 23860.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Hopewell, Va. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Appomattox River	Confluence with James River.	8
	Upstream corporate limits.	8
Bailey Creek	Confluence with James River.	8
	Confluence with Cattail Creek.	11
	State Route 156 (upstream).	18
	Confluence with Southerly Run.	35
Bullhill Run	Confluence with Cabin Creek.	27
	Woodside Ct. extended	65
Cabin Creek	Confluence with Appomattox River.	8
	River Rd	26
	Jackson Farm Rd	47
	Norfolk & Western Ry. (upstream).	74
Cattail Creek	Confluence with Bailey Creek.	10
	Winston Churchill Dr. (State Route 156) (upstream).	24

(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. 78-30044 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4674]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the Town of Scottsville, Albemarle County, Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Scottsville, Albemarle County, Va. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Scottsville Municipal Building, Scottsville, Va. 24590. Send comments to: Hon. Raymond Thacker, Mayor of Scottsville, P.O. Box 132, Scottsville, Va. 24590.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Scottsville, Albermarle County, Va. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
James River	Downstream corporate limit.	282
	Confluence of Mink Creek.	285
	Virginia Route 20	286
	Upstream corporate limit.	296
Mink Creek	Chesapeake & Ohio Ry.	285
	Main St.	285
	Jackson St.	285
	Building	285
	Tributary to Mink Creek.	285

(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. 78-30045 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4675]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the Town of Mesa, Franklin County, Wash.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Mesa, Franklin County, Wash. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Hall, Mesa, Wash. Send comments to: Hon. Floyd Vandiver, Mayor of Mesa, P.O. Box 146, Mesa, Wash. 99343.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Mesa, Franklin County, Wash., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Esquatzel Coulee...	South corporate limit.....	676
	Columbia St.....	677
	Judson St. (extended).....	678
	North corporate limit.....	680

(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 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30046 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4676]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the Town of Winlock, Lewis County, Wash.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Winlock, Lewis County, Wash. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, Winlock, Wash. Send comments to: Hon. H. Brown, Mayor, Town of Winlock, P.O. Box 7, Winlock, Wash. 98596.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Winlock, Wash., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Olequa Creek.....	Winlock-Vader Rd.—50 ft*.	271
	Walnut Ave.—70 ft*	279
	Fir St.—70 ft*	282

* Upstream of centerline.

(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. 78-30047 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4677]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the Village of Argyle, Lafayette County, Wis.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the village of Argyle, Lafayette County, Wis. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Village Clerk's Office, Argyle, Wis. Send comments to: The Honorable Robert Wenger, Village President, Village of Argyle, P.O. Box 246, Argyle, Wis. 53504.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the village of Argyle, Wis., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
East Branch Pecatonica River.	About 680 ft downstream of southern corporate limits.	799
	250 ft upstream of Milwaukee St.	800
	100 ft upstream of western corporate limits.	801

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

Issued: October 10, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30048 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4678]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Baraboo, Sauk County, Wis.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Baraboo, Sauk County, Wis.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Clerk's Office, Baraboo City Hall, 135 Fourth Street, Baraboo, Wis.

Send comments to: The Hon. E. A. Madalon, Mayor, City of Baraboo, Baraboo City Hall, 135 Fourth Street, Baraboo, Wis. 54913.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Baraboo, Wis., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Baraboo River	At eastern corporate limits.	818
	At Manchester St	819
	Just downstream of waterworks dam.	822
	Just upstream of waterworks dam.	825
	Just upstream of Circus World Museum Bridge.	827
	Just downstream of Oak St. dam.	830
	Just upstream of Oak St. dam.	834
	At South Boulevard Broadway.	835
	Just upstream of Second Ave.	838
	160 ft downstream of western corporate limits.	843
	Just downstream of Shaw St.	846

(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. 78-30049 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4679]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Village of Blanchardville, Iowa County, Wis.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the village of Blanchardville, Iowa County, Wis. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Village Hall, Blanchardville, Wis. Send comments to: The Honorable Roy Kundert, Village President, Village of Blanchardville, Village Hall, Blanchardville, Wis. 53516.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the village of Blanchardville, Wis., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
East Branch Pecatonica River.	Eastern corporate limit	821
	Downstream side of Main Street Bridge.	821
	Upstream side of dam	824
	Western corporate limit	825
Blue Mounds Branch.	Water St	820
	Northern corporate limit.	820

(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. 78-30050 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4680]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Village of Casco, Kewaunee County, Wis.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the village of Casco, Kewaunee County, Wis.These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Village Hall, Casco, Wis. Send comments to: The Honorable Rudy Hanamann, Village President, Village of Casco, Village Hall, Casco, Wis. 54205.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the village of Casco, Wis., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures re-

quired by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Casco Creek	Western corporate limit	706
	Just downstream from Church Ave.	710
	Just upstream from Church Ave.	713
	Just downstream from Ahnapee & Western RR.	714
	Northern corporate limit.	719

(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. 78-30051 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4681]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Winkelman, Gila County, Ariz.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Winkelman, Gila County, Ariz. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, Winkelman, Ariz. Send comments to: Hon. Richard Copetillo, Mayor, Town of Winkelman, Town Hall, P.O. Box 386, Winkelman, Ariz. 85292.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Winkelman, Ariz., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Gila River	Intersection of Front St. and Hewes Ave.	1,934
	Intersection of 2d St. and Stevenson Ave.	1,938
	Intersection of 6th St. and Valencia Ave.	1,942

(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. 78-30022 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4682]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the City of Yountville, Napa County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Yountville, Napa County, Calif. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, Yountville, Calif. Send comments to: Hon. Joseph Chavoen, Mayor, City of Yountville, P.O. Box 2590, Yountville, Calif. 94599.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Yountville, Calif., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National

Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Napa River.....	Yountville Crossroads—100 ft upstream of centerline.	98

(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. 78-30023 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4683]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Hayden, Gila County, Ariz.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Hayden, Gila County, Ariz. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, 520 Ray Avenue, Hayden, Ariz. Send comments to: Hon. Carmelita Hart, Mayor, Town of Hayden, Box B, Hayden, Ariz. 85234.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Hayden, Airz., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Gila River.....	Along Golf Course Rd. (600 ft from eastern corporate limits).	1,928

(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. 78-30024 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4684]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Middlebury, New Haven County, Conn.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Middlebury, New Haven County, Conn. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, Town Clerk's Office, Middlebury, Conn. Send comments to: Mr. William Longo, First Selectmen, Town of Middlebury, Town Hall, 1212 Whittemore, Middlebury, Conn. 06762.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Middlebury, Conn., in accordance with section 110 of the Flood Disaster Protection Act

of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Long Swamp Brook.	State Highway 188—20 ft*.	386
	Porter Ave.—20 ft*	425
	Brook Lane—40 ft*	435
	Dirt Rd.—20 FT	438
	State Highway 64—20 FT*.	440
	Park Entrance—20 ft*	441
	Kelly Rd.—40 ft*	481
Wooster Brook	Bradleyville Rd.—20 ft*.	376
	Interstate Highway 84—265 ft*.	403
Hop Brook	Interstate Highway 84—40 ft*.	375
	Shadduck Rd.—20 ft*	383
	State Highway 188—20 ft*.	388
	Access Rd—30 ft*	459
	Tucker Hill Rd—20 ft*	460
	State Highway 64—20 ft*.	462
	Breakneck Hill Rd.—40 ft*.	508
	Dirt Rd. (1st crossing)—20 ft*.	527
	Watertown Rd.—30 ft*	539
	Ravenwood Dr.—20 ft*	549
	Dirt Rd. (2d crossing)—20 ft*.	560

*Upstream from centerline.

(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. 78-30025 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4685]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Chickamauga, Walker County, Ga.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Chickamauga, Walker County, Ga. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 240 Cove Road, Chickamauga, Ga. Send comments to: Hon. Frank Pierce, Mayor, City of Chickamauga, P.O. Box 68, Chickamauga, Ga. 30707.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Chickamauga, Ga., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Coke Oven Branch.	Wilder Rd—30 ft*	726
	Southern RR.—50 ft*	733
	Thomas Ave.—50 ft*	734
	Georgia Highway 341—50 ft*.	738
Unnamed tributary No. 1 (Coke Oven Branch).	Private road No.1—20 ft*.	756
	Private road No. 2—20 ft*.	756
	Private road No. 3—20 ft*.	756
Unnamed tributary No. 2 (Coke Oven Branch).	Confluence with Coke Oven Branch—20 ft*.	742
Crawfish Spring Lake.	Southern RR.—80ft**	725

(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. 78-30026 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4686]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Audubon, Audubon County, Iowa

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Audubon, Audubon County, Iowa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the na-

tional flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, Audubon, Iowa. Send comments to: The Honorable Jay Dee Mindenhall, Mayor, City of Audubon, 1004 Grandview Drive, Audubon, Iowa 50025.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Audubon, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Bluegrass Creek	1,800 ft downstream from Southside Ave.	1,286
	Just downstream from Southside Ave.	1,289
	100 ft upstrem from Southside Ave.	1,290
	Just upstream from Market St.	1,291
	Just upstream from Chicago Rock Island & Pacific RR.	1,292
	Just downstream from South St.	1,296
	Just upstream from West Broadway St.	1,299
	Northwestern corporate limits.	1,305

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

Issued: October 10, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30027 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4687]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the City of Cambridge, Story County, Iowa

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Cambridge, Story County, Iowa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, Cambridge, Iowa. Send comments to: Hon. Donald Wilson, Mayor of Cambridge, P.O. Box 583, Cambridge, Iowa 50046.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Cambridge, Story County, Iowa in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
South Skunk River.	Downstream corporate limits.	849
	Confluence of Ballard Creek.	851
	County Trunk E63 bridge.	852
	Upstream corporate limits.	853

(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. 78-30028 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4688]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Clive, Polk County, Iowa

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Clive, Polk County, Iowa. These base (100-year) flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, Clive, Iowa. Send comments to: Mr. Tom Reinhard, City Administrator, City of Clive, City Hall, Clive, Iowa 50053.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Clive, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Walnut Creek	Just upstream of 73 St	832
	Just downstream of Chicago, Milwaukee & St. Paul RR.	833
	Just upstream of Chicago, Milwaukee & St. Paul RR.	835
	Just downstream of 86th St.	837
	Just stream of 86th St	839
	4,400 ft upstream of 86th St.	841
	1,600 ft upstream of 100th St.	854
	Just downstream of 114th St.	861
	West corporate limits	864
North Walnut Creek.	450 ft downstream of University Ave.	833
	Just upstream of University Ave.	834
	At North corporate limits.	837

(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. 78-30029 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4689]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Ida Grove, Ida County, Iowa

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Ida Grove, Ida County, Iowa.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, Ida Grove, Iowa.

Send comments to: The Honorable Theodore E. Murphy, Mayor, City of Ida Grove, 301 Main Street, Ida Grove, Iowa 51445.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Ida Grove, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Maple River	Western corporate limits.	1,214
	400 ft downstream of U.S. Highway 59 and State Highway 175.	1,215
	50 ft upstream of U.S. Highway 59 and State Highway 175.	1,216
	1,400 ft upstream of U.S. Highway 59 and State Highway 185.	1,218
	3,000 ft upstream of U.S. Highway 59 and State Highway 175.	1,220
	Northern corporate limits.	1,222
Badger Creek	Western corporate limits.	1,214
	Downstream side of Rohwer St.	1,221
	30 ft upstream from 5th St.	1,228
	Upstream side of 7th St.	1,232
	Upstream side of South Main St.	1,236
	Southern corporate limits.	1,247
	1,250 ft upstream of southern corporate limits at limit of flooding in community.	1,252
Odebolt Creek	Western corporate limit.	1,215
	Upstream side of Moorehead Ave.	1,218
	Upstream side of Washington St.	1,220
	1,630 ft upstream of Washington St.	1,222
	Just upstream of golf course footbridge.	1,226
	200 ft upstream of country road.	1,228
	470 ft downstream of Chicago & Northwestern.	1,230
	Southeastern corporate limits.	1,234

(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. JINENEZ,
Federal Insurance Administrator.

[FR Doc. 78-30030 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4690]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Linwood, Leavenworth County, Kans.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Linwood, Leavenworth County, Kans. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, Linwood, Kans. Send comments to: The Honorable Ronald Smith, Mayor, City of Linwood, Box 146, Linwood, Kans. 66052.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Linwood, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Stranger Creek	1,600 ft downstream of Bridge St. at southeastern corporate limits.	796
	1,500 ft upstream of Bridge St.	797
	2,000 ft upstream of Bridge St. at northern corporate limits.	798

(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. 78-30031 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4691]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Friendsville, Garrett County, Md.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Friendsville, Garrett County, Md. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Friendsville Library, Friendsville, Md. Send comments to: Hon. Carol Rush, Mayor of Friendsville, Friendsville, Md. 21531.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insur-

ance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Friendsville, Garrett County, Md. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Youghiogheny River.	Downstream corporate limits.	1,470
	Upstream of confluence with Bear Creek.	1,470
	2,700 ft upstream of confluence with Bear Creek.	1,479
	Upstream side of confluence with Minnow Creek.	1,483
	Upstream side of Maple St.	1,484
	Upstream side of U.S. Route 48.	1,492
	Upstream side of U.S. Route 42.	1,494
Minnow Creek	Downstream confluence with Youghiogheny River.	1,485
	Upstream side of Water St.	1,487
	Upstream side of Blane Franz Rd.	1,505
Bear Creek	Downstream limit of study and confluence with Youghiogheny River.	1,470
	Upstream side of 2d Ave	1,496
	Upstream side of Old Selbysport Rd.	1,504
	Upstream side of U.S. Route 48.	1,523
	Upstream side of Maple St.	1,532

(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. 78-30032 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4692]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Emmitsburg, Frederick County, Md.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Emmitsburg, Frederick County, Md. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Emmitsburg Town Hall, Main Street, Emmitsburg, Md. 21727. Send comments to: Hon. Gene Myers, Mayor of Emmitsburg, Main Street, Emmitsburg, Md. 21727.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Emmitsburg, Frederick County, Md., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Flat Run	Upstream corporate limits.	391
	Downstream corporate limits.	387
	U.S. Route 15 (upstream).	385
Tributary A to Flat Run.	Upstream corporate limits.	
	Irishtown Rd. (upstream).	410
	Downstream corporate limits.	395

(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. 78-30033 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4693]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Midland, Allegany County, Md.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations

listed below for selected locations in the town of Midland, Allegany County, Md. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Midland Post Office, Midland, Md. Send comments to: Hon. Richard Blair, Mayor of Midland, P.O. Box 5, Midland, Md. 21542.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Midland, Allegany County, Md., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Georges Creek	Corporate limits—downstream.	1,663
	250 ft upstream of corporate limits.	1,667
	950 ft upstream corporate limits.	1,673
	2,300 ft upstream of corporate limits.	1,685
	Union St.—downstream	1,688
	Union St.—upstream	1,691
	CONRAIL—upstream	1,699
	Confluence of Neff Run.	1,699
	Church St.—downstream.	1,699
	Church St.—upstream	1,702
Neff Run	Confluence with Georges Run.	1,699
	Main St. (culvert)	1,708
	New Rd. (culvert)	1,709
	400 ft upstream of New Rd. (culvert).	1,717
	800 ft upstream of New Rd. (culvert).	1,724
	1,300 ft upstream of New Rd. (culvert) at the corporate limits.	1,734

(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. 78-30034 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4694]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Township of Clinton, Macomb County, Mich.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the township of Clinton, Macomb County, Mich. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Clinton Township Hall, 1129 South Gratiot Avenue, Mount Clemens, Mich. Send comments to: Mr. Kenneth Bobcean, Township Supervisor, Township of Clinton, Clinton Township Hall, 1129 South Gratiot Avenue, Mount Clemens, Mich. 48043.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Clinton, Mich., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Clinton River	Southern corporate limit.	581
	At confluence of Clinton River spillway.	584
	At Grand Trunk Western RR.	589
	Just upstream of Moravian Dr.	593
	At confluence of Clinton River North Branch.	593
	Just upstream of Garfield Rd.	600
	At Hayes Rd.	602

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Clinton River Spillway.	East corporate limit	581
	At Harper Ave	582
	At confluence of Clinton River.	584
Clinton River North Branch.	Just upstream of Cass Ave.	594
	Just upstream of Little Rd.	596
	Just downstream of Hall Rd.	597
Clinton River Middle Branch.	At Heydenreich Rd	594
	At Hall Rd	595
Miller Drain	At Heydenreich Rd	594
	At Hall Rd	594
Harrington Drain	At Harrington Blvd	591
	Just upstream of Metropolitan Parkway	598
	At Kelly Rd	600
	Just upstream of Bobcean Rd.	606
	At 15 Mile Rd	607
Red Run Drain	At west corporate limit	602
	Just upstream of Nunneley Dr.	605

(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. 78-30039 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4695]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Hudson, Middlesex County, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Hudson, Middlesex County, Mass. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Clerk's Office, Hudson, Mass. Send comments to: Mr. George McGee, Chairman of the Board of Selectmen of Hudson, Hudson Town Hall, Hudson, Mass. 01749.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Hudson, Middlesex County, Mass., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Assabet River	Upstream corporate limits.	214
	Chapin Rd. (upstream)	211
	Confluence of Hog Brook.	209
	Houchiton St. (upstream).	206
	Broad St. (upstream)	204
	Main St. (upstream)	201
	Cox St. (upstream)	200
	Downstream corporate limits.	196
Assabet Branch No. 3.	Mary Chris Rd. (upstream).	201
	Cox St. (upstream)	204
Assabet Branch No. 4.	Downstream corporate limits.	193
	Boston & Maine RR. (upstream).	207
Fort Meadow Brook.	Fort Meadow Reservoir	236
	Causeway St. (upstream).	236
	Shay St. (upstream)	201
	Lewis St. (upstream)	196
	Chestnut St. (upstream)	187
	Main St. (upstream)	185
Hog Brook	Confluence with Assabet River.	209
	River St. (upstream)	213
	1,000 ft above River St.	221
	2,000 ft above River St.	236
Danforth Brook	Confluence with Assabet River.	206
	Apsley St. (upstream)	220
	Packard St. (upstream)	222
	Lois St. (upstream)	226
	Lincoln St. (upstream)	248
	Upstream corporate limits.	284

(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. 78-30038 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4696]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Holyoke, Hampden County, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Holyoke, Hampden County, Mass. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the pro-

posed base (100-year) flood elevations are available for review at City Hall, Mayor's Office, Holyoke, Mass. Send comments to: Hon. Ernest E. Proulx, Mayor, City of Holyoke, City Hall, Holyoke, Mass. 01040.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Holyoke, Mass., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Connecticut River.	Boston & Maine RR.—100 ft*.	68
	State Route 116 bridge—100 ft*.	73
	U.S. Route 202 bridge—100 ft*.	112
Tannery Brook.....	Meadowbrook Rd.—70 ft**.	286
	Meadowbrook Rd.—20 ft*.	292
	Access Rd—20 ft*.....	295
	Kane Rd.—70 ft*.....	313
Broad Brook (lower).	Rock Valley Rd.—20 ft*..	227
	Southampton Rd.—100 ft**.	232
	Southampton Rd.—20 ft*.	236
	Ross Rd.—20 ft*.....	238
	Keys Rd.—20 ft*.....	244
Broad Brook	Footbridge—20 ft*.....	474

*Upstream of centerline.
**Downstream of centerline.

(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. 78-30037 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4697]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Easthampton, Hampshire County, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Easthampton, Hampshire County, Mass. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Hall, 43 Main Street, Easthampton, Mass. Send comments to: The Honorable Robert Conner, Chairman, Board of Selectmen, Town of Easthampton, Town Hall, 43 Main Street, Easthampton, Mass. 01027.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Easthampton, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Connecticut River.	Upstream corporate limit.	123
	Downstream corporate limit.	123
Connecticut River Oxbow.	At confluence with Connecticut River.	123
	Upstream corporate limit.	123
Manhan River	At the confluence with Connecticut River Oxbow.	123
	132 ft downstream of Mill St. dam.	123
	60 ft upstream of Mill St. dam.	134
	0.5 mi downstream of Glendale St.	137
	Just downstream of Glendale St.	140
	Just upstream of Glendale St.	142
	Upstream corporate limit.	144
Lower Mill Pond ...	At the confluence with Manhan River.	123
	Just downstream of Ferry St. dam.	123
	Just upstream of Ferry St. dam.	132
	Just downstream of Liberty St.	133
	Just downstream of Cottage St.	133
	Just upstream of Cottage St. dam.	157
Nashawannuck Pond.	Just upstream of Cottage St. dam.	157
	At the confluence with Broad Brook.	157
Broad Brook	0.41 mi upstream of the confluence with Nashawannuck Pond.	157
	0.61 mi downstream of Hendrick St.	161

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	0.1 mi downstream of Hendrick St.	172
	1,220 ft downstream of Hendrick St.	175
	1,320 ft upstream of Hendrick St.	178
	2,745 ft downstream of Hendrick St.	183
Hannum Brook	At confluence with Manhan River.	138
	0.08 mi downstream of West St.	139
	Just downstream of West St.	141
	Just upstream of West St.	144
North Branch Manhan River.	At the confluence with Manhan River.	142
	0.6 mi upstream of Pomeroy Meadow Rd.	144
	0.45 mi downstream of Torrey Rd.	158
	Just downstream of Torrey Rd.	183
	Just upstream of Torrey Rd.	185
Basset's Brook	At the confluence with Manhan River.	135
	Just downstream of West St. dam.	135

(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. 78-30036 Filed 10-27-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4698]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Chelmsford, Middlesex County, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Chelmsford, Middlesex County, Mass. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, 1 North Road, Chelmsford, Mass. Send comments to: Mr. William R. Murphy, Chairman, Board of Selectmen, Town of Chelmsford, Town Hall, 1 North Road, Chelmsford, Mass. 01824.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Chelmsford, Mass., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
River Meadow Brook.	U.S. Route 3*	103
	Billerica Rd.-50 ft**	108
	Power line access road-50 ft*.	113
Beaver Brook	Confluence with River Meadow Brook.	111
	Summer St.*	121
	State Route 4-100 ft**	128
Putnam Brook	Confluence with River Meadow Brook.	111
	Boston Rd.-20 ft**	127
	Hall Rd.-20 ft**	136
Merrimack River	Confluence with Deep Brook.	102
Stony Brook	Middlesex Rd.*	102
	U.S. Route 3*	105
	Meadowbrook Rd.*	109
Hales Brook	Interstate Highway 495 (upstream culvert)*.	103
	Riverneck Rd.-80 ft**	106
Concord River	Downstream corporate limits.	106

* At centerline.
** Upstream of centerline.

(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. 78-30035 Filed 10-27-78; 8:45 am]

[4310-05-M]

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[30 CFR Part 715]

SURFACE COAL MINING AND RECLAMATION OPERATIONS

Appendix—Alluvial Valley Floors Technical Guidelines

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Extension of comment period.

SUMMARY: This notice extends the period for the submission of comments specified in the notice published August 25, 1978 (43 FR 38035), proposing technical guidelines for preliminary identification of alluvial valley floors. The comment period expired on October 23, 1978. Requests for an extension were received from the public at a hearing regarding the proposed guidelines held on October 13, 1978, in Denver, Colo. This extension of 9 days will permit the preparation and submission of more detailed comments by interested members of the public.

DATE: Comments must be received on or before November 1, 1978.

ADDRESS: Comments should be sent to the Regional Director, Office of Surface Mining Reclamation and En-

forcement, Region V, 1823 Stout Street, Denver, Colo. 80202.

FOR FURTHER INFORMATION CONTACT:

John Hardaway, Office of Surface Mining Reclamation and Enforcement, Region V, 1823 Stout Street, Denver, Colo. 80202, 303-837-5511.

Dated: October 23, 1978.

WALTER N. HEINE, P.E.,
Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 78-30522 Filed 10-27-78; 8:45 am]

[1410-01-M]

COPYRIGHT ROYALTY TRIBUNAL

[37 CFR Part 301]

AGENCY RULES OF PROCEDURE

Proposed Rules; Correction

AGENCY: Copyright Royalty Tribunal.

ACTION: Proposed rule; correction.

SUMMARY: In FEDERAL REGISTER Doc. 78-29871 at pages 49318 to 49326 in the issue of Monday, October 23, the FEDERAL REGISTER revised the numbering system of the proposed rules of procedure of the Copyright Royalty Tribunal, but did not make conforming changes in the supplementary information provided by the Tribunal. Therefore, the references in the second column on page 49318 to §§ 301.56, 301.58, 301.64, and 301.66 should have read §§ 301.66, 301.68, 301.74, and 301.76. The reference to §§ 301.56 and 301.64 should have read §§ 301.66 and 301.74.

FOR FURTHER INFORMATION CONTACT:

Thomas C. Brennan, Chairman, Copyright Royalty Tribunal, 202-653-5175.

THOMAS C. BRENNAN,
Chairman.

[FR Doc. 78-30509 Filed 10-27-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 996-6]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Montana Sulfur Oxides Control Strategy; Announcement of Public Hearing

AGENCY: Environmental Protection Agency.

ACTION: Announcement of time and place of public hearing.

SUMMARY: Notice is hereby given that a public hearing to receive comments on regulations proposed to correct deficiencies in Montana's Implementation Plan will be held on Wednesday, November 29, 1978, at 9 a.m. in the Civic Center auditorium, 1340 Harrison Avenue, Butte, Mont. Copies of the proposed regulations (43 FR 40240, Sept. 11, 1978), are available by writing: EPA, Air and Hazardous Materials Division, 1860 Lincoln Street, Denver, Colo. 80295. The docket (8A-78-2) in this matter is available for inspection at the above address as well as EPA Headquarters, Central Docket Section, 401 M Street SW., Washington, D.C. 20460. Written comments may also be submitted in advance of the hearing to: EPA Hearing Officer, Office of Regional Counsel, 1860 Lincoln Street, Denver, Colo. 80295.

DATE: Written comments should be submitted on or before December 15, 1978. A public hearing on the proposed action will be held on Wednesday, November 29, 1978, at 9 a.m.

ADDRESSES: Written comments should be sent to: Regional Administrator, Environmental Protection Agency, Region VIII, 1860 Lincoln Street, Suite 900, Denver, Colo. 80295. A public hearing on the proposed regulation will be held at the Civic Center auditorium, 1340 Harrison Avenue, Butte, Mont.

FOR FURTHER INFORMATION CONTACT:

Robert R. DeSpain, Chief, Air Programs Branch, Environmental Protection Agency, Region VIII, 1860 Lincoln Street, Denver, Colo. 80295, 303-837-3471.

Dated: October 13, 1978.

ALAN MERSON,
Region VIII, Regional Administrator, U.S. Environmental Protection Agency.

[FR Doc. 78-30492 Filed 10-27-78; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 611]

FOREIGN FISHING

Proposed Increase of Optimum Yield and Incremental Apportionment of Total Allowable Level

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Notice of proposed amendment to regulations.

SUMMARY: Foreign fishermen did not harvest their total allocations of certain species allocated to them by the preliminary fishery management plan for the trawl fisheries and herring gillnet fishery of the eastern and Bering Sea and northeast Pacific (PMP) (42 FR 9298). Consequently, the Director of the Alaska Regional Office (Regional Director) has determined that, as a result of the underutilization, the optimum yields (OY's) of those species can be increased. The Regional Director has determined further that the increased OY should be apportioned between the total allowable level of foreign fishing (TALFF) and reserves.

DATES: Comments are invited until November 9, 1978.

ADDRESS: Send comments to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C., 20235. Please mark "Bering Sea" on outside of envelope.

FOR FURTHER INFORMATION CONTACT:

Mr. Harry Rietze, Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99801, telephone: 907-586-7221.

SUPPLEMENTARY INFORMATION: The 1977 PMP for trawl fisheries in the Bering Sea (42 FR 9298) established TALFF's for 1977. The amended PMP for 1978 was developed in late 1977, on the assumption that the 1977 TALFF's would be fully utilized. However, this did not occur for all species. The following table depicts the extent of underharvesting in 1977:

(Metric tons)

Species	TALFF	Foreign catch[1]	Unharvested TALFF
Yellowfin sole	106,000	60,000	46,000
"Other flounders	105,000	60,000	45,000
Pacific cod	56,500	31,500	25,000
Squid	10,000	8,400	1,600
"Other species (areas I, II, and III)	59,600	44,200	15,400

[1] Based on "best blend" estimates, TALFF's for other target species were almost completely taken.

Those species were underharvested in 1977, although biological data collected by the National Marine Fisheries Service indicates that the stocks could have been fished at a higher level. Consequently, the Regional Director proposes that the 1978 OY's be adjusted to reflect the underharvest, natural mortality, increase in weight of fish, and uncertainty as follows:

[In metric tons]

Species	OY increase
Yellowfin sole	20,000
"Other" flounders	20,000
Pacific cod	12,500
Squid	800
"Other" species (areas I, II, and III)	7,000

It is proposed that the increase in OY be apportioned among the TALFF, U.S. capacity, and reserves in the following manner:

[Metric tons]

Species	OY increase	TALFF increase	Reserve increase	U.S. capacity increase
Yellowfin sole	20,000	0	20,000	0
"Other" flounders	20,000	410	19,590	0
Pacific cod	12,500	1,570	10,930	0
Squid	800	170	630	0
"Other" species (areas I, II, and III)	7,000	0	7,000	0

Several factors support the proposed division of the OY increase. First, most of the reserve will not be taken, either by domestic or foreign fishermen. Most of the fishing in the Bering Sea is for pollock. Last year, although foreign fishermen harvested their full allocation of pollock, they generally harvested other species only incidental to the pollock fishery. The same situation is expected to occur this year. Thus, although large amounts of reserves are available, foreign fishermen are not expected to utilize them fully. U.S. harvest of these species is not anticipated. Although the reserves will probably go unused, their establishment will provide the National Marine Fisheries Service with some flexibility should other nations need additional allocations in order to harvest present allocations of primary target species.

The Assistant Administrator for Fisheries has determined that the 30-day "cooling-off period" required by the Administrative Procedure Act can be waived for the following reasons:

1. Discussion of the management plans for the Bering Sea groundfish fishery was on the public meeting notice (43 FR 30594) for the August 25-26 meeting of the North Pacific Fishery Management Council (Council).

2. This item was discussed at the public meeting of the Council on August 25-26.

3. This action will not disadvantage any party. The environmental impact is considered negligible and a "Negative Declaration" of environmental impact has been filed.

4. No time is required to adjust to the revised regulations that will result from this action.

Consequently, the Assistant Administrator has determined that this action be filed with the FEDERAL REGISTER as proposed regulations with a 15-day comment period.

Signed at Washington, D.C. this the 24th day of October 1978.

WINFRED H. MEIBOHM,
Acting Executive Director,
National Marine Fisheries Service.

§ 611.20 [Amended]

It is proposed to amend 50 CFR 611.20(c) by revising table I as follows:

1. Lines 24, 25, 33, 34, 36, and 37 as revised to read:

"Species code"	"Species"	"Ocean area"	"Amended TALFF(mt)"
006	Cod, Pacific	Aleutians and Bering Sea	[4]58,570
003	Flounders, other than yellowtail sole.	do	[5]139,410
002	Sole, yellowtail	Aleutians and Bering Sea	[6]106,000
001	Squid	do	[7]10,170
099	Other species	do	[8]93,600
080, 081, and 099	Armorheads, alfonsins, and other groundfish.	do	[9]2,000101

2. Footnotes 4+ are revised as follows:

[4]Does not include 11,930 metric tons held in reserve.
[5]Does not include 19,590 metric tons held in reserve.
[6]Does not include 20,000 metric tons held in reserve.
[7]Does not include 630 metric tons held in reserve.
[8]Does not include 7,000 metric tons held in reserve.
[9]The TALFF for armorheads, alfonsins, and other groundfish resources is subject to additional restrictions on total effort by foreign fishing vessels. No more than 50 vessel days of trawling and 50 vessel days of bottom longlining will be allowed in this fishery.

§ 611.93 [Amended]

Amend 50 CFR 611.93(b) by revising table I as follows:

1. In column 1, bottom line, add words "and revised" between the words "initial" and "TALFF."

2. In column 4 headed "Other flounders," strike "105,000," and substitute "139,410."

3. In column 9 headed "Pacific cod," strike "56,500," and substitute "58,070."

4. In column 12 headed "Squid," strike "10,000," and substitute "10,170."

[FR Doc. 78-30517 Filed 10-27-78; 8:45 am]

[3510-22-M]

[50 CFR Parts 611 and 672]

GROUNDFISH OF THE GULF OF ALASKA

Fishery Management Plan Amendment; Proposed Implementary Regulations; Correction

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Correction to proposed rules.

SUMMARY: On October 6, 1978, a Notice of Proposed Rulemaking was published in the FEDERAL REGISTER (43 FR 46349), which would amend the Groundfish of the Gulf of Alaska management plan by increasing the quantity of certain species of fish in the "Joint-Venture" reserve. A table reflecting that change was inadvertently omitted by NOAA. That table is included in this correction.

FOR FURTHER INFORMATION CONTACT:

Mr. Harry L. Rietze, Regional Director, Alaska Regional Office, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99807, telephone: 907-586-7221.

SUPPLEMENTARY INFORMATION: Table 64 which appears in the FMP for Groundfish of the Gulf of Alaska on page 186 of the plan is amended. The amended table should be inserted on 43 FR 46351, between Table 62 which appears at the top of that page, and the amendments to the proposed regulations which appear in the middle of that page.

Signed in Washington, D.C., this the 24th day of October 1978.

WINFRED H. MEIBOHM,
Acting Executive Director,
National Marine Fisheries Service.

Change Figures in Table 64 to read as follows:

Table 64 -- OY1/ /Reserve 3/ /DAH/FAC2/ Schedule, By Area (1000's mt)

Species		Shumagin	Chirikof	Kodiak	Yakutat	Southeast	Total
Pollock	OY	57.0	54.4	40.3	12.5	4.1	168.8
	Reserve	45.2	43.1	32.4	9.9	3.2	133.8
	DAH	4.8	4.6	3.4	1.1	0.3	14.2
	FAC	7.0	6.7	5.0	1.5	0.6	20.8
Cod	OY	9.6	4.1	15.3	4.3	1.5	34.8
	Reserve	2.73	1.15	4.42	1.27	0.43	10.0
	DAH	4.3	1.8	6.8	1.9	0.7	15.5
	FAC	2.57	1.15	4.08	1.13	0.37	9.3
Flounders	OY	10.4	2.7	12.0	6.4	2.0	33.5
	Reserve	3.0	0.8	3.5	1.8	0.6	9.7
	DAH	2.2	0.6	2.6	1.4	0.4	7.2
	FAC	5.2	1.3	5.9	3.2	1.0	16.6
Pacific Ocean Perch	OY	2.7	2.7	5.2	7.9	6.5	25.0
	Reserve	0.9	0.9	1.6	2.5	2.0	7.9
	DAH	0.1	0.1	0.2	0.4	0.3	1.1
	FAC	1.7	1.7	3.3	5.1	4.1	16.0
Other rockfish	OY	0.3	0.2	0.6	3.4	3.1	7.6
	Reserve	0.1	0.1	0.3	1.6	1.4	3.5
	DAH	0.1	Trace	0.2	0.9	0.8	2.0
	FAC	0.1	0.1	0.1	0.9	0.9	2.1
Sablefish	OY	2.1	1.4	2.4	3.4	3.7	13.0
	Reserve	0.6	0.4	0.7	1.1	1.2	4.1
	DAH	0.1	Trace	0.1	0.8	3.0	4.0
	FAC	0.8	0.5	0.9	1.3	0	4.9
Atka mackerel	OY	4.4	3.6	15.8	1.0	0	24.8
	Reserve	1.0	0.8	3.5	0.2	0	5.5
	DAH	0	0	0	0	0	00.0
	FAC	3.4	2.8	12.3	0.8	0	19.3
Squid	OY	0.4	0.4	0.4	0.4	0.4	2.0
	Reserve	0.2	0.2	0.2	0.2	0.1	0.9
	DAH	0	0	0	0	0	00.0
	FAC	0.2	0.2	0.2	0.2	0.3	1.1
Other species	OY	4.4	3.6	5.0	2.1	1.1	16.2
	Reserve	1.3	1.0	1.5	0.6	0.3	4.7
	DAH	0.1	0.1	0.2	0.1	Trace	0.5
	FAC	3.0	2.4	3.4	1.4	0.8	11.0

1/ Based on percentages shown in Table 63.
2/ Initial FAC; may be larger as reserve is apportioned during year.
3/ Includes additional reserve for possible use in joint ventures.

[FR Doc. 78-30480 Filed 10-27-78; 8:45 am]

[3510-22-M]

[50 CFR Part 675]

DRAFT FISHERY MANAGEMENT PLAN FOR HALIBUT OFF THE COAST OF ALASKA

Cancellation of Public Hearings

AGENCY: National Oceanic and Atmospheric Adminstration/Commerce.

ACTION: Cancellation of public meeting.

SUMMARY: The public hearing on the draft environmental impact statement and fishery management plan which was scheduled for October 25, 1978, in Petersburg, Alaska, has been canceled (43 FR 46054, Oct. 5, 1978).

FOR FURTHER INFORMATION CONTACT:

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 3136DT, Anchorage, Alaska 99510, telephone 907-274-4563.

Dated: October 24, 1978.

WINFRED H. MEIBOHM,
Acting Executive Director, National Marine Fisheries Service.

[FR Doc. 78-30644 Filed 10-26-78; 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.

[6050-01-M]

ACTION

COMPETITIVE NATIONAL VISTA GRANTS

Proposed Procedures

AGENCY: ACTION.

ACTION: Amendment to Proposed Notice of Competitive National VISTA Grants published October 5, 1978, at 43 FR 46153.

SUMMARY: The proposed notice set forth the competitive procedures under which applications for national VISTA grants will be accepted and reviewed in fiscal year 1979. It provided that to be eligible for consideration, an application must be prepared and submitted in accordance with the announcement and with forms, instructions, and program guidelines contained in the national VISTA grant application kit which was to be available on or after October 16, 1978. This amendment changes that date to November 13, 1978.

The notice also provided that applications are due by close of business December 16, 1978. This amendment changes that date to January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Ms. Diana London, VISTA, 806 Connecticut Avenue NW., Washington, D.C. 20525, 202-254-5195.

SAM BROWN,
Director.

[FR Doc. 78-30623 Filed 10-27-78; 8:45 am]

[6110-01-M]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

COMMITTEE ON AGENCY DECISIONAL PROCESSES

Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the meeting of the Committee on Agency Decisional Processes of the Administrative Conference of the United States, scheduled (43 FR 47586) for October 31, 1978, in the office of Ginsburg, Feldman & Bress, 1700 Pennsylvania Avenue NW., Suite 300, Washington, D.C., has been rescheduled for 10 a.m., Wednesday, November 1, 1978, at the same location.

The Committee will meet to discuss its draft recommendation based on Prof. Michael Baram's study of the use of cost-benefit analysis in Federal regulation.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least 2 days in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during, or after the meeting.

For further information concerning this meeting contact David M. Pritzker, 202-254-7065. Minutes of the meeting will be available on request.

Dated: October 24, 1978.

RICHARD K. BERG,
Executive Secretary.

[FR Doc. 78-30508 Filed 10-27-78; 8:45 am]

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

PACKERS AND STOCKYARDS: ST. JOHNS HORSE AUCTION, ASHLEY, MICHIGAN, ET AL.

Proposed Posting of Stockyards

The Chief, Registrations, Bonds, and Reports Branch, Packers and Stockyards, Agriculture Marking Service, U.S. Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

MI—144: St. Johns Horse Auction, Ashley, Mich.
MI—143: Fenton Horse Sales, Inc., Fenton, Mich.
NC—150: Ashe Stockyards Co., Inc., Jefferson, N.C.
OK—198: Erin Springs Livestock Auction, Erin Springs, Okla.
TX—316: San Saba Cattle Auction, Inc., San Saba, Tex.

Notice is hereby given, therefore, that the said Chief, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule, may do so by filing them with the Chief, Registrations, Bonds, and Reports Branch, Packers and Stockyards, Agriculture Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, by November 29, 1978.

All written submissions made pursuant to this notice shall be made available for public inspection at such times and places in a manner convenient to the public business (7 U.S.C. 1.27(b)).

Done at Washington, D.C., this 24th day of October, 1978.

EDWARD L. THOMPSON,
Registrations, Bonds, and Reports Branch, Livestock Marketing Division.

[FR Doc. 78-30519 Filed 10-27-78; 8:45 am]

[6355-01-M]

COMMISSION ON CIVIL RIGHTS

DISTRICT OF COLUMBIA 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 District of Columbia Advisory Committee (SAC) of the Commission will convene at 12:30 p.m. and will end at 2:30 p.m. on November 14, 1978, in the USCCR Conference Room, 1121 Vermont avenue, N.W., Washington, D.C. 20425.

Persons wishing to attend this open meeting should contact the committee chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street, N.W., Room 510, Washington, D.C. 20037.

The purpose of this meeting is to discuss program planning for fiscal year 1981 activities.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 25, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-30617 Filed 10-27-78; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NEW ENGLAND FISHERY MANAGEMENT COUNCIL'S SCIENTIFIC AND STATISTICAL COMMITTEE

Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Scientific and Statistical Committee of the New England Fishery Management Council, established under section 302(g) (Pub. L. 94-265), will meet to discuss: (1) Review of development of groundfish management plan; (2) review of Scallop MP development; (3) review of New England groundfish vessel census; (4) role of S. & S. Committee; and (5) other business as necessary.

DATES: The meeting will convene at 9:30 a.m. on Tuesday, November 14, 1978, and adjourn at approximately 4:30 p.m. The meeting may be extended or shortened depending on the progress of the agenda. The meeting is open to the public.

ADDRESS: The meeting will take place at the Carriage House, Woods Hole Oceanographic Institution, Woods Hole, Mass.

FOR FURTHER INFORMATION CONTACT:

Mr. Spencer Apollonio, Executive Director, New England Fishery Management Council, Peabody Office Building, One Newbury Street, Peabody, Mass. 01960, telephone: 617-535-5450.

SUPPLEMENTARY INFORMATION: For information on seating arrangements, changes to the agenda, and/or written comments, contact the executive director.

Dated: October 24, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-30510 Filed 10-27-78; 8:45 am]

[3510-17-M]

Office of the Secretary

SEA GRANT REVIEW PANEL

Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. APP., and the Office of Management and Budget Circular A-63 of March 1974, the Secretary of Commerce has determined that the renewal of the Sea Grant Review Panel is in the public interest in connection with the performance of duties imposed on the Department by law.

The Panel was first chartered in December 1976. Its purpose was to advise the Secretary of Commerce on broad policy with respect to the establishment and operation of a national network of sea grant colleges and programs.

The Panel's advice has been useful to the Office of Sea Program on: (1) Institutional programs and major individual project proposals for support and (2) plans and policies governing execution of the national sea grant program. The statutory Sea Grant Review Panel will continue to review and advise the Secretary with respect to: (1) Contracts and grants; (2) national sea grant projects; (3) sea grant colleges and regional consortia, (4) sea grant fellowships; and (5) such other matters as the Secretary refers to it for review and advice.

The Panel will also continue with a balanced representation of 15 members. The Chairperson will be elected from the membership. The Panel will operate in compliance with the provisions of the Federal Advisory Committee Act.

Copies of the Panel's revised charter will be filed with appropriate committees of the Congress, and the Library of Congress.

Inquiries or comments may be addressed to the Committee Liaison Officer, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20235.

Dated: October 20, 1978.

ELSA A. PORTER,
Assistant Secretary for Administration.

[FR Doc. 78-30552 Filed 10-27-78; 8:45 am]

[3510-17-M]

ASSISTANT SECRETARY FOR ADMINISTRATION

Appointment of Principal Conservation Officer

Pursuant to section 656 of the Department of Energy Organization Act (Pub. L. 95-91), the Assistant Secretary for Administration is designated as the principal energy conservation officer for the Department of Commerce.

For further information contact: David Larkin, Deputy Director for Program Development, Office of the Secretary, Main Commerce Building, Room 6414, Washington, D.C. 20230. Telephone 202-377-3891.

Dated: October 16, 1978.

JUANITA M. KREPS,
Secretary of Commerce.

[FR Doc. 78-30326 Filed 10-27-78; 8:45 am]

[3510-17-M]

ADVISORY COMMITTEE ON FEDERAL POLICY ON INDUSTRIAL INNOVATION, ET AL.

Meetings

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that the Advisory Subcommittee on Federal Procurement and Direct Support of R. & D. the Advisory Subcommittee on Regulation of Industry Structure and Competition, and the Public Interest Advisory Subcommittee will each hold a series of four meetings between November 1, 1978 and December 15, 1978. The exact time and place for each of these meetings have not yet been set because the subcommittees have not yet been organized. We are giving notice of these meetings now, however, because it may be necessary to hold one or more of these meetings within less than fifteen days from the date upon which a subcommittee is organized.

The work plan for the Domestic Policy Review on Industrial Innovation contains deadlines that require the subcommittees to begin their work promptly. For example, each of the first two subcommittees named above must produce a printed report of its recommendations by December 15, 1978. Once the time and place for the meeting of a subcommittee have been set, this information will be available from Mr. John R. Heizer, Room 3868A, U.S. Department of Commerce Building, Washington, D.C., telephone 202-377-3648. In addition we expect to publish in the FEDERAL REGISTER notices supplementary to this one specifying the time and place of subcommittee meetings as they are set. We expect all of these subcommittees to be organized by November 3, 1978.

The Advisory Subcommittees on Federal Procurement and Direct Support of R. & D., and on Regulation of Industry Structure and Competition, were established to examine the impact of Federal policy in each of the

above areas on industrial innovation and to identify and evaluate policy options.

The Public Interest Advisory Subcommittee was established to examine the impact of Federal policy on industrial innovation from the point of view of the general public and to review the reports produced by the following five Advisory Subcommittees:

Advisory Subcommittee on Economic and Trade Policy.
Advisory Subcommittee on Environment, Health, and Safety Regulations.
Advisory Subcommittee on Federal Procurement and Direct Support of R. & D..
Advisory Subcommittee on Patents and Information.
Advisory Subcommittee on Regulation of Industry Structure and Competition.

The agenda for each of these meetings is:

1. Refine the scope of work.
2. Discuss the views and orientation of the subcommittee members.
3. Define the final report.

The meetings will be open to public observation. A limited number of seats will be available to the public and press on a first-come, first-serve basis.

Copies of minutes and materials distributed will be made available for reproduction, following certification by the Subcommittee Chairman, in accordance with the Federal Advisory Committee Act, at the U.S. Department of Commerce, Central Reference and Records Inspection Facility, Washington, D.C. 20230.

Further information may be obtained from Mr. John R. Heizer, Room 3868A, U.S. Department of Commerce, Washington, D.C., telephone 202-377-3648.

Dated: October 26, 1978.

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

[FR Doc 78-30739 Filed 10-27-78 8:45 am]

[3910-01-M]

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF SCIENTIFIC ADVISORY BOARD

Meeting

OCTOBER 24, 1978.

The USAF Scientific Advisory Board Ad Hoc Committee on Applications of Heavy-Lift Air Vehicles will meet on November 20 and 21, 1978 at the Pentagon, Washington, D.C. The purpose of the meeting is to assess capabilities and potential of heavy lift air technology for potential military applications. The committee will meet from 9 a.m. to 5 p.m. each day.

This meeting will be open to the public. For further information contact the Scientific Advisory Board Secretariat at 202-697-4648.

CAROL M. ROSE,
Air Force Federal Register Liaison Officer.

[FR Doc. 78-30553 Filed 10-27-78; 8:45 am]

[3910-01-M]

USAF SCIENTIFIC ADVISORY BOARD

Meeting

OCTOBER 20, 1978.

The USAF Scientific Advisory Board Ad Hoc Committee of Space Defense will meet on November 14 and 15, 1978 at the Pentagon, Washington, D.C. The purpose of the meeting is to review the space defense technology options. The Committee will meet from 9 a.m. to 4:30 p.m. each day.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at 202-697-8845.

CAROL M. ROSE,
Air Force Federal Register Liaison Officer.

[FR Doc. 78-30554 Filed 10-27-78; 8:45 am]

[3128-01-M]

DEPARTMENT OF ENERGY

ISSUANCE OF PROPOSED DECISIONS AND ORDERS BY THE OFFICE OF HEARINGS AND APPEALS

October 2 Through October 6, 1978

Notice is hereby given that during the period October 2 through October 6, 1978, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Amendments to the DOE's procedural regulations, 10 CFR, Part 205, were issued in proposed form on September 14, 1977 (42 FR 47210 (September 20, 1977)), and are currently being implemented on an interim basis. Under the new procedures any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of the new procedures, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The new procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.d.t., except federal holidays.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

OCTOBER 24, 1978.

PROPOSED DECISIONS AND ORDERS

C.L. Morris, Inc., Oil City, La., DEE—0032, crude oil

On October 4, 1977, C.L. Morris, Inc., filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart O. The Application for Exception, if granted, would permit C.L. Morris to sell the crude oil produced from the Fred K. Conn Lease located in Catahoula Parish, La. at exempt prices. On October 1, 1978, the Department of Energy issued a Proposed Decision and Order denying the Application for Exception.

Mid-Michigan Truck Services, Inc., Kalamazoo, Mich., DXE—1147, motor gasoline

Mid-Michigan Truck Services, Inc. filed an Application for exception from the provisions of 10 CFR 211.25. The exception request, if granted, would permit Mid-Michigan to receive refined petroleum products directly from the Gulf Oil Corp. rather than through Gulf's designated substitute supplier, the Bestrom Oil Corp. On October 5, 1978, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Forty-seven petitioners, various cities and States, natural gas liquids and natural gas liquid products

Forty-seven petitioners filed a total of 307 individual Applications for Exception from the provisions of 10 CFR 212.165 in which they requested an extension of exception relief previously granted to those firms for individual gas processing plants. The exception relief which had previously been approved was scheduled to expire on or before September 30, 1978. On September 21, 1978, the DOE published amendments to 10 CFR 212.165. 43 Fed. Reg. 42984 (September 21, 1978). These amendments become effective on November 1, 1978, and provide that natu-

ral gas processors will be permitted to pass through automatically most of their increased non-product costs incurred in the production of natural gas liquids and natural gas liquid products at natural gas processing plants. In view of the regulatory change the DOE determined that a continuation of exception relief for those firms will not be necessary after October 31, 1978. However, the DOE determined that a limited extension of exceptions that expire on September 30, 1978, should be approved for the period of one month prior to the effect date of the amended regulation. Consequently, the DOE issued a Proposed Decision and Order with respect to each of the petitioners' natural gas processing plants which extended, for the period October 1 through October 31, 1978, the exception relief that was most recently granted to each of the petitioners.

[FR Doc. 78-30601 Filed 10-27-78; 8:45 am]

[6740-02-M]

Federal Energy Regulatory Commission

[Docket No. ES79-5]

BALTIMORE GAS & ELECTRIC CO.

Notice of Application

OCTOBER 20, 1978.

Take notice that on October 16, 1978, Baltimore Gas & Electric Co. (applicant), a corporation organized under the laws of the State of Maryland, with its principal business office at Baltimore, Md., and is qualified to do business in the States of Maryland and the Commonwealth of Pennsylvania, 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 $200 million of unsecured promissory notes and commercial paper.

Proceeds from the borrowings will be used to provide funds for current corporate transactions and to provide interim funds for its construction program, which is expected to total $173 million in 1979 and $180 million in 1980.

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 November 3, 1978. The application is on file and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30536 Filed 10-27-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-25]

CENTRAL LOUISIANA ELECTRIC CO., INC.

Notice of Proposed Surplus Capacity Sale

OCTOBER 23, 1978.

Take notice that on October 16, 1978, Central Louisiana Electric Co., Inc. (CLECO) tendered for filing a Letter Agreement dated September 20, 1978 covering the sale of 100 MW of surplus capacity to Gulf States Utilities Co. (GSU) for twelve (12) months beginning November 15, 1978. CLECO states that GSU desires to purchase this capacity for its system needs and CLECO agrees to provide this capacity and that the Agreement will be beneficial to both systems. CLECO further states that deliveries will be made over existing interconnection facilities.

According to CLECO copies of this filing have been sent to GSU.

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, 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 November 3, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30538 Filed 10-27-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-17]

CENTRAL MAINE POWER CO.

Notice of Filing

OCTOBER 20, 1978.

Take notice that Central Maine Power Co. (Central Maine) on October 13, 1978, tendered for filing a rate schedule, capacity and related energy by Central Maine to Public Service Co. of New Hampshire (Public Service). Central Maine states that said sale is for a period commencing on the date of commercial operating of William F. Wyman Unit No. 4, scheduled for November 15, 1978 through Octover 31, 1979.

According to Central Maine a copy of the filing was served on Public Service and the Maine Public Utilities Commission.

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 application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30537 Filed 10-27-78; 8:45 am]

[6740-02-M]

[Docket No. ER 79-20]

THE CONNECTICUT LIGHT & POWER CO.

Notice of Application

OCTOBER 20, 1978.

Take notice tht on October 13, 1978, the Connecticut Light & Power Co. (CL&P) tendered for filing a proposed rate schedule with respect to Transmission Agreement dated September 1, 1978 between (1) Hartford Electric Light Co. (HELCO) and Western Massachusetts Electric Co. (WMECO) and (2) Holyoke Gas & Electric Department (HG&E).

CL&P states that the transmission Agreement provides for a transmission service to HG&E during the period from November 1, 1978 to October 31, 1981.

CL&P further states that the transmission charge rate is a monthly rate equal to one-twelfth of the annual average cost of transmission service on the NU system determined in accordance with § 13.9 (Determination of Amount of Pool Transmission Facilities (PTF) Costs) of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee, multiplied by the number of kilowatts which HG&E is entitled to receive.

CL&P requests an effective date of November 1, 1978, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 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 con-

sidered 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. 78-30539 Filed 10-27-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-19]

CONSUMERS POWER CO.

Notice of Filing

OCTOBER 20, 1978.

Take notice that on October 13, 1978, Consumers Power Co. (Consumers Power) tendered for filing an amendment (denoted Supplemental Agreement No. 10 and Supplement H) to an existing Interconnection Agreement, as amended, between Consumers Power and Northern Michigan Electric Cooperative, Inc., Wolverine Electric Cooperative, Inc., the City of Grand Haven, Mich., and the City of Traverse City, Mich. (MMCPP members).

Consumers Power requests an effective date of November 1, 1973, and therefore requests waiver of the Commission's notice requirements.

Consumers Power states that Supplement Agreement No. 10 and Supplement H provide for the transmission by Consumers Power, when conditions on Consumers Power's system permit, of 10 megawatts of capacity and associated energy provided by the Detroit Edison Co. to the MMCPP members.

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 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 application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30540 Filed 10-27-78; 8:45 am]

[6740-02-M]

[Docket No. ES79-3]

DELMARVA POWER & LIGHT CO.

Notice of Application

OCTOBER 20, 1978.

Take notice that on October 10, 1978, Delmarva Power & Light Co. (Applicant), incorporated under the laws of the State of Delaware, with its principal business office at Wilmington, Del., and is qualified to do business in the States of New Jersey, Pennsylvania and Maryland, filed an application pursuant to section 204 of the Federal Power Act, seeking authorization to issue up to $83 million of unsecured promissory notes and commercial paper from time to time prior to December 31, 1979, with a final maturity date of not later than December 31, 1980.

The short-term debt will be used to provide funds for interim financing of its construction program and other corporate purposes.

Any person desiring to be heard or to make any protest with reference to said Application should, on or before November 1, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR 1.8 or 1.10). The Application is on file and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30541 Filed 10-27-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-24]

THE DETROIT EDISON CO.

Notice of Proposed Tariff Change

OCTOBER 23, 1978.

Take notice that The Detroit Edison Co. on October 17, 1978, tendered for filing an Interconnection Agreement between the City of Detroit and The Detroit Edison Co. Detroit Edison indicates that the agreement replaced in its entirety an interconnection agreement dated July 1, 1939, amended May 4, 1959 between the parties. The agreement is being tendered for filing at this time so that it may serve as a basis for comparison with a new agreement dated October 1, 1978, tendered for filing with this Commission on September 1, 1978 being Docket No. ER78-612, according to Detroit Edison.

Detroit Edison requests waiver of the Commission's notice requirements to allow for an effective date of October 1, 1971.

The proposed changes were desirable by the parties to assure adequate and fair compensation for services rendered and to encourage the availability of the full range of services, according to Detroit Edison.

Any person desiring to be heard or to protest said Agreement 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 November 3, 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 Agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30542 Filed 10-27-78; 8:45 am]

[6740-02-M]

[Docket No. RI78-82]

EDWIN L. COX

Notice of Amended Petition for Special Relief

OCTOBER 20, 1978.

Take notice that on July 14, 1978, as amended October 2, 1978, Edwin L. Cox (Petitioner), 3800 First National Bank Building, Dallas, Tex. 75202, filed a petition for special relief in Docket No. RI78-82 pursuant to § 2.76 of the Commission's Rules. Petitioner now seeks authorization to charge $1.68 per Mcf (Petitioner's original request was for $1.80 per Mcf) for the sale of gas to Southern Natural Gas Company from the Bradish Johnson No. 5 Unit Well in the Magnolia Field, Plaquemine Parish, La. Petitioner states that this well commenced the production of dry gas in 1967 and ceased production in 1969. Petitioner estimates that by performing a workover on the well an additional 211,000 Mcf of gas can be produced, however, it is not economically feasible at the current contract price for the gas produced.

Any person desiring to be heard or to make any protest with reference to said petition should on or before November 14, 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 consid-

ered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30543 Filed 10-27-78; 8:45 am]

[6740-02-M]

[Docket No. ER76-816]

GULF STATES UTILITIES CO.

Order Approving Settlement Subject to Condition

Issued October 20, 1978.

On March 13, 1978, Gulf States Utilities Co. (Gulf States) filed with the Federal Energy Regulatory Commission [1] a Motion to Certify Settlement Agreement and Record to the Commission in the above designated docket. On March 16, 1978, the Presiding Administrative Law Judge certified the Settlement Agreement and the Record to the Commission for its consideration and determination.

Notice of the proposed settlement was issued on March 24, 1978, with comments due by April 14, 1978. On April 14, 1978, staff filed comments in support of the settlement. However, staff noted that certain language in the Availability/Applicability sections should be excluded from the rate schedules since these provisions may be unduly restrictive, anticompetitive and contrary to the public interest. the Commission approves the agreement subject to condition for the reasons set forth below.

On July 29, 1976, Gulf States tendered for filing Rate Schedule WSM "Other Electric Corporation for Resale," proposing an increase in rates for certain municipal customers,[2] and rate schedule WSC "Wholesale Power to Rural Electric Distribution Cooperatives" proposing an increase in rates for certain cooperative customers.[3] In addition the tendered rate schedules were proposed to become applicable to the then existing individual contracts between Gulf States and the members of the Sam Rayburn Dam Electric Cooperative Inc. (Sam Dam), although no service was being rendered under these contracts.[4]

Gulf States further proposed that Rate Schedule WSC superseded the existing contract between Gulf States and Cajun Electric Power Cooperative (CEPCO). Although CEPCO was not receiving power under their existing contract with Gulf States, it was estimated that the CEPCO points of delivery served by Gulf States would require power in excess of CEPCO's own generation in 1978.

By Order issued August 31, 1976, the Commission rejected application of the proposed Rate Schedule WSC to the existing contracts between Gulf States and Sam Houston Electric Cooperative, and between Gulf States and Jasper-Newton Electric Cooperative, as these contracts did not permit unilateral rate changes. The Commission accepted for filing the proposed Rate Schedule WSM to become effective subject to refund as to certain municipals on December 1, 1976, and accepted for filing the proposed Rate Schedule WSC for certain cooperative customers to become effective on September 2, 1976, subject to refund. The proposed rates were set for hearing.

Staff served Top Sheets on March 15, 1977, and settlement conferences were held. Testimony and exhibits were served by all parties and the hearing was set for November 8, 1977. Further negotiations on the morning of the hearing produced the settlement.

SETTLEMENT

The proposed settlement in Docket No. ER76-816 provides for a revenue level consistent with the cost of service in staff's revised Top Sheet and provides for an increase in resale revenues of $319,925 under Rate Schedule WSC to the rural electric cooperative customers, and $435,000 under Rate Schedule WSM to the municipal customers based on a test period for the 12 months ending December 31, 1975. The agreement provides for refunds to municipal customers for amounts collected over and above settlement rates, and allows the proposed rate increase as filed to the cooperative customers. The settlement rates would not result in an earned rate of return exceeding staff's recommended rate of 8.92 percent overall including 13.00 percent on common equity based on a common equity ratio of 33.17 percent.

The agreement further provides for a moratorium on increases in rates prior to April 1, 1979. Gulf States agrees that it will not use the Tax Adjustment Clause in Rate Schedules WSM and WSC as a basis for a change in rates absent a filing pursuant to § 35.13 of the Commission's rules and regulations. As noted in staff's comments filed April 17, 1978, the proposed Settlement Agreement includes language which restricts the customers' ability to resell power and energy furnished by Gulf States. Staff believes the language contained in the Availability/Applicability clauses may be unduly restrictive, anticompetitive, and contrary to the public interest.

DISCUSSION

We find that the settlement agreement between Gulf States and the named parties, in its totality, is neither unduly preferential nor unduly advantageous, and it establishes a just and reasonable rate level. Accordingly, the settlement should be accepted.

The only point of contention concerns the resale restrictions the settlement places upon the customers of Gulf States. The provisions in question read as follows:

SCHEDULE WSC WHOLESALE POWER TO RURAL ELECTRIC DESTRIBUTION COOPERATIVES

Availability

Availability in the territory in which Gulf States operates to Rural Electric Distribution Coooperatives for resale solely to ultimate consumers. Service under this schedule is subject to the terms and conditions specified in the Agreement for Electric Service to Rural Cooperatives to which this schedule is attached and made a part thereof. The charges specified in this schedule shall apply separately to service supplied at each point of delivery.

SCHEDULE WSM OTHER ELECTRIC CORPORATIONS FOR RESALE

Applicability

This rate is applicable under the regular terms and conditions of the company to other electric corporations who contrast for electric service to be used for resale to ultimate consumers.

This Commission's predecessor traditionally looked with disfavor upon

[1] This proceeding was commenced before the FPC. By the joint regulation of Oct. 1, 1977 (10 CFR 1000.1), it was transferred to the FERC. The term "Commission", when used in the context of action taken prior to Oct. 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC.

[2] Rate Schedule WSM-Municipal Customers: Towns of Erath, Rayne, Gueydan, Kaplan, Abbeville, St. Martinsville, Welsh, New Roads, Louisiana; Cities of Caldwell, and Newton, Texas; and Kirbyville Light & Power Co.

[3] Rate Schedule WSC-Cooperative Customers: Mid-South Electric Cooperative Association; Houston County Electric Co-op, Inc., and Cajun Electric Power Cooperative, Inc.

[4] The members of the Sam Rayburn Dam Electric Cooperative, Inc. are as follows: The town of Vinton, La., the cities of Livingston, Jasper, and Liberty, Tex.; Sam Houston, and Jasper-Newton Electric Cooperatives. By order issued July 26, 1977 in Docket Nos. ER76-816 and ER77-375 Notices of Cancellation of the individual contracts with the Sam Dam Members were accepted and effective on the dates shown in the attachment to said order. Since the effective dates of termination have passed, the aforementioned Sam Dam members are, at present, served by Sam Dam through its contract with Gulf States. The Sam Dam-Gulf States contract was approved by the Commission by order issued May 5, 1977, Docket E-8121 and by its terms extends the Sam Dam-Gulf States power supply arrangement until 1980. See Gulf States Utilities Co. FPC No. 98.

resale restrictions in wholesale contracts and rate schedule tariffs. *Cincinnati Gas and Electric Company*, Docket Nos. E-8885 and E-8546, Order issued September 5, 1975; *Wisconsin Power & Light Company*, 49 FPC 645 (1973); *Mississippi Power Company*, 45 FPC 269 (1971), *Georgia Power Company*, 35 FPC 436 (1966).

This Commission, like its predecessor, has the responsibility to consider antitrust policy in exercising its regulatory authority, including its examination of rates, terms and conditions for wholesale electric service. *Gulf States Utilities Company* v. *FPC*, 411 U.S. 747, 760-762 (1973). Gulf States' Applicability/Availability clause on its face prevents further wholesaling of power and energy purchased under the respective rate schedules. This gives Gulf States the power to eliminate or inhibit its bulk power customers as potential competitors of Gulf States for further wholesale sales. The Commission will not give its imprimatur to the proposed acquisition of market power.[5]

We do not find in the regulatory scheme under the Federal Power Act any public policy basis for allowing public utilities to employ tariff provisions to foreclose wholesale competition between a supplier like Gulf States and its bulk power purchasers. To the contrary, competition where feasible complements the regulatory scheme. According to the Supreme Court in *Otter Tail Power Co.* v. *United States*, "the history of Part II of the Federal Power Act indicates an overriding policy of maintaining competition to the maximum extent possible consistent with the public interest." 410 U.S. 366, at 374 (1973). It is axiomatic that competition creates pressure on electric utilities to reduce their costs and increase their efficiency in power supply production and marketing. This downward pressure on costs supports our direct regulation of rates to the ultimate benefit of consumers of electricity.

The anticompetitive effect of resale prohibitions is of course not conclusive under the Federal Power Act. It remains for us to consider whether such prohibitions serve some significant regulatory purpose which cannot be achieved by a less anticompetitive method and which would render them in the public interest notwithstanding that desirable competition is impaired.

In this connection, we recognize that electric utilities must plan and construct sufficient generation and transmission to meet their future power supply requirements in an orderly fashion. Proper system planning requires utilities like Gulf States to commit to building necessary facilities well in advance of the time such facilities are needed actually to serve loads, and the utilities have an important interest in projecting their load growth and requirements as accurately as possible. Resale restrictions of the sort Gulf States has prescribed do serve this interest; they insure that the loads of wholesale customers will not vary by virtue of those customers adding or losing wholesale customers of their own. These restrictions are, however, an unnecessarily blunt device for this purpose, given their apparent anticompetitive effect and the availability of other, well-established ways for utilities to regulate their loads without impairing competition.[6]

We hold, therefore, that direct resale restrictions, such as the ones here, imposed by power suppliers on their wholesale customers are unreasonable and unjust. Moreover, we conclude that any such restrictions are so devoid of redeeming value in light of the availability of other well-established means of accomplishing the legitimate purposes of regulated utilities that they should be declared per se unlawful in this and all other cases in which the issue may be presented. The public interest does not require and should not tolerate any further record inquiry of this issue. By our action today we announce to all persons interested in our proceedings that we intend to consistently apply the precedent established in this case to strike down any similar resale restrictions presented for our approval.

Accordingly, we will direct Gulf States to remove the offending resale restrictions.[7] However, recognizing Gulf States' legitimate need for orderly power supply planning, we will declare these restrictive provisions null and void and of no legal effect ninety (90) days from the date of issuance of this order. This time period will permit Gulf States to refile substitute tariff provisions appropriate for system planning purposes.

The Commission finds: The settlement agreement filed in this docket on March 13, 1978, by Gulf States Utilities Co., as conditioned herein, is just and reasonable and should be approved and made effective as hereinafter ordered.

The Commission orders: (A) The settlement agreement filed with the Commission in this proceeding on March 13, 1978, as conditioned herein, is incorporated by reference, approved and made effective as of September 2, 1976, for Rate Schedule WSC, and as of December 1, 1976, for Rate Schedule WSM.

(B) Within 90 days of the date of issuance of this order, Gulf States Utilities Co. Shall file revised rate schedules excluding the restrictive language from the "Availability" section of Rate Schedule WSC, and from the "Applicability" section of Rate Schedule WSM. This order is without prejudice to Gulf States to file within that 90 day period appropriate tariff provisions in accordance with the discussion in the body of the order. Such refiling shall be subject to Commission review and approval.

(C) Within 30 days of the filing of the revised Rate Schedules WSC and WSM, Gulf States Utilities Co. shall refund all excess amounts collected over and above the rates stated in the settlement agreement with interest at 9 percent per annum.

(D) Within 15 days after refunds are made, Gulf States Utilities Co. shall file a compliance report with the Commission showing monthly billing determinants and revenues under prior, present, and settlement rates. The compliance report shall show the monthly settlement rate increase, the monthly revenue refund, and the monthly computation, together with a summary of such information for the total refund period. A copy of the report shall also be furnished each

[5] The anticompetitive effect is similar to that of a market division or allocation of customers between competitors—conduct which the Supreme Court has held to violate the antitrust laws. *United States* v. *Topco Associaties, Inc.*, 405 U.S. 596, 606-612 (1972). The situation here differs substantially from that in *Continental T.V., Inc.* v. *GTE Sylvania Inc.*, 433 U.S. 36 (1977), where the Court held that the imposition of resale restrictions by manufacturers on distributors of their products could be reasonable and procompetitive in some circumstances. In that case, Sylvania argued that restraining competition among its retail franchisees in sales of Sylvania television sets promoted more significant competition between Sylvania and other television brands. No such redeeming procompetitive virtues warrant the imposition of explicit resale prohibitions by electric wholesalers; there are no brand names to be promoted or brand reputations to be protected here.

[6] For example, utilities commonly include contractual provisions for obtaining timely notice of customers' increased and decreased requirements. A related concern—that a member of a wholesale class might gain a resale customer whose usage would make it inappropriate for the wholesale customer to continue to be served at the class rates—can similarly be accommodated by permitting Gulf States and other such wholesalers to include in their rate schedules appropriate language describing the class on the basis of such criteria as kW load, load factors, etc.

[7] We note that the contract between Gulf States and the Intervenor Sam Dam (Gulf States Utilities Co. Rate Schedule FPC No. 98, SR-2) contains equally restrictive resale provisions as Rate Schedules WSM and WSC. Our announcement of the per se rule today renders such provisions unenforceable. (On Sept. 1, 1976, Sam Dam petitioned to intervene in the instant docket on behalf of its members whose individual contracts with Gulf States were affected by Gulf States' initial rate application in ER76-816. Sam Dam was granted intervention by Order issued Nov. 8, 1976.)

State commission within whose jurisdiction the wholesale customers distribute and sell electric energy at retail as well as to each affected customers.

(E) Insofar as this order accepts the settlement agreement filed with the Commission in this proceeding, it is without prejudice to any finding or order which has been made or which may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff or any party or person affected by this order in any proceeding now pending or hereafter instituted by or against Gulf States Utilities Co. or any other person or party.

(F) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 76-30544 Filed 10-27-78; 8:45 am]

[6740-02-M]

[Docket No. ID-1460]

JOHN T. NEWTON

Notice of Filing

OCTOBER 20, 1978

Take notice that on October 2, 1978, John T. Newton (Applicant), filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President, Secretary, and Director, Kentucky Utilities Co., Public Utility and Senior Vice President, Secretary, and Director, Old Dominion Power Co., Public Utility.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions 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 application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30545 Filed 10-27-78; 8:45 am]

[6740-02-M]

[Docket Nos. CS72-421, et al.]

McFARLANE OIL CO., INC. (McFARLANE OPERATING CO., INC., ET AL.)

Notice of Applications for "Small Producer" Certificates [1]

OCTOBER 20, 1978.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and section 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before October 27, 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 the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission in 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.

Name, Filing Date, and Docket Number

McFarlane Oil Co., Inc. (McFarlane Operating Co., Inc.), P.O. Box 359, Tyler, Tex. 75701, April 13, 1978,[a] CS72-421.

James P. Evans, Jr. (James P. Evans, Jr., and William J. Evans), 1300 Beck Building, Shreveport, La. 71101, April 11, 1978,[2] CS73-338.

R. James Stillings, d.b.a. Gastill Co. and Stillings Petroleum Corp., P.O. Box 7629, 2240 East 49th Street, Tulsa, Okla. 74105, April 17, 1978,[3] CS72-611.

[FR Doc. 78-30562 Filed 10-27-78; 8:45 am]

[6740-02-M]

[Docket No. RP73-14 (PGA78-2) (DCA78-1)]

MICHIGAN WISCONSIN PIPE LINE CO.

Notice of Certification of Stipulation and Agreement

OCTOBER 23, 1978.

Take notice that on September 14, 1978, Presiding Administrative Law Judge Samuel Kanell certified to the Commission a stipulation and agreement in this docket. If approved, the settlement will resolve all issues in this proceeding.

Any person desiring to be heard or to protest the proposed settlement should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before November 3, 1978. Comments will be considered by the Commission in determining the appropriate action to be taken upon the settlement. Copies of the settlement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30546 Filed 10-27-78; 8:45 am]

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[a] Being noticed to reflect name change.

[2] Being noticed to show request by William S. Evans to have his own small producer certificate, which was filed in Docket No. CS78-381, thus necessitating the deletion of his name as certificate co-holder, in Docket No. CS73-338.

[3] Being noticed to include a corporation 76 percent owned by R. James Stillings as certificate co-holder.

[6740-02-M]

[Docket No. ER79-23]

MISSISSIPPI POWER & LIGHT CO.

Notice of Filing

OCTOBER 20, 1978.

Take notice that on October 13, 1978, Mississippi Power & Light Co. (Mississippi) tendered for filing an Agreement for Purchase of Power. Mississippi states that the Agreement provides for the sale of electric energy by Mississippi to Southwest Mississippi Electric Power Association (Southwest), to be delivered to a point near Brookhaven, Miss.

Mississippi further states that the Agreement is filed to supersede the present Agreement for Purchase of Power at the same delivery point, designated as FERC Rate Schedule No. 189.

Mississippi indicates that the date of service under the proposed Agreement is to be November 15, 1978, but requests that the filing be accepted on the date that initial service is actually rendered.

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. 78-30548 Filed 10-27-78; 8:45 am]

[6740-02-M]

[Docket No. ER78-388]

MISSOURI POWER & LIGHT CO.

Order Amending Prior Order, Denying Request for Rejection of Filing, and Denying Request for Imposition of Mobile-Sierra Standard of Proof

OCTOBER 23, 1978.

On September 7 1978, the City of Marceline, Mo. (City) filed a Motion for Expedited Commission Action on the City's June 28, 1978, Petition for Reconsideration. City's June 28 Petition requested reconsideration of our June 19, 1978, order in this proceeding. In its Motion, City requests "(1) a clarification of whether the Commission actually intended an unprecedented denial of City's request for rehearing by Commission failure to act within 30 days of filing, and (2) expedited disposition of the matters raised by City's June 28 filing." Our review indicates that our June 19 order needs no clarification and warrants no modification to reflect matters raised in City's June 28 Petition or its September 7 Motion. A brief outline of the procedural background leading to our decision in this proceeding is set forth below.

BACKGROUND

On May 19, 1978, Missouri Power & Light Co. (MP&L) tendered for filing proposed, revised rates applicable to six of its wholesale municipal customers [1] including the City of Marceline, Mo. Notice of filing was issued on May 26, 1978, with comments, protests, or petitions to intervene due on or before June 5, 1978. No timely filings were filed in response to the foregoing Notice. However, City filed a late Motion to Reject, Protest and Petition to Intervene on June 19, 1978. To date, the matters raised in this filing with the exception of City's request for intervenor status have not yet been ruled upon.

In its June 19 filing City requested that MP&L's May 19 filing be rejected for failure to conform to the due process notice requirements of 18 CFR § 35.8(a), or in the alternative, that the effective date of MP&L's filing be deferred until a final Commission determination of the justness and reasonableness fo the rates proposed for City. City also requestd that the Commission require MP&L to meet the *Sierra-Mobile* [2] standard of proof before allowing the proposed rates to go into effect. In making the foregoing request, City acknowledges that the Federal Power Commission in Docket No. ER76-539 [3] held that language in the MP&L/City contract, which is currently effective and applicable to the instant filing, did not require that the *Sierra-Mobile* burden be met before rates could be changed prospectively.

On June 19, 1978, we issued an "Order Accepting for Filing, Suspending Rate Increases, Establishing 206(a) Proceedings, Ordering the Filing of Previously-Unfiled Agreements and Providing for Hearing" in this docket. Because of the lateness of City's June 19 Petition to Intervene, we could not have considered the arguments raised therein in that order. However, we ordered that the proposed rates applicable to City be deferred until we made a final determination of their justness and reasonableness pursuant ot section 206 of the Act.

On June 28, 1978, City filed a Petition for Reconsideration of our June 19 Order requesting that we modify that order to reflect the arguments and requests contained in City's June 19 late-filed petition. In support thereof, City cited Federal Power Commission orders of June 9, 1975 in Docket No. E-8570, *Southern California Edison Co.* and of December 22, 1975, in Docket No. ER 76-83, *Ohio Power Co.* [4] City restated its position that it failed to respond to our May 26, 1978, Notice of Filing in a timely fashion because MP&L failed to notify City as required by 18 CFR 35.8(a).

On July 5, 1978, MP&L filed a response to City's June 19 Motion to Reject, Protest, and Petition to Intervene. Therein, MP&L vigorously denied that City never received a timely notice of its filing and attached a copy of an affidavit of personal service mane by an employee of MP&L on the city manager of City on May 11,1978, to support its denial. MP&L agrees with the portion of our June 19 order requiring a final order after a section 206 investigation and hearing, prior to allowing the proposed rates applicable to City to go into effect. MP&L opposes City's request that it be required to meet a *Sierra-Mobile* standard of proof before being allowed to collect proposed rates, from City prospectively, and cites the Federal Power Commission's order of June 4, 1976, in Docket No. ER76-539, *Missouri Power & Light Co.* for support.

On July 7, 1978, City filed a Supplemental Petition to Intervene requesting that the Commission modify its June 19 order to permit investigation of an alleged price squeeze in accordance with the requirements of Order No. 563.[5] On July 25, 1978, MP&L filed a response to City's Supplemental Petition incorporating therein by reference the objections contained in its July 5 Response to City's original, late-filed Petition To Intervene and further objecting to City's request to expand the scope of the proceeding to include price squeeze. On August 4, 1978, City filed an answer to MP&L's July 25 filing arguing that its price squeeze allegations were well-founded, and the MP&L's objections went to

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[1] Cities of Centralia, Kahoka, Linneus, Marceline, Owensville, and Perry, all located in Missouri.

[2] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *F.P.C.* v. *Sierra Pacific Power Co.*, 35 U.S. 348, 355 (1956).

[3] *Missouri Power & Light Co.*, "Order Granting Petition for Rehearing and Amending Prior Order," issued June 4, 1976, Docket No. ER76-539.

[4] Because of our determination herein that the contents of City's June 28 Petition are properly before us, we need not address these orders.

[5] 18 CFR 2.17.

the merits of the alleged price squeeze and were more appropriate for resolution through discovery and hearing.

On September 7, 1978, the Presiding Administrative Law Judge issued an order "Granting Supplemental Petition for Leave to Intervene on Price Squeeze Issue," holding that City had met the requirements of 18 CFR 2.17 and that MP&L's objections as to price squeeze were premature.

On September 7, 1978, City filed the instant Motion for Expedited Commission Action on City's June 28, 1978, Petition for Reconsideration, therein restating its prior requests that MP&L's May 19 filing be rejected and that the Commission modify its June 19 order to impose the more stringent *Mobile-Sierra* burden of proof standard for determining the validity of a section 206 rate change to the City. City states that it filed the Motion pursuant to the direction of the Presiding Administrative Law Judge and that a grant of its June 28, 1978, Petition for Reconsideration establishing a *Mobile-Sierra* standard of proof could moot MP&L's filed case and the hearing schedule established by the Presiding Judge.

Discussion

Our review of all the filings of MP&L and City to date indicates that two basic issues remain unresolved: Whether City's June 28 Petition for Reconsideration is properly before us in light of City's late-filed Petition to Intervene and, if so, whether we should modify our June 19 order to reflect City's requests that we reject MP&L's May 19 filing, that we impose a *Mobile-Sierra* burden of proof standard to gauge a section 206 rate change to City in this proceeding, or that we expand the scope of the proceeding to investigate an alleged price squeeze.

On August 14, 1978, we amended our regulations [6] to authorize designated presiding administrative law judges to act on petitions to intervene in pending proceedings for the sake of administrative efficiency. We note that prior to the Presiding Administrative Law Judge's September 7 order in this proceeding granting City's supplemental petition to intervene, City did not formally enjoy the status of an intervenor. Consequently, City's July 7 Supplemental Petition to Intervene requesting expansion of the proceeding to include price squeeze was properly directed to the Commission. The Presiding Administrative Law Judge's September 7 order granting City's Supplemental Petition exceeded his authority to the extent of allowing price squeeze to become an issue in this proceeding without action by us. Our June 19, 1978, order does not discuss price squeeze nor does it establish Order No. 563 procedures. Nevertheless, the Presiding Judge has set Order No. 563 procedures and cost-of-service discovery procedures, having found the City has met the pleading requirements of Order No. 563.

Our August 14, 1978, order establishing certain delegations was not intended to give presiding administrative law judges the authority to expand the scope of a pending proceeding by the process of granting petitions to intervene. The part of the August 14 order dealing with petitions to intervene gave presiding judges the authority only to permit interventions on those matters already at issue in the proceeding. Only the Commission can grant leave to expand the scope of a proceeding.

We believe it is in the public interest to authorize the investigation of the price squeeze issue in this proceeding. Accordingly, we shall amend our June 19 order to include the price squeeze issue and to authorize the implementation of Order No. 563 procedures. The portion of City's June 19, 1978, Petition requesting status as an intervenor not having been acted upon until September 7, 1978, the arguments and requests pertaining to City's request for rejection of MP&L's filing and for imposition of the *Mobile-Sierra* standard of proof, as set forth in City's June 19 and June 28 filings, were not properly before us until September 7, 1978, on which date the thirty (30) days referred to in 18 CFR 1.12(e) began to run on City's request that we modify our June 19 order.

In light of the foregoing, City's implication that our inaction to date on its June 28 Petition for Reconsideration may have constituted "unprecedented denial of City's request for rehearing by Commission failure to act within thirty (30) days of filing" is misplaced. Only a party to a proceeding has standing to file a Motion for Reconsideration of a Commission order pursuant to 18 CFR 1.12, and City did not obtain such standing until September 7, 1978, the same day it filed its Motion for Expedited Commission Action.

Since City's September 7 Motion incorporated by reference its June 28 Petition for Reconsideration, we find that the arguments and requests contained in the June 28 Petition are now properly before us for resolution.[*]

The remaining question is whether we should modify our June 19 order by granting City's requests that we reject MP&L's May 19 filing and impose the *Mobile-Sierra* standard of proof.

The filings indicate a dispute between MP&L and City regarding whether City received adequate notice of MP&L's May 19 submittal to satisfy due process requirements. Although not conclusive, we find persuasive for the purpose of continuing to accept MP&L's filing, the affidavit of personal service attached to MP&L's July 5 Response to City's original late-filed Petition to Intervene. We note that City is an intervenor in this proceeding with full opportunity to protect its rights in hearing. City's request for rejection of MP&L's filing and for modification of our June 19 order to reflect such rejection must be denied.

The sole remaining issue is whether City's request that the *Mobile-Sierra* standard of proof be imosed in this proceeding should be granted. We find that it should not.

In our order of June 19, 1978, we note that in Docket No. ER76-539, MP&L sought to increase rates under the currently effective MP&L/City electric service contract, and our predecessor, the Federal Power Commission, held that proposed rates to City could not become effective until a final Commission order determined that section 206 requirements had been met.[7] The FPC made it clear that under the language of the MP&L/City contract, the *Mobile-Sierra* standard of proof was not applicable. MP&L is correct to point out that City addresses the same contract language in this docket to which the *Mobile-Sierra* standard was determined to be not applicable in Docket No. ER76-539.

City admits in its June 19, 1978, Petition that the FPC held that language in the City/MP&L contract only permits a change prospectively in City's rates upon a final Commission order applying section 206 standards. However, City asserts that the FPC was in error in Docket No. ER76-539 and, in effect, requests that we reconsider the FPC's prior determination. MP&L agrees that it can increase rates to City only prospectively, but objects to City's request that a stringent *Mobile-Sierra* burden be imposed.

Our review of City's Application for Rehearing of the FPC's April 26, 1976, order in Docket No. ER76-539, MP&L's Answer thereto, and the FPC's June 4, 1976, order granting City's Application, indicates that City did not address the issue of burden of proof standards in a section 206 pro-

[6] Order issued August 14, 1978, in Docket No. RM78-19, amended 18 CFR 1.8(a)(2) to allow participation in a proceeding as an intervenor "upon petition to intervene, by order of the Commission, the Secretary where an administrative law judge has not been designated, or the designated presiding administrative law judge in the proceeding". As a result the Presiding Judge's September 7, 1978, order granting City's Supplemental Petition to Intervene granted City status as an intervenor in this proceeding as of that date.

[*] On October 11, 1978, under signature of the Secretary of the Commission, we issued a Notice of Intent to Act on City's September 7, 1978, Motion.

[7] See Orders issued on April 26, 1976, and on June 4, 1976, in Docket No. ER76-539, *Missouri Power & Light Co.*

ceeding in that docket but merely argued successfully that MP&L did not have the right to file unilaterally for a rate schedule change under section 205 of the Act. The FPC agreed with City, but adopted "as the burden of proof the just and reasonable standard of section 206 of the Federal Power Act rather than the *Mobile-Sierra* Standard [Footnote omitted]." City did not object to the FPC's adoption of section 206 standards in Docket No. ER76-539, but does object to our adoption of them in this proceeding.

Our review of the arguments raised by City to support its request that we modify our June 19 order to impose a *Mobile-Sierra* standard of proof indicates that they must be rejected. City asserts that section 1 of its contract with MP&L[8] is "in pertinent part identical" to language in section 12 of the 1948 Contract between Pacific Gas and Electric Co. (PG&E) and the Sierra Pacific Power Co.[9] under which language the Supreme Court imposed a heavy *Sierra* burden of proof. MP&L correctly points out that the language in section 1 of the Marceline Contract and the language in section 12 of the 1948 PG&E/Sierra Pacific contract are not identical. MP&L refers to the controlling legal principle cited in *Richmond Power & Light Co.* v. *FPC*, 81 F. 2d 490, 493 (1973); *cert. denied, sub nom. Indiana & Michigan Electric Co.* v. *FPC*, 414 U.S. 1068 (1975) to support its position:

> The rule of *Sierra*, *Mobile* and *Memphis* is refreshingly simple: The contract between the parties governs the legality of the filing. Rate filings consistent with contractual obligations are valid; rate filings inconsistent with contractual obligations are invalid.

Accordingly, our review indicates, and MP&L correctly asserts, that section 1 of MP&L's contract with City contemplates that rate changes would be permitted during the life of the contract upon a finding by the Commission that proposed rates are just and reasonable. Nowhere in City's June 19 late-filed Petition or in its June 28 Motion for Reconsideration does City refer to language in the City/MP&L contract which precludes a rate change under section 206 of the Act. Such a failure is fatal to City's request for imposition of a *Mobile-Sierra* burden in this proceeding.

Our finding that the language of the MP&L/City contract does not preclude a rate change pursuant to section 206 of the Act is consistent with precedent.[10]

The Commission orders:

(A) Our order of June 19, 1978, in this docket is hereby amended to authorize the investigation of the price squeeze issue and the implementation of Order No. 563 procedures.

(B) City's request that we modify our June 19, 1978, order in this docket by rejecting MP&L's May 19, 1978, submittal for failure to meet due process notice requirements, is hereby rejected.

(C) City's request that we modify our June 19, 1978, order in this docket to reflect the imposition of a *Mobile-Sierra* burden of proof standard prior to authorizing the use of proposed rates applicable to City, is hereby denied.

(D) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30547 Filed 10-27-78; 8:45 am]

[8] "1. Company shall supply and Customer shall accept and pay for all electric energy it may require for the operation of its water works and other municipal requirements, street lighting system, and for distribution and sale to its electrical customers, at the rates and charges applicable to the two types of service hereby offered. The rates to be charged by the Company under this agreement shall be in accordance with the attached rate schedules marked Exhibit A and Exhibit B; *provided, however that said rates may be changed during the term of the contract but only with the approval of the appropriate regulatory agency having jurisdiction.*" [*Emphasis added.*]

[9] "12. This agreement shall become effective as of January 1, 1948, upon the procurement of an order by the Public Utilities Commission of the State of California authorizing the parties hereto to carry out the terms and conditions hereof. This agreement shall at all times be subject to such changes and/or modifications as said Commission may from time to time direct in the exercise of its jurisdiction."

[10] See *Appalachian Power Co.*, Docket Nos. ER76-799, ER76-800, order issued November 8, 1976, and *Louisiana Power & Light Co.*, Docket No. ER77-533, order issued September 30, 1977, wherein the FPC held that contractual phrases providing for rate changes only with the "approval" of the appropriate jurisdictional agency, prohibit a section 205 filing, but permit application under section 206 to set just and reasonable rates prospectively without having to meet the heavy *Sierra* standard.

[6740-02-M]

[Docket No. ER79-21]

MISSOURI UTILITIES CO.

Notice of Proposed Change in Rates

OCTOBER 23, 1978.

Take notice that on October 13, 1978, Missouri Utilities Co. (Missouri), tendered for filing a change in rates applicable to electric service rendered to its Central Missouri wholesale customers. Missouri indicates that these changes in rates are proposed to become effective as of November 16, 1978. Missouri further indicates that the proposed changes in rates are to compensate Missouri primarily for increases in its cost of power.

Missouri states that its current wholesale rates in Central Missouri are deficient by $160,239 annually based on sales volumes set forth in the statements accompanying its Notice of Change in Rates.

Copies of the proposed rate schedules and their revenue effect have been served upon the Missouri Utilities Co. wholesale customer, the City of California, affected by this filing, according to Missouri.

Any person desiring to be heard or to protest said notice 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 and Regulations (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 6, 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. 78-30528 Filed 10-27-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-26]

NIAGARA MOHAWK POWER CORP.

Notice of Filing

OCTOBER 23, 1978.

Take notice that Niagara Mohawk Power Corp. on October 17, 1978, tendered for filing a letter agreement dated July 24, 1978, with New York State Electric & Gas Corp. Niagara Mohawk requests waiver of the Commission's notice requirements to allow for effective dates of April 1, 1977 and April 1, 1978, for the two proposed revisions comprising this filing.

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 November 3, 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. 78-30529 Filed 10-27-78; 8:45 am]

[6740-02-M]

[Docket No. ER77-530]

OHIO EDISON CO.

Notice of Certification

OCTOBER 23, 1978.

Take notice that Presiding Administrative Law Judge, George P. Lewnes, on September 1, 1978, certified to the Commission an executed settlement agreement in the above-noted docket.

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington D.C. 20426, on or before November 13, 1978. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30530 Filed 10-27-78; 8:45 am]

[6740-02-M]

[Project No. 1934]

SOUTHERN CALIFORNIA EDISON CO.

Notice of Application for Use of Public Lands

OCTOBER 20, 1978.

Take notice that on May 12, 1978, an application was filed with the Federal Energy Regulatory Commission by the Southern California Edison Co. (correspondence to: D. J. Lowerison, Jr., Southern California Edison Co., P.O. Box 410, 100 Long Beach Boulevard, Long Beach, Calif. 90801), for use of public lands on the Mill and Mountain Creeks Project (Project No. 1934), located in San Bernardino County, Calif. and in the San Bernardino National Forest.

Applicant proposes to grant a 25-foot wide easement over project lands to the San Bernardino Valley Municipal Water District (District), to permit the District to construct and operate an underground pipeline. The pipeline would divert up to 4 cfs of water from the Mill Creek Nos. 2 and 3 Powerhouse tailrace to the three Yucaipa Lakes and for the irrigation of the Yucaipa Lakes Regional Park. Approximately 0.25 acre of project lands in section 13, T. 1 S, R. 2 W, S. B. B. & M. would be affected by the easement.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before November 14, 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. 78-30531 Filed 10-27-78; 8:45 am]

[6740-02-M]

[Docket No. RP77-31]

SOUTHERN NATURAL GAS CO.

Notice of Filing of Amendment to Stipulation and Agreement

OCTOBER 20, 1978.

Take notice that on September 20, 1978, Southern Natural Gas Co. filed with the Commission and the Presiding Administrative Law Judge William L. Ellis, an amendment to the stipulation and agreement previously certified to the Commission in this docket on May 18, 1978. The amendment modifies paragraph 8, Article II, of the original stipulation and agreement and pertains solely to the treatment of interperiod Federal income taxes.

Any person desiring to be heard or to protest the amendment to the proposed settlement should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before November 3, 1978. Comments will be considered by the Commission in determining the appropriate action to be taken upon the settlement. Copies of the amendment are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30532 Filed 10-27-78; 8:45 am]

[6740-02-M]

[Docket No. CP78-453]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Application

OCTOBER 19, 1978.

Take notice that on July 31, 1978, Transcontinental Gas Pipe Line Corp. (Applicant), P.O. Box 1396, Houston, Tex. 77001, filed in Docket No. CP78-453, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation on an interruptible basis of up to 30,000 dekatherms (dt) equivalent of natural gas per day for a limited term of 1 year from date of first delivery for Tennessee Gas Pipeline Co., a Division of Tenneco Inc. (Tennessee), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is indicated that Tennessee would purchase natural gas produced in Ship Shoal Block 246A, offshore Louisiana, and deliver a scheduled daily delivery quantity of up to 30,000 dt into Applicant's Southeast Louisiana Gathering System at Ship Shoal Block 246B. Pursuant to a transportation agreement with Tennessee, Applicant proposes to receive the subject gas for Tennessee's account at the Block 246B location and transport and deliver a thermally equivalent quantity of gas, less 1.2 percent for gas lost and unaccounted for and fuel, and less reduction in volume and Btu content due to processing, if any, to Tennessee at existing points of interconnection between Transco's and Applicant's systems in Louisiana and Texas.

Applicant states that it would charge Tennessee for the proposed transportation service, an initial rate of 15.25 cents per dt transported and delivered to Tennessee, and 13.15 cents per dt for shrinkage, fuel and gas lost due to processing at the Shell Oil Co. North Terrebonne Gas Processing Plant (Terrebonne Plant), on Applicant's Southeast Louisiana Gathering System.

The application indicates that during the 1-year term proposed, Tennessee would make other arrangements to receive this gas into its system on a long term basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 26, 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. 78-30533 Filed 10-27-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-18]

UNION ELECTRIC CO.

Notice of Proposed Revised Service Schedule

OCTOBER 20, 1978.

Take notice that on October 13, 1978, Union Electric Co. (Union) tendered for filing First Amendment, First Revised Exhibits I and II, and First Revised Service Schedules A, G, and H to the Interchange Agreement dated April 11, 1977 between Union, Arkansas-Missouri Power Co., and Associated Electric Cooperative, Inc.

Union indicates that said revisions provide for certain changes in facilities to be installed under the Interchange Agreement and for revisions in certain rates under said Interchange Agreement.

Union requests a proposed effective date of September 15, 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 §§ 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 application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-30534 Filed 10-27-78; 8:45 am]

[6740-02-M]

[Docket Nos. ER76-399 and ER76-303]

WISCONSIN ELECTRIC POWER CO. AND WISCONSIN MICHIGAN POWER CO.

Notice of Filing

OCTOBER 23, 1978.

Take notice that Wisconsin Electric Power Co. on August 28, 1978, tendered for filing, in anticipation of a Commission order directing that refunds be made to the City of Kauhauma, the computation of refunds. The Company states that it anticipates such an order by the Commission in response to a remand from the District of Columbia Court of Appeals directing the Commission to "direct Wisconsin Michigan to refund promptly to the City all revenues attributable to the amount of the proposed increase collected prior to final approval."

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions should be filed on or before November 9, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary

[FR Doc. 78-30535 Filed 10-27-78; 8:45 am]

[3128-01-M]

Western Area Power Administration

MILES CITY-BAKER-HETTINGER-NEW UNDERWOOD 230 KV TRANSMISSION LINE, MONTANA-NORTH DAKOTA-SOUTH DAKOTA

Draft Environmental Impact Statement; Public Hearings

AGENCY: Department of Energy.

ACTION: Notice of public hearings on draft environmental impact statement on 230 kV transmission line.

SUMMARY: Notice is hereby given that the Western Area Power Administration, Department of Energy, has issued a draft environmental impact statement on a proposed 230 kV transmission line from Miles City-Baker, Mont., through Hettinger, N. Dak., to New Underwood, S. Dak. This EIS is issued pursuant to DOE's implementation of the National Environmental Policy Act of 1969.

Public comments will be received respectively on the draft environmental impact statement at public hearings to be held on the dates and at the locations specified in the text of this notice.

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of Energy has prepared a draft environmental statement for the Miles City-Baker-Hettinger-New Underwood 230 kV transmission line. This statement (DOE/EIS-0025-D) was transmitted to the Environmental Protection Agency on August 31, 1978, and was made available to the public on September 27, 1978.

The statement concerns construction of a 528-kilometer (328-mile) 230 kV transmission line from Miles City, Mont., east to Hettinger, N. Dak., and south to New Underwood, S. Dak. The line is needed to provide additional high-voltage transmission capacity in the area to improve power system stability, to improve reliability of service to existing loads, and to provide increased capability to serve future load growth in the area.

Public hearings will be held on the following dates at the locations indicated below.

HEARING DATE, TIME, AND LOCATION

November 14, 1978, 2 p.m., Room 106, Community College, Miles City, Mont.
November 15, 1978, 2 p.m., Hettinger Armory, Hettinger, N. Dak.
November 16, 1978, 10 a.m., Grand Electric Cooperative Building, Bison, S. Dak.

The hearings are to receive views and comments from interested organizations or individuals relating to the environmental impacts of this line. Oral statements at the hearing will be limited to a period of 10 minutes. Speakers will not trade their time to

obtain a longer oral presentation; however, the person authorized to conduct the hearing may allow any speaker to provide additional oral comment after all persons wishing to make comment have been heard. Speakers will be scheduled according to the time preference mentioned in their letter or telephone request, whenever possible, and any scheduled speaker not present when called will lose his or her privilege in the scheduled order and his or her name will be recalled at the end of the scheduled speakers. Request for scheduled presentation will be accepted up to 4:30 p.m., November 8, 1978, and any subsequent request will be handled on a first-come-first-serve basis following the scheduled presentation.

Copies of the draft environmental impact statement have previously been furnished to concerned State, Federal, and local agencies with environmental expertise, environmental organizations, and other interested members of the public.

Copies have been sent to the county commissioners in the following eight counties:

Custer County, Mont.
Fallon County, Mont.
Adams County, N. Dak.
Bowman County, N. Dak.
Slope County, N. Dak.
Meade County, S. Dak.
Pennington, S. Dak.
Perkins, S. Dak.

Copies are available for public inspection at public libraries in the following cities:

Mile City, Mont.
Baker, Mont.
Amidon, N. Dak.
Rapid City, S. Dak.
Bowman, N. Dak.
Hettinger, N. Dak.
Bison, S. Dak.
Sturgis, S. Dak.

Copies of the draft envrionmental impact statement are available at DOE public document rooms located at: Library, DOE, Room 1223, 20 Massachusetts Avenue NW., Washington, D.C.; DOE, Room GA 152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C.

A limited number of single copies are available for distribution by contacting the Billings Area Manager, Jim Davies, Western Area Power Administration, P.O. Box EGY, Billings, Mont. 59101.

Questions concerning the draft EIS may be addressed to Mr. Jim Davies, Billings Area Manager at Billings, Mont., post office box address above.

Organizations or individuals desiring to present their statements at the hearing should contact Jim Davies, Area Manager, Western Area Power Administration, Department of Energy, P.O. Box EGY, Billings, Mont. 59101, telephone 406-657-6533, and announce their intention to participate. Written comments from those unable to attend and from those willing to supplement their oral presentation at the hearing should be sent on or before November 22, 1978, so that they can be included in the hearing record.

FOR FURTHER INFORMATION CONTACT:

Mr. James Davies, Area Manager, Western Area Power Administration, Department of Energy, P.O. Box EGY, Billings, Mont. 59101, 406-657-6533 (FTS) 585-6533.

Issued in Washington, D.C., October 26, 1978.

WILLIAM P. DAVIS,
Deputy Director of Adminstration.

[FR Doc. 78-30791 Filed 10-27-78; 9:01 am]

[1505-01-M]

Federal Energy Regulatory Commission

PIPELINES

Tentative Valuations

Correction

In FR Doc. 78-28694 appearing at page 47000 in the issue Thursday, October 12, 1978, make the following changes:

(1) In the second column, the address of the Kenai Pipe Line Co. should read "* * * 575 Market St., San Francisco, Calif. 94105."

(2) The Valuation Docket No. PV for Mobil Pipe Line Co. now reading "131" should read "1311".

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 996-7; OPP-00079]

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT SCIENTIFIC ADVISORY PANEL

Open Meeting

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 2-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel from 9:30 a.m. to 4:30 p.m. daily on Wednesday and Thursday, November 15 and 16, 1978. The meeting will be held in Room 1112A, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va., and will be open to the public.

FOR FURTHER INFORMATION CONTACT:

Dr. H. Wade Fowler, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-766), Room 803, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va., telephone 703-557-7560.

SUPPLEMENTARY INFORMATION: In accordance with section 25(d) of the amended FIFRA, the Scientific Advisory Panel will comment on the impact on health and the environment of regulatory actions under section 6(b) and 25(a) prior to implementation. The purpose of this meeting is to discuss the following topics:

1. Completion of Panel review of FIFRA section 6(b) action on Amitraz (BAAM) products:

2. A briefing will be given to the Panel by EPA on decision options under consideration by the Agency to conclude RPAR (Rebuttable Presumption Against Registration) action on Pronamide products;

3. Completion of Panel review of topics continued from previous meeting; and

4. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Any member of the public wishing to attend or submit a paper should contact Dr. H. Wade Fowler, Jr., at the address or phone listed above to be sure that the meeting is still scheduled. Interested persons are permitted to file written statements before or after the meeting, and may upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. Written or oral statements will be taken into consideration by the panel in formulating comments or in deciding to waive comments. Persons desirous of making oral statements must notify the Executive Secretary and submit a summary no later than November 9, 1978.

Individuals who wish to file written statements are advised to submit statements to the Executive Secretary in a timely manner to ensure appropriate consideration by the Panel.

STATUTORY AUTHORITY: Section 25(d) of FIFRA, as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.) and Sec. 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770).

Dated: October 23, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-30487 Filed 10-27-78; 8:45 am]

[6560-01-M]

[FRL 997-2 OPP-180244]

IDAHO STATE DEPARTMENT OF AGRICULTURE

Issuance of Specific Exemption To Use Thiabendazole To Control Fungi in Stored Sugar Beets

The Environmental Protection Agency (EPA) has granted a specific exemption to the Idaho State Department of Agriculture (hereafter referred to as the "Applicant") for postharvest application of thiabendazole to control various fungi threatening 50,000 tons of sugar beets in storage areas in Idaho. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Room E-315, Washington, D.C. 20460.

According to the Applicant, about 50,000 tons of sugar beets could become infested with various fungi such as *Pencillium, Botrytis, Phoma,* and others. These fungi cause deterioration while the beets are in storage, resulting in a decline of the sugar content of the beets. These fungal diseases occur naturally in sugar beets; however, only those beets to be stored for more that 75 days could be seriously affected.

There are no registered alternative pesticides that can be applied as a post-harvest treatment to control fungal deterioration in sugar beets. The logistics and economics of the processing equipment made immediate processing of the beets infeasible.

The Applicant proposed to use Mertect 340-F, EPA Reg. No. 618-75; this product is already registered for preharvest field use on sugar beets to control *Cercospora* Leaf Spot. The rate of application is 42 ounce Mertect 340-F added to 100 gallons of water per 1 ton of sugar beets. The maximum amount of the product that could be used would be 165 gallons on 50,000 tons of sugar beets. Applications will be made by trained employees of the Utah and Idaho Sugar Co. The estimated economic loss without this treatment is $150,000.

Permanent pesticide tolerances of 0.25 ppm on sugar beets and 10 ppm on sugar beet tops have been established (40 CFR 180.242). Existing milk and meat tolerance should be adequate to cover the proposed use and no detectable residues are expected to occur in poultry tissues or eggs. The requested use will add only an insignificant amount of thiabendazole to the human diet. Based on an existing registered product of field application of thiabendazole to sugar beets, no serious adverse effects on the environment are expected.

After reviewing the application and other available information, EPA determined that (a) a pest outbreak of various fungi has occurred or is about to occur; (b) there is no pesticide presently registered and available for use to control the fungi on stored sugar beets in Idaho; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic losses may result if the various fungi are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until December 31, 1978, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The thiabendazole product Mertect 340-F, EPA Reg. No. 618-75, will be used;

2. The rate of application will not exceed 0.42 ounces of the product per 1 gallon of water per 1 ton of sugar beets;

3. A maximum of 165 gallons of the product may be applied;

4. A maximum of 50,000 tons of sugar beets may be treated;

5. All applications will be made in storage areas under the control of the Utah and Idaho Sugar Co.;

6. All applications will be made by trained personnel of the Utah and Idaho Sugar Co.;

7. The Applicant is responsible for insuring that all the provisions of this specific exemption are met, and must submit a report to EPA summarizing the results of this program by August 1979;

8. All applicable directions, restrictions, and precautions on the EPA-registered label must be followed;

9. The EPA shall be immediately informed of any adverse effects resulting from use of thiabendazole in connection with this exemption;

10. This exemption is not a modification of any NPDES permits issued to the Utah and Idaho Sugar Co. and does not constitute a waiver of State or Federal discharge limitations. The Utah and Idaho Sugar Co. is required to contact the Idaho State Department of Ecology for possible amendments to NPDES permits;

11. The State of Idaho and concerned growers must seek the establishment of permanent tolerances for sugar beets through regular channels if the fungal disease is likely to continue to be a pest of sugar beets in Idaho; and

12. A thiabendazole residue level not exceeding 6 ppm in or on sugar beets has been determined to be adequate to protect the public health. Permanent tolerances for residues of thiabendazole and its metabolite 5-hydroxy-thiabendazole in meat and milk will not be exceeded as a result of this use. Secondary residues in poultry and eggs are expected to be below detectable levels. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action.

STATUTORY AUTHORITY: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.)

Dated: OCTOBER 23, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-30489 Filed 10-27-78; 8:45 am]

[6560-01-M]

[FRL 997-1; OPP-180243]

MICHIGAN STATE DEPARTMENT OF AGRICULTURE

Issuance of Specific Exemption To Use Thiabendazole To Control Fungi in Stored Sugar Beets

The Environmental Protection Agency (EPA) has granted a specific exemption to the Michigan State Department of Agriculture (hereafter referred to as the "Applicant") for postharvest application of thiabendazole to control various fungi threatening 65,000 tons of sugar beets in storage areas in Michigan. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain informtion required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Room E-315, Washington, D.C. 20460.

According to the Applicant, about 65,000 tons of sugar beets could become infested with various fungi such as *Penicillium, Botrytis, Phoma,* and others. These fungi cause deterioration while the beets are in storage, resulting in a decline of the sugar content of the beets. These fungal diseases occur naturally in sugar beets; however, only those beets to be stored

for more than 75 days could be seriously affected. Fungal deterioration results in loss of processed sugar, loss of stored beets, and causes filter fouling which increases discharges of suspended solids and decreased sugar recovery. The Applicant anticipates that without a means of controlling the fungi, a monetary loss of up to $150,000 could result.

There are no registered alternative pesticides that can be applied as post-harvest treatment to control fungal deterioration in sugar beets. The logistics and economics of the processing equipment made immediate processing of the beets unfeasible.

The Applicant proposed to use Mertect 340-F, EPA Reg. No. 618-75; this product is already registered for pre-harvest field use on sugar beets to control *Cercospora* leaf spot. The rate of application is 42 ounces Mertect 340-F added to 100 gallons of water; one gallon of this suspension will be applied to one ton of sugar beets. The maximum amount of the product that could be used would be 205 gallons on 65,000 tons of sugar beets. Applications will be made by a State-certified commercial applicator.

Permanent pesticide tolerances of 0.25 p.p.m. on sugar beets and 10.0 p.p.m. on sugar beet tops have been established (40 CFR 180.242). Existing milk and meat tolerances should be adequate to cover this use. The requested use will add only an insignificant amount of thiabendazole to the human diet. Based on an existing registered product for field application of thiabendazole to sugar beets, no serious adverse effects on the environment are expected.

After reviewing the application and other available information, EPA determined that (a) a pest outbreak of various fungi has occurred or is about to occur; (b) there is no pesticide presently registered and available for use to control the fungi on stored sugar beets in Michigan; (c) there are no alterntive means of control, taking into account the efficacy and hazard; (d) significant economic losses may result if the various fungi are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until December 31, 1978, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The thiabendazole product Mertect 340-F, EPA Reg. No. 618-75, will be used;

2. The rate of application will not exceed 0.42 ounces per one gallon of water per one ton of sugar beets;

3. A maximum of 250 gallons of the product may be applied;

4. A maximum of 65,000 tons of sugar beets may be treated;

5. All applications will be made in storage areas under the control of the Monitor Sugar Co.;

6. Application will be made by a State-certified commercial applicator;

7. The Applicant is responsible for insuring that all the provisions of this specific exemption are met, and must submit a report to EPA summarizing the results of this program by August 1979;

8. All applicable directions, restrictions, and precautions on the EPA-registered label must be followed;

9. The EPA shall be immediately informed of any adverse effects resulting from use of tiabendazole in connection with this exemption;

10. This exemption is not a modification of any NPDES permits issued to Monitor Sugar Co. and does not constitute a waiver of State or Federal discharge limitations. Monitor Sugar Co. is required to contact the Michigan Department of Natural Resources for possible amendments to NPDES permits;

11. Michigan and concerned growers must pursue the establishment of a permanent tolerance on sugar beets through normal channels, if the fungal disease is likely to continue to be a pest.

12. Effluent from the processing plant will be monitored for residues of thiabendazole. Data from these tests will be submitted to EPA by October 1979; and

13. A thiabendazole residue level not exceeding six p.p.m. in or on sugar beets, has been determined to be adequate to protect the public health. Permanent tolerances for residues of thiabendazole and its metabolite 5-hydroxy-thiabendazole in meat and milk will not be exceeded by this use. Secondary residue in poultry and eggs are expected to be below detectable levels. The Food and Drug Administration of the U.S. Department of Health, Education, and Welfare has been advised of this action.

STATUTORY AUTHORITY: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).

Dated: October 23, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-30490 Filed 10-27-78; 8:45 am]

[6560-01-M]

[FRL 996-5]

STATUS OF TOXIC SUBSTANCES CONTROL ACT'S SECTION 8(e), SUBSTANTIAL RISK REPORTING

Public Participation Meeting; Request for Meeting Discussion Issues To Be Submitted In Advance

AGENCY: Environmental Protection Agency.

ACTION: Notice of public participation meeting; request for discussion issues to be submitted by the public in advance of the meeting.

PURPOSE: In the March 16, 1978 FEDERAL REGISTER (43 FR 11110), EPA published their "Statement of Interpretation and Enforcement Policy" concerning "Substantial Risk Notification under section 8(e) of the Toxic Substances Control Act." Since the publication of the policy statement, approximately 150 notices have been received. The Agency believes an open meeting to discuss section 8(e)'s implementation status would be beneficial to all interested parties.

DATE/LOCATION/TIME: The meeting will be held from 10 a.m. until 4 p.m. on December 7, 1978, at the Skyline Inn, Hall of States Room, 10 I Street SW., Washington, D.C.

MEETING FORMAT: A panel of EPA members will present a status report on section 8(e)'s implementation. The panel members will then conduct a discussion centered around the issues and questions submitted in advance by the public, concerning substantial risk notices. The meeting format will be informal, in order to generate a constructive discussion of section 8(e).

DISCUSSION ISSUES FOR THE MEETING SUBMITTED IN ADVANCE: Persons interested in submitting discussion issues and questions concerning TSCA substantial risk reporting should do so no later than November 22, 1978. EPA will respond at the meeting to all questions that it judges to be of interest to industry and public participants concerned with section 8(e) implementation. The questions, themselves, should preferably refer to specific problems or issues that persons have encountered in interpreting the meaning of the policy statement. Where possible, a hypothetical situation or reference to an existing section 8(e) notice should be submitted to illustrate the question.

ALL QUESTION SUBMISSIONS SHOULD BE SENT TO: Charles M. Auer, Assessment Division (TS-792), Office of Toxic Substances, U.S. EPA, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION:

Call the Industry Assistance Office: Toll-free number 800-424-9065; persons in Washington, D.C., area are to call 554-1404.

Dated: October 23, 1978.

STEVEN D. JELLINEK,
Assistant Administrator for Toxic Substances.

[FR Doc. 78-30488 Filed 10-27-78; 8:45 am]

[6560-01-M]

[FRL 996-8; OPP-180242]

UTAH AND WASHINGTON DEPARTMENTS OF AGRICULTURE

Issuance of Specific Exemptions To Use Thiabendazole To Control Fungi in Stored Sugar Beets

The Environmental Protection Agency (EPA) has granted specific exemptions to the Utah and Washington Departments of Agriculture (hereafter referred to as the "Applicants") for post-harvest application of thiabendazole to control various fungi threatening 50,000 tons of sugar beets in Utah and 500,000 tons of sugar beets in storage areas in Washington. These exemptions were granted in accordance with, and are subject to, the provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the applications on file with the Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Room E-315, Washington, D.C. 20460.

According to the Applicants, sugar beets awaiting processing could become infested with various fungi, such as *Penicillium*, *Botrytis*, *Fusarium*, *Phoma*, and others, which cause deterioration while the beets are in storage, resulting in a decline of the sugar content of the beets. These fungal diseases occur naturally in sugar beets; however, only those beets to be stored for more than 75 days could be seriously affected. Fungal deterioration results in loss of processed sugar, loss of stored beets, and causes filter fouling which increases discharges of suspended solids and decreases sugar recovery. The Applicants anticipate that without this treatment, losses could run as high as $150,000 in Utah and $1,500,000 in Washington.

There are no registered alternative pesticides that can be applied as a post-harvest treatment to control fungal deterioration in sugar beets. The logistics and economics of the processing equipment made immediate processing of the beets infeasible.

The Applicants proposed to use Mertect 340-F, EPA Reg. No. 618-75; this product is already registered for preharvest field use on sugar beets to control *Cercospora* leaf spot. The rate of application is 0.42 ounces Mertect 340-F added to sufficient water to treat one ton of sugar beets. The maximum amount of the product that would be used would be 175 gallons in Utah and an estimated 1,667 gallons in Washington. Applications will be made by employees of the Utah and Idaho Sugar Co. who have been trained to use the specialized equipment on the beet dump piling machinery.

Permanent pesticide tolerances of 0.25 p.p.m. on sugar beets, and 10.0 p.p.m. on sugar beet tops from preharvest use have been established. Existing milk and meat tolerances should be adequate to cover this use. The requested use will add only an insignificant amount of thiabendazole to the human diet. Based on an existing registered product for field application of thiabendazole to sugar beets, no serious adverse effects on the environment are expected.

After reviewing the applications and other available information EPA determined that: (a) Pest outbreaks of various fungi have occurred or are about to occur; (b) there is no pesticide presently registered and available for use to control the fungi on stored sugar beets in Utah and Washington State; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic losses may result if the various fungi are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicants have been granted specific exemptions to use the pesticide noted above until December 31, 1978, to the extent and in the manner set forth in the applications. The specific exemptions are also subject to the following conditions:

1. The thiabendazole product Mertect 340-F, EPA Reg. No. 618-75 will be used;

2. The rate of application will not exceed 42 ounces of the product in 100 gallons of water per 100 tons of sugar beets;

3. A maximum of 175 gallons of the product in Utah and 1,667 gallons in Washington may be applied;

4. A maximum of 50,000 tons of sugar beets in Utah and 500,000 tons in Washington may be treated;

5. All applications will be made in storage areas under the control of the Utah and Idaho Sugar Co. in the sugar beet growing areas in Utah and in central Washington. The Applicants will maintain a record of all application sites in their respective States;

6. All applications will be made by employees of the Utah and Idaho Sugar Co., who have been trained to the specialized equipment on the beet dump piling machinery, and under the direct supervision of a State-certified applicator;

7. The Applicants are responsible for insuring that all the provisions of these specific exemptions are met in their respective States and each must submit a report to EPA summarizing the results of these programs by August 1979;

8. All applicable directions, restrictions, and precautions on the EPA-registered label must be followed;

9. The EPA shall be immediately informed of any adverse effects resulting from use of thiabendazole in connection with these exemptions;

10. These exemptions are not modifications of any NPDES permits issued to the Utah and Idaho Sugar Co. and do not constitute a waiver of State or Federal discharge limitations. The Utah and Idaho Sugar Co. is required to contact the Utah State Department of Agriculture in that State and the Washington State Department of Ecology in Washington, for possible amendments to NPDES permits;

11. Effluent from the processing plant will be monitored for residues of thiabendazole. Data from these tests will be submitted to EPA by August 1979;

12. Thiabendazole residue levels not exceeding 6 p.p.m. in or on sugar beets, 50 p.p.m. for sugar beet pulp, and 40 p.p.m. for sugar beet molasses have been determined to be adequate to protect the public health. A residue level of 40 p.p.m. for sugar beet molasses will not result in significant residues in poultry or eggs. The Food and Drug Administration of the U.S. Department of Health, Education, and Welfare has been advised of this action; and

13. Washington State and concerned growers are urged to pursue the establishment of a permanent tolerance for this use of thiabendazole through regular channels, if the fungal disease is likely to continue to be a pest of sugar beets.

STATUTORY AUTHORITY: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).

Dated: October 23, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-30491 Filed 10-27-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

BROADCAST SERVICE WORKING GROUP 1979 WORLD ADMINISTRATIVE RADIO CONFERENCE

Schedule of Meeting

OCTOBER 19, 1978.

Pursuant to Pub. L. 92-463, notice is hereby given of the following meeting for November 1978.

WARC-79 INTERNATIONAL BROADCASTING SERVICE GROUP

Tuesday, November 28, 1978, 2:30 p.m.-4:30 p.m., Room A110, (FCC Annex) 1229 20th Street NW., Washington, D.C., Chairman: Stanley Leinwoll, FCC Liaison: Darrell E. Bauguess.

The Agenda will be as follows:

1. Call to order and announcements by the Chairman.
2. Approval of Minutes of previous meeting.
3. Discussion of results of SPM.
4. Report and discussion of meeting with International Broadcasters in Geneva, Switzerland.
5. Reports from Task Groups.
6. Further discussion.
7. Next meeting date and adjournment.

The above meeting is open to broadcast industry representatives and interested members of the general public.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-30607 Filed 10-27-78; 8:45 am]

[6712-01-M]

FEE REFUND PROGRAM

Commission Staff To Hold Public Meeting

OCTOBER 19, 1978.

The FCC has announced that members of the Commission's staff who are responsible for implementing its Over-$20 Fee Refund Program will hold a public meeting on November 1, 1978 beginning at 1:30 p.m. in the General Services Administration auditorium at 18th and F Streets NW., Washington, D.C.

The purpose of the meeting is to discuss, generally, the Over-$20 Fee Refund Program which the Commission outlined in its Notice of Inquiry in General Docket No. 78-316 (FCC 78-695, released October 6, 1978), to discuss the design of the refund system, to answer questions, and to entertain recommendations for changes in the refund program. There will be no discussion regarding a future Commission fee schedule or refund of fees of $20 and less.

Written comments regarding the Over-$20 Fee Refund Program, proposed in General Docket No. 78-316 are due by November 8, 1978. In addition to the general areas in which comments were sought by the October 6 Notice of Inquiry, individuals and businesses who may be entitled to refunds under this program are specifically requested to provide the Commission, in their written comments, with information as to the nature and extent of the recordkeeping and reporting burdens that will be created by the proposed Fee Refund Claim Form. (The proposed Fee Refund Claim Form was shown as Attachment B to the October 6 Notice of Inquiry, which is printed at 43 FR 46658-46692 (October 10, 1978).)

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-30606 Filed 10-27-78; 8:45 am]

[6712-01]

RADIO TECHNICAL COMMISSION FOR MARINE SERVICES

Meetings

In accordance with Public Law 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

SPECIAL COMMITTEE NO. 73, "MINIMUM PERFORMANCE STANDARDS (MPS), MARINE OMEGA RECEIVING EQUIPMENT"

Notice of 4th Meeting. Tuesday, November 14, 1978, 9:30 a.m. Conference Room, Maritime Institute of Technology & Graduate Studies (MITAGS), 5700 Hammonds Ferry Road, Linthicum Heights, Md. 21090.

AGENDA

1. Call to Order; Chairman's Report.
2. Administrative Matters.
3. Reports of Working Groups.
4. Discussion of Response of Manufacturers and Users to request for comments on Regulations and Requirements Affecting MPS.
5. Discussion on User Surveys.

M. H. Carpenter, Co-Chairman, CDR T. P. Nolan, Co-Chairman, Maritime Institute of Technology & Graduate Studies, Linthicum Heights, Md. 21090, Phone: 301-636-5700.

EXECUTIVE COMMITTEE MEETING

The next Executive Committee Meeting will be on Thursday, November 16, at 9:30 a.m. in Conference Room 7200, Nassif Building, 400 Seventh Street SW. (at D Street), Washington, D.C.

AGENDA

1. Call to Order.
2. Administrative Matters.
3. Discussion on Petition to Amend By Laws, Article IV, Section 1.
4. Discussion on Resolution to Amend Constitution, Article VI, Section 8.
5. Acceptance of FY-78 Audit Report.
6. New business.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: 202-632-6490).

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-30608 Filed 10-27-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

AGREEMENTS FILED

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, La.; San Francisco, Calif.; Chicago, Ill.; and San Juan, P.R. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before November 15, 1978 in which this notice appears. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the act.

A copy of any comments should also be forwarded to the party filing the

agreements and the statement should indicate that this has been done.

Agreement No.: T-3734.

Filing Party: Mr. Neal M. Mayer, Coles and Goertner, 1000 Connecticut Avenue NW., Washington, D.C. 20036.

Summary: Agreement No. T-3734, between North Carolina State Ports Authority (Port) and Seatrain Transportation, Inc. (Seatrain), provides for Seatrain's use of 6.325 acres of land, together with a building at Wilmington Port Terminal, and preferential use of: (1) Berths 7 and 8 on two consecutive preferential days; (2) a gantry crane of at least 40-ton capacity; and (3) a truck scale. As compensation, Seatrain will pay Port $55,120 per annum land rental and $4,190.70 per annum building rental. In addition, Seatrain will pay Port Wharfage, subject to a guaranteed minimum of 100,000 tons per contract year, and dockage at rates as set forth in the agreement. Seatrain will pay Port $200 a month for the preferential use of the truck scale. This agreement supersedes FMC Agreement No. T-3384, between the Port and Seatrain Lines, Inc., approved by the Commission January 25, 1977.

Agreement No.: T-3736.

Filing Party: Maxim M. Cohen, General Manager, Chicago Regional Port District, Butler Drive-Lake Calumet Harbor, Chicago, Ill. 60633.

Summary: Agreement No. T-3736, between Chicago Regional Port District (Port) and Ceres Terminals, Inc. (Ceres), provides for the 5-year lease of certain premises including Transit Shed No. 3 at lake Calumet, Chicago, Ill., to be used for the purpose of operating ship, barge, railroad and truck terminal, warehouse, and for the handling of goods and merchandise as well as commercial or industrial activities. As compensation, Ceres will pay Port $68,460 per annum, fifty percent of the net storage revenues derived from the usage of the open space, not to exceed $5,000 per annum, plus regular posted Harbor dockage and wharfage charges.

Agreement No. 8660-9.

Filing Party: Eliot J. Halperin, Esquire, Graham & James, 1050 17th Street NW., Washington, D.C. 20036.

Summary: Agreement No. 8660-9 modifies the basic agreement of the Latin America/Pacific Coast Conference to provide for the appointment of an independent policing authority as enforcement authority for self-policing.

Agreement No. 10160-1.

Filing Party: Jerzy Rozanski, Vice-President Traffic and Container Operations, Gdynia America Line, Inc., General Agents, One World Trade Center Suite 3557, New York, N.Y. 10048.

Summary: Agreement No. 10160-1 would extend the duration of the Polarctic Joint Service Agreement for 3 years, to and including December 15, 1981. Agreement No. 10160 is presently set to expire with December 15, 1978.

Agreement No. 10355.

Filing Party: Elmer C. Maddy, Esq., Kirlin, Campbell & Keating, One Twenty Broadway, New York, N.Y. 10005.

Summary: Agreement No. 10355, between The Bank & Savill Line Ltd. (B & S) and The Shipping Corp. of New Zealand Ltd. (SCNZ) or New Zealand Line Ltd., provides for the operation of a cargo service in the trade between Australasia, The Pacific Islands, The Caribbean, Central and South America and Mexico and Atlantic and Gulf ports of the United States, pursuant to the terms and conditions thereof. Significantly, the Agreement would provide: (1) that the parties may include in their future service as many as three container vessels and four breakbulb vessels; (2) for the scheduling of containership sailings at regular intervals as warranted, supplemented by conventional sailings as necessary; (3) that B & S shall be appointed managing agents of the service, general agents of the service in the United States, and established agencies of B & S, including SCNZ in New Zealand, are to be used; (4) for the apportionment of net revenues or deficiencies among the parties; (5) that the parties shall, from time to time, agree upon sailing programmes for their vessels; (6) for the acquisition of any additional vessels deemed necessary by charter or purchase; (7) for the submission to the Commission of an annual revenue tonnage report; and (8) for an initial period of effectiveness of 5 years.

Agreement No. 10356.

Filing Party: Frank J. Fagan, Vice President, Dart Containerline, Container Services Division, Five World Trade Center, New York, N.Y. 10048.

Summary: Agreement No. 10356, a cooperative working agreement filed on behalf of Orient Overseas Container Line Ltd. and Dart Containerline Co. Ltd., entitled *Equipment Interchange and Lease Basic Agreement* would permit the parties to lease cargo containers and/or related equipment between them in accordance with the terms and conditions set forth in the agreement.

By Order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-30610 Filed 10-27-78; 8:45 am]

[4110-89-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Assistant Secretary for Education

COMMENTS ON COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

Pursuant to section 406(g)(2)(B), General Education Provisions Act, notice is hereby given as follows:

The Institute of Museum Services and the U.S. Office of Education have proposed collections of information and data acquisition activities which will request information from educational agencies or institutions.

The purpose of publishing this notice in the FEDERAL REGISTER is to comply with paragraph (g)(2)(B) of the "Control of Paperwork" amendment which provides that each educational agency or institution subject to a request under the collection of information and data acquisition activity and their representative organizations shall have an opportunity, during a 30-day period before the transmittal of the request to the Director of the Office of Management and Budget, to comment to the Administrator of the National Center for Education Statistics on the collection of information and data acquisition activity.

These data acquisition activities are subject to review by the HEW Education Data Acquisition Council and the Office of Management and Budget.

Descriptions of the proposed collections of information and data acquisition activities follow below.

Written comments on the proposed activities are invited. Comments should refer to the specific sponsoring agency and form number and must be received on or before November 29, 1978, and should be addressed to Administrator, National Center for Education Statistics, attention: Manager, Information Acquisition, Planning, and Utilization, Room 3001, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Further information may be obtained from Elizabeth M. Proctor of the National Center for Education Statistics, 202-245-1022.

Dated: October 25, 1978.

MARIE D. ELDRIDGE,
Administrator, National Center for Education Statistics.

Description of a Proposed Collection of Information and Data Acquisition Activity

1. Title of Proposed Activity: Guarantee Agency Loan Information For Preparing Guaranteed Student Loan Program Budget.

2. Agency/Bureau/Office: Office of Education, Bureau of Student Financial Aid, Guaranteed Student Loan Program.

3. Agency Form Number: OE-671.

4. Legislative Authority for This Activity: Sec. 428 (A)(b)(3).

Each supplemental Guaranty agreement entered into under subsection (a) . . . "shall provide for making such reports, in such form and containing such information, as the Commissioner may reasonably require to carry out his functions under this subsection, and for keeping such records and for affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports; . . ." (P.L. 89-329 as amended by P.L. 94-482-20 U.S.C. 1078—1)

5. Voluntary/Obligatory Nature of Response: Obligatory.

6. How Information To Be Collected Will Be Used: The budget data obtained directly from each Guaranteed Agency will be used by the Guaranteed Student Loan Program in preparing accurate and timely projected budget estimates. New loan volume in the Guarantee Agency Program increased 14 percent from fiscal years 1975-1977, and is expected to increase approximately 60 percent from 1977 to

1979. Encouraged by the Education Amendments of 1976, 10 States established insurance programs during fiscal year 1977-1978, and an additional eight State agencies are anticipated to be created during 1979.

7. Data Acquisition Plan: a. Method of collection, Mail (There may also be telephonic inquiries for vertification purposes). b. Time of Collection, January or February. c. Frequency, Annually.

8. Respondent: a. Type, State Institutions (Guarantee Agencies). b. Number, 36 (current). c. Estimated average man-hours per respondent: 1.2 hours.

9. Information To Be Collected: For the current and next four (4) Federal Fiscal years, a. The number and dollar amount of guaranteed student loans committed and disbursed. b. Number of defaults claims. c. Amounts recovered. d. Request for loan advances and administrative cost allowance.

[FR Doc. 78-30520 Filed 10-27-78; 8:45 am]

Description of a Proposed Collection of Information and Data Acquisition Activity

1. Title of Proposed Activity: Proposal Application Form.

2. Agency/Bureau/Office: Department of Health, Education and Welfare/Office of the Assistant Secretary for Education/Institute of Museum Services.

3. Agency Form Number: IMS-102/IMS-103.

4. Legislative Authority for This Activity: Museum Services Act—Title II of the Arts, Humanities and Cultural Affairs Act of 1976. P.L. 94-462. Section 206. (a) The Director . . . is authorized to make grants to museums to increase and improve museum services . . . (20 U.S.C. 965).

5. Voluntary/Obligatory Nature of Response: Required to obtain or maintain benefits.

6 How Information Collected Will Be Used: Through the Institute of Museum Services, discretionary grant program funds are provided to museums for general operating support and special project support. The proposed application forms for the March 9, 1979 deadline requesting general and budgetary information have been developed to simplify the application process for the museum applicant and to expedite the Institute's review process.

Because of the unique nature of the Institute's grant program—one of the few programs that provide general dollars for operating expenses—the financial information needed for an effective grant review must contain data on the total operating budget of the museum, in addition to reflecting its long-range fiscal and program plans.

The information collected from the Institute's proposed application form will be used to evaluate the museums eligible for support during the March deadline. The museum applicants will be reviewed in relation to the Institute's published guidelines for its 1979 grants program determined by the National Museum Services Board, the Policy-making arm of the Institute.

Each question contained in the application form corresponds directly with the IMS published criteria for evaluation and is essential for a thorough review of each museum's operation. In addition, the Institute is requiring its grantees to notify us of any grants pending before other Federal agencies in an attempt to avoid duplication of funding efforts.

7. Data Acquisition Plan: a. Method of collection, Mail. b. Time of collection, March, 1979. c. Frequency, Annually.

8. Respondents: a. Type, Public or private non-profit museums. b. Number, 3,000. c. Estimated average man-hours per respondent, 3 hours.

9. Information To Be Collected: 1. A summary of the museums history and purpose. 2. A summary of the organizational structure and staff size of museum. 3. A summary of the size, type and quality of a museum's collection. 4. A summary of the curatorial and educational activities of the museum. 5. A summary of community outreach programs of the museum. 6. A copy of the museum's long-range financial and program development. 7. A complete detailed budget of the museum applicant.

Description of Proposed Collection of Information and Data Acquisition Activity

1. Title of Proposed Activity: Adult Education Clearinghouse.

2. Agency/Bureau/Office: U.S. Office of Education, Bureau of Occupational and Adult Education, Division of Adult Education.

3. Agency Form Number: OE 560.

4. Legislative Authority for This Activity: "Sec. 309A. The Commissioner shall establish and operate a clearinghouse on adult education, which shall collect and disseminate to the public information pertaining to the education of adults and adult education programs, together with ways of coordinating adult education programs with manpower and other education programs. The Commissioner is authorized to enter into contracts with public agencies or private organizations to operate the clearinghouse established or designated under this section." (20 U.S.C. 1208-1; P.L. 93-380).

5. Voluntary/Obligation Nature of Response: Voluntary.

6. How Information Collected Will Be Used: Data collected through the survey will be edited and reformated for inclusion in a catalog of adult education projects. The catalog, then, as an information product, represents a subset of a continuously growing adult education data base. The catalog and survey will provide the mechanism for the production of a data base that can be used for measuring program progress from a Federal viewpoint. Additionally, the information can be used by the Adult Education State Directors as a basis for reducing 306/309 project duplication, identifying areas of over or underemphasis, and measuring progress toward fulfilling the needs of priority target groups of adult education and manpower programs. Utilization of the results of the special demonstration and training projects, and the information exchange among practitioners in the field will ultimately lead to improved practices, products, and programs. This process will create a feedback loop which allows for interstate information exchange and the development of a data base.

7. Data Acquisition Plan: a. Method of collection, Mail. b. Time of collection, Fall, 1979-1985. c. Frequency, Annually.

8. Respondents: a. Type: Individuals (Directors of Adult Education Section 306(a)(4) and 309 projects operated in colleges and universities, local educational agencies, nonprofit organizations, and by individuals.) b. Number: 400. c. Estimated average man-hours per respondent: .5.

9. Information To Be Collected: Each respondent will provide a summary of their project which includes title, contact, objectives, description, evaluation, target audience, and products.

[4110-08-M]

National Institutes of Health

ETHICS ADVISORY BOARD

Meeting and Public Hearing

Notice is hereby given that the Ethics Advisory Board will hold a series of public hearings on the subject of human in vitro fertilization. These hearings will provide an opportunity for interested members of the public to express their opinions to the Board regarding the legal, ethical, scientific, and social issues surrounding DHEW support of research and therapeutic applications of in vitro fertilization in humans. The hearings will be open to the public subject to the limitations of available space. They will be held at the following times and locations:

ATLANTA, GA.

December 1, 1978; 12 noon to 9 p.m., Federal Office Building, 275 Peachtree Street, NE., Room 556, Atlanta, Ga. *Submission date:* November 24, 1978.

DALLAS, TEX.

December 11, 1978; 12 noon to 4 p.m.; 6 p.m. to 9 p.m., 1 Main Place, Community Room, B-1 Level, Dallas, Tex. *Submission date:* December 4, 1978.

DENVER, COLO.

December 8, 1978; 12 noon to 4 p.m.; 6 p.m. to 9 p.m., 1961 Stout Street, Room 1083, Denver, Colo. *Submission date:* December 1, 1978.

DETROIT, MICH.

December 5, 1978; 1 p.m. to 9 p.m., Cobo Hall, Room 3186, 1 Washington Boulevard, Detroit, Mich. *Submission date: November 28, 1978.*

KANSAS CITY, MO.

December 4, 1978; 1 p.m. to 9 p.m., 601 East 12th Street, Room 140, Kansas City, Mo. *Submission date:* November 27, 1978.

NEW YORK CITY, N.Y.

December 15, 1978; 1 p.m. to 8 p.m., Federal Building, Room 305, 26 Federal Plaza, New York City, N.Y. *Submission date:* December 8, 1978.

PHILADELPHIA, PA.

December 6, 1978; 1 p.m. to 9 p.m., Holiday Inn, 36th and Chestnut Street, Philadelphia, Pa. *Submission date:* November 29, 1978.

SAN FRANCISCO, CALIF.

November 14, 1978; 12 Noon to 4 p.m., 6 p.m. to 9 p.m., Larkin Hall, San Francisco Civic Center, 99 Grove Street, San Francisco, Calif. *Submission date:* November 7, 1978.

SEATTLE, WASH.

November 9, 1978; 4:30 p.m. to 9 p.m., Federal Building, Rooms 370-380, 915 2d Avenue, Seattle, Wash. *Submission date:* November 1, 1978

Any one wishing to speak at one of the hearings must receive prior approval from the Board and submit one written copy of testimony at the hearing. In order to be considered for approval, requests to speak at a particular hearing must be received no later than the submission date listed for that hearing, and should include the following information: Name of person wishing to testify, professional affiliation (if any), the hearing at which testimony will be given, a brief summary of the testimony (which should be limited to 5 minutes), and an address and telephone number at which the requestor may be reached during business hours. Requests should be submitted to the Ethics Advisory Board, Westwood Building, Room 125, 5333 Westbard Avenue, Bethesda, Md. 20016. Written materials of any length may be submitted for the record at any time and will be distributed to all members of the Board.

On November 10 and 11, 1978 the Ethics Advisory Board will hold a regularly scheduled meeting in rooms 370-380, Federal Building, 915 2d Avenue, Seattle, Wash. The meeting will begin at 9 a.m. on both days and be open to the public subject to limitations of available space. The agenda for the meeting will include discussion of the legal, ethical, scientific and social issues surrounding DHEW support of human in vitro fertilization and review of an application for departmental support of research involving fetoscopy.

Requests to testify or for information should be directed to Dr. Charles R. McCarthy, Westwood Building, Room 125, 5333 Westbard Avenue, Bethesda, Md. 20016, telephone, 301-496-7776.

Dated: October 25, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-30646 Filed 10-27-78; 8:45 am]

[4110-12-M]

Office of the Secretary

OFFICE OF THE INSPECTOR GENERAL

Statement of Organization, Functions, Delegations of Authority

Part AF of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health, Education, and Welfare is amended to clarify the responsibilities of the Office of the Assistant Inspector General for Investigations.

SECTION 1. Section AF.20D.2.a.(ii) of part AF is amended to read as follows:

(ii) Implements guidelines and policies for the detection and investigation of actual or suspected criminal activity *or wrongdoing* by departmental grantees or contractors or by departmental employees in the performance of their official duties; (underscored language is new, modifying language published in 42 FR 17532; April 1, 1977).

SEC. 2. Section AF.20D.2. of part AF is amended by adding at the end thereof the following new paragraph:

(e) The Division of Special Assignments (AFEC):

(i) Is responsible for conducting criminal investigations of unusual complexity or which have multiregion or national implications and highly sensitive noncriminal investigations involving Department personnel, contractors, and grantees; for pursuing the civil and administrative aspects of criminal cases after resolution of the criminal charges; and for developing strategies, priorities and tactics for the investigation of criminal cases that cross regional lines or are national in scope;

(ii) Develops methods and techniques for the investigation and identification of the more sophisticated and complex fraud cases in the white collar crime area;

(iii) Assists the Assistant Inspector General for Investigations and the Special Agents-in-Charge in establishing and maintaining effective liaison and coordination of investigative and prosecutive efforts with all Federal prosecutive and investigative offices in connection with law enforcement planning in the areas of program fraud and other forms of white collar crime and which have national or multiregion implications;

(iv) Advises the Assistant Inspector General for Investigations in the identification of and formulation of proposed solutions of management problems identified during multiregion or national investigations;

(v) Participates in the investigation of allegations involving the more complex conflict of interest and employee misconduct cases;

(vi) Assists in the design and implementation of programs to train personnel of AFE and other offices in the Department that have investigative responsibilities (these programs will relate principally to the criminal law and procedures relative to investigations); and

(vii) Provides legal advice and assistance relating to criminal law to the Assistant Inspector General for Investigations in connection with the investigations which are assigned to the Division.

SEC. 3. Prior Statement of Organization, Functions, and Delegations of Authority. To the extent inconsistent with this statement, all previous statements of organization, functions, and delegations of authority, as well as currently applicable chapters of the Department's Organizational Manual are hereby suspended by this statement, except that all delegations in effect immediately prior to the effective date of this statement shall continue in effect until new delegations are made.

SEC. 4. Effective Date. This Statement shall be effective on October 20, 1978.

Dated: October 20, 1978.

WILFORD J. FORBUSH,
Acting Assistant Secretary for
Management and Budget.

[FR Doc. 78-30612 Filed 10-27-78; 8:45 am]

[4110-12-M]

OFFICE OF PROGRAM INTEGRITY

Statement of Organization, Functions, and Delegations of Authority

This notice amends the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare, Office of the Secretary, by revising Chapter AMM, Office of Management Analysis and Systems (OMAS), (42 FR 36312-13, July 14, 1977 and 43 FR 43389, Sept. 25, 1978) to establish an Office of Program Integrity. This office will report directly to the Deputy Assistant Secretary for Management Analysis and Systems. It will assist in setting up and operating a management system to measure the results of the Department's initiatives to improve the integrity of HEW programs by eliminating fraud, abuse, and errors.

To provide for the Office of Program Integrity, the functional statement for the immediate office of the Office of Management Analysis and Systems, as stated in AMM.20A, henceforth will contain the following additional functional assignment:

(3) Through the Office of Program Integrity: (a) Provides the Secretary, the Assistant Secretary for Management and Budget and other key officials with advice and assistance in the planning, implementation, and operation of a management system for achieving and measuring results from the Department's initiatives to improve the integrity of HEW programs by eliminating fraud, abuse, and errors; (b) administers HEW's program integrity reporting and tracking system and provides the Secretary with periodic assessments of agency integrity objectives, progress against those objectives, results of these efforts, and other program integrity activities; (c) furnishes advice and assistance to the principal operating components in designing and establishing quality control systems for improving the integrity of program activities; and (d) provides assistance and guidance to principal operating components to insure followup by them of the Inspector General findings through the medium of program integrity and quality control activities and systems.

Dated: October 18, 1978.

WILFORD J. FORBUSH,
Acting Assistant Secretary for Management and Budget.

[FR Doc 78-30611 Filed 10-27-78; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[Docket No. NFD-648; FDAA-566-DR]

CALIFORNIA

Major Disaster and Related Determinations

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FDAA-566-DR), dated October 9, 1978, and related determinations.

DATED: October 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Judy Barrows, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410, 202-634-7825.

NOTICE: Pursuant to the authority vested in the Secretary of Housing and Urban development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development, Delegation of Authority, docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that on October 9, 1978, the President declared a major disaster as follows:

I have determined that the damage in the city of Laguna Beach, Orange County, in the State of California resulting from landslides beginning about October 2, 1978, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of California.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Robert C. Stevens, FDAA Region IX, to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following area to have been adversely affected by this declared major disaster.

The City of Laguna Beach (Orange County).

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance)

WILLIAM H. WILCOX,
Federal Disaster Assistance Administration.

[FR Doc. 78-30518 Filed 10-27-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES 18923]

FLORIDA

Filing of Plat of Survey

OCTOBER 27, 1978.

1. The supplemental plat of survey of lands described below, accepted on January 3, 1978, will be officially filed in this office effective at 10 a.m. on November 30, 1978.

TALLAHASSEE MERIDIAN

T. 3 S., R. 11 E.,
Lot 8, Section 31, containing 3.00 acres.

2. This supplemental plat was prepared to return as surveyed and provide an acreage and designation for a small parcel of land shown east of the Suwannee River on the plat of section 31, T. 3 S., R. 11 E., Tallahassee Meridian, approved in February 1826.

3. Lot 8 is over 50 percent upland in character within the interpretation of the Swampland Act of September 28, 1850.

4. Except for valid existing rights, this land will not be subject to application, petition, location, selection or any other type of appropriation under any public law, including the mining and mineral leasing laws, until a further order is issued.

5. All inquiries relating to these lands should be addressed to the Director, Eastern States Office, Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Md. 20910.

LANE J. BOWMAN,
Acting Director, Eastern States.

[FR Doc. 78-30555 Filed 10-27-78; 8:45 am]

[4310-31-M]

Geological Survey

ADVISORY COMMITTEE ON WATER DATA FOR PUBLIC USE

Meeting

Pursuant to Pub. L. 92-463, effective January 5, 1973, notice is hereby given that an open meeting of the Advisory Committee on Water Data for Public Use will be held November 14-16, 1978, at the Hotel Utah in Salt Lake City,

Utah. The Committee is made up of representatives of water-resources oriented groups, including national, State, and regional organizations, professional and technical societies, and the academic community. Its principal responsibility is to represent the interests of the non-Federal community on plans, policies, and procedures related to water-data programs. The Director of the U.S. Geological Survey is chairman of the Committee.

The meeting will convene at 8:30 a.m. on Tuesday, November 14. Featured items on the Tuesday morning agenda include: (1) A review of the progress made over the past year in the implementation of Office of Management and Budget Circular A-67, which provides guidelines for the coordination of water-data acquisition activities of Federal agencies; (2) a progress report on the Federal interagency project to develop the *National Handbook of Recommended Methods for Water Data Acquisition;* (3) a report of progress in the Geological Survey's program of regional aquifer systems analysis and river-quality assessment; (4) the increasing need for "real-time" water data; and (5) a report of the activities of the U.S. Council on Environmental Quality's Task Force on Environmental Data and Monitoring. A field trip to points of hydrologic and geologic interest in the Salt Lake City area is scheduled for Tuesday afternoon. Wednesday, November 15, is set aside for three concurrent working group sessions on ground-water quality and quantity data, recommended methods for water-data acquisition, and urban water-data needs. On Thursday morning, November 16, the working group reports will be presented and other business will be discussed. The meeting will be adjourned about noon on November 16.

Persons wishing to attend the meeting or desiring more information on the meeting should contact R. H. Langford, Chief, Office of Water Data Coordination, U.S. Geological Survey, 417 National Center, Reston, Va. 22092.

HENRY W. COULTER,
Acting Director.

[FR Doc. 78-30549 Filed 10-27-78; 8:45 am]

[4310-31-M]

KNOWN RECOVERABLE COAL RESOURCE AREA

Gallup, N. Mex.

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, Secretary's Order No. 2948, and section 8A of the Mineral Leasing Act of February 25, 1920, as added by section 7 of the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94-377, Aug. 4, 1976), Federal lands within the State of New Mexico have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date and total acreage involved are as follows:

(31) NEW MEXICO

Gallup (New Mexico) Known Recoverable Coal Resource Area; February 14, 1978; 182,067 acres.

A diagram showing the boundaries of the area classified has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and the land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Federal Center, Denver, Colo. 80225.

Dated: October 18, 1978.

W. A. RADLINSKI,
Acting Director.

[FR Doc. 78-30556 Filed 10-27-78; 8:45 am]

[4410-09-M]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

MANUFACTURE OF CONTROLLED SUBSTANCES

Registration

By Notice dated July 28, 1978, and published in the FEDERAL REGISTER on August 8, 1978 (43 FR 35124) Applied Science Laboratories, Inc., Brush Valley Road, Oak Hall, Pa. 16827, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substances listed below:

Drug and schedule

D-lysergic acid methylpropylamide (7328)—I.
Mescaline (7381)—I.

No comments or objections having been received, and pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations § 1301.54(e), the Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substances listed above is granted.

Dated: October 24, 1978.

PETER B. BENSINGER,
Administrator.

[FR Doc. 78-30603 Filed 10-27-78; 8:45 am]

[6820-35-M]

LEGAL SERVICES CORPORATION

GRANTS AND CONTRACTS

OCTOBER 25, 1978.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355 88 Stat 378, 42 U.S.C. 2996-29961, as amended, Pub. L. 95-222 (Dec. 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project.

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Southern Tier Legal Services in Corning, N.Y., to serve Steuben, Allegany, and Cattaraugus counties. Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at:

Legal Services Corporation, New York Regional Office, 10 East 30th Street, New York, N.Y. 10016.

THOMAS EHRLICH,
President.

[FR Doc. 78-30513 Filed 10-27-78; 8:45 am]

[7510-01-M]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 78-53]

NASA ADVISORY COUNCIL (NAC) SPACE AND TERRESTRIAL APPLICATIONS ADVISORY COMMITTEE (STAAC)

Meeting

The Ad Hoc Informal Advisory Subcommittee on Geodynamics and Geology of the NAC-STAAC will meet on November 15 and 16, 1978, from 8:30 a.m. to 4:30 p.m. at NASA Headquarters, Room 226A, Federal Office Building 10B, 600 Independence Avenue SW., Washington, D.C. 20546. Members of the public will be admitted to the meeting at 8:30 a.m. on both days on a first-come, first-served basis and will be required to sign a visitors' register. The seating capacity of the meeting room is for 35 persons.

This subcommittee, comprised of nine members of the NAC-STAAC including the subcommittee chairman, Dr. Michael Chinnery, will review the current and planned 5-year program in geology and discuss the future direction of this program. In addition,

NASA plans to respond to the subcommittee's recommendations on NASA's Geodynamics Program which was discussed at the previous meeting.

NOVEMBER 15, 1978

TIME AND TOPIC

8:30 a.m.: Chairman's remarks.
9 a.m.: Overview of NASA's resource observation program.
9:30 a.m.: NASA's response to subcommittee's recommendations.
10:15 a.m.: Five-Year Plan goals and objectives.
11:15 a.m.: Discussion.
1:30 p.m.: Global geology, geophysics, and geodynamics.
3:30 p.m.: Discussion.
4:30 p.m.: Adjourn.

NOVEMBER 16, 1978

TIME AND TOPIC

8:30 a.m.: USDI roles and missions of the U.S. Geological Survey.
9:30 a.m.: Nonrenewable resources.
11:30 a.m.: Discussion.
1:30 p.m.: Program funding requirements.
2 p.m.: Discussion of issues.
3 p.m.: Summary and recommendations.
4 p.m.: Adjourn.

For further information regarding the meeting, please contact Louis B. C. Fong, Executive Secretary of the Subcommittee, Washington, D.C., 202-755-8601.

Dated: October 24, 1978.

ARNOLD W. FRUTKIN,
Acting Associate Administrator for External Relations.

[FR Doc. 78-30583 Filed 10-27-78; 8:45 am]

[7510-52-M]

[Notice 78-52]

NASA AEROSPACE SAFETY ADVISORY PANEL

Meeting

The Aerospace Safety Advisory Panel will meet on November 30, 1978, in Room 7002, Federal Office Building 6, 400 Maryland Avenue SW., Washington, D.C. The Panel will present its annual report to the Administrator and Deputy Administrator. The meeting is open to the public and will begin at 1 p.m. and continue until 2:30 p.m. The seating capacity of the room is about 40 persons, including members and other participants. Visitors will be requested to sign a visitor's register.

The panel is chartered by Congress "to review safety studies and operations plans referred to it and shall make reports thereon, shall advise the Administrator with respect to the hazards of proposed or existing facilities and proposed operations and with respect to the adequacy of proposed or existing safety standards, and shall perform such other duties as the Administrator may request."

Pursuant to carrying out its statutory duties, the Panel reviews, evaluates, and advises on those program activities, systems, procedures and management policies that contribute to risk and provide identification and assessment of these for management. Priority is given to those programs that involve the safety of manned flight.

Chairman of the Panel is Mr. Herbert E. Grier. The contact for further information is Carl R. Praktish, Executive Secretary, Aerospace Safety Advisory Panel, 400 Maryland Avenue SW., Washington, D.C. 20546. Phone, area code 202, 755-8380.

Dated: October 24, 1978.

ARNOLD W. FRUTKIN,
Acting Associate Administrator for External Relations.

[FR Doc. 78-30582 Filed 10-27-78; 8:45 am]

[4410-01-M]

NATIONAL COMMISSION FOR THE REVIEW OF ANTITRUST LAWS AND PROCEDURES

CONTEMPLATION OF CLOSING THE RECORD

In accordance with Executive Order 12022 and section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770), the National Commission for the Review of Antitrust Laws and Procedures (hereinafter "Commission"), has held public hearings and has received statements from interested persons on the subjects enumerated in the aforesaid Executive order. Notice is hereby given, in contemplation of closing the record of the Commission, that fifty (50) copies of any additional written statements by interested persons must be transmitted to the Commission office (Attention: Ms. Deana Harvell), Room 7315, Department of Justice Building, 10th Street and Pennsylvania Avenue NW., Washington, D.C. 20530, no later than November 15, 1978.

Dated: October 25, 1978.

WENDELL B. ALCORN, Jr.,
Special Counsel.

[FR Doc 78-30613 Filed 10-27-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on October 23, 1978 (44 USC 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes:

The name of the agency sponsoring the proposed collection of information;

The title of each request received;

The agency form number(s), if applicable;

The frequency with which the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses;

The estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice thru this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

DEPARTMENT OF ENERGY

Tertiary Enhanced Recovery Program Application
ERA-93
On occasion
Petroleum Producers Owning Tertiary Projects, 100 responses; 16,000 hours
C. Louis Kincannon, 395-3211

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration (Medicare)
Uniform Bill Questionnaire
HCFA-79
On occasion
Small and Large Hospitals, 50 responses; 250 hours
Richard Eisinger, 395-3214

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Policy Development and Research
Survey of Mortgage Lenders
Annually
Persons Who Make Lending Decisions Re Selected Neighborhoods, 75 responses; 75 hours
Caywood, D. P., 395-3443

Policy Development and Research
Survey of Neighborhood Multipurpose Centers
Annually
Managers of Facilities in Selected Neighborhoods, 75 responses; 75 hours
Caywood, D. P., 395-3443

Policy Development and Research
Survey of Owners and Managers of Rental Property

Annually
Owners or Managers of Substantial Numbers of Property in Selected Neighborhoods and Cities, 75 responses; 75 hours
Caywood, D. P., 395-3443

Policy Development and Research
Survey of Services and Facilities for the Elderly
Annually
Managers of Facilities in Selected Neighborhoods, 75 responses; 75 hours
Caywood, D. P., 395-3443

Policy Development and Research
Survey of Recreational Services and Facilities
Annually
Managers of Facilities in Selected Neighborhoods, 75 responses; 75 hours
Caywood, D. P., 395-3443

Policy Development and Research
Survey of Child Care Services and Facilities
Annually
Managers of Facilities in Selected Neighborhoods, 75 responses; 1 hour
Caywood, D. P., 395-3443

DEPARTMENT OF LABOR

Employment and Training Administration
Rearranged Work Schedules Studies (Parts A & B)
MT-287, A & B
Single-time
Employees on Rearranged Work Schedules, 94,015 responses; 277 hours
Strasser, A., 395-6132

DEPARTMENT OF TRANSPORTATION

Departmental and Other
Survey to Determine Pre-DWI Behavior
Single-time
Male Drivers 16-24 years old, 500 responses; 225 hours
Strasser, A., 395-6132

REVISIONS

ENVIRONMENTAL PROTECTION AGENCY

National Emissions Data System (NEDS) Input Data Forms
EPA(DUR), 219, 220, 243
Semi-annually
55 State Air Pollution Control Agencies, 110 responses; 2,750 hours
Ellett, C. A., 395-6132

VETERANS ADMINISTRATION

Application for Educational Assistance 22-5490
On occasion
Child of Veteran, 12,000 responses; 3,000 hours
Caywood, D. P., 395-3443

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service
Animal Welfare
Other (See SF-83)
Animal Dealers and Exhibitors and Research Facilities
Ellett, C.A. 395-6132.

Office of General Sales Manager
Sales of Agricultural Commodities for Export
OGSM 97, 98, 99, & 100
Other (See SF-83)
Exporters of Agricultural Commodities, 27,840 responses; 69,600 hours
Ellett, C. A., 395-6132

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service
Hospital Discharge Survey
Annually
National Sample of Short-stay Hospitals, 220,000 responses; 14,667 hours
Richard Eisinger, 395-3214

EXTENSIONS

U.S. CIVIL SERVICE COMMISSION

Supplementary Information to Ann. WA-807, EWA-407
On occasion
Applicants for Federal employment, 2,500 responses; 1,250 hours
Marsha Traynham, 395-3773

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development
Annual Report on Post-employment Services
OHDRSA 32
Annually
State VR agency, 84 responses; 200 hours
Reese, B. F., 395-3211

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration
Civil Rights Data Report
Annually
Airport sponsors subject to 49 CFR Part 21 Regulations, 1,957 responses; 5,871 hours
Strasser, A., 395-6132

BRENDA A. MAYBERRY,
Acting Budget and Management Officer.

[FR Doc. 78-30584 Filed 10-27-78; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 15252]

AMERICAN STOCK EXCHANGE, INC., ET AL.

Commission Action Declaring Effective an Amendment to the Consolidated Tape Plan

OCTOBER 20, 1978.

The Securities and Exchange Commission announced that it has sent to the sponsors of the joint industry plan filed pursuant to Rule 17a-15 under the Securities Exchange Act of 1934, and declared effective as of May 17, 1974, a letter declaring an amendment to the plan effective as of October 20, 1978. The amendment establishes a procedure for storing and reporting last sale information received by the processor of the plan during a regulatory halt.

The text of the letter follows:

AMERICAN STOCK EXCHANGE, INC.
MIDWEST STOCK EXCHANGE, INC.
NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
NEW YORK STOCK EXCHANGE, INC.
PACIFIC STOCK EXCHANGE, INC.
PHILADELPHIA STOCK EXCHANGE, INC.

DEAR SIRS: This is in response to the filing by you on July 21, 1977, of an amendment to the joint industry plan (the "Plan") filed pursuant to Rule 17a-15 under the Securities Exchange Act of 1934 (the "Act") and declared effective by the Commission as of May 17, 1974, establishing a procedure for storing and reporting last sale information received by the processor of the Plan during a regulatory halt.

After a review of the amendment to the Plan, the Commission is of the view that the amendment represents an appropriate method for the reporting of last sale information received by the processor of the Plan during a regulatory halt. Therefore, having due regard for the maintenance of fair and orderly markets, the public interest and the protection of investors, the Commission has declared the amendment effective as of the date of this letter.

By the Commission.

Sincerely yours,

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-30496 Filed 10-27-78; 8:45 am]

[8010-01-M]

[Release No. 34-15255; File No. SR-Amex-78-21]

AMERICAN STOCK EXCHANGE, INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on September 20, 1978, the above-mentioned self-regulatory organization filed with the Secu-

rities and Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT OF TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The American Stock Exchange, Inc. ("Amex") proposes to amend Exchange Rule 991 by deleting present Rule 991 in its entirety and proposes to adopt a new Rule 991. The text of the proposed rule is set forth below (brackets indicate deletions; italics indicate new material):

SALES COMMUNICATIONS

Rule 991. *(a) Approval by Registered Options Principal. All advertisements and sales literature issued by a member or member organization pertaining to options shall be approved in advance by a general partner or officer of the member organization who is a Registered Options Principal, and copies thereof, together with the names of the persons who prepared the material and, in the case of sales literature, the source of any recommendations contained therein shall be retained by the member or member organization and be kept readily available for examination by the Exchange for a period of 3 years.*

(b) Standards of Approval. No advertisement or sales literature shall be approved under paragraph (a) of this Rule which:

(i) contains any untrue statement or omission of a material fact or is otherwise false or misleading;

(ii) contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly labeled as forecasts;

(iii) contains hedge clauses or disclaimers which are not easily identifiable, which attempt to disclaim responsibility for the content of such literature or for opinions expressed therein, or which are otherwise inconsistent with such advertisement or sales literature;

(iv) otherwise fails to meet the standards prescribed by Paragraph 9495 of the Exchange Rules;

(v) would constitute a prospectus as that term is defined in the Securities Act of 1933, unless it meets the requirements of section 10 of said Act.

(c) Exchange Approval Required for Options Advertisements. In addition to the approval by a Registered Options Principal required by paragraph (a) of this Rule, every advertisement of a member or member organization pertaining to options shall be submitted to the Legal and Regulatory Policy Division of the Exchange at least 10 days prior to use (or such shorter period as the Department may allow in particular instances) for approval and, if changed or expressly disapproved by the Exchange, shall be withheld from circulation until any changes specified by the Exchange have been made and further, in the event of disapproval, until the advertisement has been resubmitted for, and has received, Exchange approval. The requirements of this paragraph shall not be applicable to:

(i) advertisements submitted to and approved by another self-regulatory organization having identical requirements regarding approval of advertisements pursuant to an arrangement approved by the Exchange;

(ii) Advertisements in which the only reference to options is contained in a listing of the services of a member organization; and

(iii) Advertisements approved within the last 6 months.

(d) Except as otherwise provided in the "Commentary" hereunder, no written materials respecting options may be disseminated to any person without prior or contemporaneous dissemination to such person of a current prospectus of the Options Clearing Corp.

(e) Definitions.—For purposes of this rule, the following definitions shall apply:

(i) The term "advertisement" shall include any material that reaches a mass audience through public media such as newspapers, periodicals magazines, radio, television, telephone recording, motion picture, audio or video device, billboards, signs, or through letters designed for customer mailing not accompanied or preceded by a current prospectus of the Options Clearing Corp.

(ii) The term "sales literature" shall include any communication for distribution to customers or the public (or which may be made accessible to customers or the public) which contains any analysis, report, recommendation, opinion, prediction or comment with respect to options, underlying securities or market conditions, or any seminar text which pertains to options and which is communicated to customers or the public at seminars, lectures, or similar such events, or any exchange-produced materials pertaining to options.

Commentary * * *

.01 The special risks attendant to options transactions and the complexities of certain options investment strategies shall be reflected in any advertisement or sales literature which purports to discuss the uses or advantages of options. In the preparation of communications respecting options, the following guideines should be observed:

A. Any statement referring to the opportunities or advantages presented by options should be balanced by a statement of the corresponding risks. The risk statement should reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as "with options, an investor has an opportunity to earn profits while limiting his risk of loss," should be balanced by a statement such as "Of course, an options investor may lose the entire amount committed to options in a relatively short period of time."

B. It should not be suggested that options are suitable for most investors, or for small investors. Indeed, it is strongly suggested that there be included in all literature discussing the use of options a warning to the effect that options are not for everyone.

C. Statements suggesting the certain availability of a secondary market for options should not be made.

.02 Advertisements pertaining to options shall conform to the following standards:

A. Advertisements may only be used (and copies of the advertisements may be sent to persons who have not received a prospectus of the Options Clearing Corp.) if the material meets the requirements of Rule 134 under the Securities Act of 1933, as that rule has been interpreted as applying to options. Under Rule 134, advertisements must be limited to general descriptions of the security being offered and of its issuer. Advertisements under this rule shall state the name and address of the person from whom a current prospectus of the Options Clearing Corp. may be obtained. Such advertisements may have the following characteristics:

(i) The text of the advertisement may contain a brief description of such options, including a statement that the issuer of every such option is the Options Clearing Corp. The text may also contain a brief description of the general attributes and method of operation of the exchange or exchanges on which such options are traded and of the Options Clearing Corp., including a discussion of how the price of an option is determined on the trading floor(s) of such exchange(s);

(ii) The advertisement may include any statement required by any State law or administrative authority;

(iii) Advertising designs and devices, including borders, scrolls, arrows pointers, multiple and combined logos and unusual type spaces and lettering as well as attention getting headlines and photographs and other graphics may be used, provided such material is not misleading.

B. The use of performance figures, including annualized rates of return, are not permitted in any advertisement pertaining to options.

.03 Sales literature pertaining to options must be preceded or accompanied by a current prospectus of the Options Clearing Corp. and shall conform to the following standards:

A. Such literature may contain project performance figures (including projected annualized rates of return in connection with covered call option writing programs) provided that:

(i) No suggestion of certainty of future performance is made;

(ii) Parameters relating to such performance figures are clearly established (e.g., to indicate exercise price of option, purchase price of the underlying stock and its market price, option premium, anticipated dividends, etc.);

(iii) Commissions, transaction costs, and interest charges (if applicable with regard to margin transactions) are included in all calculations; and such returns are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation;

(iv) Any assumptions made in such calculations are clearly identified (e.g., "assume option expires," "assume option unexercised," "assume options exercised," etc.); and

(v) Further provided, in the case of literature relating to annualized rates of return, that such returns are not calculated on any more than four (4) consecutive 3-month option periods; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated.

B. Sales literature featuring records and statistics concerning past recommendations shall include the date of each initial recommendation, the price(s) of such security at that date and at the end of the period when liquidation of the security position(s) was suggested, and the trend of the market during that period. Records and statistics must be confined to a specific "universe," e.g., (i) the work of one research analyst for a period of at least 1 year; (ii) the work of an entire firm for a period of at least 1 year; (iii) the results of all accounts under management for a period of at least 1 year; or (iv) some other clearly definable area which can be fully isolated and circumscribed. All such sales literature shall state that the results presented should not and cannot be viewed as an indicator of future performance.

C. All sales literature shall state that supporting documentation for any claims, comparisons, recommendations, statistics, or other technical data will be supplied upon request.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The purpose of the proposed rule change is to amend Exchange Rule 991 (concerning advertisements, market letters, and sales literature relating to options) to conform with similar proposals of other options exchanges and to reflect uniform policies and standards applicable to options sales communications directed to public investors by Exchange members and members organizations.

As used herein, communications with the public involving options include, in a broad sense, both advertisements and sales literature (as those terms are defined in paragraph (e) of proposed Rule 991). Basically, a communication which meets the standards of an advertisement may be disseminated to the public without a prospectus; sales literature, however, must be preceded or accompanied by a prospectus.

The proposed rule sets forth the several procedures and standards which member firms must follow in preparing (and obtaining approval, where required) options related advertisements and sales literature. In part, the rule incorporates traditional standards of truthfulness and good taste required of nonoptions marketing material and clarifies certain specific requirements pertaining to exchange-traded options.

While all options exchanges presently have rules similar to Exchange Rule 991, the exchanges have sought to further refine such rules in light of experiences gained since the establishment of their respective options program. In recognition of the need for uniformity in the area of communications with the public relating to exchange-traded options, representatives of the Amex, CBOE, Midwest, Pacific, and Philadelphia Exchanges have conducted during the past several months an in-depth review of present rules. Two of the objectives of the review were: (i) To prepare rule changes which would reflect uniform policies and standards applicable to communications with the public concerning options; and (ii) to prepare an industry-wide publication which would amplify on such rules and assist firms in their preparation of such communications.

In addition to retaining certain specific requirements (such as OCC prospectus availability) and general requirements (such as general standards of truthfulness and good taste discussed above), the proposed rule seeks to: (i) Expand the definitions of the terms "advertising" and "sales literature" (see Rule 991(e)); (2) eliminate, in the case of dual members, the need for approvals of advertisements by more than one exchange and permit a firm to submit advertisements to any one exchange in which it maintains a membership for necessary prepublication approval (see Rule 991(c)); and (3) establish uniform standards to be used in discussion of rates of return, annualized returns, recommendations and performance figures (see Rules 991.02 and 991.03).

Following Commission approval of the proposed rule change, the options exchanges intend to jointly publish a booklet, tentatively entitled Guidelines for Options Communications, which is designed to assist member firms maintain proper standards in their preparation of communications with the public. The booklet will also serve to explain and amplify upon exchange rules relating to option sales communications and insure a uniform reference source applicable to all firms who communicate with the public respecting options.

The basis for the proposed rule change is found in section 6(b)(5) of the Act which provides, in pertinent part, that Exchange rules be designed to promote just and equitable principles of trade and protect investors and the public interest.

No written comments were solicited or received from Exchange members, participants or others in connection with the proposed rule change. Some dual member organizations, however, have orally indicated that, in certain respects, present rules lack specific standards which the exchanges will employ in approving and commenting upon options-related advertisements and sales literature. They have cited instances when identical advertisements submitted to more than one options exchange have received varying (and sometime inconsistent) comments which resulted in delays in obtaining publication approvals.

The proposed rule change will not impose any burden on competition.

On or before December 4, 1978, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned, self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change; or

(b) Initiate proceeding to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written date, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying at

the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before December 29, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 20, 1978.

[FR Doc. 78-30501 Filed 10-27-78; 8:45 am]

[8010-01-M]

[Release No. 34-15254; File No. SR-CBOE-1978-26]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on September 8, 1978 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

(Brackets indicate deletions: italics indicate new material)

SALES COMMUNICATIONS

Rule 9.21. *(a) Approval by Registered Options Principal. All advertisements and sales literature issued by a member or member organization pertaining to options shall be approved in advance by a general partner or officer of the member organization who is a Registered Options Principal, and copies thereof, together with the names of the persons who prepared the material and, in the case of sales literature, the source of any recommendation contained therein shall be retained by the member or member organization and be kept readily available for examination by the Exchange for a period of three years.*

(b) Standards of Approval. No advertisement or sales literature shall be approved under paragraph (a) of this Rule which:

(i) contains any untrue statement or omission of a material fact or is otherwise false or misleading;

(ii) contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly labeled as forecasts;

(iii) contains hedge clauses or disclaimers which are not easily identifiable, which attempt to disclaim responsibility for the content of such literature or for opinions expressed therein, or which are otherwise inconsistent with such advertisement or sales literature;

(iv) fails to meet general standards of good taste, judgment and truthfulness common to the securities industry;

(v) would constitute a prospectus as that term is defined in the Securities Act of 1933, unless it meets the requirements of Section 10 of said Act.

(c) Exchange Approval Required for Options Advertisements. In addition to the approval by a Registered Options Principal required by paragraph (a) of this Rule, every advertisement of a member or member organization pertaining to options shall be submitted to the Department of Sales Practice Complaince of the Exchange at least ten days prior to use (or such shorter period as the Department may allow in particular instances) for approval and, if changed or expressly disapproved by the Exchange, shall be withheld from circulation until any changes specified by the Exchange have been made and further, in the event of disapproval, until the advertisement has been resubmitted for, and has received, Exchange approval. The requirements of this paragraph shall not be applicable to:

(i) advertisements submitted to and approved by another self-regulatory organization having identical requirements regarding approval of advertisements pursuant to an arrangement approved by the Exchange;

(ii) advertisements in which the only reference to options is contained in a listing of the services of a member organization; and

(iii) advertisements approved within the last six months.

(d) Except as otherwise provided in the Interpretations and Policies hereunder, no written materials respecting options may be disseminated to any person without prior or contemporaneous dissemination to such person of a current prospectus of the Options Clearing Corporation.

(e) Definitions. For purposes of this Rule, the following definitions shall apply:

(i) The term "advertisement" shall include any material that reaches a mass audience through public media such as newspapers, periodicals, magazines, radio, television, telephone recording, motion picture, audio or video device, billboards, signs, or through letters designed for customer mailing not accompanied or preceded by a current prospectus of The Options Clearing Corporation.

(ii) The term "sales literature" shall include any communication for distribution to customers or the public (or which may be made accessible to customers or the public) which contains any analysis, report, recommendation, opinion, prediction or comment with respect to options, underlying securities or market conditions, or any seminar text which pertains to options and which is communicated to customers or the public at seminars, lectures or similar such events, or any exchange-produced.

Interpretations and Policies * * *

.01 The special risks attendant to options transactions and the complexities of certain options investment strategies shall be reflected in any advertisement or sales literature which purports to discuss the uses or advantages of options. In the preparation of communications respecting options, the following guidelines should be observed:

A. Any statement referring to the opportunities or advantages presented by options should be balanced by a statement of the corresponding risks. The risk statement should reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as "with options, an investor has an opportunity to earn profits while limiting his risk of loss", should be balanced by a statement such as "Of course, an options investor may lose the entire amount committed to options in a relatively short period of time."

B. It should not be suggested that options are suitable for most investors, or for small investors. Indeed, it is strongly suggested that there be included in all literature discussing the use of options a warning to the effect that options are not for everyone.

C. Statements suggesting the certain availability of a secondary market for options should not be made.

.02 Advertisements pertaining to options shall conform to the following standards:

A. Advertisements may only be used (and copies of the advertisements may be sent to persons who have not received a propsectus of The Options Clearing Corporation) if the material meets the requirements of Rule 134 under the Securities Act of 1933, as that Rule has been interpreted as applying to options. Under Rule 134, advertisements must be limited to general descriptions of the security being offered and of its issuer. Advertisements under this Rule shall state the name and address of the person from whom a current prospectus of the Options

Clearing Corporation may be obtained. Such advertisements may have the following characteristics:

(i) The text of the advertisement may contain a brief description of such options, including a statement that the issuer of every such option is The Options Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of the exchange or exchanges on which such options are traded and of The Options Clearing Corporation, including a discussion of how the price of an option is determined on the trading floor(s) of such exchange(s);

(ii) The advertisement may include any statement required by any state law or administrative authority;

(iii) Advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type spaces and lettering as well as attention getting headlines and photographs and other graphics may be used, provided such material is not misleading.

B. The use of performance figures, including annualized rates of return, are not permitted in any advertisement pertaining to options.

.03 Sales literature pertaining to options must be preceded or accompanied by a current prospectus of The Options Clearing Corporation and shall conform to the following standards:

A. Such literature may contain projected performance figures (including projected annualized rates of return in connection with covered call option writing programs) provided that:

(i) no suggestion of certainty of future performance is made;

(ii) parameters relating to such performance figures are clearly established (e.g., to indicate exercise price of option, purchase price of the underlying stock and its market price, option premium, anticipated dividends, etc.);

(iii) commissions, transaction costs and interest charges (if applicable with regard to margin transactions) are included in all calculations; and such returns are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation;

(iv) any assumptions made in such calculations are clearly identified (e.g., "assume option expires", "assume option unexercised", "assume options exercised," etc.); and

(v) further provided, in the case of literature relating to annualized rates of return, that such returns are not calculated on any more than four (4) consecutive 3-month option periods; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated.

B. Sales literature featuring records and statistics concerning past recommendations shall include the date of each initial recommendation, the price(s) of such security at that date and at the end of the period when liquidation of the security position(s) was suggested, and the trend of the market during that period. Records and statistics must be confined to a specific "universe", e.g., (i) the work of one research analyst for a period of at least one year; (ii) the work of an entire firm for a period of at least one year; (iii) the results of all accounts under management for a period of at least 1 year; or (iv) some other clearly definable area which can be fully isolated and circumscribed. All such sales literature shall state that the results presented should not and cannot be viewed as an indicator of future performance.

C. All sales literature shall state that supporting documentation for any claims, comparisons, recommendations, statistics or other technical data, will be supplied upon request.

[Advertisements, Market Letters and Sales Literature

Rule 9.21 (a) Approval by Registered Options Principal. All advertisements, market letters and sales literature issued by a member organization pertaining to options shall be approved in advance by a Registered Options Principal who is an officer or partner of the member organization, and copies thereof together with the names of persons approving their issuance, the names of persons who prepared the material and the source or any recommendations contained therein shall be retained by the member organization and be readily available for examination by the Exchange for a period of three years.

(b) Standards of Approval. No advertisement, sales literature or market letter shall be approved under paragraph (a) of this Rule which:

(i) contains any untrue statement or omission of a material fact or is otherwise false or misleading;

(ii) contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly labeled as forecasts;

(iii) fails to meet general standards of good taste and judgement common to the securities industry;

(iv) would constitute a prospectus as that term is defined in the Securities Act of 1933, unless it meets the requirements of Section 10 of said Act.

(c) Exchange Approval Required for Advertisements. In addition to the approval required by paragraph (a) of this Rule, every advertisement of a member organization pertaining to options shall be submitted to the Department of Compliance of the Exchange at least ten days prior to use (of such shorter period as the Department may allow in particular instances) and, if expressly disapproved by the Exchange, shall be withheld or withdrawn from circulation until changes specified by the Exchange have been made and the advertisement re-submitted for Exchange approval.

(d) Definitions. For purposes of this Rule, the following definitions shall apply:

(i) advertisements include any material for use in any newspaper or magazine or other public media or by radio, telephone recording, motion picture or television.

(ii) sales literature and market letters include any communication for distribution to customers or the public which contains any analysis, report, recommendation, opinion, prediction or comment with respect to options, underlying securities, or market conditions.

. . . Interpretation and Policies:

.01 In addition to adhering to the general standards of truthfulness and good taste prescribed by Rule 9.21, the advertisements, market letters and sales literature of Exchange members covering Chicago Board Options should reflect the following factors.

I. Chicago Board Options are securities registered under the Securities Act of 1933, and they are the subject of a currently effective registration statement. Section 5 of the Securities Act prohibits the use of any written material or radio or television advertisements (or other material constituting a "prospectus" as defined in the Act) relating to a registered security unless certain conditions are met. With respect to advertisements and sales literature covering Chicago Board Options, the following rules must be observed:

A. Except as provided in paragraph B below, no written material with respect to Chicago Board Options may be sent to any person unless prior to or at the same time with the written material a current Options Prospectus was sent to such person.

B. Advertisements may be used (and copies of the advertisements may be sent to persons who have not received a prospectus) if the material meets the requirements of Rule 134 under the Securities Act of 1933, as that Rule has been interpreted as applying to Chicago Board Options. Under Rule 134, advertisements are limited to general descriptions of the security being offered and of its issurer. In the case of Chicago Board Options, advertisements under this Rule must have the

following characteristics: (i) The advertisement should state the name and address of the person from whom a current Options Prospectus may be obtained (this would usually be the member sponsoring the advertisement); (ii) The text of the advertisement may contain a brief description of Chicago Board Options, including a statement that the issuer of every Chicago Board Option is the Chicago Board Options Exchange Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of the Exchange and the Clearing Corporation, including a discussion of how the price of an Option is determined on the Exchange's trading floor; (iii) The advertisement may include any statement or legend required by any state law or administrative authority; (iv) Advertising designs and devices including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.

II. There are special risks attendant to options transactions and certain options transactions involve complex investment strategies. These factors should be reflected in any communication (including advertising, sales literature and similar material) which purport to include any discussion of the uses or advantages of Chicago Board Options. Although it is up to each member in preparing its communications concerning Chicago Board Options to take into consideration these factors, the following points of particular importance are presented for the general guidance of members in this regard:

A. Any statement referring to the opportunities or advantages presented by Chicago Board Options should be balanced by a statement of the corresponding risks. The risk statement should reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as, "With options, an investor has an opportunity to earn profits while limiting his risk of loss," should be balanced by a statement such as, "Of course, an options investor may lose the entire amount committed to options in a relative short period of time."

B. It should not be suggested that options are suitable for most investors, or for small investors. Indeed, it is strongly suggested that there be included in all Chicago Board Options literature discussing the uses of options a warning to the effect that options are not for everybody.

C. Until the existence of the Exchange's secondary market has been demonstrated by experience, Chicago Board Options literature should reflect the untried nature of this aspect of the Exchange. Accordingly, statements suggesting the certain availability of the Exchange's secondary market should not be made. Instead, any reference to the secondary market should be expressed in such terms as, "The Exchange's secondary market is intended to provide a means for the liquidation of positions in options", or, "If the price of the underlying stock goes down the holder of a Chicago Board Option may be able to realize any remaining value of the Option by selling it in the secondary market". (Italics used for illustrative purposes only).]

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The purpose of the proposed rule change is to amend Exchange Rule 9.21 (concerning advertisements, market letters and sales literature relating to options) to conform with similar proposals of other options exchanges and to reflect uniform policies and standards applicable to options sales communications directed to public investors by Exchange members and member organization.

As used herein, communications with the public involving options include, in a broad sense, both advertisements and sales literature (as those terms are defined in paragraph (e) of proposed Rule 9.21). Basically, a communication which meets the standards of an advertisement may be disseminated to the public without a prospectus; sales literature, however, must be preceded or accompanied by a prospectus.

The proposed rule sets forth the several procedures and standards which member firms must follow in preparing (and obtaining approval, where required) of options related advertisements and sales literature. In part, the rule incorporates traditional standards of truthfulness and good taste required of non-options marketing material and clarifies certain specific requirements pertaining to exchange-traded options.

While all options exchanges presently have rules similar to Exchange Rule 9.21, the exchanges have sought to further refine such rules in light of experiences gained since the establishment of their respective options programs. In recognition of the need for uniformity in the area of communications with the public relating to exchange-traded options, representatives of the Amex, CBOE, Midwest, Pacific and Philadelphia Exchanges have conducted during the past several months an in-depth review of present rules. Two of the objectives of the review were: (i) to prepare rule changes which would reflect uniform policies and standards applicable to communications with the public concerning options; and (ii) to prepare an industry-wide publication which would amplify on such rules and assist firms in their preparation of such communications.

In addition to retaining certain specific requirements (such as general standards of truthfulness and good taste discussed above), the proposed rule seeks to: (1) expand the definitions of the terms "advertising" and "sales literature" (see Rule 9.21(e); (2) eliminate, in the case of dual members, the need for approval of advertisements by more than one exchange and permit a firm to submit advertisements to any one exchange in which it maintains a membership for necessary prepublication approval (see Rule 9.21 (c); and (3) establish uniform standards to be used in discussion of rates of return, annualized returns, recommendations and performance figures (see Rule 9.21.02 and Rule 9.21.03).

Following Commission approval of the proposed rule change, the options exchanges intend to jointly publish a booklet, tentatively entitled Guidelines for Options Communications (see draft of booklet attached as exhibit 2) which is designed to assist member firms in maintaining proper standards in their preparation of communications with the public. The booklet will also serve to explain and amplify upon exchange rules relating to option sales communications and ensure a uniform reference source applicable to all firms who communicate with the public respecting options.

The basis for the proposed rule change is found in Section 6(b)(5) of the Act which provides, in pertinent part, that exchange rules be designed to promote just and equitable principles of trade and protect investors and the public interest.

No written comments were solicited or received from Exchange members, participants or others in connection with the proposed rule change. Some dual member organizations, however, have orally indicated that, in certain respects, present rules lack specific standards which the exchanges will employ in approving and commenting upon options-related advertisements and sales literature. They have cited instances where identical advertisements submitted to more than one options exchange have received varying (and sometime inconsistent) comments which resulted in delays in obtaining publication approval.

The proposed rule change will not impose any burden on competition.

On or before December 4, 1978, or within such longer period (i) as the Commission may designate up to 90

days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before December 29, 1978.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 20, 1978.

[FR Doc. 78-30502 Filed 10-27-78; 8:45 am]

[8010-01-M]

[Release No. 34-15261; File No. SR-CBOE-1978-29]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on October 13, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The proposed change requires a number of technical changes in CBOE's Constitution and Rules. Set forth below is a description of such changes:

THE CHAIRMAN OF THE BOARD

CONSTITUTION

1. Section 3.2 *Annual Election Meeting.* This proposed change deletes the provision which refers to electing the Chairman and Vice Chairman of the Board.

2. Section 4.3 *Nominating Procedure.* This proposed modification also deletes the requirement to nominate a Chairman and Vice Chairman of the Board.

3. Section 5.3 *Counting of Ballots.* This proposed amendment deletes language which relates to the membership election of Chairman and Vice Chairman of the Board. In addition it deletes the requirement that one of the off-floor directors be a member, which change when it had been approved by the membership some months ago in section 6.1 of the Constitution was not made to this section.

4. Section 6.3 *Resignation, Disqualification and Removal of Directors.* The proposed change to this section relates to the substitution of the Chairman of the Board for the President as one of the persons to whom a director may tender his resignation.

5. Section 7.2 *The Executive Committee.* This change will specifically provide that the Chairman of the Board, Chairman of the Executive Committee, the President and at least four other directors be designated voting members of the Executive Committee.

6. Section 8.1 *Designation; Number; Election.* This new section completely replaces the old section 8.1 and specifies that (a) the Chairman of the Board be elected by a two-thirds affirmative vote of the directors, which directors may prescribe his duties and tenure of office, (b) officers, other than the Chairman of the Executive Committee shall be appointed by the Chairman of the Board, subject to the Board's approval and (c) certain offices may not be held by the same person.

7. Section 8.2 *Chairman of the Board of Directors.* This new section replaces a portion of the provisions of Section 8.3 and describes the position and responsibilities of the Chairman of the Board.

8. Section 8.7 *Removals.* This section replaces part of old section 8.2 which has been deleted and sets forth the required votes by the Board of Directors to remove the Chairman of the Board (two-thirds), the Chairman of the Executive Committee (two-thirds) and the President (two-thirds). It also sets forth the board's ability to remove any other officers when the best interests of the Exchange would be served thereby.

9. Sections 8.8 *Vice President;* 8.9 *Secretary;* 8.10 *Treasurer.* These sections reflect the replacement of the President by the Chairman of the Board as the person in addition to the Board which can prescribe the duties of the above described officers.

10. Section 11.3 *Departments.* This section replaces the President with the Chairman of the Board as the individual able to authorize Exchange departments, subject to Board approval.

RULES

11. Rules 2.15 *Departments of the Exchange.* This change provides that the Chairman of the Board, not the President, shall be the head of the Executive Department.

CHAIRMAN OF THE EXECUTIVE COMMITTEE

CONSTITUTION

1. Section 3.4 *Special Meetings.* This proposal substitutes the Chairman of the Executive Committee for the President as one of the officers who can call a Special Meeting of Members.

2. Section 4.1 *Nominating Committee.* This modification provides that the Chairman of the Executive Committee and not the Chairman of the Board shall choose, subject to Board approval, the seventh member of the Nominating Committee for a 1-year term.

3. Section 4.2 *Nominating Committee Vacancies.* This proposal allows the Chairman of the Executive Committee instead of the Board Chairman to fill vacancies on the nominating Committee subject to Board approval.

4. Section 5.1 *Election Committee.* This proposal empowers the Chairman of the Executive Committee to appoint the Election Committee instead of the Chairman of the Board.

5. Section 6.7 *Special Meetings.* This modification provides that the Chairman of the Executive Committee in addition to the Chairman of the Board can call a Special Meeting of Directors.

6. Section 7.1 *Designation of Committees.* This modification replaces the Chairman of the Board with the Chairman of the Executive Committee as the individual responsible for designating members of Exchange Committees.

7. Section 7.3 *The Appeals Committee.* This proposal substitutes the Chairman of the Executive Committee for the Chairman of the Board as the person responsible for designating the Chairman of the Appeals Committee.

8. Section 7.4 *Appeals Committee Vacancies.* This amendment requires that the Chairman of the Executive Committee instead of the Board Chairman select those persons to fill vacancies on the Appeals Committee.

9. Section 8.1 *Designation; Number; Election.* This new section additionally provides that the Chairman of the Executive Committee be a director who owns or directly controls his own membership and shall be elected each year by an affirmative vote of the majority of the members of the Board of Directors.

10. Section 8.3 *Chairman of the Executive Committee.* This new section replaces old section 8.3 and provides that the Chairman of the Executive Committee shall also function as the Vice Chairman of the Board. In addition, it sets forth the functions and responsibilities of such member officer.

11. Section 8.4 *Acting Chairman.* This new section provides, in the event there is a vacancy in both the office of Chairman of the Board and that of the Chairman of the Executive Committee, the means by which an Acting Chairman is to be chosen.

12. Section 8.5 *Vacancy In Office of Chairman of Executive Committee.* This section specifies the means by which the Board shall choose a new Chairman of the Executive Committee if such office becomes vacant prior to the end of the incumbent's term and the qualifications of such replacement.

13. Section 11.4 *Officers and Employees Restricted.* This amendment sets forth an exception for the Chairman of the Execu-

tive Committee to the prohibition against dealing in options traded on the Exchange as well as against dealing in securities underlying such options.

RULES

14. Rule 2.1 *Establishment of Committees.* This proposed change requires the Chairman of the Executive Committee to appoint, subject to Board approval, the members of Exchange Committees.

15. Rule 2.23 *Liability for Payment.* This proposed modification empowers the Chairman of the Executive Committee to suspend members for nonpayment of dues, fees, charges, etc.

16. Rule 16.1 *Summary Suspension.* This proposal replaces the President with the Chairman of the Executive Committee as one of the persons having powers of summary suspension.

THE PRESIDENT

CONSTITUTION

1. Section 8.6 *President.* This new section replaces old section 8.4 in its entirety, and provides that the President shall be the Chief Operating Officer of the Exchange. This section also sets forth the responsibilities of the President.

COMPOSITION OF THE BOARD

CONSTITUTION

1. Section 6.1 *Number, Election and Term of Office of Directors.* These changes relate to the deletion of the membership election of the Vice Chairman position, the increase in public directors from three to four, the change in the term of office of public directors from 3 years to 2 years and the specification that off-floor directors shall be employed by member organizations which primarily conduct a nonmember public customer business.

2. Section 6.4 *Filling of Vacancies.* This section provides that vacancies in elected director positions may be filled by an affirmative vote of a majority of directors, and that a vacancy in the office of an appointed director shall be filled by the Chairman of the Board with the approval of the Board.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The purposes of this rules change are (1) to better define the respective responsibilities and roles of the Chairman of the Board and the President and their means of selection, (2) to set forth the means of selection and the scope of the responsibilities of the Chairman of the Executive Committee; and (3) to modify the composition of the Board by the addition of one more public director and by the specification that the member organizations whose executive officers occupy six places on the Board of Directors be organizations which are primarily engaged in doing a public customer business.

With respect to the first purpose set forth above, it is proposed that the Exchange's Chairman of the Board become a full-time chief executive officer, selected by the Board. The duration of his term and his compensation would be determined by the Board. This proposal contrasts with the present means of electing a Board Chairman from among the membership for a 1-year term. The duties of the senior full-time staff official would be comprised of those chief executive responsibilities presently undertaken by the Board Chairman (an exception would be the appointive powers of Board Chairman which would be transferred to the Chairman of the Executive Committee, see below), and by the President, who presently functions as the Chief Executive Officer. This change will create a greater degree of governmental continuity at the Chairman level. This is believed to be desirable to strengthen the Exchange's administrative effectiveness and to strengthen the confidence of its members, the financial community and the investing public in the Exchange's conduct of its affairs. The remaining portion of this first modification to the Exchange's administrative structure pertains to the Office of the President. It is proposed that the President act as the Chief Operating Officer of the Exchange. His responsibilities would be primarily administrative; however, he would retain his positions as a member of the Board of Directors and of the Executive Committee.

The second purpose of this rules change deals with the selection and responsibilities of the Chairman of the Executive Committee. Since the Board Chairman's position is to be filled by a nonmember on a full-time basis, the position of Chairman of the Executive Committee was designated as the principal Exchange member position. In order to maintain member involvement and representation on the senior management level of the Exchange, the responsibilities of the person holding this office would include: (1) Functioning as Vice Chairman in case of the absence of or inability to act as the Board Chairman or a vacancy in the Office of Chairman of the Board; (2) selection with Board approval, the chairmen and members of all standing committees and the coordinating of all committee actions; and (3) functioning as Chairman of the Executive Committee. In contrast with the present election by the membership of a Vice Chairman of the Board for a 1-year term, the Chairman of the Executive Committee would be selected by the Board from the Board's elected member directors who own or control their own memberships for a 1-year term. This method of selection should serve to foster a complementary working relationship between the senior staff official (Board Chairman) and the senior member director (Chairman of the Executive Committee).

The final purpose of this proposed rules change is the modification of the composition of the Board. As described in the chart set forth below, the Board is now comprised of 21 persons, which include a Chairman, Vice Chairman, and 15 directors each separately elected from among the membership, a President and three public directors. As mentioned above, the position of Vice Chairman is proposed to be absorbed into the position of Chairman of the Executive Committee, which latter position would then be filled by the Board from among the 15 elected directors. Consequently, this change would eliminate the separately elected position of Vice Chairman with the result of reducing the total number of Board members to 20 from 21. Therefore, in order to restore the Board to the level of 21 persons it is proposed to add 1 more public director for a total of 4. It is also proposed that two public directors be appointed each year for 2-year terms instead of one public director appointed each year for a 3-year term. It is believed that enlarged public representation can make a meaningful contribution to the Board's effectiveness.

Present	*Proposed*
1 Chairman of the Board elected by the membership.	1 Chairman of the Board selected by the Board.
1 Vice Chairman of the Board elected by the membership.	Chairman of the Executive Committee/ Vice Chairman of the Board chosen by the Board from among the 15 elected directors.
1 President selected by the Board.	1 President selected by the Board.
	4 Public directors selected by Chairman of the Board and approved by the Board.
3 Public directors selected by the President and approved by the Board.	6 Floor members* elected by the membership.
6 Floor members* elected by the membership.	6 Off-Floor executive officers* of member firms elected by the membership.
6 Off-Floor executive officers* of member firms elected by the membership.	3 Members who function in any capacity elected by the membership
3 Members who function in any capacity elected by the membership..	
—	—
21	21.

*See Section 6.1 of the Exchange Constitution for description of these categories.

The other modification of the Board's composition is the proposed requirement that the six Board members employed by member organizations (two elected each year for 3-year terms) be associated with organizations which are primarliy engaged in doing a public customer business. As now specified, the executive officers of such member organizations do not have to be members themselves (see SR-CBOE-1978-19), and such individuals may not be primarily engaged in

business on the Exchange floor. However, an executive officer of any member firm, without regard to the type of business such firm conducts, could now be elected to fill one of these six Board seats. The proposed rule change would assure that those six places on the Board which are reserved for member firm executives are filled by executive officers of organizations whose primary business is acting on behalf of public customers purchasing securities as demonstrated by the totality of an organization's business activities. This proposal will foster a more balanced representation of those member firms responsible for the transmission of public customer orders to the Exchange for excution. Those firms which do not meet the public customer business criteria set forth above will continue to have the same opportuntity as presently exists to seek representation on the Board, for 3 of the 15 member places on the Board may be held by individual members or nominees of member organizations without regard to the type of business conducted by the individual or the organization.

The basis for the proposed rules change is found in section 6(b)(3) of the act which provides for the fair representation of its members in the administration of its affairs and the selection of its directors and that one or more directors be representative of investors. Moreover, section 6(b)(5) of the act is also applicable, for the modifications in the administration of the Exhange as proposed herein will operate to promote just and equitable principles of trade, and protect investors and the public interest.

Comments have been solicited from members pursuant to a Special Meeting of the Membership on October 4, 1978 which resulted in 797 votes in favor of these proposed changes and 94 votes against.

These proposed rules changes do not impose any burden upon competition.

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before November 20, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 20, 1978.

[FR Doc. 78-30578 Filed 10-27-78; 8:45 am]

[8010-01-M]

[Release No. 15253; File No. S7-433]

CONSOLIDATED TAPE ASSOCIATION

Receipt of Amendments to Plan

OCTOBER 20, 1978.

The Consolidated Tape Association (the "CTA") has submitted to the Commission proposed amendments to various sections of the joint industry plan (the "Plan") filed with and declared effective pursuant to Rule 17a-15 [17 CFR 240.17a-15] under the Securities Exchange Act of 1934 (the "Act") governing the consolidated transaction reporting system ("consolidated system"). The Commission is soliciting comments with respect to the proposed amendments.

I. AMENDMENT SUBMITTED ON JANUARY 12, 1978

On January 12, 1978, the CTA submitted to the Commission, and on June 15, 1978, the CTA resubmitted to the Commission, a proposed amendment to section X(a) of the Plan which would establish procedures to be followed in recommending dissemination on a current and continuous basis, of last sale reports for any security eligible for reporting in the consolidated system ("Eligible Security") which is the subject of a regulatory halt.[1] The Plan does not presently contain such a procedure. The procedure to be established by the amendment has been implemented by the Plan participants with the informal concurrence of the Commission's staff.

Pursuant to the procedure which would be formally established by the amendment, the primary market must promptly notify the processor of the Plan when it determines that adequate publication or disclosure of information has occurred so as to permit termination of a regulatory halt (the "First Notice"). No sooner than 15 minutes after receipt of the First Notice, the processor must inlcude on the consolidated tape any indication of interest, or other message, received from the primary market, any other participant or any "other reporting party"[2] which is a national securities exchange, relating to the Eligible Security. In the event that the primary market has caused the processor to include an indication of interest on the consolidated tape with respect to the affected Eligible Security within the 30-minute period (the "Notice Period") following receipt of the First Notice, the processor is required to recommence real time dissemination of last sale reports which are received from any participant or other reporting party which is an exchange after the conclusion of the Notice Period. However, in the event that the primary market does not transmit such an indication of interest to the processor within the Notice Period, the primary market is required to cause the processor to include an administrative message on the consolidated tape within 5 minutes after the expiration of the Notice Period. The administrative message will, in most instances, announce that unusual market conditions exist on the primary market, such as a large influx of orders or an order imbalance in the affected Eligible Security. In such event, the processor is required to recommence real time dissemination of last sale reports in the affected Eligible Security 5 minutes after the printing of the administrative message. Alternatively, the administrative message may announce a continuation of the regulatory halt, in which case dissemination will not recommence until a new first Notice and Notice Period have occurred.

The amendment also includes certain technical modifications to section X(a) of the Plan. It provides that Plan participants may communicate by telephone with the primary market during a regulatory halt to determine the rationale for such halt; however, such communications are required to be kept confidential. In addition, the proposed amendment clarifies the procedures to be followed by the processor in the daily reporting of last sale reports received during a regulatory halt.[3] The amendment provides that

[1] Section X(a) contemplates the announcement of a regulatory halt when the primary market has determined (i) that there are matters relating to an Eligible Security or the issuer thereof which have not been adequately disclosed to the public or (ii) that there are regulatory problems relating to an Eligible Security which should be clarified before trading is permitted to continue.

[2] An "other reporting party" reports last sale transactions in the same manner as Plan participants. However, such an entity has no voting rights under the Plan.

[3] On this date, the Commission has declared effective an amendment to the Plan

Footnotes continued on next page

such last sale reports will be preceded on the consolidated tape by an indication that a regulatory halt is, or was, in effect on the primary market, and the reason for the halt.

II. First Amendment Submitted on April 5, 1978

On April 5, 1978, the CTA submitted to the Commission a proposed amendment to section XI(c) of the Plan which would reduce charges to vendors for access to the Network A high speed line.[4] If the vendor accesses the Network A high speed line directly the charge would be reduced from $750 to $500 per month. If the vendor accessses the Network A high speed line via another vendor the charge would be reduced from $500 to $250 per month. The reduction in these charges, which reflects decreasing costs to the CTA of disseminating last sale information through the Network A high speed line, was implemented, effective January 1, 1978.

III. Second Amendment Submitted on April 5, 1978

On April 5, 1978, the CTA submitted to the Commission, and on April 25, 1978, the CTA resubmitted to the Commission, proposed amendments to sections V(e), VIII(f), XI(a)(ii) and XI(b)(ii) of the Plan. These amendments have been proposed by the CTA in connection with the implementation of the Intermarket Trading System ("ITS"), a market linkage system providing facilities and procedures for (i) rapid and efficient routing of orders and administrative messages between and among the participants, and (ii) participation, under certain conditions, by all participants in opening transactions in the primary market. The ITS is being implemented pursuant to a plan ("ITS Plan") filed with the Commission on March 9, 1978, by the NYSE, the American Stock Exchange, Inc. ("Amex"), Boston Stock Exchange, Inc., Pacific Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc. On April 14, 1978, the Commission issued an order ("Approval Order") temporarily approving the ITS Plan for a period not to exceed 120 days, pending solicitation of public comment and final consideration of the ITS Plan under Section 11A (a)(3)(B) of the Act,[5] and on April 17, 1978, the participants began a phased implementation of the ITS.[7]

The amendments to the Plan are intended to comply with the terms of a Commission order ("Exemptive Order") issued simultaneously with the Approval Order, granting exemptions from Rule 17a-15 under the Act for a period of 120 days or until the Commission took final action with respect to the ITS Plan, whichever occurred first.[7] The Exemptive Order [8] was issued in response to a request by the participants in the ITS that, in conjunction with the implementation of ITS, the Commission either amend Rule 17a-15 under the Act or issue an exemptive order pursuant to paragraph (h) of the Rule, to permit the dissemination of last sale reports on moving ticker displays without any indication of the market of execution of all transactions effected in any market center which was scheduled to participate or was participating in the ITS (including transactions not effected through, and securities not traded in, that system).[9] In the Exemptive Order, the Commission stated its findings that

> no significant deprivation of market information would occur if moving tickers were permitted to display last sale reports without any market identification.[10]

In addition, the Commission noted that deletion of market identifiers would eliminate reporting disparities between the "primary" exchange markets and other market centers and might avoid tape delays. Therefore, the Commission determined that, during the 120-day period for which temporary ITS approval had been granted, it was not necessary in the public interest or for the protection of investors that last sale reports in eligible securities be accompanied by market identifiers when disseminated in moving ticker displays.

However, the Commission also noted that, in its view, removal of market identifiers for less than all market centers reporting transactions in the consolidated system would be discriminatory and anticompetitive as to those market centers not participating in ITS. Accordingly, although the Commission granted the relief requested (by permitting the CTA and the Securities Industry Automation Corp., the processor of the consolidated system, to report transactions effected in market centers which had agreed to participate in the ITS without market identifiers for dissemination on moving ticker displays), that relief was conditioned on the prompt removal as soon as technically feasible of such identifiers on moving ticker displays for all transactions as to which last sale information is reported in the consolidated system, regardless of the market of execution.[11] The proposed amendments to the Plan are designed to effectuate the terms of the Exemptive Order and otherwise accommodate the implementation of the ITS.

A. Amendment to Section V(e)

Requirements with respect to market identification are currently contained in both section V(e) [12] and VIII(f) of the Plan. The amendments to section V(e) of the Plan would generally consolidate and clarify [13] these requirements and would also include the following substantive changes.

1. *Deletion of market identifier from moving tickers.* The amendment would revise the terms of the Plan to provide that, commencing upon the approval of the ITS Plan by the Commission, all transactions effected in any market center participating in the ITS Plan will be disseminated for moving ticker purposes without market identification. In addition, the amendment would require the deletion of market identifiers from moving ticker displays with respect to all transactions, including those effected in market centers not participating in the ITS Plan, as soon as technically possible.[14]

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which would establish a procedure for storing and reporting last sale information received by the processor of the Plan during a regulatory halt. Securities Exchange Act Release No. 15252 (Oct. 20, 1978).

[4] Network A disseminates last sale reports of transactions executed in all reporting markets for securities listed on the New York Stock Exchange, Inc. ("NYSE").

[5] See Securities Exchange Act Release No. 14661 (Apr. 14, 1978), 43 FR 17419.

[6] On August 11, 1978, the Commission issued an order extending the Commission's temporary approval of the ITS Plan for an additional 12 months. See Securities Exchange Act Release No. 15058 (Aug. 11, 1978).

[7] See Securities Exchange Act Release No. 14662 (Apr. 14, 1978), 43 FR 17422.

[8] On August 11, 1978, the Commission also issued an order extending the Commission's temporary exemptions from Rule 17a-15 for an additional 12 months. See Securities Exchange Act Release No. 15059 (Aug. 11, 1978).

[9] Rule 17a-15(b) currently provides that: "[e]ach composite tape or interrogation system, in displaying last sale reports, shall identify the marketplace where each transaction was executed." The Rule defines the term "composite tape" to mean a "moving, real-time last sale reporting system."

[10] Exemptive Order, *supra* note 7, 43 FR 17422.

[11] As of April 24, 1978, market identifiers were deleted from moving ticker displays with respect to all transactions, including those effected in market centers not participating in the ITS.

[12] Section V(e) currently sets forth market identification requirements for moving ticker displays. Pursuant to this section, any moving ticker display must indicate the market of execution for each last sale report transmitted for ticker display purposes, except that transactions occurring on the NYSE or Amex are to be "identified" by the absence of any market identifier.

[13] Section VIII(f) of the Plan sets forth market identification requirements with respect to last sale reports disseminated by means of high-speed data transmission lines and displayed on interrogation devices. These requirements are identical to requirements for ticker displays.

[14] Based upon the Approval Order, the CTA has implemented this amendment to

Footnotes continued on next page

2. *Market identification of ITS transactions.* The amendment would also set forth provisions with respect to market identification of last sale reports effected through the ITS and displayed on interrogation devices. Pursuant to the amendment, last sale reports effected through the operation of ITS would, when transmitted by means of the high-speed line and displayed on interrogation devices, be accompanied by an alphabetic symbol identifying the market in which the ITS transaction was received and accepted.[15] However, the amendment would provide that, as soon as possible, such last sale reports would be accompanied by a symbol or symbols identifying both the market in which the seller was located and the market in which the buyer was located at the time of the ITS transaction.

B. AMENDMENT OF SECTION VIII(f)

Section VIII(f) currently requires that, except to the extent permited by an effective exemption from Rule 17a-15, interrogation devices displaying last sale reports with respect to any Eligible Security must be capable of displaying the most recent last sale report with respect to such security, as disseminated by the processor of the system, accompanied by an identifier as to the market of execution. The amendment would add a new provision to section VIII(f) to permit deletion of market identifiers from consolidated last sale displays (but not individual market displays) available through vendor interrogation devises. Pursuant to the proposed amendment, any interrogation device may be programed in such a fashion that, when queried by the easiest access routine, it will display the most recent sale price (together with the open, high, and low prices) in a particular security without regard to the market in which the sale took place and without identifying the market.[16]

C. AMENDMENTS TO SECTIONS XI(a)(ii) AND XI(b)(ii)

To clarify procedures for allocation of income and expenses associated with the dissemination of last sale reports in the consolidated system, the CTA has proposed amendments to sections XI(a)(ii) and XI(b)(ii) of the Plan which would provide that transactions effected through the ITS would be deemed to have been reported to the processor of the system by the party which supplied the sell side of the transaction.

IV. AMENDMENT SUBMITTED ON SEPTEMBER 5, 1978

On September 5, 1978, the CTA submitted to the Commission several proposed amendments to section XI of the Plan. The amendments are intended to reduce the costs of the regional exchanges which are Plan participants or other reporting parties.

The first of the amendments ("first amendment"), a new paragraph to section XI (c), would eliminate or reduce certain of the charges imposed by the CTA on participants or other reporting parties which are national securities exchanges ("CTA exchanges") for receipt of consolidated last sale information with respect to Eligible Securities. This provision has been implemented by the CTA, effective retroactive to August 1, 1978.

The CTA currently imposes three types of charges on vendors and their subscribers for receipt of last sale information. These charges consist of (i) access charges to cover the cost of operation of the high-speed data transmission lines over which last sale information is transmitted to interrogation devices; (ii) display charges based upon the number of moving tickers and interrogation devices operated by the recipient; and (iii) computer program charges for the right to process last sale information for a variety of purposes. Prior to the implementation of the first amendment, certain of these charges were imposed on CTA exchanges. Display charges related to the use of moving tickers an interrogation devices were imposed on all of such exchanges, and access charges and computer program charges were imposed on certain of such exchanges.

The first amendment would eliminate or reduce certain of these charges. Display charges related to the use of interrogation devices would be eliminated and display charges related to the use of moving tickers would be reduced to a level which would reimburse the CTA for its costs in providing these facilities. The first amendment would also eliminate computer program charges. However, the first amendment would not effect access charges.

The first amendment provides that the elimination of display charges related to the use of interrogation devices and the reduction of display charges related to the use of moving tickers would, however, be conditioned on the participant or other reporting party being subject to, and not in breach of, a contract with the NYSE or the Amex which would require that (i) the consolidated last sale information may be furnished only at premises occupied solely by the Plan participant or other reporting party, or on the trading floor(s) of the participant or other reporting party; (ii) the consolidated last sale information may be used by the participant or the other reporting party solely for regulatory and surveillance purposes or for other purposes specifically approved by the CTA; and (iii) the consolidated last sale information may not be retransmitted from, or otherwise made available to, any person not located within or on such premises or trading floor(s).

The second of the amendments ("second amendment"), a new subsection (d) to section XI, would permit any of the CTA exchanges to enter into an agreement with the Plan processor to use the high-speed line by which the processor disseminates last sale information to vendors for the purpose of disseminating last sale information relating to transactions in securities other than Eligible Securities. No agreement of the type contemplated by the second amendment has as yet been executed.

Currently, the CTA exchanges, at their own expense, transmit to vendors and other persons over high-speed lines last sale information with respect to securities listed solely on regional exchanges which are not Eligible Securities ("regionally listed securities"). The second amendment would permit regional exchanges to report last sale information with respect to regionally listed securities through the facilities of the CTA rather than through existing facilities. The regional exchanges have indicated that the reporting of last sale information with respect to regionally listed securities through the facilities of the CTA may be more efficient and less costly than current methods.

The second amendment provides that a CTA exchange may not enter into the type of agreement contemplated by its terms unless (i) the agreement does not interfere with the implementation of, operations under, and rights and obligations created by, the Plan, and contracts made, and the exercise of authority delegated, pursuant to the Plan; and (ii) the agreement

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Footnotes continued from last page

the Plan. All such market identifiers were deleted from moving tickers with respect to ITS participants as of April 17, 1978, and with respect to all last sale reports disseminated in the consolidated system as of April 24, 1978. *See* note 11, *supra*. On this date the Commission is proposing to amend Rule 17a-15 to require the deletion of market identifiers from moving ticker displays. *See* Securities Exchange Act Release No. 15251 (Oct. 20, 1978).

[15] This aspect of the amendment to the Plan has been implemented by the CTA Plan participants with the informal concurrence of the Commission's staff.

[16] The deletion of market identifiers from consolidated last sale displays available on interrogation devices would require an amendment to or exemption from Rule 17a-15 under the Act. On this date the Commission has published for comment proposed Rule 11Ac1-2 under the Act, which would require the deletion of market identifiers from consolidated last sale displays. See Securities Exchange Act Release No. 15251 (Oct. 20, 1978).

does not have any impact on, and is wholly independent of, the provisions of section XI of the Plan and the computations under such section.

V. REQUEST FOR COMMENT

In order to assist the Commission in determining whether to approve the proposed amendments, interested persons are invited to submit their views and comments on these proposals in writing to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, on or before November 29, 1978. In particular, the Commission is interested in receiving comments concerning the deletion of market identifiers from moving ticker displays and consolidated displays available through vendor interrogation devices. The amendments to the Plan will be available for public inspection in the Commission's public reference room. All such communications should refer to File No. S7-433.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-30497 Filed 10-27-78; 8:45 am]

[8510-01-M]

[Rel. No. 10449]

MONEY POOLERS INCOME TRUST

Filing of Application

OCTOBER 23, 1978.

Notice is hereby given, that Money Poolers Income Trust ("Applicant"), 518 Beach 140th Street, New York, N.Y. 11694, 811-2523, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on November 28, 1977, and an amendment thereto on September 25, 1978, pursuant to section 8(f) of the Act for an order of the Commission declaring that 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.

Applicant, organized under the laws of the State of New York, registered under the Act on September 19, 1974. On the same date it filed a registration statement (File No. 2-54403) under the Securities Act of 1933 for the public offer and sale of shares of its capital stock. This registration statement was declared effective on November 25, 1975; however, no shares were ever sold to the public and thus no shares are currently outstanding. The application states that because of economic conditions the Applicant was unable to sell any of its shares pursuant to the public offering.

The application further states that at a special meeting of Applicant's board of trustees held on July 5, 1977, the trustees determined that Applicant should cease to be an investment company and that an application should be filed with the Commission seeking an order of the Commission terminating the Applicant's registration under the Act.

Applicant represents that it has no unpaid expenses or claims against it and that it is not a party to any litigation or administrative proceedings, that no shares have been sold, no assets have been transferred to a separate trust, and that there are no outstanding subscriptions for sale of shares. It also states that steps will be taken upon the receipt of the requested order of the Commission to liquidate and dissolve the trust pursuant to the laws of the State of New York.

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, which order may be subject to appropriate conditions, and upon 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 16, 1978 at 5:30 p.m., submit to the Commission in writing a request for 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 he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of any attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application 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. 78-30577 Filed 10/27/78; 8:45 am]

[8010-01-M]

[Release No. 34-15257; File No. SR-MSRB-78-12]

MUNICIPAL SECURITIES RULEMAKING BOARD

Self-Regulatory Organizations; Proposed Rule Changes

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), notice is hereby given that on October 10, 1978 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission the proposed rule changes as follows:

STATMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGES

The proposed rule changes would effect the following changes in rule G-8:

(1) Subparagraph (E) of rule G-8(a)(xi), which requires municipal securities brokers and municipal securities dealers to maintain a record of the name and address of the employer of each customer, would be deleted.

(2) Subparagraph (I) of rule G-8(a)(xi), which requires municipal securities brokers and municipal securities dealers to maintain a record of whether a customer is employed by another broker, dealer or municipal securities dealer, would be modified to provide that when a customer is so employed the record must also contain the name of his employer.

(3) The proposed rules changes would also make certain related technical changes, including the redesignation of the subparagraphs following subparagraph (E) to reflect its deletion. The text of the proposed rule changes appears below.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule changes are as follows:

PURPOSE OF PROPOSED RULE CHANGES

Rule G-8(a)(xi) currently requires municipal securities brokers and municipal securities dealers to obtain certain basic information from each customer. The Board explained in its initial rule filing relating to rule G-8 (File No. SR-MSRB-76-4) that such information is "necessary to identify the customer, establish the customer's creditworthiness and authority to effect transactions, and demonstrate adequate internal supervision of the

account." On reconsideration of subparagraph (E) of rule G-8(a)(xi), the Board has determined that the information required to be obtained under the subparagraph imposes an unnecessary burden on municipal securities brokers and municipal securities dealers and therefore should be deleted from rule G-8. The Board believes that the deletion of the subparagraph will not contravene any of the purposes for requiring customer account information to be obtained and, to the extent that information required by the subparagraph may otherwise be relevant, other Board rules negate the need for it.

The Board's reconsideration of subparagraph (E) was prompted by recent comments received from several members of the municipal securities industry who indicated that they have encountered difficulty in complying with the subparagraph. One of the reasons cited for this difficulty is that information as to the name and address of the customer's employer is not required under the rules of any other self-regulatory organization or the Commission. Accordingly, such information may not be obtained at the time accounts are opened for customers who intend to trade only in corporate securities. Securities firms therefore have to establish special office and recordkeeping procedures to obtain the required information in the event a municipal securities transaction is ever effected for such accounts.

As indicated above, the Board believes that the deletion of subparagraph (E) will not contravene the stated purposes for requiring municipal securities brokers and municipal securities dealers to obtain customer account information. The information required by subparagraph (E) is not necessary to identify the customer since other provisions of rule G-8(a)(xi) accomplish this purpose more directly, and such information is not pertinent to the matter of whether a customer is authorized to effect transactions. Nor does information as to the name and address of a customer's employer provide meaningful information with respect to a customer's creditworthiness. Such information provides little insight, if any, with respect to a customer's financial resources or prospects. Further, to the extent that information regarding a customer's occupation may be tangentially relevant to this question, the Board notes that subparagraph (D) of rule G-8(a)(xi) requires municipal securities brokers and municipal securities dealers to obtain information regarding the occupation of each customer. Adequate internal supervision of customer accounts will not be affected by the deletion of subparagraph (E). In this regard, the Board notes that proposed Board rules G-26 and G-27 will require municipal securities brokers and municipal securities dealers to implement strict supervisory control over customer accounts and transactions in such accounts.

The Board also notes that proposed rule G-19 on suitability of recommendations imposes an affirmative obligation on municipal securities brokers and municipal securities dealers to obtain the necessary information in order to make a determination that a recommendation is suitable for a customer. Accordingly, although the specific identity of a customer's employer may not generally be relevant for such a determination, a municipal securities broker or municipal securities dealer would be required by this rule to obtain such information in those cases in which it may be relevant.

Information concerning a customer's employer will be relevant in the situation in which a customer is employed by another broker, dealer or municipal securities dealer. In such circumstances, a record of the identity of the employer will be necessary for the purpose of compliance with the Board's proposed rule G-28, relating to transactions with employees and partners of other municipal securities professionals. Accordingly, the Board has determined to amend subparagraph G-8(a)(xi)(I) (to be redesignated G-8(a)(xi)(H)) to require the recordation of the identity of an employer if the customer is employed by another broker, dealer or municipal securities dealer.

Basis Under the Act for Proposed Rule Changes

The Board has adopted the proposed rule changes pursuant to section 15B(b)(2)(G) of the Securities Exchange Act of 1934, as amended (the "Act"), which requires and empowers the Board to adopt rules prescribing the records to be made and kept by municipal securities brokers and municipal securities dealers and the periods for which such records shall be preserved.

Comments Received From Members, Participants, or Others on Proposed Rule Changes

Comments were not solicited or received on the proposed rule changes. However, as noted above, the Board received comments from industry members critical of the requirement to obtain for each customer the name and address of the customer's employer.

Burden on Competition

The Board is of the opinion that the proposed rule changes will not impose any burden on competition.

On or before December 4, 1978, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before November 21, 1978.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 20, 1978.

Text of Proposed Rule Changes [1]

Rule G-8; Books and Records to be Made by Municipal Securities Brokers and Municipal Securities Dealers.

(a) Description of Books and Records Required to be Made. Except as otherwise specifically indicated in this rule, every municipal securities broker and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such municipal securities broker or municipal securities dealer:

(i) through (x) No change.

(xi) Customer Account Information. A record for each customer, other than an institutional account, setting forth the following information to the extent applicable to such customer:

(A) through (D) No change.

[(E) name and address of employer;]

(*E*)[(F)] name and address of beneficial owner or owners of such account if other than the customer and transactions are to be confirmed to such owner or owners;

(*F*)[(G)] signature of municipal securities representative or general securi-

[1] Italics indicate new language; brackets indicate deletions.

ties representative introducing the account and signature of a municipal securities principal or general securities principal indicating acceptance of the account;

(G)[(H)] with respect to discretionary accounts, customer's written authorization to exercise discretionary power or authority with respect to the account, written approval of municipal securities principal who supervises the account, and written approval of municipal securities principal with respect to each transaction in the account, indicating the time and date of approval;

(*H*)[(I)] whether customer is employed by another broker, dealer, or municipal securities dealer *and, if so, the name of his employer;* and

(*I*)[(J)] in connection with the hypothecation of the customer's securities, the written authorization of, or the notice provided to, the customer in accordance with Commission rules 8c-1 and 15c2-1.

For purposes of this subparagraph, the terms "general securities representative" and "general securities principal" shall mean such persons as so defined by the rules of a national securities exchange or registered securities association. For purposes of this subparagraph, the term "institutional account" shall mean the account of an investment company as defined in section 3(a) of the Investment Company Act of 1940, a bank, an insurance company, or any other institutional type account. Anything in this subparagraph to the contrary notwithstanding, every municipal securities broker and municipal securities dealer shall maintain a record of the information required by items (A), (C), (*F*), (G), [(H)] and (*I*)[(J)] of this subparagraph with respect to each customer which is an institutional account.

(xii) No change.

(b) through (g) No change.

OCTOBER 20, 1978.

[FR Doc. 78-30581 Filed 10-27-78; 8:45 am]

[8010-01-M]

[Release No. 15248; SR-MSRB-77-12]

MUNICIPAL SECURITIES RULEMAKING BOARD

Filing of Amended Proposed Rule Change by the Municipal Securities Rulemaking Board and Order Approving That Rule Change

OCTOBER 19, 1978.

The Municipal Securities Rulemaking Board (the "MSRB"), Suite 507, 1150 Connecticut Avenue NW., Washington, D.C. 20036, submitted on October 17, 1978, an amended proposed rule change under Rule 19b-4 amending proposed rule G-28, which was filed as part of a series of proposed rules and rule amendments previously filed with the Commission (File No. SR-MSRB-77-12). The general purpose of that series is to codify basic standards of fair and ethical business conduct for municipal securities professionals. The Commission today approved, with the exception of the proposed amendment to rule D-8, and proposed rules G-23 and G-28, that series of proposed rules and rule amendments (Securities Exchange Act Release No. 15247 (Oct. 19, 1978)).[1] Proposed rule G-28 was originally filed with the Commission on September 20, 1977 (Securities Exchange Act Release No. 13987 (Sept. 22, 1977), 42 FR 49856 (Sept. 28, 1977)), and previously was amended on February 28, 1978 (Securities Exchange Act Release No. 14519 (Mar. 2, 1978), 43 FR 9672 (Mar. 9, 1978)). Proposed rule G-28 establishes procedures for municipal securities professionals which are opening and maintaining accounts for employees and partners of other municipal securities professionals (or for their spouses or minor children) or effecting transactions in such accounts. The amendment would modify proposed rule G-28 to make it applicable only in the case where the municipal securities professional knows that a customer is an employee or partner or another municipal securities broker or municipal securities dealer, or that the customer is the spouse or minor child of such a person.

The text of proposed rule G-28, as amended, is as follows:

RULE G-28—TRANSACTIONS WITH EMPLOYEES AND PARTNERS OF OTHER MUNICIPAL SECURITIES PROFESSIONALS

(a) *Account instructions.* No broker, dealer, or municipal securities dealer shall open or maintain an account in which transactions in municipal securities may be effected for a customer who such broker, dealer, or municipal securities dealers knows is employed by, or the partner of, another municipal securities broker or municipal securities dealer, or for or on behalf of the spouse or minor child of such a person, unless such broker, dealer, or municipal securities dealer first gives written notice with respect to the opening and maintenance of such account to the municipal securities broker or municipal securities dealer by whom such person is employed or of whom such person is a partner.

(b) *Account transactions.* No broker, dealer, or municipal securities dealer shall effect a transaction in municipal securities with or for an account subject to section (a) of this rule unless such broker, dealer, or municipal securities dealer:

(i) Sends simultaneously to the employing municipal securities broker or municipal securities dealer a duplicate copy of each confirmation sent to the customer, and

(ii) Acts in accordance with any written instructions which may be provided to the broker, dealer or municipal securities dealer by an employing municipal securities broker or municipal securities dealer with respect to transactions effected with or for such account.

(c) *Effectiveness.* The requirements of this rule shall become effective on December 18, 1978.

The Commission finds that the proposed rule, as amended, 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. In addition, the Commission finds good cause for approving the proposed rule prior to the thirtieth day after the date of publication of notice of filing of the amendment to the proposed rule. The proposed rule is one of a series of fair practice rules, the majority of which were approved by the Commission earlier today. Approval by this order of proposed rule G-28, will permit brokers, dealers, and municipal securities dealers to implement procedures for compliance with proposed rule G-28 and the other fair practice rules at the same time.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change on or before November 20, 1978. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSRB-77-12.

Copies of the submission and all subsequent amendments, and copies of all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of section 552 of Title 5, United States Code, will be available for inspection and copying at the Securities and Exchange Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

[1] The Commission deferred for future consideration the proposed amendment to rule D-8, the definition of "bank dealers," which would exclude the fiduciary activities of a bank municipal securities dealer from the scope of MSRB regulation, and proposed rule G-23, which concerns the activities of financial advisors.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule, as amended, be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-30499 Filed 10-27-78; 8:45 am]

[8010-01-M]

[Release No. 15247; SR-MSRB-77-12]

MUNICIPAL SECURITIES RULEMAKING BOARD

Order Approving Proposed Rule Changes

On September 20, 1977, 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 (17 CFR 240.19b-4), a series of 17 proposed rules collectively referred to as the MSRB proposed rules of fair practice. The MSRB filing also included three proposed definitional rules and two proposed amendments to rules currently in effect.

The MSRB's proposed fair practice rules represent a first attempt to codify basic standards of fair and ethical conduct for brokers, dealers, municipal securities dealers, and their associated persons in the municipal securities business. Pursuant to this objective, the proposed omnibus fair practice rule (proposed Rule G-17) would establish the general standard for conduct of a municipal securities business, requiring a municipal securities professional to deal fairly with all persons and not to engage in any deceptive, dishonest, or unfair practice. The other proposed fair practice rules would provide, in essence, an elaboration upon this general standard, by establishing guidelines for particular subject matters such as the suitability of recommendations and transactions, professional advertising, the administration of discretionary and other customer accounts, supervision of employees, the determination of prices and commissions for municipal securities, disclosures in connection with new issue municipal securities, and advertisements of such securities.

The proposed definitional rules which the MSRB included in its filing would define the terms "customer," "discretionary account," and "associated person." The proposed definitions would apply to all MSRB rules, not merely the proposed fair practice rules. The two proposed amendments to current rules would (i) amend the definition of "bank dealer" in MSRB Rule D-8 to exclude from regulation by the MSRB the fiduciary activities of bank municipal securities dealers, except as otherwise explicitly provided by an MSRB rule, and (ii) amend MSRB Rule G-13 concerning quotations to provide that no municipal securities broker or municipal securities dealer shall knowingly misrepresent a quotation relating to municipal securities made by any other broker, dealer, or municipal securities dealer.

The MSRB filed substantive amendments to certain of the proposed rule changes on February 28, 1978, June 30, 1978, and August 23, 1978. Notice of the proposed rule changes, and their amendments, together with the terms of substance thereof, was given by publication of Commission releases (Securities Exchange Act Release Nos. 13987 (Sept. 22, 1977), 14519 (Mar. 2, 1978), 14943 (July 7, 1978), and 15138 (Sept. 7, 1978)) and by publication in the FEDERAL REGISTER (42 FR 49856 (Sept. 28, 1977), 43 FR 9672 (Mar. 9, 1978), 43 FR 30379 (July 14, 1978), and 43 FR 41111 (Sept. 15, 12978)). 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 by the Commission and were made available to the public at the Commission's Public Reference Room (File No. SR-MSRB-77-12).

The Commission finds that proposed Rules G-17 through G-22, G-24 through G-27, G-29 through G-33, D-9 through D-11, and the proposed amendment to Rule G-13 are consisent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, and in particular, the requirements of section 15B and the rules and regulations thereunder.[1]

Commission approval of a proposed rule change is based on the limited finding that such proposal is consistent with the Act. Accordingly, the Commission does not necessarily view the formulation of any particular proposed rule change approved by this order as the best formulation for purposes of meeting the MSRB's statutory mandate to propose and adopt rules that shall "be designed to prevent fradulent and manipulative acts and practices, to promote just and equitable principles of trade, * * * and, in general, to protect investors and the public interest * * *."[2] In particular, the Commission intends to consider whether additional disclosure concerning underwriting arrangements should be required. Furthermore, although the Commission views the proposed rules of fair practice approved by this order as a worthwhile initial step towards codifying basic standards of fair and ethical conduct for municipal securities professionals, the Commission understands that the MSRB will continue to study whether it is necessary or appropriate to develop additional rules of fair practice.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the

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[1] In order to avoid any misinterpretation, it is necessary to clarify the manner in which proposed Rules D-11 and G-18 approved by this order would operate.

Proposed Rule D-11 is a definitional rule which, in general, provides that unless the context otherwise requires or a rule of the MSRB otherwise specifically provides, the terms "broker," "dealer," "municipal securities broker," "municipal securities dealer," and "bank dealer" shall be deemed to include their respective associated persons. Proposed Rule D-11, in its present form, could have an unintended result if applied to associated persons in situations where they perform functions other than those of a broker, dealer, or municipal securities dealer. The MSRB staff has indicated to the Commission staff that it will recommend that the MSRB amend proposed Rule D-11 to clarify that the rule refers to associated persons only to the extent such associated persons are performing, either with or for the municipal securities professional with which they are associated, "municipal securities dealer activities," as defined in Rule G-1(b) of the Board. Although Rule G-1(b) refers to "dealer activities," it includes activities performed by municipal securities brokers and has been used by the MSRB as a general description of the activities of a municipal securities professional. *See* MSRB Rule G-3(a)(i). The Commission is of the opinion that such an amendment would clarify the scope of proposed Rule D-11.

Proposed Rule G-18 requires that a municipal securities professional acting as agent shall make a reasonable effort to obtain a price for the customer that is fair and reasonable. The MSRB has indicated that such a professional may utilize the services of a "broker's broker" to obtain the fair and reasonable price for his customer (File No. SR-MSRB-77-12, p. 9 (Sept. 20, 1977)). It should be noted, however, that if a municipal securities professional uses the services of a "broker's broker," although the rule does not require him to duplicate the efforts of the municipal securities professional, he continues to have a duty to assure that a reasonble effort has been made to obtain a fair and reasonable price. The MSRB has interpreted proposed Rule G-18 to require a municipal securities professional acting as agent for a customer exercise the same high degree of care as the professional would if acting for its own account (File No. SR-MSRB-77-12, p. 8 (Sept. 20, 1977)). Furthermore, common law agency principles would not be effected by Commission approval of MSRB proposed Rule G-18, but would continue to apply to a municipal securities professional acting as agent for a customer (section 28(a) of the Act). Those principles impose a duty upon the agent to obtain the best price discoverable in the exercise of reasonable diligence (*Securities and Exchange Commission, Report of Special Study of Securities Markets*, H. Doc. No. 95, Pt. 2, 88th Cong., 1st Sess. 623, n. 223 (1963)).

[2] Section 15B(b)(2)(C) of the Act.

above-mentioned proposed rule changes be, and they hereby are, approved.

The Commission has determined to defer consideration of the proposed amendment to Rule D-8, the definition of "bank dealer," which would exclude the fiduciary activities of a bank from the scope of MSRB regulation, proposed Rule G-23, which concerns the activities of financial advisors, and proposed Rule G-28, which concerns transactions with employees and partners of other municipal securities professionals.[1]

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-30500 Filed 10-27-78; 8:45 am]

[8010-01-M]

[File No. 1-4511]

PACIFIC NORTHWEST BELL TELEPHONE CO.

Application to Withdraw From Listing and Registration

OCTOBER 23, 1978.

The above-named issuer has filed an application with the Securities and Exchange Commission, pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The common stock of Pacific Northwest Bell Telephone Co. (the "Company") has been listed for trading on the Amex since September 14, 1961. On February 17, 1978, the stock was also listed for trading on the New York Stock Exchange, Inc. ("NYSE"). In making the decision to withdraw its common stock from listing and registration on the Amex, the company considered the direct and indirect costs and expenses attendant on maintaining a dual listing on both exchanges. The company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for such stock.

The application relates solely to the withdrawal from listing and registration on the Amex and shall have no effect on the continued listing of such common stock on the NYSE. The amex has posed no objection in this matter.

Any interested person may, on or before November 24, 1978, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission will, on the basis of the application and any other information submitted to it, issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-30498 Filed 10-26-78; 8:45 am]

[8010-01-M]

[Release No. 34-15256; File No. SR-SCCP-78-4]

STOCK CLEARING CORP. OF PHILADELPHIA

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on October 3, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

TEXT OF PROPOSED RULE CHANGE

The Stock Clearing Corp. of Philadelphia ("SCCP") proposes a new Rule 25 and supplementary material establishing a late charge to be imposed by SCCP on clearing members for delinquent payment of dues, fees, fines, or other charges owed SCCP. The text of the proposed rule and supplementary material follows (italics indicate new material):

Rule 25. There shall be imposed upon any clearing member using the facilities or services of the Clearing Corporation, or enjoying any of the privileges therein, a late charge until payment is received of dues, fees, fines, or other charges imposed by the Clearing Corporation and not paid within thirty (30) days after notice thereof has been mailed. The amount of such late charge shall be fixed from time to time by the Board of Directors. If any clearing member shall fail to pay such dues, fees, fines, or other charge, including late charges, within ninety (90) days after notice thereof has been mailed, the Controller shall so notify the Board of Directors which shall take such action as it may deem appropriate.

* * * *Supplementary Material*

The amount of the late charge authorized by Rule 25 has been established at the rate of one percent (1%) per month.

BASIS AND PURPOSE OF PROPOSED RULE CHANGE

The purpose of the proposed rule is to promote efficiency of operation and adequate cash flow for provision of services in a membership organization.

The proposed rule is consistent with the requirement that clearing agency rules provide for equitable allocation of reasonable dues, fees, and other charges among participating members. Delinquent members should not expect to be subsidized indirectly by SCCP and other members whose payments are timely.

SCCP believes that the late charge is an equitable allocation made to encourage uniformity in timely payment. The period allowed for timely payment and the rate of the delinquent charge are in line with standard commercial usage.

No comments have been solicited or received by SCCP regarding the proposed rule change.

SCCP believes that no burden on competition will be imposed by the proposed rule change.

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-

[1] The proposed amendment to Rule D-8 raises considerations which have not yet been resolved. Proposed Rule G-23 was recently amended by the MSRB, and the MSRB has requested that the Commission defer consideration of that rule so that action on the other rules filed will not be delayed pending analysis by the Commission and its staff of whatever comments are received with respect to the amendment. Proposed Rule G-28 was amended by an MSRB filing of October 17, 1978, and today was approved by the Commission in a separate release (Securities Exchange Act Release No. 15248 (Oct. 19, 1978)).

regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before November 20, 1978.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 20, 1978.

[FR Doc. 78-30503 Filed 10-27-78; 8:45 am]

[8010-01-M]

[Release No. 34-15258; File No. SR-NASD-78-12]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on September 25, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

TEXT OF NASD'S PROPOSED RULE CHANGE

The following is the full text of the proposed amendment to Schedule D of Article XVI of the bylaws of the National Association of Securities Dealers, Inc. Part IV of Schedule D shall be amended by the addition of section H as follows (new material is italicized):

H. Late Fees.

All NASDAQ Service Charges which are past due for 60 days or more shall be subject to a late fee of 10 percent of the amount past due.

NASD'S STATEMENT ON PURPOSE OF PROPOSED RULE CHANGE

A small number of NASDAQ subscribers fail to make payment in a timely manner. Such failure leads to additional costs for followup procedures and other collection efforts. The Association does not believe that the costs of such collection efforts should continue to be borne by all NASDAQ subscribers, but should be borne by those subscribers who caused them. The proposed amendment establishing a 10 percent late fee on accounts past due 60 days or more is intended to recover the costs of the followup procedures and collection efforts.

NASD'S STATEMENT ON BASIS UNDER THE ACT FOR PROPOSED RULE CHANGE

Section 15A(b)(5) provides that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that the rules of the association provide for equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

NASD'S STATEMENT ON COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS, OR OTHERS ON PROPOSED RULE CHANGE

Article XVI, section 3 of the Association's bylaws provides that membership approval of a change in schedule D is not necessary. However, comments from the membership were solicited. Of four comments received, three were unqualifiedly favorable. The fourth comment was generally favorable but indicated some reservation with respect to assessing the late fee on bona fide disputed items. The Association will not assess a late fee in the case of a bona fide dispute.

NASD'S STATEMENT ON BURDEN ON COMPETITION

The Association believes this proposal will not impose a burden on competition.

Within 35 days of the date of publication of this notice in the FEDERAL REGISTER, or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will: (a) By order approve such proposed rule change; or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before November 14, 1978.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 20, 1978.

[FR Doc. 78-30579 Filed 10-27-78; 8:45 am]

[8010-01-M]

[Release No. 34-15259; File No. SR-NASD-78-15]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Self-Regulatory Organizations; Proposed Rule Change

On September 25, 1978, the National Association of Securities Dealers, Inc. ("NASD"), rescinded a rule which had become effective upon filing (SR-NASD-78-9 filed July 25, 1978) pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and which had increased the variable portion of its annual membership assessment. It simultaneously submitted a new proposal (SR-NASD-78-15) identical in substance to the one submitted as File No. SR-NASD-78-9. That proposal became effective upon filing pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934. Thus, the Commission may summarily abrogate it on or before November 24, 1978.

Publication of the original submission was made in 43 FR 37046 (August 21, 1978). Interested persons are invited to submit written data, views and arguments concerning the new submission on or before November 14, 1978. Persons desiring to make written submissions 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 No. SR-NASD-78-15.

Copies of the submission and of all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of the filing will also be available at the principal office of the NASD.

For the Commission by the division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 20, 1978.

[FR Doc. 78-30580 Filed 10-27-78; 8:45 am]

[4710-01-M]

DEPARTMENT OF STATE

[Public Notice 637; Delegation of Authority No. 120-2]

ASSISTANT SECRETARY FOR ADMINISTRATION

Delegation of Authority

By virtue of the authority vested in me by section 4 of the Act of May 26, 1949 (63 Stat. 111, 22 U.S.C. 2658), as amended, State Department Delegation of Authority No. 120 of October 30, 1969 (Public Notice No. 318, 34 FR 18095) is amended as follows:

1. The phrase "heretofore reserved to or performed by the Deputy Under Secretary for Administration" in paragraph 2 is deleted;

2. The phrase "Deputy Under Secretary for Administration" is amended to read "Under Secretary for Management" each time it appears.

Dated: October 12, 1978.

CYRUS R. VANCE,
Secretary of State.

[FR Doc. 78-30557 Filed 10-27-78; 8:45 am]

[4710-07-M]

[Public Notice CM-8/122]

STUDY GROUP 1 OF THE U.S. ORGANIZATION FOR THE INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE COMMITTEE (CCITT)

Meeting

The Department of State announces that Study Group 1 of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on November 20, 1978 at 10 a.m. in room 856 of the Federal Communications Commission, 1919 M Street, NW., Washington, D.C. This Study Group deals with U.S. Government regulatory aspects of international telegraph and telephone operations and tariffs.

The Study Group will discuss international telecommunications questions relating to telegraph, telex, data, videotex, maritime mobile and leased channel services in order to develop U.S. positions to be taken at international CCITT meetings to be held in December 1978 and during 1979, in Geneva, Switzerland.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

Requests for further information should be directed to Mr. Richard H. Howarth, State Department, Washington, D.C. 20520, telephone 202-632-1007.

Dated: October 20, 1978.

RICHARD H. HOWARTH,
Chairman,
U.S. CCITT National Committee.

[FR Doc. 78-30559 Filed 10-27-78; 8:45 am]

[4710-01-M]

[Public Notice 636; Delegation of Authority No. 104-12]

ASSISTANT SECRETARY FOR INTERNATIONAL NARCOTICS MATTERS

Delegation of Authority

By virtue of the authority vested in me by section 621(a) of the Foreign Assistance Act of 1961, as amended (75 Stat. 445, 22 U.S.C. 2381), and by section 4 of the Act of May 26, 1949, as amended (63 Stat. 111, 22 U.S.C. 2658), State Department Delegation of Authority No. 104 of November 3, 1961 (26 FR 10608), as heretofore amended, is hereby further amended as follows:

Section 6(b)(5) is amended to read as follows:

"(5) To the Assistant Secretary for International Narcotics Matters:

"(A) Those functions conferred upon the President by section 481 of the Act, together with all those authorities contained in the Act, to the extent necessary or appropriate to accomplish the purposes of Section 481 of the Act: *Provided:* That Department of State procurement for the international narcotics control program shall be carried out in accordance with Department of State Procurement Regulations (41 CFR Chapter 6).

"(B) Those functions conferred upon the Secretary of State by the determination of the President pursuant to section 604(a) of the Act, dated October 18, 1961 (26 FR 10543), and by section 4 of Executive Order 11223 of May 12, 1965 (30 FR 6635).

"(C) The functions of negotiating, concluding and terminating international agreements relating to international narcotics control programs subject to the concurrences required by the State Department Circular 175 Procedure."

This delegation of authority supersedes and cancels Delegation of Authority No. 104-9 of November 16, 1973 (Public Notice 408, 38 FR 34130): *Provided:* That all determinations, authorizations, regulations, rulings, orders, directives, contracts, agreements, and other actions made, issued, or entered into with respect to any function affected by this delegation of authority and not revoked, superseded, or otherwise made inapplicable before the effective date of this delegation of authority shall continue in full force and effect until amended, modified, or terminated by appropriate authority.

Pending appointment of an Assistant Secretary for International Narcotics Matters, the functions delegated herein may be performed by the Senior Advisor for International Narcotics Matters.

Dated: October 12, 1978.

CYRUS R. VANCE,
Secretary of State.

[FR Doc. 78-30558 Filed 10-27-78; 8:45 am]

[4910-13-M]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

AIRPORT TRAFFIC CONTROL TOWER AT PATRICK HENRY INTERNATIONAL AIRPORT, NEWPORT NEWS, VA.

Reduced Hours of Operation

Notice is hereby given that the Airport Traffic Control Tower at Patrick Henry International Airport, Newport News, Va., will reduce its hours of operation effective December 31, 1978. Hours of operations will be at 7 a.m. to midnight daily.

(Sec. 313(a) of the Federal Aviation Act of 1958, 72 Stat. 752, 49 U.S.C. 1354.)

Issued in New York, N.Y., on October 20, 1978.

IRVING MARK,
Acting Regional Director.

[FR Doc. 78-30521 Filed 10-27-78; 8:45 am]

[4910-22-M]

Federal Highway Administration

[FHWA Docket No. 76-9]

BAYONNE BRIDGE, GOETHALS BRIDGE, GEORGE WASHINGTON BRIDGE, AND OUTERBRIDGE CROSSING TOLLS

Order of the Administrator

The Federal Highway Administrator in his order of August 9, 1977, directed the Port Authority of New York and New Jersey (PANYNJ) "to prepare and submit to the Administrator and all parties a comprehensive feasibility study and recommendations for peak-hour charges and the impact that carpooling and commuter discounts have upon congestion" within one year of the date of the final order, November 7, 1977.

The PANYNJ on September 20, 1978, requested an extension of the time to file this feasibility study to January 30, 1979. The request of PANYNJ which states its reasons for the extension was served on all parties of record, and the Administrator by order of September 28, 1978, served notice on all parties for objections to the extension of time for filing this study to be filed with the Administra-

tor by close of business October 13, 1978.

The Administrator has received only one comment on his order of September 28, 1978, and that was from the Environmental Defense Fund stating no objections to the granting of this extension. The Fund indicated that its primary interest in the study is not that it be completed by a specific date, but that it be as comprehensive, well-designed and scientifically reliable as possible.

Wherefore, the Administrator finds that there are no objections to the granting of this extension and the Administrator's decision of August 9, 1977, is hereby amended to direct that the feasibility study for peak-hour charges and the impact that carpooling and commuter discounts have upon congestion shall be filed with the Administrator by January 30, 1979. All other portions of the August 9, 1977, and November 7, 1977, orders shall remain in full force and effect.

Issued this 19th day of October 1978, in Washington, D.C.

KARL S. BOWERS,
Federal Highway Administrator.

[FR Doc 78-30560 Filed 10-27-78; 8:45 am]

[4910-59-M]

National Highway Traffic Safety Administration

NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE

Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I), notice is hereby given of a meeting of the National Highway Safety Advisory Committee's Highway Safety Data Task Force. This meeting will take place on November 15 and 16 starting at 9 a.m. in room 6200 of the Department of Transportation Headquarters Building.

The Task Force will hear briefings from NHTSA and FHWA on the need for data, its sources and quality, and data systems presently in operation or planned to collect that data.

Attendance is open to the interested public, but limited to the space available. With the approval of the chairperson, members of the public may present oral statements at the meeting. Any member of the public may present a written statement to the Committee at any time.

This meeting is subject to the approval of the appropriate Department of Transportation officials. Additional information may be obtained from the NHTSA Executive Secretary, Room 5215, 400 Seventh Street SW., Washington, D.C. 20590, telephone 202-426-2872.

Issued in Washington, D.C., on October 23, 1978.

WM. H. MARSH,
Executive Secretary.

[FR Doc. 78-30405 Filed 10-27-78; 8:45 am]

[4910-61-M]

St. Lawrence Seaway Development Corporation

PROCEDURES FOR CLOSING OF 1978 NAVIGATION SEASON

On April 4, 1978, the St. Lawrence Seaway Development Corporation published in the FEDERAL REGISTER (43 FR 14197) proposed procedures to be implemented during the closing of the 1978 navigation season on the Montreal-Lake Ontario section of the St. Lawrence Seaway. The public was invited to submit comments on those procedures by April 15, 1978. Subsequently, it was decided, after consultation with the Canadian St. Lawrence Seaway Authority, to extend the comment period to May 1, 1978 (43 FR 17089). On August 1, 1978, Seaway Notice Affecting Navigation No. 20 of 1978 was distributed to mariners describing the procedures finally adopted.

The purpose of announcing the closing procedures is to provide for a more orderly end to the navigation season on the St. Lawrence Seaway than has been effected over the past several years and to minimize the operating difficulties and uncertainties encountered both by users of the system and the Seaway entities of the United States and Canada. Additionally, it is hoped that by being made aware of the closing procedures, vessel operators and owners will schedule their end-of-season transits so as to avoid the very real possibility of being trapped in the Seaway system throughout the winter.

Several comments were received in response to the proposed closing procedures. These were jointly reviewed by the Seaway Corporation and the St. Lawrence Seaway Authority of Canada. The procedures have also been discussed with representatives of affected segments of the vessel industry. As a result of the Seaway entities' joint review and discussions with industry representatives, the procedures have been revised as follows:

(1) The reference to December 17 as the official closing date of the Seaway system has been eliminated as it resulted in some confusion.

(2) The identification of the reporting point for vessels transiting downbound has been changed from "CIP Whaleback" to "CIP Crossover Island." This reflects a recent change in Seaway communication procedures but does not significantly alter the closing procedures.

(3) The dollar amounts of the operational surcharge to be assessed those vessels reporting after December 15 at the designated call-in points, and which are able to complete their transits, have been reduced from $25,000 for each day late in reporting with a $100,000 maximum surcharge to $20,000 a day with an $80,000 maximum.

(4) The restrictions dealing with vessel dimensions, draft and horsepower have been substantially revised from those proposed on April 4. Such restrictions will now become effective December 7 rather than December 5 and will be somewhat less stringent than those originally considered. More stringent restrictions will, however, be in effect for transits on and after December 12.

(5) A provision has been added to the procedures which requires that each vessel have sufficient aft draft to fully submerge its propeller.

The closing procedures are being established in the United States by the St. Lawrence Seaway Development Corporation pursuant to authority contained in the Act of May 13, 1954 (33 U.S.C. 981-988).

To provide for an orderly end to the 1978 navigation season for the Montreal-Lake Ontario section, the following procedures are established:

1. Upbound vessels transiting into the Great Lakes and wishing to return downbound through St. Lambert Lock will be accepted for transit at CIP 15, Welland Canal up to 2400 hours, December 6, 1978.

2. Downbound vessels will be accepted for transit at CIP Crossover Island up to 2400 hours, December 15, 1978.

3. Upbound vessels will be accepted for transit at Cap St. Michel up to 2400 hours, December 15, 1978.

4. Vessels which have complied with these call-in procedures will be cleared through the system, operating conditions permitting.

5. Vessels which have not reported at the designated call-in points at Crossover Island and Cap St. Michel may be allowed to transit if, in the sole judgment of the Seaway entities, such transits can be permitted. If such transits are allowed, these transit privileges will be assessed an operational surcharge for the transit as follows:

For vessels reporting on: December 16, 1978, $20,000; December 17, 1978, $40,000; December 18, 1978, $60,000; December 19, 1978; and thereafter, $80,000.

The Seaway entities, in their discretion, may adjust the above dates and corresponding surcharges should circumstances within their operational control so require.

ST. LAMBERT-IROQOUIS SEGMENT

Unique ice conditions are encountered in the St. Lambert-Iroquois Segment. The limits of this Segment are defined as CIP 2 (upbound) and Cardinal (downbound). To reduce the problem of lengthy delays caused by vessels operating in ice, the following restrictions, if necessary, will apply during the 1978 navigation season:

1. From 0001 hours on December 7, vessels in the following categories will not be accepted for transit between St. Lambert and Iroquois Locks:

UPBOUND

(a) Vessels with a power-to-length ratio of less than 20:1 (kW/meter).
(b) Vessels with a forward draft of less than 40 dm.

DOWNBOUND

(a) Vessels with a power-to-length ratio of less than 15:1 (kW/meter).
(b) Vessels with a minimum forward draft of less than 20 dm.

2. From 0001 hours on December 12, vessels in the following categories will not be accepted for transit between St. Lambert and Iroquois Locks:

UPBOUND

(a) Vessels with a power-to-length ratio of less than 24:1 (kW/meter).
(b) Vessels with a forward draft of less than 50 dm.

DOWNBOUND

(a) Vessels with a power-to-length ratio of less than 15:1 (kW/meter).
(b) Vessels with a forward draft of less than 25 dm.

In all cases, the aft draft is to be sufficient to have the propeller fully submerged.

NOTES.—(i) The above draft limitations do not apply to tugs.
(ii) For determining the power-to-length ratio, the information contained in the Lloyd's Registry will be used.
(iii) Vessel operators may utilize a tug of about 3,000 HP to augment the power of a vessel. In calculating the vessel's power-to-length ratio, 50 percent of the tug's horsepower can be added to the vessel's power.

Operators are reminded that the above restrictions are minimum and do not assure transit, and that the Seaway entities will adjust the restrictions as ice conditions may dictate.

Dated: October 24, 1978.

D. W. OBERLIN,
Administrator, St. Lawrence Seaway Development Corporation.

[FR Doc. 78-30550 Filed 10-27-78; 8:45 am]

[8320-01-M]

VETERANS ADMINISTRATION

STATION COMMITTEE ON EDUCATIONAL ALLOWANCES

Meeting

Notice is hereby given pursuant to section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on November 27, 1978, at 1 p.m., the Veterans Administation Regional Office Station Committee on Educational Allowances shall at Federal Building, U.S. Courthouse, Room A-220, 110 9th Avenue, South, Nashville, Tenn., conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in National School of Business, Inc., 1412 South Lee Highway, Cleveland, Tenn., should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Dated: October 23, 1978.

R. S. BIELAK,
Director, VA Regional Office, 110 9th Avenue, South, Nashville, Tenn.

[FR Doc. 78-30561 Filed 10-27-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 25, 1978.

These applications for long- and short-haul relief have been filed with the ICC.

Protests are due at the ICC within 15 days from the date of publication of this notice.

FSA No. 43616, Southwestern Freight Bureau, Agent's No. B-774, rates on ethylene glycol, from Port Neches, Tex., to Forster, S.C., in supplemental 2 to its Tariff 11-J, ICC 5348, to become effective December 1, 1978. Grounds for relief—market competition.

FSA No. 43617, Lykes Bros. Steamship Co., Inc., No. 7, intermodal rates on general commodities, between European, African, Mediterranean, Middle, and Far Eastern ports, and Pacific Northwestern ports in the United States, via U.S. Gulf coast ports, in its Tariffs 1, 2, 3, 4, 7, and 8, ICC Nos. 1, 2, 3, 4, 7, and 8, respectively, to become effective November 24, 1978. Grounds for relief—water competition.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-30614 Filed 10-27-78; 8:45 am]

[7035-01-M]

MINIMIZE DISRUPTIONS OR TEMPORARY SUSPENSION OF RAIL OPERATIONS WHEN SEVERE WINTER STORMS OCCUR

Informal Public Conference

AGENCY: Interstate Commerce Commission.

ACTION: Informal Public Conference to be held by the Bureau of Operations, November 8, 1978, Conrad Hilton Hotel, Chicago, Ill., 9 a.m., in the Waldorf Room.

SUMMARY: Informal Conference will bring together shippers, receivers of freight, railroads, State officials, and representatives of Federal agencies to discuss what plans can be made to minimize disruptions or temporary suspensions of rail operations when severe winter storms occur.

FOR FURTHER INFORMATION CONTACT:

William J. Love, Assistant to the Director, Bureau of Operations, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7614.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-30619 Filed 10-27-78; 8:45 am]

[1505-01-M]

[Vol. No. 107]

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER OPERATING RIGHTS APPLICATIONS

Correction

In FR Doc. 78-21410, appearing at page 34258 in the issue of Thursday, August 3, 1978, is corrected as follows:
1. MC 106963 (Sub-1F), second full paragraph, middle column, page 34260, should be designated as set out at the beginning of this sentence.

[7035-01-M]

TRANSPORTATION OF HOUSEHOLD GOODS BY MOTOR COMMON CARRIERS

Informal Conference

AGENCY: Interstate Commerce Commission

ACTION: Notice that the Commission intends to conduct an informal confer-

ence with motor common carriers of household goods in interstate or foreign commerce on October 30, 1978.

SUMMARY: This notice is to inform the public that the Interstate Commerce Commission will conduct an informal conference with motor common carriers of household goods subject to the jurisdiction of the Commission. The agenda for the conference includes; estimating accuracy; the Commission's use of the media; weighing of household goods shipments and ethical practices; deregulation of government traffic; the financial stability of movers, and the industry's future which, in turn, includes need for current triangular structure, reasonable dispatch, paperwork burden, sub 8 compliance and other deregulation efforts.

FOR FURTHER INFORMATION CONTACT:

Joel E. Burns, Director, Bureau of Operations, Room 7115, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, D.C. 20423, 202-275-7849.

Peter M. Shannon, Director, Bureau of Investigations and Enforcement, Room 7417, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, D.C. 20423, 202-275-7594.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-30615 Filed 10-27-78; 8:45 am]

[4810-40-M]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular: Public Debt Series—No. 24-78]

TREASURY NOTES OF SERIES U-1980

Interest Rate

OCTOBER 25, 1978.

The Secretary of the Treasury announced on October 24, 1978, that the interest rate on the notes designated Series U-1980, described in Department Circular—Public Debt Series—No. 24-78, dated October 18, 1978, will be 8⅞ percent. Interest on the notes will be payable at the rate of 8⅞ percent per annum.

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

SUPPLEMENTARY STATEMENT

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regualtions.

[FR Doc. 78-30551 Filed 10-27-78; 8:45 am]

[4810-40-M]

Office of the Secretary

[Department Circular Public Debt Series No. 27-78]

TREASURY BONDS

Series 2003-2008

Washington, October 26, 1978.

1. INVITATION FOR TENDERS

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $1,750,000,000 of the United States securities, designated Treasury Bonds of 2003-2008 (CUSIP No. 912810 CE 6). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts may also be issued for cash to Federal Reserve Banks as agents of foreign and international monetary authorities.

2. DESCRIPTION OF SECURITIES

2.1. The securities will be dated November 15, 1978, and will bear interest from that date, payable on a semiannual basis on May 15, 1979, each subsequent 6 months on November 15 and May 15, until the principal becomes payable. They will mature on November 15, 2008, but may be redeemed at the option of the United States on and after November 15, 2003, in whole or in part, at par and accrued interest on any interest payment date or dates, on 4 months' notice of call given in such manner as the Secretary of the Treasury shall prescribe. In case of partial call, the securities to be redeemed will be determined by such method as may be prescribed by the Secretary of the Treasury. Interest on the securities called for redemption shall cease on the date of redemption specified in the notice of call.

2.2 The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. SALE PROCEDURES

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Thursday, November 2, 1978. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, November 1, 1978.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11 percent. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and

the amount may not exceed $1,000,000.

3.3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5 percent of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a one-eighth of 1 percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 92.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in section 1, and to make different percentage allotments to various classes of applicant when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made or completed on or before Wednesday, November 15, 1978, at the Federal Reserve bank or branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing U.S. securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Thursday, November 9, 1978, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Wednesday, November 8, 1978, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of te face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to Federal Reserve bank or branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve bank or branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be re-

turned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. GENERAL PROVISIONS

6.1. As fiscal agents of the United States, Federal Reserve banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

TREASURY SECURITIES—TREASURY ANNOUNCES AUCTION OF 3½-YEAR NOTES, 10-YEAR NOTES, AND 30-YEAR BONDS

SUPPLEMENTARY STATEMENT

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

[FR Doc. 78-30824 Filed 10-27-78; 10:42 am]

[4810-40-M]

[Department Circular Public Debt Series—No. 26-78]

TREASURY NOTES OF NOVEMBER 15, 1988

Series B-1988

Washington, October 26, 1978.

1. INVITATION FOR TENDERS

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $2,500,000,000 of United States securities, designated Treasury Notes of November 15, 1988, Series B-1988 (CUSIP No. 912827 JE 3). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts may also be issued for cash to Federal Reserve Banks as agents of foreign and international monetary authorities.

2. DESCRIPTION OF SECURITIES

2.1. The securities will be dated November 15, 1978, and will bear interest from that date, payable on a semiannual basis on May 15, 1979, and each subsequent 6 months on November 15 and May 15, until the principal becomes payable. They will mature November 15, 1988, and will not be subject to call for redemption prior to maturity.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. SALE PROCEDURES

3.1. Tenders will be received at Federal Reserve banks and branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Wednesday, November 1, 1978. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, October 31, 1978.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11 percent. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3.3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in Section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5 percent of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a one-eighth of 1 percent increment, which results in an equivalent average accepted price

close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made or completed on or before Wednesday, November 15, 1978, at the Federal Reserve bank or branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Thursday, November 9, 1978, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Wednesday, November 8, 1978, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve bank or branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve bank or branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

[FR Doc. 78-30823 Filed 10-27-78; 8:45 am]

[4810-40-M]

[Department Circular, Public Debt Series—No. 25-78]

TREASURY NOTES OF MAY 15, 1982

Series K-1982

Washington, October 26, 1978.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $2,500,000,000 of U.S. securities, designated Treasury notes of May 15, 1982, series K-1982 (CUSIP No. 912827 JD 5). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve banks for their own account in exchange for maturing Treasury securities. Additional amounts may also be issued for cash to Federal Reserve banks as agents of

foreign and international monetary authorities.

2. DESCRIPTION OF SECURITIES

2.1. The securities will be dated November 15, 1978, and will bear interest from that date, payable on a semiannual basis on May 15, 1979, and each subsequent 6 months on November 15 and May 15, until the principal becomes payable. They will mature May 15, 1982, and will not be subject to call for redemption prior to maturity.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing U.S. securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. SALE PROCEDURES

3.1. Tenders will be received at Federal Reserve banks and branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., e.s.t., Tuesday, October 31, 1978. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, October 30, 1978.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $5,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11 percent. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3.3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3.4. Commercial banks, which for this purpose are definded as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5 percent of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of one-eighth of 1 percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. RESERVATION

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. PAYMENT AND DELIVERY

5.1. Settlement for allotted securities must be made or completed on or before Wednesday, November 15, 1978, at the Federal Reserve bank or branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing U.S. securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Thursday, November 9, 1978, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Wednesday, November 8, 1978, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will

not be accepted unless they are payable at the applicable Federal Reserve bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forefeited to the United States.

5.3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve bank or branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve bank or branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. GENERAL PROVISIONS

6.1. As fiscal agents of the United States, Federal Reserve banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

SUPPLEMENTARY STATEMENT

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

[FR Doc. 78-30822 Filed 10-27-78; 10:42 am]

[1505-01-M]

WATER RESOURCES COUNCIL

PRINCIPLES AND STANDARDS FOR PLANNING WATER AND RELATED LAND RESOURCES

Change in Discount Rate

Correction

In FR Doc. 78-30408 appearing at page 50276 in the issue for Friday, October 27, 1978, in the first paragraph of the document, the interest rate referred to as "* * * 7⅛ percent" should have read "* * * 6⅞ percent * * *".

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-172, Amdt. 4, Oct. 26, 1978]

CIVIL AERONAUTICS BOARD.

Notice of change of time.

TIME: 10:30 a.m., October 26, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: See M-172.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

[S-2184-78 Filed 10-26-78; 4:33 pm]

[6320-01-M]

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[M-174, Oct. 25, 1978]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., November 1, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Oral Argument: Docket 21670, Frontier Airlines, Inc., subsidy mail rates.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

[S-2185 Filed 10-26-78; 4:33 pm]

[6320-01-M]

3

[M-172, Amdt. 3; Oct. 25, 1978]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the October 26, 1978, agenda.

TIME AND DATE: 10 a.m., October 26, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 3a. Docket 26291, Petition for immediate restoration of adequate air service for American Samoa (Memo 7651-D, BPDA, BIA, BCP, OCCR, OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: The Board in its closed meeting on October 24, 1978, voted to add this item to the October 26, 1978, agenda in order to hold discussion of adequacy aspects in public session as soon as possible. Accordingly, the following Members voted on October 24, 1978, that agency business requires the addition of item 3a to the October 26, 1978, agenda and that no earlier announcement of this addition was possible:

Member, Elizabeth E. Bailey
Member, Gloria Schaffer
Member, Marvin S. Cohen

All amemdments 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-2186-78 Filed 10-26-78; 4:33 pm]

[6320-01-M]

4

[M-173, Amdt. 3, Oct. 24, 1978]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the October 24, 1978, agenda.

TIME AND DATE: 2 p.m., October 24, 1978.

PLACE: Room 1011, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: (6) BIA briefing concerning ongoing consultations with the Netherlands and proposed ad referendum agreement with Peru.

STATUS: Closed.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: This meeting will concern the Board's view about implementation of U.S. policies in Dutch and Peruvian negotiations. Public disclosure, particularly to foreign governments with whom the United States is or will be negotiating, of the opinions, evaluations, and strategies of the Board and its staff could seriously compromise the ability of the U.S. Delegations to achieve agreements which would be in the best interests of the United States. Accordingly, the following Members have voted that public observation of this item would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552b(c)(9)(B) and 14 CFR 310b.5(9)(B) and that the meeting on this item will be closed.

Chairman, Alfred E. Kahn
Member, Elizabeth E. Bailey
Member, Gloria Schaffer
Member, Marvin S. Cohen

On Saturday, October 21, 1978, negotiations with Peru were recessed. The Department of State orally requested the Board's views on the next steps the United States should take with respect to these negotiations as soon as possible in order that the Department of State may quickly respond to the Peruvian Government. The Director of BIA received a phone call from the U.S. Delegation Chairman to the Dutch negotiations in the Hague on October 24. The chairman requested the Board's views on the course of action that should be taken with respect to these negotiations prior to the next session on the morning of October 25. Accordingly, the following Members have voted that agency business requires the addition of this item to the October 24, 1978, agenda and that no earlier announcement of this addition was possible:

Chairman, Alfred E. Kahn
Member, Elizabeth E. Bailey
Member, Gloria Schaffer
Member, Marvin S. Cohen

PERSONS EXPECTED TO ATTEND

See M-173 dated 10-20-78.

GENERAL COUNSEL CERTIFICATION

I certify that this meeting may be closed to the public under 5 U.S.C.

552b(c)(9)(B) and 10 and 14 CFR Section 410b.5(9)(B) and (10) and that the meeting may be closed to public observation.

PHILIP J. BAKES, Jr.,
General Counsel.

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-2187-78 Filed 10-26-78; 4:33 pm]

[6351-01-M]

5

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., October 31, 1978, and continuation on November 1, 1978, if necessary.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Dealer options.
Final rule for dealer options reporting requirements.
White Weld petition for exemption from suspension.
Resolution of issues relating to the pilot program for commodity options on domestic boards of trades.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2183-78 Filed 10-26-78; 4:33 pm]

[6351-01-M]

6

COMMODITY FUTURES TRADING COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 43, No. 206, October 24, 1978, page 49603.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11 a.m., October 27, 1978.

CHANGES IN THE MEETING: The meeting has been postponed until October 30, 1978, at 11 a.m.

[S-2182-78 Filed 10-26-78; 4:33 pm]

[6351-01-M]

7

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 2 p.m., November 1, 1978.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2181-78 Filed 10-26-78; 4:33 pm]

[6715-01-M]

8

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Wednesday, November 1, 1978, at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Audit Reports, Compliance, Personnel.

DATE AND TIME: Thursday, November 2, 1978, at 10 a.m.

STATUS: Portions of this meeting will be open to the public and portions will be closed.

MATTERS TO BE CONSIDERED:

Portions open to the public:

Setting of dates for future meetings.
Correction and approval of minutes.
Audit policy.
Legal authority for bookkeeping and reporting manual for Presidential candidates.
Earmarked contributions.
Appropriations and budget.
Presidential campaign disclosure form (if not concluded October 26.)
Pending legislation.
Pending litigation.
Liaison with other Federal agencies.
Classification actions.
Routine administative matters.

Portions of the meeting closed to the public:

Any matters not concluded on November 1, 1978.

PERSON TO CONTACT FOR INFORMATION:

Mr. David Fiske, Press Officer, telephone 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-2176-78 Filed 10-26-78; 8:45 am]

[6820-12-M]

9

OCTOBER 26, 1978.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: Wednesday, October 25, 1978, 11 a.m.

PLACE: Room 610, 1730 K Street NW., Washington, D.C. 20006.

STATUS: Closed (pursuant to 5 U.S.C. 552b(c)(10)).

MATTER CONSIDERED: Grundy Mining Co., 78-3424 (6th Cir. filed August 3, 1978). This meeting involved the Commission's participation in a civil action.

VOTE: Voting to close the meeting: Commissioners Waldie (Chairman), Jestrab, Lawson, and Nease. It was determined by this vote that Commission business required that this meeting be closed. Further, the Commission members voted to hold the meeting immediately on the basis that agency business so required and to issue public notice as soon as practicable.

ATTENDANCE: Present at the meeting were: Commissioners Waldie (Chairman), Jestrab, Lawson, and Nease; Al Treherne; Robert Phares; Mary Masulla; General Counsel Robert Pleasure; and Gerry Dixon, Secretary.

CONTACT PERSON FOR MORE INFORMATION:

Office of Executive Director, 202-653-5644.

CERTIFICATION OF CLOSED MEETING

The General Counsel, in accordance with section 3(f)(1) of the Government in the Sunshine Act (5 U.S.C. 552b(f)(1)), hereby certifies that the Commission meeting of October 25, 1978, at which the Commission discussed a civil action (Grundy Mining Co., No. 78-3424 6th Cir. filed August 3, 1978) was properly closed to the public on the basis of the exemption set forth in 5 U.S.C. 552b(c)(10).

ROBERT PLEASURE,
General Counsel.

OCTOBER 26, 1978.

[S-2188-78 Filed 10-26-78; 4:33 pm]

[6210-01-M]

10

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 49108, October 20, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Wednesday, October 25, 1978.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item was added:

Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees. (This matter was originally announced for a meeting on Friday, October 27, 1978.)

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: October 25, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-2178-78 Filed 10-26-78; 9:05 am]

[8010-01-M]

11

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 49109, October 20, 1978.

STATUS: Open meeting; closed meeting.

DATE AND TIME: Wednesday, October 25, 1978, 10 a.m.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

The following item will not be considered by the Commission at the open meeting scheduled for Wednesday, October 25, 1978, at 10 a.m., but has been rescheduled for consideration on Wednesday, November 1, 1978:

Consideration of whether or not to approve proposed rules submitted by the Securities Investor Protection Corporation setting forth requirements for the closeout or completion of open contractual commitments. For further information, please contact Linda Kurjan at 202-755-7470.

The following items will be considered by the Commission at a closed meeting scheduled for Wednesday, October 25, 1978, immediately following the 10 a.m. open meeting:

Access to investigative files by Federal, State or self-regulatory authorities.
Formal order.
Other litigation matters.
Subpena enforcement actions.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A), and (10) and 17 CFR 200.402 (a) (8), (9)(i), and (10).

Chairman Williams and Commissioners Loomis, Evans, Pollack, and Karmel determined that Commission business required consideration of these matters and that no earlier notice thereof was possible.

OCTOBER 24, 1978.

[S-2179-78 Filed 10-26-78; 9:54 am]

[8010-01-M]

12

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 30, 1978, in Room 825, 500 North Capitol Street, Washington, D.C.

An open meeting will be held on Wednesday, November 1, 1978, at 10 a.m. Closed meetings will be held on Tuesday, October 31, 1978, at 10 a.m., and on Wednesday, November 1, 1978, immediately following the 10 a.m. open meeting.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A), and (10) and 17 CFR 200.402(a) (8), (9)(i), and (10).

Chairman Williams and Commissioners Loomis, Evans, Pollack, and Karmel determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 31, 1978, at 10 a.m., will be:

Access to investigative files by Federal, State or self-regulatory authorities.
Formal order of investigation.
Freedom of Information Act appeal.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Order compelling testimony.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive action.
Other litigation matters.

The subject matter of the open meeting scheduled for Wednesday, November 1, 1978, at 10 a.m., will be:

1. Consideration of the application of John R. Patterson asking permission for him to become associated with Offerman & Co., Inc., a registered broker-dealer, as a registered representative in a nonsupervisory, nonproprietary capacity with adequate supervision. For further information, please contact David P. Tennant at 202-376-2036.

2. Consideration of an application filed by Claremont Capitol Corp., a nondiversified closed-end, management investment company registered under the Investment Company Act of 1940 (the "Act"), and Mr. Allen H. Parkinson, the Chairman of the Board of Infoton, Inc., pursuant to section 17(b) of the Act requesting an order of the Commission exempting the proposed sale by Claremont to Mr. Parkinson of 237,500 shares of common stock of Infoton at approximately $0.63 per share from the provisions of section 17(a) of the Act. For further information, please contact Glen A. Payne at 202-755-1739.

3. Consideration of whether or not the Commission should: (1) Issue notice of an application filed by Foster Management Co. for an order pursuant to section 206A of the Investment Advisers Act of 1940 and (2) authorize its Secretary to issue an order "By the Commission" granting the application, if no requests for a hearing are received. For further information, please contact Mark J. Mackey at 202-755-1547.

4. Consideration of the issuance of an interpretative release reflecting the views of its Division of Investment Management with respect to rule 13f-1 and related form 13F under the Securities Exchange Act of 1934. For further information, please contact Mark J. Mackey at 202-755-1547.

5. Consideration of whether or not to adopt an amendment to rule 6 of the Commission's Rules of Practice to specify which persons should receive notice of Commission stop order proceedings. For further information, please contact Linda Griggs at 202-755-1803.

6. Consideration of a proposed release announcing (1) the adoption of revised guidelines for the disclosure of projections of future economic performance, and (2) the proposal of rules that would provide a "safe-harbor" from the liability provisions of the Federal securities laws for projections that are prepared with a reasonable basis and disclosed in good faith. For further information, please contact Steven J. Paggioli at 202-376-8090.

7. Consideration of whether or not to approve proposed amendments to rules relating to the form of filings received by the Commission, under the Federal securities laws whereby all such filings will be numbered sequentially from the first page of the filing through the last page of any exhibit or attachment thereto. For further information, please contact Roderic L. Woodson at 202-523-5530.

The subject matter of the closed meeting scheduled for Wednesday, November 1, 1978, immediately following the 10 a.m. open meeting, will be:

Litigation matters.
Freedom of Information Act appeal.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Beverly C. Rubman at 202-755-1103.

OCTOBER 25, 1978.

[S-2180-78 Filed 10-26-78; 9:54 am]

[8120-01-M]

13

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 10:30 a.m., Wednesday, November 1, 1978.

PLACE: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tenn.

STATUS: Open.

MATTERS TO BE CONSIDERED: Program to assist small independent coal operators.

MATTERS FOR ACTION:

CONSULTING AND PERSONAL SERVICE CONTRACTS

1. Renewal of personal service contract with Butler-Arde', Inc., Englewood Cliffs, N.J.—Office of Engineering Design and Construction.

2. Renewal of personal service contract with CDI Corp., Philadelphia, Pa.—Office of Engineering Design and Construction.

PURCHASE AWARDS

1. Req. No. 152083—Boiler tubing for Kingston Steam Plant.

2. Req. No. 823525—6,900-volt recirculating pump swichgear for Hartsville and Phipps Bend Nuclear Plants.

3. Amendment to Contract 77X36-547338-6 with Caterpillar Tractor Co., Peoria, Ill., for indefinite quantity term contract for genuine Caterpillar tractor and engine parts for any TVA project or warehouse.

POWER ITEMS

1. Bill of sale and quitclaim deed to the city of Florence, Ala., covering conveyance of 4.3-mile section of TVA's deenergized Wilson-Colbert 161-kV Line.

2. Lease and amendatory agreement with Cumberland Electric Membership Corp.—TVA's Dover and Ocana Substations.

3. New power contract with Texas Eastern Transmission Corp.

4. Sale of TVA's interest in certain uranium properties in Black Hills, Wyo., area at public auction.

REAL PROPERTY TRANSACTIONS

1. Filing of condemnation suit.

2. Grant of permanent easement for an outfall line to the town of Jasper, Tenn., affecting 0.03 acre of Guntersville Reservoir land—tract XTCR-1268.

UNCLASSIFIED

1. Expenditure of TVA funds for meals and similar provisions in connection with visits to TVA by certain individuals and groups.

2. Supplemental agreement between TVA and Meigs County Board of Education for education mitigation in the Watts Bar Nuclear Plant area.

3. Supplemental agreement among TVA, Tennessee Department of Education, and local school systems in the Hartsville Nuclear Plants project area.

4. Settlement of civil action for breach of contract pending in United States District Court—*TVA* v. *Oneida Fuel & Coal, Inc., et al.*

Dated: October 25, 1978.

CONTACT PERSON FOR MORE INFORMATION:

John Van Mol, Director of Information, or member of his staff can respond to requests for information about this meeting. Call 613-632-3257, Knoxville, Tenn. Information is also available at TVA's Washington Office, 202-566-1401.

[S-2177-78 Filed 10-26-78; 8:45 a.m.]

federal register

MONDAY, OCTOBER 30, 1978
PART II

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

■

AIRWORTHINESS REVIEW PROGRAM AMENDMENT NO. 7

Airframe Amendments; Final Rule

[4910-13-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket Nos. 14324, 14606, 14625, 14685, and 14779; Amdt. Nos. 23-23; 25-46; 27-16; 29-17; and 121-149]

AIRWORTHINESS REVIEW PROGRAM AMENDMENT NO. 7

Airframe Amendments; Final Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The purpose of these amendments to the Federal Aviation Regulations is to update and improve the airframe and crashworthiness standards applicable to the type certification of aircraft, and to make related changes to the operating rules contained in Part 121. These amendments are part of the Airworthiness Review Program.

EFFECTIVE DATE: December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Adolfo O. Astorga, Airworthiness Review Branch (AFS-910), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone 202-755-8714.

SUPPLEMENTARY INFORMATION: These amendments are the seventh in a series of amendments to be issued as part of the Airworthiness Review Program. The following amendments have previously been issued as part of this Airworthiness Review Program:

Title—FR citation

Form number and clarifying revisions (40 FR 2576; Jan. 14, 1975).
Rotorcraft anticollision light standards (41 FR 5290; Feb. 5, 1976).
Miscellaneous amendments (41 FR 55454; Dec. 20, 1976).
Powerplant amendments (42 FR 15034; Mar. 17, 1977).
Equipment and systems amendments (42 FR 36960; July 18, 1977).
Flight amendments (43 FR 2302; Jan. 16, 1978).

The amendments now being issued are based on five Notices of Proposed Rulemaking—Notice 75-10, published in the FEDERAL REGISTER on March 7, 1975 (40 FR 10802); Notice 75-19 published in the FEDERAL REGISTER on May 19, 1975 (40 FR 21866); Notice 75-23 published in the FEDERAL REGISTER on May 27, 1975 (40 FR 23048); Notice 75-26 published in the FEDERAL REGISTER on June 10, 1975 (40 FR 24802); and Notice 75-31 published in the FEDERAL REGISTER on July 11, 1975 (40 FR 29410).

The amendments based on Notice 75-10 were deferred in the series of amendments titled "Miscellaneous Amendments" so that they could be considered with the final disposition of certain proposals in Notices 75-23, 75-26, and 75-31. The amendments based on Notice 75-19 were deferred in the series of amendments titled "Powerplant Amendments" so that they could be considered with the final disposition of certain proposals in Notice 75-31. The amendments based on Notice 75-23, including the related amendments based on Notice 75-10, were deferred in the series of amendments titled "Equipment and Systems Amendments" for further consideration and review.

The amendments based on Notice 75-31, and the related amendments based on Notices 75-10, and 75-19, implement the rotorcraft proposals or parallel proposals for the other aircraft airworthiness Parts. These proposals were brought forward for consideration with the final disposition of the proposals in Notice 75-26 in order to dispose of all the outstanding rotorcraft proposals and allow the announcement of a rotorcraft regulatory review. The discussions of the comments received for the deferred proposals from Notice 75-10 are included under the heading of the related proposals from Notices 75-23, 75-26, and 75-31. The discussions of the comments received for the deferred proposals from Notice 75-19 are included under the heading of the related proposals from Notice 75-31.

Interested persons have been afforded an opportunity to participate in the making of these amendments and due consideration has been given to all matter presented. A number of substantive changes and changes of an editorial and clarifying nature have been made to the proposed rules based upon relevant comments received and upon further review within the FAA. Except for minor editorial and clarifying changes and the substantive changes discussed below, these amendments and the reasons for them are the same as those contained in Notices 75-10, 75-19, 75-23, 75-26, and 75-31.

DISCUSSION OF COMMENTS

The following discussion is keyed to like-numbered proposals contained in Notices 75-23, 75-26, and 75-31, and is presented in the same order as the corresponding amendments to be found in the rules portion of this document.

Proposal 7-1. One commentator recommended that the 25 feet per second head-on gust requirement in proposed § 23.345(c) be deleted because there had been no recorded failures of any flaps or flap structure attributed to head-on gusts and the proposal would increase the power-off flap loads. The FAA believes that a majority of the recorded flap and flap support structural failures resulted from head-on gusts. The amendment to § 23.345(c) is adopted without substantive change.

Based on the comments received and upon further review within the FAA, the proposal for new § 23.345(f) is withdrawn.

Proposal 7-2. One commentator objected to the proposal to amend § 23.561(b)(2) to require a 3.0g rearward ultimate inertial load for seat attachment design. The commentator stated that it is unreasonable to expect rearward inertia forces that are twice the sideward and equal to upward inertia forces. Upon further review, the FAA believes that it does not have enough information at this time to specify the minimum value to be used as a rearward ultimate inertia force. The proposal is withdrawn. However, the proposal to add a new § 23.785(h) concerning seat track retention is adopted. See Proposal 7-11.

Proposal 7-3. Several commentators objected to the proposal to amend § 23.603 and to similar proposals to amend §§ 25.603, 27.603, and 29.603. These proposals would require the applicant to show that the materials used for safety-critical parts will maintain their design properties throughout their service lives, taking into consideration the environmental considerations expected in service. The commentators stated that there is no satisfactory means of showing compliance for many materials. The limiting factors in achieving this objective were stated to be as follows: (1) A complete definition of the operating environment; (2) an understanding of interactive effects; and (3) test methods which correlate with service. After consideration of the comments received, and after further review of the materials used on modern aircraft, the FAA agrees that there may be significant difficulties in developing means to show compliance with the proposed amendments. The FAA believes, however, that the design characteristics of some materials used on aircraft may be affected by environmental conditions and that, where such materials are used in safety-critical parts, the effects of the environment upon them must be considered. The FAA further believes that the term "environmental conditions" should be clarified.

Accordingly, the proposals to add new §§ 23.603(a)(3), 25.603(c), 27.603(c), and 29.603(c) are revised to require only that the suitability and durability of materials used for safety-critical parts must take into account the effects of environmental conditions,

such as temperature and humidity, expected in service.

Two commentators, while agreeing with the proposal for § 25.603, stated that the proposed requirement should apply also to fabrication methods. The FAA does not have any information at this time to indicate that the change recommended by these commentators is necessary, and the commentators did not provide any. These commentators also suggested that the term "design values" be substituted for the proposed term "design properties" to let the designer anticipate deterioration. The FAA believes that the change suggested by these commentators is unnecessary in view of the revision made in the rule as adopted.

Two commentators stated that the proposal for § 27.603(c) is not needed since the proposed requirements appear to be covered in present §27.609. The FAAS does not agree. Section 27.609 requires that each part of the structure must be protected from deterioration or loss of strength in service due to any cause, including weathering, corrosion, and abrasion, and it further requires provisions for ventilation and drainage where necessary for protection. Proposed new § 27.603(c) is concerned with the suitability of materials which may undergo changes in design characteristics, regardless of the degree of protection that is provided them.

One commentator objected to the proposal for § 27.603, stating that the subject material is adequately covered in §§ 27.613 and 27.619. The FAA does not agree. The practical effect of § 27.613 is to require that the effects of temperature on certain allowable stresses be considered where thermal effects are significant under normal operating conditions. Section 27.619 requires that special factors of safety be applied for each part of the structure whose strength is uncertain, likely to deteriorate in service before normal replacement, or subject to appreciable variability because of uncertainties in manufacturing processes or inspection methods. The FAA believes that §§ 27.613 and 27.619 do not specifically provide for the long-term behavior of certain modern construction materials and that the proposals to amend §§ 23.603, 25.603, 27.603, and 29.603 are necessary.

Proposal 7-4. For comments concering the subject matter of the proposal to amend § 23.605, see Proposal 7-29. The proposal is adopted without substantive change.

Proposal 7-5. No unfavorable comments were received on the proposal to amend § 23.613(c). Accordingly, the proposal is adopted without substantive change.

Proposal 7-6. One commentator objected to the wording of proposed § 23.629(a) which states, "It must be shown by any one of the methods specified in paragraphs (b), (c), or (d) of this section that the airplane is free from flutter * * *" The commentator recommended that proposed § 23.629(a) be revised to clarify that combinations of the methods in proposed §§ 23.629 (b), (c), and (d) may be used to show freedom from flutter. The FAA agrees, and the proposal is revised accordingly. The commentator also recommended that proposed § 23.629(a) be revised to clarify that the flutter substantiation requirements of proposed § 23.629 are not applicable to minor structural items such as fairings, lights, and antennas which will not affect safety of flight. The FAA does not agree. The FAA believes that flutter in minor structural items can have an adverse effect upon safety of flight.

One commentator questioned who decides which of the methods specified in paragraphs (b), (c), or (d) are to be applied. The applicant can select any one of the methods specified in paragraphs (b), (c), or (d), or a combination of these methods.

One commentator objected to the requirement in proposed § 23.629(a)(1) that adequate tolerances must be established for quantities which affect flutter, including speed, damping, mass balance, and control system stiffness. The commentator stated that all quantities which affect flutter may not be significant and recommended that proposed § 23.629(a)(1) be reworded to state "those quantities or parameters that would significantly degrade the critical flutter speed are to be considered and pertinent tolerances established where necessary." The FAA believes that all quantities which affect flutter should be considered. However, the use of the word "adequate" indicates that the tolerance to be established will vary, depending on the significance of the quantity considered. Proposed § 23.629(a)(1) is adopted without substantive change.

Two commentators objected to the requirement in proposed § 23.629(a)(2) that natural frequencies of main structural components be determined by vibration tests. It was stated that this proposed change would impose a burden in the case of simple aircraft meeting the requirements of proposed § 23.629(d), and it was recommended that the words "or other approved methods" be reinstated. Upon further review, the FAA believes that the current requirement of "vibration tests or other approved methods" has provided satisfactory results in the past. Proposed § 23.629(a)(2) is revised accordingly.

The FAA believes that the intent of proposed § 23.629(b) may be unclear, since the term "stability" may be applicable either to the structural vibration modes, as intended, or to the airplane itself. The proposal is revised for clarity.

One commentator objected to the wording of proposed § 23.629(c)(1) that "proper and adequate attempts to induce flutter have been made." The commentator stated that this might be interpreted to allow pilot control impulse of the controls and this would not necessarily excite high frequency modes which may exist. The FAA believes that the wording as proposed is adequate. The proposed requirement to develop a vibratory response of the structure during the test will indicate the attempts to induce flutter, and the adequacy of the excitation can be evaluated by reference to the data record. Proposed § 23.629(c) is adopted without substantive change.

One commentator recommended the deletion of proposed § 23.629(d), which allows the use of Airframe and Engineering Report No. 45 in showing the airplane to be free from flutter but submitted no justification for the deletion. Since this report has been used for years with satisfactory results, the FAA believes that this alternative procedure, as revised and set forth in proposed § 23.629(d), should be continued.

One commentator recommended that proposed § 23.629(d)(3)(iii) be revised to state whether a trim-adjustable stabilizer would qualify as a fixed stabilizer. The FAA does not believe that any revision is necessary. The "degree of fixity" governs whether a trim-adjustable stabilizer can be considered a fixed stabilizer in regard to the use of Report No. 45. Some designs may have a high enough "degree of fixity" to allow treatment as fixed stabilizers, while others do not. Accordingly, § 23.629(d)(3)(iii) is adopted without substantive change.

One commentator objected to the proposed § 23.629(f) which would require that the airplane be free from flutter, control reversal, and divergence after the failure of any single element in the primary control system, any tab control system, or any flutter damper. The commentator stated that this requirement would add weight and cost, particularly in light single engine aircraft, since it would require that virtually all primary control systems, tab control systems, and flutter dampers be made fail-safe. The FAA believes this comment has merit, and proposed paragraph (f) is revised to require that airplanes that meet the criteria of paragraphs (d)(1) through (d)(3) of § 23.629 need to be shown to be free from flutter, control reversal, and divergence with a failure of any single element in the tab control system only. The FAA believes that the requirements of Report No. 45 satisfactorily consider

the failure of any single element in the primary flight control system, and flutter dampers are not appropriate for airplanes designed to the requirements of Report No. 45. Further, tab control systems, which have been a significant cause of flutter problems, can be designed to prevent flutter after the failure of any single element by balancing or by structural fail-safe means with a minimum cost and weight increase. The FAA further believes that, for airplanes having a configuration or operating speed that does not meet the criteria of paragraphs (d) (1), (2), and (3), the requirement for considering single element failures should be applied to the primary flight control system, any tab control system, and any flutter damper. The FAA believes that for current complex, high-speed designs, the proposed flutter requirements can be met with minimum cost and effects by use of the current state-of-the-art methods of balancing and structural fail-safe features.

One commentator agreed in principle with the proposal to revise § 23.629, but stated that suitable methods of compliance should be specified. The FAA does not believe the rule needs further change but will consider the issuance of guidance material as to applicable means of compliance.

Proposal 7-7. One commentator objected to the proposed amendment to § 23.677 concerning an aural warning device for certain longitudinal trim systems. The device would provide an aural warning when the horizontal stabilizer trim is in transit due to trim system operation or when the power or thrust controls are advanced to the takeoff position with the stabilizer trim set in a position outside the approved range for takeoff. The commentator stated that the warning would tend to be ignored in a cockpit environment which already contains many aural warnings. The commentator also objected to the cost and complexity that this requirement would add. The FAA agrees, and the proposal to add a new § 23.677(d) is withdrawn.

Proposal 7-8. No unfavorable comments were received on the proposal to amend § 23.701. However, after further review, the FAA believes that the proposed change is not appropriate and is not needed for Part 23 airplanes. The proposal is withdrawn.

Proposal 7-9. No unfavorable comments were received on the proposal to amend § 23.723(a) which would allow the use of analysis to supplement tests to substantiate landing load factors. However, the FAA has revised the proposal based on comments received on Proposal 7-34. See Proposal 7-34.

Proposal 7-10. Two commentators questioned the benefit of the ski shock absorption test in proposed §§ 23.737 and 25.737. The commentators noted that the conditions which may cause ski failure in service do not correspond to the conditions of the proposed shock absorption test. Based upon these comments and upon further review within the FAA, the FAA believes that it does not have enough information at this time to specify requirements for ski shock absorption tests and the proposals are withdrawn.

Proposal 7-11. No unfavorable comments were received on the proposal to add a new § 23.785(h). Accordingly, the proposal is adopted without substantive change. The proposal as adopted is redesignated as § 23.785(l) in view of the adoption of §§ 23.785 (h), (i), (j), and (k) by Amendment 23-19 (42 FR 30601; June 16, 1977).

Proposal 7-12. No unfavorable comments were received on the proposal to add a new § 23.853(e). However, to insure consistent interpretation, the applicable portions of Appendix F to Part 25 are set forth in a new Appendix F to Part 23, and the corresponding reference in the proposal is revised accordingly.

In addition, the FAA believes that the proposed requirement for a vertical self-extinguishing test may be unduly restrictive for electrical wire and cable insulation and for certain small parts. An exception is therefore provided for these items.

Proposal 7-13. One commentator agreed with the intent of the proposal to add a new § 23.863, but stated that without appropriate explanatory material, the proposed rule could be applied in a manner beyond the limits of cost and engineering practicality for many general aviation airplanes. The FAA will consider the issuance of appropriate guidance material. The proposal is adopted without substantive change.

Proposal 7-14. No unfavorable comments were received on the proposal to revise § 23.1307(a). However, a commentator suggested that a provision be added to allow the type design to include a seat or other facility (such as a stretcher) that is intended to be occupied on takeoff, during flight and on landing. The FAA believes that Part 23 airplanes utilized for a special purpose should be allowed to have installed berths, such as those approved under § 23.785, as well as approved seats. Proposed § 23.1307(a) is revised accordingly.

Proposals 5-7, 5-24, 5-41, 5-58, 2-84, 2-129, and 2-184. Proposal 5-7 of Airworthiness Review Notice No. 5 (Notice 75-23), to amend § 23.1329 is similar to proposals to amend §§ 25.1329 and 29.1329 and to the proposal to add a new § 27.1311 (Proposals 5-24, 5-58, and 5-41, respectively). Other related proposals affecting §§ 25.1329, 27.1329, and 29.1329 were included in Airworthiness Review Notice No. 2 (Notice 75-10) as Proposals 2-84, 2-129, and 2-184, respectively, and their disposition was deferred for consideration with Proposals 5-24, 5-41, and 5-58, respectively.

Several commentators objected to the above proposals. After consideration of the comments received, and after further review, the FAA believes that except for proposed §§ 23.1311(h) and 25.1329(h) of Proposals 5-7 and 5-24 respectively, which are discussed below, Proposals 2-84, 2-129, 2-184, 5-41, and 5-58 and the remainder of Proposals 5-7 and 5-24 are premature, and they are withdrawn.

One commentator objected to the language "means independent of the mode selector switch" in proposed § 23.1311(h) on the ground that it would require separation of the mode selector from the mode indicator, constituting an unnecessary and burdensome restriction for single and two-axis automatic pilot systems. The FAA believes, after further consideration, that the need to provide reliable mode selection information to the pilot exists only when the automatic pilot system can be coupled to airborne navigation equipment such as VOR and ILS (localizer and glide slope). Accordingly, the proposal is revised to incorporate that qualification.

Several commentators stated that the proposed requirement attempts to provide design details instead of stating the intent, which tends to retard advances in technology, and that it does not take into account modern panels which incorporate illuminated mode indications that give positive indication of the selected mode but are not "independent" of the mode selector switch. The FAA agrees that the proposed requirement is unnecessarily restrictive, and the proposals are revised to specify that selector switch position is not acceptable as a means of indication instead of requiring the means of indication to be independent of the selector switch.

Commentators objected to the phrase "and the availability status of each alternative system" in proposed §§ 23.1311(h) and 25.1329(h), contending that compliance may not be possible for some systems, and that even when possible, the added complexity would reduce reliability and create confusion in the cockpit. The FAA agrees, and the phrase is deleted.

One commentator suggested that proposed § 23.1311(h) be revised to require that the mode selector indication for the automatic pilot system differ from that for the flight director system. The FAA does not have sufficient information at the present time

to justify imposing such a regulation. This commentator further suggested that when automatic pilot mode selection indication is provided for both pilot and copilot, those indications must agree. This would merely require that both mode selection indications be correct, and the FAA does not believe that the revision suggested by the commentator is necessary.

In view of the withdrawal of the proposals to redesignate § 23.1329 as § 23.1311 and to add a new § 23.1311(g), proposed § 23.1311(h) is redesignated § 23.1329(g) and is adopted with the revisions discussed above. Proposed § 25.1329(h) (Proposal 5-24) is adopted with the revision discussed above for § 23.1311(h).

Proposal 7-15. Several commentators objected to the wording "the highest loads expected in service under any loading condition" in the proposals to revise §§ 23.1413(a), 25.1413(b), 27.1413(a), and 29.1413 which would broaden the rated strength requirements for safety belts and harnesses. The commentators contended that this wording was unreasonable, vague, and would be difficult to administer. The FAA believes that research and development work in the area of full scale dynamic testing of airplanes and mathematical modeling of the man-seat combination is needed to develop a more definitive standard. The proposed revisions of §§ 23.1413(a), 25.1413(b), 27.1413(a), and 29.1413 are withdrawn.

Proposal 7-16. One commentator objected to the proposal to add a new § 23.1416 which would add pneumatic de-icer boot system requirements. The commentator stated that the words "any forseeable" in paragraph (b) are too broad and suggested that the nominal system operating parameters for each component should be used as a basis for establishing a factor of the nominal as design limit. The FAA disagrees that a factor is appropriate but agrees that the criteria should be revised. Accordingly, the words "any foreseeable" in proposed § 23.1416 are deleted and the words "any normal" are inserted in their place. The same commentator objected to the wording of proposed § 23.1416(c) on the ground that it could be interpreted to mean a pressure gauge would be required in the cockpit. The commentator recommended revising paragraph (c) to require that means be provided to indicate to the flight crew that the pneumatic de-icer boot system is receiving adequate pressure during the inflation cycle. The FAA agrees. This revision would make it clear that the use of pressure switches and indicator lights would be allowed in lieu of a pressure gauge. The proposal is revised accordingly.

Proposal 5-18. One commentator objected to the proposal to amend § 23.1545, contending that it would result in an unwarranted economic burden on aircraft owners. The FAA does not agree. The proposed requirement that the airspeed indicator be marked according to indicated airspeed is necessary to provide a more useful airspeed reference for operation of the airplane. In addition, the FAA does not believe that the proposed requirement would result in an appreciable increase in cost to aircraft owners compared to the current requirements.

Another commentator (who concurred with the proposed revision of § 23.1545) stated that the amount of information required on the airspeed indicator is reaching the point where confusion may be a factor, and that the reference to radials and arcs in § 23.1545 apparently prohibits the use of linear (horizontal or vertical) gauges. The FAA recognizes that indicator markings, if excessive, may cause confusion but believes that the proposed marking requirements are well within safe limits. With respect to linear-scale gauges, it is not the intent of the proposal to prohibit their use. The proposal, as well as present § 23.1545, describes marking for circular airspeed indicators since current airspeed indicators are circular. Analogous markings could be devised for linear-scale instruments and approved under airplane type certification equivalent safety provisions. Accordingly, the proposal to amend § 23.1545 is adopted without substantive change.

Proposal 8-22. For a comment related to proposed § 23.1557(f), see Proposal 8-24. The proposal is revised for the reasons discussed in Proposal 8-24.

Proposal 8-23. No unfavorable comments were received on the proposal to delete § 23.1583(i). Accordingly, the proposal is adopted without substantive change.

Proposal 8-24. Proposed §§ 23.1585(e) and (f), together with Proposal 8-23 for § 23.1583, would transfer information concerning the meaning of the zero fuel indication from the operating limitations section to the operating procedures section of the Airplane Flight Manual. One commentator stated that any reference to "fuel remaining" when the fuel quantity indicator reads "zero" invites pilot error or misinterpretation. The FAA does not agree. The reference to "fuel remaining" appears in the current rule, and the FAA does not have any information at this time to indicate that it has resulted in pilot error or misinterpretation. However, after further review, the FAA believes that the information that is required to be furnished under proposed § 23.1585(e) should be clarified in view of the fuel gauge calibration requirements set forth in § 23.1337(b)(1).

Accordingly, proposed § 23.1585(e) is revised by adding the language "in level flight" so that the section reads in part "* * * when the fuel quantity indicator reads "zero" in level flight, any fuel remaining in the fuel tank cannot be safely used in flight". Similar revisions are made to proposed §§ 25.1585(d), 27.1585(d), and 29.1585(d). Proposed §§ 23.1585(f), 25.1585(e), 27.1585(e), and 29.1585(e) are adopted without substantive change.

In view of the adoption of new §§ 23.1585(e), 27.1585 (c), and (d), and 29.1585 (c) and (d) in Airworthiness Review Amendment 6 (43 FR 2302; January 16, 1978), proposed §§ 23.1585 (e) and (f), 27.1585 (d) and (e), and 29.1585 (d) and (e) are redesignated and adopted as §§ 23.1585 (f) and (g), 27.1585 (e) and (f), and 29.1585 (e) and (f), respectively.

Proposal 7-17. The proposed amendment to § 25.305(d) and the proposed new Appendix G to Part 25 (Proposal 7-55) are being deferred until final rule making action is taken with respect to Airworthiness Review Notice No. 8 (Notice 75-31; 40 FR 29410; July 11, 1975).

Proposal 7-18. One commentator suggested that proposed § 25.331(a)(4) be revised to allow the trim system to operate at its maximum rate with normal aerodynamic load instead of requiring the flight test trim conditions specified in § 25.255. The FAA believes that there is insufficient data for rulemaking action to make the suggested revision. Another commentator recommended that proposed § 25.331(a)(4) be revised to exclude the effect of out-of-trim conditions as a consideration for the accelerated pitching conditions of proposed § 25.331(c) but retained for the zero pitching acceleration conditions of proposed § 25.331(c). The FAA disagrees. Out-of-trim conditions may exist in zero pitching acceleration maneuvers as well as in accelerated pitching maneuvers and should be considered in both cases. Section 25.331(a)(4) is amended as proposed.

One commentator suggested that proposed § 25.331(c)(1) be revised to clarify the type of pitching parameter to be considered, and to allow for the optional use of transient rigid body response for airplane loads. The FAA agrees. The use of transient rigid body response will yield conservative, but easier-to-calculate loads. The proposal is revised to allow for the use of transient rigid body response and to clarify the type of pitching parameter to be considered.

The same commentator suggested that proposed § 25.331(c) be revised to state that airplane loads which occur

subsequent to the occurrence of maximum positive pitching acceleration need not be considered. The FAA disagrees. The commentator did not submit, and the FAA is not aware of, time-history data that shows that the transient down tail load will always reach its peak value at the same time that the elevator surface reaches its maximum prescribed throw and that the pitching acceleration will also always reach a maximum in the nose-up direction at the same time.

The same commentator further suggested that proposed § 25.331(c)(1) be revised to make the requirements applicable to configurations with conventional trailing-edge elevator controls, and that configurations using an all-movable horizontal stabilizer should be designed to the specified control displacements of current § 23.531(c)(3). The commentator stated that applying the proposed requirements to configurations using an all-movable horizontal stabilizer for primary pitching control results in an entirely different type of loading condition than was originally intended for elevator-controlled airplanes. This results, the commentator stated, from the fact that all-movable stabilizers have much lower rate capabilities than elevators; approximately 6 degrees per second for all-movable stabilizers versus 30 to 40 degrees per second for elevators. The FAA does not have sufficient data to support the distinction suggested by the commentator.

Another commentator objected to combining the requirements for "checked maneuver at speeds between V_A and V_D" and the requirements for "specified control displacement" in proposed § 25.331(c)(2). This commentator stated that he is not aware of any evidence that the present required levels of pitching acceleration have resulted in unsafe designs, and that the design requirement should involve either the use of rational time history analyses or, alternatively, the use of the present acceleration criteria. The proposal to amend § 25.331(c)(2) contains the current requirements except that a rational pitching motion-time profile is required rather than optional. The present acceleration criteria were derived from the behavior of airplanes much older than, and different from, those of current design. The FAA does not have enough information regarding the conservatism these criteria provide for modern designs. However, since the rational time history analysis method does consider the behavior of the modern airplanes, that method is specified.

Two commentators stated that proposed § 25.331(c)(2) is not clear with respect to whether pitching accelerations greater than the values quoted in the formula are to be used for design, and also stated that it does not define the control movement to be considered nor state whether the limit load factor must be reached. In addition to proposed § 25.331, the strength criteria contained in other sections of the Subpart must be considered in establishing structural design criteria. With respect to control movement and load factor, the FAA does not have any information at this time which would indicate that specific constraints on control movement or load factor are necessary.

The proposal to amend § 25.331 is adopted with the revisions discussed above.

Proposal 7-19. Several commentators, including the initial public proponent, objected to the proposal to add a new § 25.341(d) to require the empennage to be designed for gusts which are not purely vertical or lateral in direction. The commentators referred to existing conservatisms in the rules which have resulted in satisfactory service experience to date, and stated the need for further review and evaluation. The FAA, upon further review, believes that there is insufficient data to substantiate the need for the additional requirement at this time. The proposal to add a new § 25.341(d) is withdrawn.

Proposal 7-20. One commentator objected to deletion of the words "as speed brakes" in the proposal to amend § 25.345(c). The commentator stated that the removal of the words "as speed brakes" would increase structural weight, not only in the flaps, but also in the wings and horizontal tail. The FAA agrees that airplane loads, and weight, may increase as a result of this proposed amendment. However, the FAA believes that an airplane should be designed for any condition in which the airplane is normally operated. Airplanes are now commonly flown in en route conditions with flaps deployed for purposes other than as speed brakes, and the airplane structure should be designed for the appropriate loads regardless of the operational reason. Another commentator objected to the deletion of the words "as speed brakes" on the ground that removal would leave unanswered questions on flaps up-down cycling, gust encounters, upsets, and overspeed. The FAA does not have any information at this time which indicates that additional requirements related to these factors are necessary. The amendment to § 25.345(c), is adopted as proposed.

Two commentators suggested rewording the proposed new § 25.345(d) by replacing the word "landing" with the word "maneuvering" to make it clear that the proposed requirement is not intended as an additional landing condition to be investigated under § 25.473. The FAA believes that the suggested rewording would lead to a possible misunderstanding due to altitude effects which may result in a more severe load being applied to the airplane. The intent of the proposal is to provide an additional landing condition to be investigated, but not under § 25.473, at maximum takeoff weight with a maneuvering load factor of 1.5g and the flaps and similar high lift devices in the landing configuration. Accordingly, the proposed new § 25.345(d) is adopted without substantive change.

Proposal 7-21. Several commentators stated tht the proposal for § 25.351(a), which would extend the upper limit of the speed range specified in current § 25.351(a) from V_A to V_D, is unduly severe and recommended that the pilot's maximum rudder pedal force be 300 pounds from V_{MC} to V_A and 200 pounds from V_C/M_C to V_D/M_D with linear variation between V_A and V_C/M_C. In addition, one commentator stated that the proposed extension of the upper limit of the speed range would penalize aircraft utilizing manual control systems. The commentator further stated that reducing rudder control force at the higher speeds would be consistent with probable operational practice. The FAA believes that the capability of current jet transports for high rudder forces throughout the design envelope has resulted in a high degree of structural integrity during recovery maneuvers, and that this capability must be ensured in future designs. The proposal to amend § 25.351(a) is adopted without substantive change.

Proposal 7-22. Two commentators expressed a need for clarification of the terms "sudden engine stoppage" as used in the proposal to amend § 25.361(b) and "torque for maximum continuous take-off power" as used in the proposed lead-in of § 25.361(c). Actually the word "take-off" did not appear in Notice 75-26. However, since both terms occur in the current rule and were used in the same sense in the proposal, the FAA does not believe further clarification is needed. Accordingly, the proposal is adopted without substantive change.

Proposal 7-23. All of the comments received in response to proposed § 25.491 either questioned the definition of the words "roughest runway and taxiway profiles to be expected in normal operations", or questioned the means of showing compliance. Two commentators stated that the costs of conducting dynamic analyses are high and that the proposal would cause an unjustified economic penalty by requiring dynamic analyses whether needed for a particular configuration or not. The FAA agrees that a more

specific proposal is needed. The proposal to revise § 25.491 is withdrawn.

Proposal 7-24. Although no unfavorable comments were received on the proposed new § 25.499(e), two commentators stated that some factor above the nominal values of torque and static reaction is needed to cover possible increases of loads. The FAA does not believe at this time that a factor for nose gear loads due to steering is needed. Accordingly, the proposal is adopted without substantive change.

Proposal 7-25. One commentator objected to the 1.5g rearward ultimate inertia force requirement of the proposed § 25.561(b)(3)(v) because of inadequate substantiation. The commentator stated that the current research on crashworthiness should be completed before the proposal is finalized. After consideration of this comment, and after further review, the FAA agrees that the proposal to add a new § 25.561(b)(3)(v) is premature, and it is withdrawn.

After consideration of the comments received on the proposal to add a new § 25.561(d) concerning structural crashworthiness requirements for certain multi-deck airplanes, and after further review, the FAA believes that it does not have enough information to set forth a rule of general applicability at this time. Accordingly, the proposal to add a new § 25.561(d) is withdrawn.

Proposal 7-26. After consideration of the comments received on the proposal to add a new § 25.563(b), concerning structural ditching requirements for certain multi-deck airplanes, and after further review, the FAA believes that it does not now have enough information to set forth a general standard which would be appropriate for both partial and full multi-deck configurations. The proposal to add a new § 25.563(b) is withdrawn.

Proposal 7-27. The proposal to revise § 25.571(c)(1), concerning fatigue requirements, is withdrawn in view of the separate rulemaking action that has been initiated to consider the fatigue requirements for transport category airplanes (see Notice 77-15; 42 FR 41236; Aug. 15, 1977).

Proposal 7-28. For comments related to the proposal to add a new § 25.603(c), see Proposal 7-3.

Proposal 7-29. One commentator objected to the proposed amendment to § 25.605(b) which would require that new aircraft fabrication methods be substantiated by a test program. The commentator stated that, to meet current § 25.605, manufacturers presently conduct many tests before new fabrication methods are used, especially where the airworthiness of the airplane is involved. The commentator felt that the present regulations are adequate and questioned the need for a test program requirement since this would require specific FAA approval of the test program. Such approval, the commentator stated, would only increase the expense and require additional time to coordinate. The FAA does not agree that current § 25.605 is adequate. Current § 25.605 requires only that the processes requiring close control to produce a consistently sound structure be performed under an approved process specification. The FAA believes that the proposed rule is necessary to insure that all new aircraft fabrication methods are tested to determine their soundness. In addition, the manfuacturers who currently perform an adequate test program should have no difficulty in meeting the proposed requirement. The proposal to amend § 25.605 is adopted without substantive change.

Proposal 7-30. No unfavorable comments were received on the proposal to amend § 25.613(e). Accordingly, the proposal is adopted without substantive change.

Proposal 7-31. One commentator recommended that the proposed amendment to § 25.629(d)(1)(ii) be revised to include the words "affecting divergence or flutter". The FAA does not believe the change is needed since words to this effect are used in the lead-in of present § 25.629(d)(1).

One commentator objected to the requirement in proposed § 25.629(d)(1)(ii) that freedom from flutter or divergence be shown for any combination of failures not shown to be extremely improbable. The commentator stated that the cost would far outweigh any theoretical improvement to safety over what is presently provided. The FAA disagrees. Service experience has shown that combinations of failures can be expected and, therefore, unless combinations of failures are shown to be extremely improbable, they must be considered in design for freedom from flutter and divergence.

One commentator recommeded that the proposed § 25.629(d)(4)(vi) requirement for consideration of any single failure in any flutter damper system be revised to exclude active control systems for damping and apply only to flutter dampers connected to a control surface. The FAA disagrees. Failures in all flutter damping systems must be considered if the freedom-from-flutter requirement of § 25.629(d)(1) is to be demonstrated. The proposal is adopted without substantive change.

Proposal 7-32. One commentator on the proposed amendment to § 25.697(b), concerning lift and drag device controls, recommended that the word "inadvertent" in both sentences of the proposal be replaced with the word "unintentional" or "unintended". The FAA does not believe that a clarification would result from the recommended revision. The proposal is adopted without substantive change.

Proposal 7-33. One commentator objected to proposed § 25.701(a) which would provide for the use of equally reliable means instead of a mechanical interconnection for the synchronization of flaps on opposite sides of an airplane. The commentator questioned what would be as reliable as mechanical interconnection. The FAA believes that there are devices which are available or may become available that are at least as reliable as a mechanical system in this application and would be acceptable alternatives. However, to clarify the intent of the proposed rule, the proposal is revised to read "approved equivalent means" instead of "equally reliable means".

Proposal 7-34. One commentator recommended that proposed § 25.723(a) be revised to state that the analysis which may be used to substantiate landing gear limit load factors for increases in takeoff and landing weights must be based on identical landing gear systems. The commentator expressed the opinion that the use of the word "similar" might cause confusion and allow deviations from the original intent that the analysis must be based on landing gear tests conducted on a landing gear system with identical, not similar, energy absorption characteristics. The FAA agrees, and the proposal is revised accordingly.

Proposal 7-35. For a discussion of the withdrawal of proposed § 25.737, see proposal 7-10.

Proposal 7-36. One commentator opposed the proposal to add a new § 25.773(d) to add markers or other guides to enable pilots to position themselves for optimum outside visibility and instrument scan. The commentator stated that he knew of no airplane that has a position for maximum outside visibility that coincides with optimum eye position for instrument scan. Another commentator concurred with the proposal but recommended that it be revised to clarify that the optimum "combination" of outside visibility and instrument scan is sought. The FAA agrees that what is intended is an optimum combination, and proposed new § 25.773(d) is revised accordingly.

Proposal 7-37. No unfavorable comments were received on the proposal to amend § 25.777. Accordingly, the proposal is adopted without substantive change.

Proposal 7-38. Several commentators objected to the requirements of proposed new § 25.789(b) that would require each major galley component, including serving carts, drawers, and compartments, to have a placard indicating its maximum load. The com-

mentators stated that drawers and compartments are designed for weights that can reasonably be expected in service. Two commentators stated that placarding galley components would not increase the level of safety for the occupants of the airplane, and would not guarantee adherence to the indicated maximum load during operation. Based on these comments, and upon further review within the FAA, the proposed new § 25.789(b) is withdrawn.

No unfavorable comments were received on proposed new § 25.789(c). Accordingly, the proposal is adopted without substantive change and redesignated as § 25.789(b).

Proposals 7-39 and 7-79. Numerous commentators objected to Proposal 7-39 to add a new § 25.802 to establish standards for evacuation alarm systems, and to Proposal 7-79 to add a new § 121.292 to require that evacuation alarm systems be installed on all passenger-carrying airplanes. After considering the comments received, and after further review, the FAA believes that rulemaking on the subject of evacuation alarm systems in passenger-carrying airplanes is premature. Accordingly, the proposals to add new §§ 25.802 and 121.292 are withdrawn.

Proposal 7-40. Proposed § 25.803(c) would replace the present emergency evacuation demonstration conditions with conditions which satisfy both Part 25 and Part 121, thus providing for one demonstration that serves both airworthiness and operational requirements. One commentator stated that the aircraft manufacturer should not be the sole demonstrator of emergency evacuations and recommended that more than one demonstration be required to rule out a "long shot" success. The commentator did not present any data to show that additional demonstrations by persons other than the manufacturer are needed. The FAA believes that demonstrations made under the prescribed conditions and using the prescribed procedures will yield comparable results, and that the manufacturer is competent to conduct such demonstrations.

Two commentators objected to proposed § 25.803(c)(4) which would require that the airplane's normal electrical power sources be de-energized and stated that the existing wording "using only the emergency lighting system" is preferred. The FAA agrees and § 25.803(c)(4) is revised to state that only the airplane's emergency lighting system may provide illumination, except as noted in paragraph (c)(1).

No unfavorable comments were received on proposal § 25.803(c)(5), to require that all emergency equipment must be installed in accordance with §§ 25.1411 and 25.1415. However the FAA believes that the proposal may be misconstrued, since certain operating rules of the chapter also state emergency equipment installation requirements. Proposed § 23.803(c)(5) is revised to specify that all emergency equipment that is required for the planned operation of the airplane must be installed.

A statement of required crewmember qualifications was inadvertently omitted from proposal § 25.803(c). Present Part 121 App. D paragraph (a)(12) states a requirement for a regularly scheduled line crew, and present § 25.803(c)(6) states a requirement merely for persons who have knowledge of the exits and emergency equipment. The FAA believes that the training and knowledge levels associated with a regularly scheduled line crew are appropriate for any demonstration that is conducted for the introduction of a type and model of airplane into passenger-carrying operations, whether the demonstration is conducted for compliance with Part 121 alone or for dual compliance with Parts 25 and 121. Accordingly, the crew requirements of present part 121 App. D paragraph (a)(12) are set forth as new § 25.803 (c)(7)(i). The crew requirements of present § 25.803(c)(6) have been shown adequate for airplane type certification under Part 25. These requirements are set forth in a new § 25.803 (c)(7)(ii) to provide for situations where separate demonstrations of compliance with type certification and operating rules may be necessary or appropriate.

One commentator suggested deletion of the requirements of §§ 25.803(c)(7)(ii) and (c)(7)(iii) requiring at least 5 percent of passengers be over the age of 60 and 5-10 percent be children under the age of 12 years. The FAA believes that age distribution should be considered in the selection of test subjects, and that the proposed requirements are realistic in terms of the age distribution of airline passengers. The proposed §§ 25.803(c)(7)(ii) and (c)(7)(iii) are adopted without substantive change. One commentator requested that, due to laws governing employment and insurance for persons under 18 years of age, § 25.803(c)(7)(iii) be modified to provide an equivalency by adding the words "or at least 5 percent, but not more than 10 percent must be adults between the ages of 50 to 60 years of age." A second commentator suggested essentially the same wording, citing data showing comparable evacuation times for persons under 12 and in the 50 to 59 age group and relating one instance where this equivalency was allowed during evacuation testing. The FAA does not now have enough information on evacuation times for the various age groups to revise the proposal in the manner suggested by these commentators. One commentator recommended that proposed § 25.803(c)(7)(iv) be modified to require the three life-size dolls to have height and weight equivalent to a child. The FAA believes the terms "life-size" and "simulate live infants" adequately express this intent. The proposed § 25.803(c)(7)(iv) is adopted without substantive change.

One commentator stated that reference to the words "crewmembers, mechanics, and training personnel" in § 25.803(c)(7)(v) is only appropriate if tests are being conducted by the operator rather than the manufacturer. The FAA disagrees since such training personnel are also employed by the manufacturer. Accordingly, §25.803(c)(7)(v) is adopted as proposed.

One commentator suggested that the carry-on baggage, blanket, and pillow requirements of § 25.803(c)(10) be deleted since there would be a reduced risk of injury during the test without significant effect on the results. The FAA does not agree since such items are intended to help simulate actual emergency evacuation conditions and might significantly affect the results of an evacuation test. Proposed § 25.803(c)(10) is adopted without substantive change.

One commentator suggested that § 25.803(c)(12) should state that no "prior" indication may be given of the exits to be used and that the word "advised" is more appropriate in § 25.803(c)(14) than the word "warned". The FAA agrees with both clarifications and the amendments are revised accordingly.

Although no adverse comments were received on the proposed requirements for multi-deck airplanes in § 25.803(c)(16), the FAA believes that it does not now have enough information to establish comprehensive evacuation criteria for multi-deck airplanes and the multi-deck requirements of § 25.803(c)(16) are deleted.

One commentator objected to the requirement in proposed § 25.803(c)(18) that all the emergency equipment that is normally available, including slides, ropes, lights, and megaphones, must be fully utilized during the demonstration. The commentator stated that the utilization of ropes and megaphones places an undue and unrealistic burden on the evacuation demonstration. The commentator believes that the use of ropes at over-wing exits introduces the hazard of tripping and entanglement, and could result in a reduced evacuation flow rate, and that the use of megaphones limits the ability of the flight attendant to effect rapid egress of participants by denying the use of one hand and by restricting the line of vision. The commentator also objected that the use of two or

more megaphones simultaneously during the demonstration could confuse and misdirect evacuees. The FAA recognizes that certain items of emergency equipment are installed for purposes other than evacuating occupants from an airplane after an aborted takeoff and that a need to control the use of communications devices may exist. These factors should be considered in each applicant's approved procedures. Proposed § 25.803(c)(18) is amended to state that the applicant's approved procedures must be fully used during the demonstration.

Several commentators objected to the proposed amendment to § 25.803(d) which would allow analysis in showing that the airplane is capable of being evacuated within 90 seconds. One commentator stated that analysis alone is an incomplete means of showing compliance and should not be allowed. Another commentator stated that extrapolations based on analytical testing have no practical relation to actual conditions which occur in accidents and in evacuation demonstrations. The FAA agrees that the limitations on the use of analytical procedures should be made clear. The requirement that the Administrator find the analysis data acceptable was intended to preclude approvals which might be based on insufficient test data, such as in the case of a completely new airplane model or a model which has major changes or a considerably larger passenger capacity than a previously approved model.

Accordingly, § 25.803(d) is revised to clarify the intent.

No unfavorable comments were received regarding proposed §§ 25.803 (c)(1), (c)(2), (c)(3), (c)(6), (c)(7)(i), (c)(8), (c)(9), (c)(11), (c)(13), (c)(15), and (c)(17). Accordingly, these proposals are adopted without substantive change.

It should be noted that the deletion of several proposed paragraphs and the insertion of a new § 25.803(c)(7) has required the redesignation of the adopted paragraphs.

The proposal to revise §§ 25.803 (c) and (d) is adopted with the changes discussed above.

Proposal 7-41. One commentator objected to the proposal to revise § 25.807(a)(7)(vi), stating that a flight attendant seat can be so mounted relative to an exit or to other seats that the flight attendant's access to the exit itself is restricted. The commentator recommended that the proposal be revised to specify that forward facing seats be placed aft of the emergency exit, and aft-facing seats be placed forward of the emergency exit, so that no flight attendant is seated with the attendant's back to the exit. The intent of the proposals to revise § 25.807(a)(7)(vi) is to specify that the seat required by present § 25.807(a)(7)(vi) must be a flight attendant seat which complies with the requirements of §§ 25.785 (h) and (i). The FAA is not aware of any unsatisfactory service history with respect to the orientation of seats provided in accordance with present § 25.807(a)(7)(vi), and the commentator did not provide any information which would indicate that a problem exists. The FAA believes that revising the proposal in the manner suggested by the commentator would unduly restrict design. Accordingly, the proposal is adopted without substantive change.

Proposed § 25.807(c)(7) is based on the existing special conditions developed for the current wide body jet airplanes. Based on the comments received, and upon further review within the FAA, the FAA believes that it does not have enough information to adopt a rule of general applicability to multideck airplanes at this time. Proposed § 25.807(c)(7) is withdrawn.

Proposal 7-42. Several commentators objected to proposed new § 25.809(f)(1)(iv) which would require that the emergency exit means to assist the occupants in descending to the ground be usable without outside assistance in 25-knot winds. One commentator stated that the proposed section was not clear with respect to whether deployment into a 25-knot wind was required in addition to operation in 25-knot winds after deployment. Proposed § 25.809(f)(1)(iv) is revised to state the requirement more clearly. Another commentator proposed that the weight of one person on the device be allowed to ground it to make it usable. The FAA agrees that the assistance of one person should be allowed. Proposed § 25.809(f)(1)(iv) is revised accordingly. In response to another comment questioning the state-of-the-art, the FAA believes that the proposed requirement, as revised to allow the assistance of one person after deployment, is within the state-of-the-art.

Another commentator stated that the provision concerning wind force direction in proposed § 25.809(f)(1)(iv) was vague. The FAA disagrees since the critical wind direction may vary for each assisting means and the applicant must demonstrate which direction is most-critical.

Several commentators objected to the 98 percent reliability requirement in proposed new § 25.809(f)(1)(v) as being difficult to interpret given a relatively small sample size and indicated that tests conducted on new designs may not adequately represent the reliability level in service. Another commentator stated that the reliability requirements in proposed § 25.809(f)(1)(v) were excessive and unwarranted. The FAA believes that the evaluation of slide designs during airplane type certification does establish a level of in-service performance if the slides are maintained properly. The FAA agrees, however, that the amount of testing that would be required to obtain data for the proposed determination of 98 percent reliability may be excessive for the systems under consideration. A more direct testing method, requiring fewer tests, has been found to provide an acceptable measure of egress system reliability in recent airplane type certifications. Proposed § 25.809(f)(1)(v) is revised to specify the use that method.

One commentator asked how the inertial forces specified in proposed § 25.809(f)(i)(v) would be applied. In practice, this has been done by applying equivalent static loads. (Clearly, test methods will have to be developed for dynamic testing if future designs indicate a need for it.) This commentator also asked whether the last sentence of proposed § 25.809(f)(i)(v) is necessary. The FAA believes that with the test method specified, the testing series must be restarted following failure to ensure that the reliability assessment is valid. The last sentence of § 25.809(f)(i)(v) has been rewritten to make this clear.

Proposal 7-43. One commentator objected to proposed § 25.811(e), stating that the present operating instructions have historically proven adequate to open doors and that there is no need for the additional requirements. The FAA does not agree and believes that the need for the proposed requirements has been established by recent adverse service experience.

One commentator questioned whether proposed § 25.811(e)(2) is applicable to Type II exits. The FAA is unaware of any need for extending this requirement to Type II exits at this time. Consistent with the proposal, the requirement applies only to Type A and Type I exits.

One commentator recommended that proposed §§ 25.811 (e)(2)(i), (e)(2)(ii), and (e)(3) be revised to require that a minimum brightness remain after a substantial amount of weathering in service. The FAA believes that a requirement for a minimum brightness belongs in the operating rules and that it is correctly stated in § 121.310(e)(2) of the Federal Aviation regulations.

Another commentator suggested that the alternative requirements for Type I and Type A passenger exit operating handles set forth in proposed § 25.811(e)(2) (i) and (ii) be made applicable to Type III exit operating handles. The FAA does not agree. The alternative provisions referred to are allowed for Type I and Type A exits be-

cause a specified level of illumination must be provided at these exits. However, since illumination levels are not specified for all Type III exit installations, a self-illuminated operating handle must be provided.

One commentator objected to the proposed ±0.5-inch tolerance for the location of the projected point of the arrow for rotary handle markings. The commentator indicated that current door rigging variations cannot always meet the proposed tolerance. The FAA agrees. To allow for rigging variations, proposed § 25.811(e)(4)(ii) is revised to require that centerline of the exit handle be within ±1-inch of the projected point of the arrow when the handle has reached full travel and has released the locking mechanism.

One comment on proposed § 25.811(e)(4)(ii) suggested that no marking is a substitute for having a door mechanism designed so that it is unmistakable when full travel of the mechanism has been reached. It is not clear what the commentator is recommending. However, the proposal requires marking of the handle position at the full travel limit, after the locking mechanism has been released. Since persons unfamiliar with the mechanism may be required to operate it in an emergency, the marking is needed to insure that they move the handle to full travel against any resistance which may be felt.

Proposed § 25.811(e) is adopted with the revision discussed above. In addition, several nonsubstantive changes have been made for clarity.

Proposal 7-44. No unfavorable comments were received on the proposal to amend § 25.812(e). Accordingly, the proposal is adopted without substantive change.

Two commentators questioned proposed §§ 25.812 (f) and (g) to provide emergency lighting coverage with the airplane in abnormal attitudes. One of the commentators contended that present standards have historically provided satisfactory lighting and that a "battery of lights" would be necessary to comply with the proposal. Based on the comments received, and after further review within the FAA, the proposed changes to §§ 25.812 (f) and (g) are withdrawn.

Several commentators objected to the proposal to add a new § 25.812(1). One commentator stated that the meaning of "high intensity" is subject to broad interpretation and that a flashlight could provide an acceptable level of illumination. Current § 121.549(b) provides for a readily available flashlight for each crewmember, and the FAA believes that the intent of the proposal can be met by specifying an accessible flashlight storage means. The proposal to add a new § 25.812(1) is withdrawn and Proposal 7-81 for § 121.310(1) is revised to require flashlight stowage provisions that are readily accessible from each flight attendant seat and to allow 2 years for compliance.

Proposal 7-45. One commentator objected to the proposal to revise § 25.813(c)(1) to add a requirement that "there must be no interference in opening the exit." The commentator considered this proposal to be interpretive material better suited for Advisory Circular action and stated it was not clear. The FAA disagrees. Many emergency exits need more clearance than the projected exit opening to prevent interference when opening the exit, and this proposal would make it clear that adequate clearance is required. The commentator suggested adding after the word "protrusions" the words "to prevent exit door ready removal" in § 25.813(c)(1). The FAA does not believe proposed § 25.813(c)(1) needs clarification, and the suggested wording could lead to misinterpretations.

Another commentator recommended that the requirement of § 25.813(c)(1) be applied to airplanes having 9 to 19 passenger seats. The FAA disagrees. Current requirements of § 25.813(c)(2) consider emergency exit access for airplanes having 19 or less passengers. Service experience has shown no need to change the requirements of § 25.813(c)(2).

After consideration of the comments received, and after further review, the FAA believes that proposed § 25.813(g) to establish material and systems requirements and proposed §§ 25.813 (h) and (i) to establish passageway design requirements are premature, and they are withdrawn.

Proposal 7-46. In view of the amendment of § 25.831 by Airworthiness Review Amendment No. 5 (42 FR 36960; July 18, 1977), the FAA believes that proposed § 25.831(g) is not necessary and it is withdrawn.

Proposal 7-47. No unfavorable comments were received on the proposal to amend § 25.863. One commentator asked for an explanation of the means to show compliance with the proposed requirements of paragraph (d). The areas where flammable fluids or vapors could escape by the leakage of a fluid system must be identified and defined as part of type design data submitted by the applicant for type certification. The proposal is adopted without substantive change.

Proposal 8-43. One commentator contended that proposed § 25.901(d) will be difficult to administer because the term "applicable provisions of this subpart" will not be consistently interpreted. The commentator suggested that the applicable provisions be clearly defined. The FAA does not agree with the commentator and believes the suggested revision is unnecessary. The same wording is used in current § 25.901(b)(1) with respect to propulsion powerplant installations, and has been administered without difficulty.

One commentator suggested that only those auxiliary power units (APU) that are classed as essential power units need to meet the applicable provisions of the subpart. Several other commentators suggested that the applicable provisions should be clearly defined to differentiate between essential and nonessential APU installations. The FAA does not agree with these comments. The FAA believes that appropriate requirements for safety must be applied to all APU installations. No justification has been shown for the operation of a nonessential or a ground operation only APU at a safety level that is different from that which is required for an essential APU.

The proposal is adopted without substantive change.

Proposal 8-46 and 3-35. Disposition of Proposal 3-35 to amend § 25.1103 (Notice 75-19) was deferred so that it could be considered in connection with Proposal 8-46. One commentator on Proposal 3-35 suggested that the proposed revision to § 25.1103(d), concerning ducts other than induction system ducts, be placed in a separate section of Part 25. The FAA believes that it is more appropriate to include the requirement in § 25.1103 and to expand the heading of that section to include a reference to air duct systems. Proposal 3-35 is adopted without substantive change. However, § 25.1103(d) as adopted reflects a change proposed by Proposal 8-46, one commentator suggested that the phrase "unless it can be shown that a duct failure will not result in an additional fire hazard" be added to proposed § 25.1103(b). The FAA does not believe that the suggested condition could be met. The ducts under consideration are those which are contained within fire zones, including the auxiliary power unit fire zone. Duct failures in such areas could allow fire to spread, possible outside the fire zone, or could reduce the effectiveness of installed fire-extinguishing systems.

Several commentators suggested that it would be difficult to establish the "sufficient distance upstream of the auxiliary power unit compartment" specified in proposed § 25.1103(e). The FAA believes that the proposed standard is appropriate. In this instance, a more definitive standard, taking into account all of the factors that might be involved, would tend to restrict design flexibility unnecessarily.

One commentator objected to proposed § 25.1103(e), contending that its language precluded the use of meth-

ods to prevent hot gas reverse flow, which would provide at least an equivalent level of safety. The FAA knows of no practical method other than fireproofing to prevent hot gas reverse flow in induction system ducts. If such a method were developed, the applicant could apply for its approval under the "equivalent safety" provisions of § 21.21(b)(1). This commentator also contended that if proposed § 25.1103(f) is met, it is unrealistic to consider a fire caused by hot gas reverse flow burning in the air induction system. The commentator suggested, instead, a requirement to determine the maximum intake duct temperature that could occur under hot gas reverse flow conditions and to use a duct material that can resist these temperatures. The commentator apparently misinterpreted the proposal. Proposed § 25.1103(e) requires that certain portions of each auxiliary power unit induction system duct be fireproof, and proposed § 25.1103(f) states heat tolerance requirements for those portions of the induction system other than those which are specifically required to be fireproof. However, the FAA believes the proposed language may be unclear. Therefore, that portion of § 25.1103(f) which states requirements for the heat tolerance of materials be revised to clarify the applicability and is moved to § 25.1103(e).

Two commentators suggested that proposed § 25.1103(f) be revised to allow the use of materials that may absorb or trap non-hazardous quantities of flammable fluids (or flammable fluids that could present a hazard to the aircraft). These commentators contended that proposed § 25.1103(f) would prevent the use of certain sound suppression materials that trap small quantities of fluids. The FAA agrees and § 25.1103(f) is revised accordingly.

One commentator suggested that an acceptable alternative to compliance with proposed § 25.1103(f) would be to show that any fire which may occur is contained within the induction system. The FAA does not believe that it would be possible to contain a fire in the induction system since the induction system is a passage which is open at both ends.

Substantively identical revisions are made to Proposal 8-73 for § 29.1103.

Proposal 8-47. Two commentators on proposed § 25.1142 stated that there was no need for starting control on the flight deck for auxiliary power units (APU) that are operable only on the ground. The FAA believes that any APU installed on the airplane, whether or not intended only for ground use, should be able to be operated by the flight crew since its improper operation or malfunction could affect the safety of the aircraft. The commentators appear to have interpreted the proposal to apply to both the APUs which are installed in the airplane and to those stationary, portable, or mobile units which are external to the airplane and are considered to be ground support equipment. The proposal is therefore revised to clarify that it is applicable only to installed APUs.

One commentator stated that APU and engine standards in Part 25 should be separated to insure consistent administration. The FAA does not agree with this commentator, and believes the suggested revision is unnecessary. The APU and engine standards in Part 25 have been administered without difficulty for years.

Another commentator stated that the proposal should be revised to differentiate between essential and nonessential APUs. For a discussion of this comment, see Proposal 8-43.

Proposals 8-49 and 3-41. Disposition of Proposal 3-41 to amend § 25.1195(b) (Notice 75-19) was deferred so that it could be considered in connection with Proposal 8-49. One commentator objected to Proposal 3-41 and suggested that it be revised to read "* * * all extinguishers are not required to crossfeed all engines, but two shots to each engine are required." The proposal deletes the last sentence of present § 25.1195(b) to avoid the possible interpretation that a particular discharge must be directable to every fire zone. Such an arrangement would be acceptable, but individual systems which have a dual discharge capability may be confined to serve a particular fire zone. The proposal is considered equivalent to the wording preferred by this commentator.

Another commentator stated that the proposal does not meet the intent of the explanation unless the last sentence of present § 25.1195(b) is deleted. The proposal includes this deletion. This commentator further stated that the proposed wording contradicts the exemptions allowed by § 25.1195(a). The FAA does not agree. Section 25.1195(b) applies only to non-excepted fire zones. Proposal 3-41 to amend § 25.1195(b) is adopted without substantive change.

One commentator objected to the requirement in Proposal 8-49 for § 25.1195(b) that the test fully simulate actual critical airflow conditions, stating that there should be provisions in the regulations to allow the use of test results and analysis to show compliance. Another commentator objected to the proposal because it does not allow demonstration of compliance by a combination of analysis and analogy with similar engine installations that have been subjected to full scale fire tests. The FAA does not agree with these comments. Distribution of the extinguishing agent within a fire zone is a controlling factor in extinguishing a fire within that fire zone. No acceptable procedure has been found to demonstrate extinguishing agent concentration by analysis, or by reference to tests or service experience on similar powerplant installations, or by reference to tests conducted under conditions other than those encountered in service. Compliance with proposal § 25.1195(b) must be based on actual or simulated flight tests which fully provide the critical airflow conditions to be encountered in flight.

One commentator objected to the words "under critical airflow conditions," "any fire," and "preventing reignition" as meaningless when engine breakup or cowling damage occurs. A second commentator objected to the proposal because no hole size is specified. However, the proposal is based on the assumption that the fire zones under consideration remain intact, with no engine breakup or cowling damage and with only those holes that are present during normal operation. Therefore, no damage factors are specified.

Several commentators objected to the words "and preventing reignition" for the reason that there is no practical way to determine compliance unless the fire and potential reignition sources are defined. These commentators suggested that this requirement should be changed to "and minimize the probability of reignition." The FAA agrees that the language "and preventing reignition" may imply that extinguishing agent concentration must be maintained indefinitely. The FAA believes that this is beyond the present state-of-the-art, and the proposal is revised in the manner suggested by these commentators. Three of these commentators further objected to the proposed requirement for an extinguishing agent concentration capable of "extinguishing any fire" in a fire zone because there is no practical way to determine compliance unless the fire is defined. The FAA agrees, and the proposal is revised to incorporate the words "extinguishing fires" to be consistent with the provisions of present § 25.1195(b).

One commentator stated that the use of full-scale fire tests, evidence of similar powerplant configurations, and analysis were proposed as part of Airworthiness Review Notice No. 3 (Notice 75-19; 40 FR 21866; May 19, 1975) to show compliance with the requirements of §§ 25.1181 through 25.1203, and that this proposal is in conflict with Notice 75-19. The proposal in Notice 75-19 to which the commentator refers has been adopted as § 25.1207 (Airworthiness Review Amendment No. 4, effective May 2, 1977). Section 25.1207, as adopted, provides for those cases when tests are

specifically required. However, in light of the adoption of proposed § 25.1195(b), the FAA believes that § 25.1207 could be confusing and it is revised for clarity. Additionally, this commentator stated that the method of demonstrating satisfactory fire extinguishing capability should be by agreement between the manufacturer and the certificating authority. The FAA does not agree. Objective rules are needed to ensure that a consistent level of safety is maintained.

One commentator stated that the proposal refers to critical airflow conditions while the explanation refers to flight conditions, which are not necessarily the same thing. The FAA agrees that clarification is necessary. The proposal is revised to specify critical airflow conditions in flight.

Proposal 8-49 to amend § 25.1195(b) is adopted with the revisions discussed above. Similar revisions are also made in connection with Proposal 8-75 for § 29.1195(d).

Proposal 7-48. No unfavorable comments were received on the proposal to amend § 25.1307(a). Accordingly, the proposal is adopted without substantive change.

Proposal 5-24. For comments related to the proposal to revise § 25.1329(b), see Proposal 5-7.

Proposal 7-49. One commentator suggested deletion of the words "Such as automatic life raft releases" from proposed § 25.1411(a)(1) since they imply that the requirement is intended to apply only to equipment for ground emergency use. The FAA agrees. This implication is not intended, and the proposal is revised in the manner suggested by this commentator.

Several commentators objected to proposed § 25.1411(a)(2) and to its companion proposal for § 121.309(a)(2) (Proposal 7-80) regarding accessibility of standard emergency equipment to flight attendants. In light of the comments received, and after further review, the FAA believes that it should not be required that safety equipment such as fire extinguishers, portable oxygen bottles, and first aid kits be positioned adjacent to each flight attendant seat and be readily accessible to the seated flight attendant. From a safety standpoint, it is not essential that this equipment be used from a seated position, and from a practical standpoint it would be difficult to provide for the installation of the equipment in the confined areas proposed. Safety equipment should be installed in accessible areas of the aircraft where it would be available during an emergency. However, the FAA believes that when a public address system is provided in compliance with the operating rules of this chapter, the flight attendant seated in any of the seats located adjacent to a floor level exit may be required to use the public address system. Therefore, at least one public address system microphone intended for flight attendant use should be positioned at each floor level exit and be readily accessible to a flight attendant seated in any seat adjacent to the exit. The proposal to amend § 25.1411(a)(2) is revised accordingly. The proposal for § 121.309(a)(2) is revised in a substantively identical manner and is adopted as part of § 121.318(b), which is concerned with public address systems.

One commentator objected to the proposed requirement in § 25.1411 (a)(2) that "no equipment may be located as to adversely affect the safety of the flight attendant under any condition," stating that compliance would be clearly impossible to achieve. The FAA agrees that the proposed requirement may be too restrictive and it is deleted.

No unfavorable comments were received on the proposal to add a new § 25.1411(b)(3). The FAA believes that the requirements to identify the contents of storage compartments and containers are adequately covered in § 25.1541(c). The proposal for § 25.1411(b)(3) is withdrawn.

No unfavorable comments were received on the proposal to amend § 25.1411(d) and it is adopted without substantive change.

Two commentators objected to the proposal to add a new § 25.1411(h) which would require that emergency equipment be clearly marked to indicate its method of operation if it is not obvious. The commentator objected to passengers operating emergency equipment without assistance from flight attendants and also pointed out that current § 25.1561 already requires the marking of safety equipment as to its method of operation. After further review, the FAA believes that although crewmembers are not always available, the current marking instructions set forth in § 25.1561 cover passenger use. Proposed new § 25.1411(h) is withdrawn.

Proposal 7-50. The proposal to amend § 25.1413(b) is withdrawn. For comments related to the withdrawal, see Proposal 7-15.

Proposal 7-51. Two commentators objected to the proposal to add a new § 25.1415(b)(4), which would require that one-half of the non-portable rafts be considered unusable for ditching. The commentators stated that the requirement that one-half of the rafts be considered unusable is unrealistic. The FAA does not agree since a non-portable raft, or a raft which by design cannot be used at other than its primary exit, may not be operable if that exit malfunctions or if ditching conditions are such that that exit cannot be used. However, after consideration of the comments received, and after further review, the FAA believes that it does not have enough information to prescribe a rule of general applicability for the design of ditching provisions which incorporate non-portable rafts. Accordingly, proposed new § 25.1415(b)(4) is withdrawn. The FAA believes that with the withdrawal of proposed § 25.1415(b)(4), the reference to portable rafts that is contained in proposed § 25.1415(b)(3) may be interpreted as allowing the use of nonportable rafts. This effect is not intended, and proposed new § 25.1415(b)(3) is withdrawn.

Several commentators objected to the proposal to add a new § 25.1415(b)(5), which would require that means be provided to assist the airplane's occupants in boarding the rafts from the airplane without entering the water. The commentators contended that for certain sea conditions no means has been demonstrated for boarding rafts from airplanes without the possibility of the occupants entering the water. The FAA agrees and proposed new § 25.1415(b)(5) is withdrawn.

Proposal 7-52. No unfavorable comments were received on the proposal to add a new § 25.1416 which adds pneumatic de-icer systems requirements. However, the FAA has revised the proposal based on the comments received on Proposal 7-16. See Proposal 7-16.

Proposal 7-53. Several commentators recommended revisions to the proposal to add a new § 25.1423 which would establish intercommunication equipment requirements for multideck airplanes. One commentator recommended that the lead-in paragraph be revised to make the requirements applicable to airplanes with adjacent occupiable decks or compartments (excluding lavatories) and that the intercommunication and the two-way alert means be required between each occupiable deck or compartment and the flight deck. The same commentator recommended that the intercommunication system and the two-way alert means be capable of providing crewmembers on all decks or occupiable compartments an immediate indication of an emergency situation on any deck or occupiable compartment (excluding lavatories). In the light of the comments received, and after further review, the FAA believes that it does not now have enough information to specify intercommunication equipment requirements appropriate for all transport category airplanes. The proposal to add a new § 25.1423 is withdrawn.

Proposal 8-57. One commentator suggested that proposed new § 25.1522 be revised so that it would also apply

to auxiliary power units (APU) that do not meet the requirements of TSO-C77 (§ 37.183). The FAA does not agree. The proposal recognizes that operating limitations established under a TSO do not have to be reestablished as a part of airplane type certification. However, an airplane type certificate applicant would have to develop appropriate operating limitations during the airplane type certification for any installed APU not manufactured under the provisions of a TSO. Such APU operating limitations would then become part of the aircraft type design. The proposal has no applicability in the situation discussed by the commentator.

Another commentator, while agreeing with the proposal, suggested that proposed § 25.1522 be revised to require also that each APU meet the requirements of TSO-C77. The FAA does not agree. TSO-C77 is applicable only to gas turbine powered APU's. The suggested revision would require that APU's other than gas turbine units be manufactured to the standards which are appropriate to, and established only for, the manufacture of gas turbine auxiliary power units.

The proposal is adopted without substantive change.

Proposal 7-54. One commentator objected to the proposal to amend § 25.1561(c) which makes clear that the removal of required emergency equipment from the stowage provisions be "easy." The commentator suggested replacement of the word "facilitate" between the words "and" and "removal" with the words "provide easy accessibility and rapid" in § 25.1561(c). The FAA does not believe that the recommended revision is necessary to accomplish the intent of the proposal and the proposal is adopted without substantive change.

Proposal 8-60. No unfavorable comments were received on the proposal to delete § 25.1583(g). Accordingly, the proposal is adopted without substantive change.

Proposal 8-61. For a comment related to the proposal to amend § 25.1585, see Proposal 8-24. Proposed § 25.1585(d) is revised for reasons stated in the discussion of Proposal 8-24. Proposed § 25.1585(e) is adopted without substantive change.

Proposal 7-55. For a discussion of the deferral of the proposal to add a new Appendix G to Part 25, see Proposal 7-17.

Proposal 8-63. No unfavorable comments were received on the proposal to revise § 27.79(b)(2). Accordingly, the proposal is adopted without substantive change.

Proposal 7-56. For comments related to the proposal to add a new § 27.603(c), see Proposal 7-3.

Proposal 7-57. For comments related to the proposal to amend § 27.605, see Proposal 7-29.

Proposal 7-58. One commentator apparently misunderstood the proposed addition to the lead-in of § 27.613(d). The commentator stated that the proposal did not change the current rule. However, the proposal would add the words "or other values approved by the Administrator." to the lead-in. With this change, the Administrator may allow the applicant greater flexibility in the selection of design values. The proposal is adopted without substantive change.

Proposal 7-59. Several commentators objected to the proposed amendments of §§ 27.671 and 29.671 on the ground that they would require extensive redundancy in the mechanical portion of the flight control system and require that the rotorcraft be capable of continued safe flight and landing if all engines fail. The commentators stressed that no current state-of-the-art designs can meet the proposed requirements and that redundancy may cause less reliable structure as a result of extreme complexity. One commentator stated that adequate safety can be achieved by proper design and fatique testing and analysis. After consideration of the comments received, and after further review, the FAA believes that it does not have enough information at this time to set forth an appropriate general standard for control system performance following failure or malfunction. The proposed changes to §§ 27.671 and 29.671 are withdrawn.

Proposal 7-60. No unfavorable comments were received on the proposal to revise § 27.675(d)(1). Accordingly, the proposal is adopted without substantive change.

Proposal 7-61. The proposed deletions of §§ 27.695 and 29.695 are related to the proposed revisions of §§ 27.671 and 29.671. In consideration of the withdrawal of the proposed revision of §§ 27.671 and 29.671, the proposed deletions of §§ 27.695 and 29.695 are withdrawn. See Proposal 7-59.

Proposal 7-62. Several commentators objected to the requirement in proposed §§ 27.737 and 29.737 that compliance with shock absorption tests must be demonstrated with ski components installed on rotorcraft. The commentators emphasized that the design of helicopter landing gear, such as standard skid designs, is such that ski installations will not generally change energy absorption characteristics. The FAA agrees. The proposals to amend §§ 27.737 and 29.737 are withdrawn.

Proposal 7-63. Several commentators objected to the proposed amendment to § 27.853 which would impose certain of the compartment interior fire protection requirements for transport category airplanes on normal category rotorcraft. The commentators stated that these proposed requirements are not reasonable for normal category rotorcraft and are more severe and more restrictive than the current requirements for normal category airplanes. The FAA agrees, and the proposal to amend § 27.853 is withdrawn.

Proposal 7-64. Two commentators objected to the proposal to add a new § 27.863 that would require protection from a flammable fluid or vapor fire outside the engine compartment. The commentators stated that the small, unsophisticated fluid carrying systems in normal category rotorcraft make this an unnecessary and expensive compliance item without increasing safety. The FAA disagrees. The agency believes that the smaller and less complex fluid carrying systems will be able to meet this requirement with correspondingly small and simple means. The proposal is adopted without substantive change. Also see the comments for Proposals 7-47 and 7-75.

Proposal 7-65. The proposal to amend § 27.1413(a) is withdrawn. For comments related to the withdrawal, see Proposal 7-15.

Proposal 7-66. Several commentators objected to the proposals to add new §§ 27.1463 and 29.1463 to require a means to prevent persons from inadvertently contacting the tail rotor of a rotorcraft. The comment was made that the only practical way to prevent a person from contacting a tail rotor is to make it physically impossible for the person to reach the tail rotor. This could be accomplished by raising the tail rotor or by using shrouds and screens. On smaller rotorcraft shrouds and screens would have to be used to prevent tail rotor contact by a person since it would be impossible to raise the tail rotor sufficiently. It was contended that providing a shroud and screen of sufficient strength and rigidity to accomplish its purpose, without itself causing a hazard due to deformations to be expected in service, would add excessive weight in a weight critical area of many rotorcraft designs. The FAA agrees with these comments and after further consideration the proposals to add new §§ 27.1463 and 29.1463 are withdrawn.

Proposals 5-51 and 5-65. Two commentators objected to proposed §§ 27.1545(a) and 29.1545(a) on the ground that these provisions are appropriate only to fixed-wing aircraft. Apparently these commentators construed the reference to paragraph (b) in proposed §§ 27.1545(a) and 29.1545(a) as referring to the markings specified in proposed § 23.1545(b). However, the paragraph (b) that is referred to in proposed § 27.1545(a) is current § 27.1545(b), and the paragraph referred to in proposed § 29.1545(a) is current § 29.1545(b).

Sections 27.1545(b) and 29.1545(b) have not been changed. Accordingly, the proposals to revise §§ 27.1545(a) and 29.1545(a) are adopted without substantive change.

Proposal 8-65. No unfavorable comments were received on the proposal to delete § 27.1583(f). Accordingly, the proposal is adopted without substantive change.

Proposal 8-66. No unfavorable comments were received on the proposal to amend § 27.1585; however, proposed § 27.1585(d) is revised for reasons stated in the discussion of Proposal 8-24. Proposed § 27.1585(e) is adopted without substantive change. In view of the adoption of new §§ 27.1585 (c) and (d) in Airworthiness Review Amendment No. 6 (42 FR 2302; January 16, 1973), proposed §§ 27.1585 (d) and (e) are redesignated and adopted as §§ 27.1585 (e) and (f), respectively.

Proposal 8-68. In the proposed amendment of § 29.75, one commentator objected to the use of the 50-foot height criterion for the determination of Category A landing distance. The commentator suggested a rewording that was identical to the proposal except that the 50-foot height criterion would be replaced by a requirement that the approach flight path cross the edge of the heliport at an altitude of 25 feet or less. According to the commentator, the 50-foot altitude criterion is inconsistent with past practices of some certification programs and there has been no adverse experience with the use of a 25-foot altitude "window." The FAA does not agree with the commentator. The FAA is aware of only one instance in which a 25-foot height criterion was used. In that instance, a 25-foot height was specified for landing operations to be conducted on a 2,300-foot runway. The FAA is not aware of any certification experience involving the use of a range of altitudes over the edge of the heliport (the "altitude window" concept) in the determination of Category A landing distances.

The commentator also suggested that the Category A performance requirements should be edited as a group and put into language which is understandable to people who work with helicopters. However, the commentator did not make any specific recommendations, and the FAA has no information which would indicate that Category A performance requirements are difficult to understand.

The proposal to amend § 29.75 is adopted without substantive change.

Proposal 7-67. For comments related to the proposal to add a new § 29.603(c), see Proposal 7-3. Section 29.603(c), as adopted, differs from the proposal for the reasons discussed in Proposal 7-3.

Proposal 7-68. For comments concerning the subject matter of the proposal to amend § 29.605, see Proposal 7-29. The proposal is adopted without substantive change.

Proposal 7-69. No unfavorable comments were received on the proposal to amend § 29.613(d). Accordingly, the proposal is adopted without substantive change.

Proposal 7-70. The proposal to amend § 29.671 is withdrawn. For a discussion of the withdrawal, see Proposal 7-59.

Proposal 7-71. No unfavorable comments were received on the proposal to amend § 29.675(d)(1). Accordingly, the proposal is adopted without substantive change.

Proposal 7-72. The proposal to delete § 29.695 is withdrawn. For discussion related to the withdrawal, see Proposal 7-61.

Proposal 7-73. The proposal to amend § 29.737 is withdrawn. For discussion related to the withdrawal, see Proposal 7-62.

Proposal 7-74. Several commentators objected to the proposal to amend § 29.853, which would impose certain of the compartment interior fire protection requirements for transport category airplanes on transport category rotorcraft. The commentators cited the favorable service experience to date, the smaller cabins of transport category rotorcraft relative to transport category airplanes, the ability of helicopters to land quickly, and the fact that helicopter cabins are not pressurized, as reasons not to impose transport category airplane requirements on transport category rotorcraft. The FAA disagrees. The service experience cited is based on the relatively small current civil fleet of transport category rotorcraft. However, the current fleet is increasing in size both with respect to the number of rotorcraft and with respect to the size of rotorcraft.

In response to another comment, proposed § 29.853(a) has been further revised to set forth the applicable requirements contained in §§ 25.853 (a) and (b) rather than cross referencing those regulations.

However, the cross-reference to Appendix F of Part 25 for test procedures has been retained. See also the discussion of Proposal 7-12.

Proposal 7-75. Two commentators objected to the proposal to revise § 29.863 on the ground that the present regulations provide an adequate level of safety without adding unnecessary cost to the certification program. The FAA believes that the proposed requirements are necessary to insure protection from a flammable fluid or vapor fire. The proposal is adopted without substantive change. Also see the discussion of Proposals 7-47 and 7-64.

Proposal 8-69. No unfavorable comments were received on the proposal to amend § 29.901. For comments related to the like proposal to amend § 25.901, see Proposal 8-43. The proposal is adopted without substantive change.

Proposal 8-70. One commentator objected to the requirements in proposed § 29.923(a) that the tests be conducted on the rotorcraft and that the test torque be absorbed by the actual rotors to be installed. This commentator stated that the testing of larger drive systems while installed on the rotorcraft is impractical and, in some cases, unconservative in view of the manner in which the rotorcraft must be attached to the ground to absorb the powers involved. Another commentator also objected to the requirement that the 200-hour test be conducted on the rotorcraft. This commentator stated that for conventional rotorcraft with anti-torque tail rotors, or those with contra-rotating rotors, the test purpose could be fulfilled by conducting the test on a suitable rig, if it can be demonstrated that the distortion and vibration conditions are the same as those met on the rotorcraft. The requirements to which these commentators objected are contained in present § 29.923 and were merely restated for clarity in the proposal. Further, the FAA believes these requirements are necessary to insure the validity of the test results.

One commentator suggested that for clarity § 29.923(a) should read "* * * for at least 200 hours plus any extra time required to meet paragraphs (b)(2) and (k) of this section where more than two engines are fitted in the rotorcraft." The FAA believes that the applicability of §§ 29.923 (b)(2)(ii) and (k)(2) to multi-engine rotorcraft is clearly stated and that the revision suggested by this commentator is unnecessary.

The proposal to amend § 29.923 is adopted without substantive change.

Proposals 8-71 and 2-164. Disposition of Proposal 2-164 to amend § 29.927 (Notice 75-10, 40 FR 10802; March 7, 1975) was deferred so that it could be considered in connection with Proposal 8-71. One commentator on Proposal 2-164 to amend § 29.927(b)(2) questioned whether due consideration had been given to the 30-minute emergency power rating when establishing the 15-minute time requirement for the torque transmission test. The 30-minute rating is substantiated by the endurance testing specified in proposed § 29.923, while the proposed 15-minute time requirement is associated with testing which must be done if turbine engine output can exceed the highest engine or transmission torque

limit and that output is not directly controlled by the pilot under normal operating conditions. The highest engine or transmission torque limit is usually associated with takeoff torque, and the 15-minute test would be done at a torque level substantially higher than that associated with the 30-minute rating. The FAA therefore believes that due consideration has been given to the 30-minute ratings, and Proposal 2-164 is adopted without substantive change.

One commentator on Proposal 8-71 agreed with the concept that the overspeed test should be a "proof" test, but questioned the use of maximum continuous speed as a datum. The commentator stated that the use of 120 percent of maximum continuous speed would be acceptable provided this value is at least equal to 105 percent of rotor never-exceed speed and 115 percent of takeoff speed. Maximum continuous speed is used as a reference speed in other required testing of the rotor drive system, and the FAA believes it is appropriate to retain it for consistency. Further, the FAA does not have any information at the present time to indicate that the additional requirements recommended by the commentator are necessary.

One commentator objected to the provisions "After completion of the 200-hour, tie-down test and without intervening major disassembly" in proposed § 29.927(d). The FAA agrees that this provision is inappropriate. The intent of the proposal was to dissociate the overspeed test from the 200-hour, tie-down test since the tests are unrelated. The proposal is revised by striking the words "After completion of the 200-hour, tie-down test and without intervening major disassembly."

Proposal 8-72. No unfavorable comments were received on the proposal to amend § 29.1091 and it is adopted as proposed.

Proposal 8-73. For comment related to the proposal to revise § 29.1103, see Proposal 8-46. The proposal is revised for the reasons discussed in Proposal 8-46.

Proposal 8-74. One commentator objected to the requirement in proposed § 29.1142 that controllability from the flight deck must be provided for auxiliary power units (APU), contending that nonessential APUs should be excluded from the requirement. The FAA does not agree. The commentator has not presented any reason to justify distinguishing between APUs on the basis of the essential or nonessential nature of the services provided by the APU. The FAA believes the flight crew should be provided a means to control an emergency involving any installed auxiliary power unit.

For reasons that are stated in the discussion of Proposal 8-47, proposed § 29.1142 is revised by inserting the word "installed" between the words "each" and "auxiliary."

Proposal 8-75. For comments related to a proposal similar to the proposal for § 29.1195(d), see Proposal 8-49. Section 29.1195(d), as adopted, differs from the proposal for the reasons discussed in Proposal 8-49.

Proposal 7-76. The proposal to amend § 29.1413 is withdrawn. For a discussion of the withdrawal, see Proposal 7-15.

Proposal 7-77. The proposal to add a new § 29.1463 is withdrawn. For a discussion of the withdrawal, see Proposal 7-66.

Proposal 8-76. No unfavorable comments were received on the proposal to add a new § 29.1522. For comments related to the proposal to add a new like section under Part 25, see Proposal 8-57. The proposal to add new § 29.1522 is adopted without substantive change.

Proposal 5-65. For comments related to the proposal to revise § 29.1545(a), see Proposal 5-51. The proposal is adopted without substantive change.

Proposal 8-78. No unfavorable comments were received on the proposal to delete § 29.1583(g). Accordingly, the proposal is adopted without substantive change.

Proposal 8-79. No unfavorable comments were received on the proposal to amend § 29.1585; however, proposed § 29.1585(d) is revised for reasons stated in the discussion of Proposal 8-24. Proposed § 29.1585(e) is adopted without substantive change. In view of the adoption of new §§ 29.1585 (c) and (d) in Airworthiness Review Amendment No. 6 (43 FR 2302; January 16, 1978), proposed §§ 29.1585 (d) and (e) are redesignated and adopted as §§ 29.1585 (e) and (f), respectively.

Proposal 7-78. One commentator suggested that the proposal to amend § 121.291 be revised to allow an air carrier to utilize the results of an evacuation demonstration conducted by another air carrier to eliminate the need for an additional demonstration. The purpose of the proposed amendment to § 121.291 and the related proposals to revise § 25.803(c) (Proposal 7-40) and to delete paragraph (a) of Appendix D to Part 121 (Proposal 7-84) is to specify conditions for an emergency evacuation demonstration to be conducted during type certification, which meets both airworthiness and operational needs. The FAA does not believe that any further relaxation of the current requirement that a Part 121 operator conduct a demonstration in addition to that conducted during type certification of the airplane, is justified. This commentator also recommended revising the proposal to require a demonstration upon a major change in cabin interior configuration that significantly affects the emergency evacuation duties of crewmembers. The FAA believes that present § 121.291(a)(2) adequately provides for the situation described by the commentator.

One commentator suggested that paragraph (a) of Appendix D to Part 121 be retained since there are certain difference in wording between that paragraph and § 25.803(c) which would be inappropriate. After consideration of this comment, and upon further review, the FAA agrees that paragraph (a) of Appendix D Part 121 contains certain requirements for emergency equipment installation, for seating density and arrangement, and for crewmember qualifications which are appropriate to an emergency evacuation demonstration conducted by an operator and which should be retained. Proposal 7-84 to delete paragraph (a) of Appendix D is withdrawn, and the reference to that paragraph which appears in present § 121.291(a) is retained.

Proposal 7-79. The proposal to add a new § 121.292 is withdrawn. For a discussion of comments related to the proposal, see Proposal 7-39.

Proposal 7-80. For discussion concerning the revision of the proposal for § 121.309(a)(2), see Proposal 7-49. Since provisions for a public address system and its use are currently provided under § 121.318, the FAA believes that substance of the proposed § 121.309(a)(2), as revised, is more appropriately stated in § 121.318, and that section is revised accordingly. The provision for a delayed effective date has been retained but extended to 2 years.

The proposal to add a new § 121.309(a)(3) is withdrawn since the proposed requirements are adequately covered in § 121.309(b)(4).

While no unfavorable comments were received on the proposal to amend § 121.309(b)(3), upon further review the FAA believes that the current requirement adequately covers identification and marking of equipment operation. Accordingly, the proposal is withdrawn.

Proposal 7-81. Several commentators objected to the proposal to amend § 121.310(a), which would require that existing aircraft comply with the emergency evacuation slide requirements in proposed § 25.809(f)(1) within 2 years of the effective date of this amendment. The commentators stated that 2 years would not be enough time to develop and test emergency evacuation slides complying with proposed § 25.809(f)(1) and to retrofit them to existing aircraft. One commentator further objected that the design development and testing needed would con-

stitute an undue burden for the operator, and that there is no assurance that the proposed criteria could be applied retroactively to all airplanes. The FAA agrees, and the proposal to amend § 121.310(a) is withdrawn.

One commentator stated that the requirement in proposed new § 121.310(d)(4), that each emergency light have a cockpit control device with "on", "off," and "armed" positions 1 year after the effective date of the amendment, may be too restrictive, particularly for large fleet operators. Upon further consideration, the FAA believes the retrofit requirement should be extended to two years. Proposed new § 121.310(d)(4) is revised accordingly.

For a discussion of the revision to proposed § 121.310(1), see Proposal 7-44.

Proposal 7-82. One commentator objected to the proposal to revise § 121.319(b)(1) to require two-way communication between the pilot compartment and all the galleys and other flight attendant stations on the ground that the proposed requirement would result in unnecessary redundancy and would not be cost effective. The commentator agreed with a requirement for interphones for only those galleys physically isolated from the passenger compartment. Two other commentators stated that adequate communication could be provided without interphones at each flight attendant station and galley because of the close proximity of some flight attendant stations to galleys. Another commentator suggested that the interphone be required only at required flight attendant stations. The FAA agrees that the intent of the proposal can be accomplished without requiring a means of communication to all galleys and other flight attendant stations. Accordingly, the proposal is revised to require a means of two-way communication between the pilot compartment and each galley which is located on other than the main passenger deck level and each passenger compartment.

One commentator stated that the installation of the proposed two-way communication system would require the modification of aircraft and therefore requested a delayed effective date. The FAA agrees and the proposal is revised to provide 2 years for compliance with the new requirement.

Additionally, §§ 121.313 (b)(3), (b)(4), and (b)(5) are revised for consistency with the proposal for § 121.319(b)(1) by deleting the words "the passenger compartment" and substituting the words "each passenger compartment" in their place.

Proposal 7-83. One commentator stated that under the proposed rule it is conceivable that an aircraft of 300 passenger capacity might have its raft requirements satisfied with three rafts of 100 person capacity each, and considered such compliance to be impractical from the standpoint of passenger flow, urgency of evacuation at the time of ditching, and the number of exits available to those surviving passengers. The commentator recommended that the minimum number of life rafts be equivalent to the number of exits for launching of life rafts and for exiting of passengers of the ditched aircraft. The FAA does not have sufficient information at the present time to justify requiring more life rafts than would be required by proposed § 121.339(a)(2).

One commentator recommended that the proposal to amend § 121.339(a)(2) be revised to use the wording in § 25.1415(b)(1). The FAA agrees. The proposed amendment to § 121.339(a)(2) was intended to update it to agree with the requirements of § 25.1415(b)(1). The proposal is revised accordingly.

Proposal 7-84. The proposal to delete paragraph (a) of Appendix D to Part 121 is withdrawn. For discussion of the withdrawal, see Proposal 7-78.

Adoption of the Amendments

Accordingly, Parts 23, 25, 27, 29, and 121 of the Federal Aviation Regulations (14 CFR Parts 23, 25, 27, 29, and 121), are amended as follows, effective December 1, 1978.

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, AND ACROBATIC CATEGORY AIRPLANES

1. By revising § 23.345(c) to read as follows:

§ 23.345 High lift devices.

* * * * *

(c) In designing the flaps and supporting structures, the following must be accounted for:

(1) A head-on gust having a velocity of 25 feet per second (EAS).

(2) The slipstream effects specified in § 23.457(b).

2. By deleting the word "be" and the dash at the end of the lead-in of § 23.603(a) and inserting in their place a dash; by inserting the word "Be" at the beginning of § 23.603(a)(1) and deleting the word "and" at the end of § 23.603(a)(1); by deleting the period at the end of § 23.603(a)(2) and inserting a semicolon and the word "and" in its place; and by adding a new § 23.603(a)(3) to read as follows:

§ 23.603 Materials and workmanship.

(a) * * *

(3) Take into account the effects of environmental conditions, such as temperature and humidity, expected in service.

* * * * *

3. By redesignating § 23.605 as § 23.605(a) and adding a new § 23.605(b) to read as follows:

§ 23.605 Fabrication methods.

* * * * *

(b) Each new aircraft fabrication method must be substantiated by a test program.

4. By revising the lead-in of § 23.613(c) to read as follows:

§ 23.613 Material strength properties and design values.

* * * * *

(c) Design values must be those contained in the following publications (obtainable from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402) or other values approved by the Administrator:

* * * * *

5. By revising § 23.629 to read as follows:

§ 23.629 Flutter.

(a) It must be shown by one of the methods specified in paragraph (b), (c), or (d) of this section, or a combination of these methods, that the airplane is free from flutter, control reversal, and divergence for any condition of operation within the limit V-n envelope, and at all speeds up to the speed specified for the selected method. In addition—

(1) Adequate tolerances must be established for quantities which affect flutter, including speed, damping, mass balance, and control system stiffness; and

(2) The natural frequencies of main structural components must be determined by vibration tests or other approved methods.

(b) A rational analysis may be used to show that the airplane is free from flutter, control reversal, and divergence if the analysis shows freedom from flutter for all speeds up to $1.2V_D$.

(c) Flight flutter tests may be used to show that the airplane is free from flutter, control reversal, and divergence if it is shown by these tests that—

(1) Proper and adequate attempts to induce flutter have been made within the speed range up to V_D;

(2) The vibratory response of the structure during the test indicates freedom from flutter;

(3) A proper margin of damping exists at V_D; and

(4) There is no large and rapid reduction in damping as V_D is approached.

(d) Compliance with the rigidity and mass balance criteria (pages 4-12), in Airframe and Equipment Engineering Report No. 45 (as corrected) "Simplified Flutter Prevention Criteria" (published by the Federal Aviation Administration) may be accomplished to show that the airplane is free from flutter, control reversal, or divergence if—

(1) V for the airplane is less than 260 knots (EAS) at altitudes below 14,000 feet and less than Mach 0.6 at altitudes at and above 14,000 feet,

(2) The wing and aileron flutter prevention criteria, as represented by the wing torsional stiffness and aileron balance criteria, are limited in use to airplanes without large mass concentrations (such as engines, floats, or fuel tanks in outer wing panels) along the wing span, and

(3) The airplane—

(i) Does not have a T-tail or boom tail,

(ii) Does not have unusual mass distributions or other unconventional design features that affect the applicability of the criteria, and

(iii) Has fixed-fin and fixed-stabilizer surfaces.

(e) For multiengine turbopropeller powered airplanes, the dynamic evaluation must include—

(1) Whirl mode degree of freedom which takes into account the stability of the plane of rotation of the propeller and significant elastic, inertial, and aerodynamic forces, and

(2) Engine-propeller-nacelle stiffness and damping variations appropriate to the particular configuration.

(f) Freedom from flutter, control reversal, and divergence up to V_D/M_D must be shown as follows:

(1) For airplanes that meet the criteria of paragraphs (d)(1) through (d)(3) of this section, after the failure, malfunction, or disconnection of any single element in any tab control system.

(2) For airplanes other than those described in paragraph (f)(1) of this section, after the failure, malfunction, or disconnection of any single element in the primary flight control system, any tab control system, or any flutter damper.

6. By revising § 23.723(a) to read as follows:

§ 23.723 **Shock absorption tests.**

(a) It must be shown that the limit load factors selected for design in accordance with § 23.473 for takeoff and landing weights, respectively, will not be exceeded. This must be shown by energy absorption tests except that analysis based on tests conducted on a landing gear system with identical energy absorption characteristics may be used for increases in previously approved takeoff and landing weights.

* * * * *

7. By adding a new § 23.785(1) to read as follows:

§ 23.785 **Seats and berths.**

* * * * *

(1) Each seat track must be fitted with stops to prevent the seat from sliding off the track.

8. By adding a new § 23.853(e) to read as follows;

§ 23.853 **Compartment interiors.**

* * * * *

(e) Airplane materials located on the cabin side of the firewall must be self-extinguishing or be located at such a distance from the firewall, or otherwise protected, so that ignition will not occur if the firewall is subjected to a flame temperature of not less than 2,000 degrees F for 15 minutes. For self-extinguishing materials (except electrical wire and cable insulation and small parts that the Administrator finds would not contribute significantly to the propagation of a fire), a vertifical self-extinguishing test must be conducted in accordance with Appendix F of this part or an equivalent method approved by the Administrator. The average burn length of the material may not exceed 6 inches and the average flame time after removal of the flame source may not exceed 15 seconds. Drippings from the material test specimen may not continue to flame for more than an average of 3 seconds after falling.

9. By adding a new § 23.863 to read as follows.

§ 23.863 **Flammable fluid fire protection.**

(a) In each area where flammable fluids or vapors might escape by leakage of a fluid system, there must be means to minimize the probability of ignition of the fluids and vapors, and the resultant hazard if ignition does occur.

(b) Compliance with paragraph (a) of this section must be shown by analysis or tests, and the following factors must be considered:

(1) Possible sources and paths of fluid leakage, and means of detecting leakage.

(2) Flammability characteristics of fluids, including effects of any combustible or absorbing materials.

(3) Possible ignition sources, including electrical faults, overheating of equipment, and malfunctioning of protective devices.

(4) Means available for controlling or extinguishing a fire, such as stopping flow of fluids, shutting down equipment, fireproof containment, or use of extinguishing agents.

(5) Ability of airplane components that are critical to safety of flight to withstand fire and heat.

(c) If action by the flight crew is required to prevent or counteract a fluid fire (e.g. equipment shutdown or actuation of a fire extinguisher), quick acting means must be provided to alert the crew.

(d) Each area where flammable fluids or vapors might escape by leakage of a fluid system must be identified and defined.

10. By revising § 23.1307(a) to read as follows:

§ 23.1307 **Miscellaneous equipment.**

(a) There must be an approved seat or berth for each occupant.

* * * * *

11. By adding a new § 23.1329(g) to read as follows:

§ 23.1329 **Automatic pilot system.**

* * * * *

(g) If the automatic pilot system can be coupled to airborne navigation equipment, means must be provided to indicate to the flight crew the current mode of operation. Selector switch position is not acceptable as a means of indication.

12. By adding a new § 23.1416 to read as follows:

§ 23.1416 **Pneumatic de-icer boot system.**

If certification with ice protection provisions is desired and a pneumatic de-icer boot system is installed—

(a) The system must meet the requirements specified in § 23.1419.

(b) The system and its components must be designed to perform their intended function under any normal system operating temperature or pressure, and

(c) Means to indicate to the flight crew that the pneumatic de-icer boot system is receiving adequate pressure and is functioning normally must be provided.

13. By revising §§ 23.1545(a) and 23.1545(b)(5), and by adding a new § 23.1545(b)(6), to read as follows:

§ 23.1545 **Airspeed indicator.**

(a) Each airspeed indicator must be marked as specified in paragraph (b) of this section, with the marks located at the corresponding indicated airspeeds.

(b) * * *

(5) For the one-engine-inoperative best rate of climb speed, V_y, a blue sector extending from the V_y speed at sea level to the V_y speed at—

(i) An altitude of 5,000 feet, if the one-engine-inoperative best rate of climb at that altitude is less than 100 feet per minute, or

(ii) The highest 1,000-foot altitude (at or above 5,000 feet) at which the one-engine-inoperative best rate of climb is 100 feet per minute or more.

Each side of the sector must be labeled to show the altitude for the corresponding V_y.

(6) For the minimum control speed (one-engine-inoperative), V_{mc}', a red radial line.

* * * * *

14. By adding a new § 23.1557(f) to read as follows:

§ 23.1557 Miscellaneous markings and placards.

* * * * *

(f) *Unusable fuel.* If the unusable fuel supply in any tank exceeds five percent of the tank capacity, or one gallon, whichever is greater, a placard must be installed next to the fuel quantity indicator for that tank, stating that the fuel remaining when the quantity indicator reads "zero" in level flight cannot be used safely in flight.

§ 23.1583 [Amended]

15. By deleting § 23.1583(i) and marking it "[Reserved]".

16. By adding new §§ 23.1585(f) and (g) to read as follows:

§ 23.1585. Operating procedures.

* * * * *

(f) If the unusable fuel supply in any tank exceeds 5 percent of the tank capacity, or 1 gallon, whichever is greater, information must be furnished which indicates that when the fuel quantity indicator reads "zero" in level flight, any fuel remaining in the fuel tank cannot be used safely in flight.

(g) Information on the total quantity of usable fuel for each fuel tank must be furnished.

17. By adding a new Appendix F to Part 23 to read as follows:

APPENDIX F

An acceptable Test Procedure for Self-Extinguishing Materials for showing compliance with § 23.853(e).

(a) *Conditioning.* Specimens must be conditioned to 70 degrees F, plus or minus 5 degrees, and at 50 percent plus or minus 5 percent relative humidity until moisture equilibrium is reached or for 24 hours. Only one specimen at a time may be removed from the conditioning environment immediately before subjecting it to the flame.

(b) *Specimen configuration.* Materials must be tested either as a section cut from a fabricated part as installed in the airplane or as a specimen simulating a cut section, such as a specimen cut from a flat sheet of the material or a model of the fabricated part. The specimen may be cut from any location in a fabricated part; however, fabricated units, such as sandwich panels, may not be separated for test. The specimen thickness must be no thicker than the minimum thickness to be qualified for use in the airplane, except that thick foam parts must be tested in ½-inch thickness. In the case of fabrics, both the warp and fill direction of the weave must be tested to determine the most critical flammability conditions. When performing the test prescribed in paragraph (d) of this appendix, the specimen must be mounted in a metal frame so that: (1) The two long edges and the upper edge are held securely; (2) the exposed area of the specimen is at least 2 inches wide and 12 inches long, unless the actual size used in the airplane is smaller; and (3) the edge to which the burner flame is applied must not consist of the finished or protected edge of the specimen but must be representative of the actual cross section of the material or part installed in the airplane.

(c) *Apparatus.* Except as provided in paragraph (e) of this appendix, tests must be conducted in a draft-free cabinet in accordance with Federal Test Method Standard 191 Method 5903 (revised Method 5902) which is available from the General Services Administration, Business Service Center, Region 3, Seventh and D Streets SW., Washington, D.C. 20407, or with some other approved equivalent method. Specimens which are too large for the cabinet must be tested in similar draft-free conditions.

(d) *Vertical test.* A minimum of three specimens must be tested and the results averaged. For fabrics, the direction of weave corresponding to the most critical flammability conditions must be parallel to the longest dimension. Each specimen must be supported vertically. The specimen must be exposed to a Bunsen or Tirrill burner with a nominal ⅜-inch I.D. tube adjusted to give a flame of 1½ inches in height. The minimum flame temperature measured by a calibrated thermocouple pyrometer in the center of the flame must be 1,550 degrees F. The lower edge of the specimen must be three-fourths inch above the top edge of the burner. The flame must be applied to the center line of the lower edge of the specimen. The flame must be applied for 60 seconds and then removed. Flame time, burn length, and flaming time of drippings, if any, must be recorded. The burn length determined in accordance with paragraph (e) of this appendix must be measured to the nearest one-tenth inch.

(e) *Burn length.* Burn length is the distance from the original edge to the farthest evidence of damage to the test specimen due to flame impingement, including areas of partial or complete consumption, charring, or embrittlement, but not including areas sooted, stained, warped, or discolored, nor areas where material has shrunk or melted away from the heat source.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

18. By deleting § 25.331(c)(3) and marking it "[Reserved]," revising §§ 25.331(c)(1) and (c)(2), and adding a sentence to the end of § 25.331(a)(4) to read as follows.

§ 25.331 General

(a) * * *

(4) * * *. The in-trim and out-of-trim flight conditions specified in § 25.255 must be considered.

* * * * *

(c) * * *

(1) *Maximum elevator displacement at V_A.* The airplane is assumed to be flying in steady level flight (point A_1, § 25.333(b)) and, except as limited by pilot effort in accordance with § 25.397(b), the pitching control is suddenly moved to obtain extreme positive pitching acceleration (nose up). The dynamic response or, at the option of the applicant, the transient rigid body response of the airplane, must be taken into account in determining the tail load. Airplane loads which occur subsequent to the normal acceleration at the center of gravity exceeding the maximum positive limit maneuvering load factor, n, need not be considered.

(2) *Specified control displacement.* A checked maneuver, based on a rational pitching control motion vs. time profile, must be established in which the design limit load factor specified in § 25.337 will not be exceeded. Unless lesser values cannot be exceeded, the airplane response must result in pitching accelerations not less than the following.

(i) A positive pitching acceleration (nose up) is assumed to be reached concurrently with the airplane load factor of 1.0 (Points A to D, § 25.333(b)). The positive acceleration must be equal to at least

$$39n/V(n-1.5), \text{ (Radians/Sec.}^2\text{)}$$

where—

n is the positive load factor at the speed under consideration, and V is the airplane equivalent speed in knots.

(ii) A negative pitching acceleration (nose down) is assumed to be reached concurrently with the positive maneuvering load factor (points A to D, § 25.333(b)). The negative pitching acceleration must be equal to at least

$$-26n/V(n-1.5), \text{ (Radians/Sec.}^2\text{)}$$

where—

n is the positive load factor at the speed under consideration; and V is the airplane equivalent speed in knots.

* * * * *

19. By striking the words "as speed brakes" from the lead-in of § 25.345(c); and by adding a new § 25.345(d) to read as follows:

§ 25.345 High lift devices.

* * * * *

(d) The airplane must be designed for landing at the maximum takeoff weight with a maneuvering load factor of 1.5g and the flaps and similar high lift devices in the landing configuration.

§ 25.351 [Amended]

20. By striking the symbol "V_A" in the lead-in of § 25.351(a) and replacing it with the symbol "V_D".

21. By striking the words "The limit engine torque" in § 25.361(a)(1) and replacing them with the words "A limit engine torque"; by striking the words "The limit engine torque corresponding to maximum continuous power and propeller speed" in § 25.361(a)(2) and replacing them with the words "A limit engine torque as specified in § 25.361(c)"; by striking the words "the limit engine torque" in § 25.361(a)(3) and replacing them with the words "a limit engine torque"; and by revising § 25.361(b) and the lead-in of § 25.361(c) to read as follows:

§ 25.361 Engine torque.

* * * * *

(b) For turbine engine installations, the engine mounts and supporting structure must be designed to withstand each of the following:

(1) A limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming).

(2) A limit engine torque load imposed by the maximum acceleration of the engine.

(c) The limit engine torque to be considered under paragraph (a)(2) of this section must be obtained by multiplying the mean torque for maximum continuous power by a factor of—

* * * * *

22. By adding a new § 25.499(e) to read as follows:

§ 25.499 Nose-wheel yaw.

* * * * *

(e) With the airplane at design ramp weight, and the nose gear in any steerable position, the combined application of full normal steering torque and a vertical force equal to the maximum static reaction on the nose gear must be considered in designing the nose gear, its attaching structure, and the forward fuselage structure.

23. By deleting the word "and" at the end of § 25.603(a); by deleting the period at the end of § 25.603(b) and inserting a semicolon and the word "and" in its place; and by adding a new § 25.603(c) to read as follows:

§ 25.603 Materials.

* * * * *

(c) Take into account the effects of environmental conditions, such as temperature and humidity, expected in service.

24. By redesignating § 25.605 as § 25.605(a) and by adding a new § 25.605(b) to read as follows:

§ 25.605 Fabrication methods.

* * * * *

(b) Each new aircraft fabrication method must be substantiated by a test program.

25. By revising the lead-in of § 25.613(e) to read as follows:

§ 25.613 Material strength properties and design values.

* * * * *

(e) Design values must be those contained in the following publications (obtainable from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402) or other values approved by the Administrator:

* * * * *

26. By revising §§ 25.629 (d)(1), (d)(4)(v), and (d)(4)(vi) to read as follows:

§ 25.629 Flutter, deformation, and fail-safe criteria.

* * * * *

(d)* * *

(1) It must be shown, by analysis or tests, that the airplane is free from such flutter or divergence that would preclude safe flight, at any speed up to V_D, after each of the following:

(i) Each of the failures, malfunctions, or adverse conditions listed in subparagraph (4) of this paragraph.

(ii) Any other combination of failures not shown to be extremely improbable.

* * * * *

(4)* * *

(v) Failure of each principal structural element selected for compliance with § 25.571(b). Safety following a failure may be substantiated by showing that losses in rigidity or changes in frequency, mode shape, or damping are within the parameter variations shown to be satisfactory in the flutter and divergence investigations.

(vi) Any single failure or malfunction, or combinations thereof, in the flight control system considered under §§ 25.671, 25.672, and 25.1309, and any single failure in any flutter damper system. Investigation of forced structural vibration other than flutter, resulting from failures, malfunctions, or adverse conditions in the automatic flight control system may be limited to airspeeds up to V_C.

27. By revising § 25.697(b) to read as follows:

§ 25.697 Lift and drag devices, controls.

* * * * *

(b) Each lift and drag device control must be designed and located to make inadvertent operation improbable. Lift and drag devices intended for ground operation only must have means to prevent the inadvertent operation of their controls in flight if that operation could be hazardous.

* * * * *

28. By revising § 25.701(a) to read as follows:

§ 25.701 Flap interconnection.

(a) Unless the airplane has safe flight characteristics with the flaps retracted on one side and extended on the other, the motion of flaps on opposite sides of the plane of symmetry must be synchronized by a mechanical interconnection or approved equivalent means.

* * * * *

29. By revising § 25.723(a) to read as follows:

§ 25.723 Shock absorption tests.

(a) It must be shown that the limit load factors selected for design in accordance with § 25.473 for takeoff and landing weights, respectively, will not be exceeded. This must be shown by energy absorption tests except that analysis based on tests conducted on a landing gear system with identical energy absorption characteristics may be used for increases in previously approved takeoff and landing weights.

* * * * *

30. By adding a new § 25.773(d) to read as follows:

§ 25.773 Pilot compartment view.

* * * * *

(d) Fixed markers or other guides must be installed at each pilot station to enable the pilots to position themselves in their seats for an optimum

combination of outside visibility and instrument scan. If lighted markers or guides are used they must comply with the requirements specified in § 25.1381.

§ 25.777 [Amended]

31. By deleting the measurement "6'0"" from § 25.777(c) and replacing it with the measurement "6'3""; by deleting the word "belt" in § 25.777(c) and replacing it with the words "belt and shoulder harness (if provided)"; and by deleting the word "belts" in § 25.777(f) and replacing it with the words "belt and shoulder harness (if provided)".

32. By amending § 25.789 by inserting the words "or galley" after the words "crew compartment" and redesignating the paragraph as paragraph (a), and by revising the title and adding a new paragraph (b) to read as follows:

§ 25.789 Retention of items of mass in passenger and crew compartments and galleys.

* * * * *

(b) Each interphone restraint system must be designed so that when subjected to the load factors specified in § 25.561(b)(3), the interphone will remain in its stowed position.

33. By revising §§ 25.803(c) and (d) to read as follows:

§ 25.803 Emergency evacuation.

* * * * *

(c) Except as provided in paragraph (d) of this section, for airplanes having a seating capacity or more than 44 passengers, it must be shown by actual demonstration that the maximum seating capacity, including the number of crewmembers required by the operating rules for which certification is requested, can be evacuated from the airplane to the ground within 90 seconds. The demonstration must be conducted under the following conditions:

(1) It must be conducted either during the dark of the night or during daylight with the dark of the night simulated. If the demonstration is conducted indoors during daylight hours, it must be conducted with each window covered and each door closed to minimize the daylight effect. Illumination on the floor or ground may be used, but it must be kept low and shielded against shining into the airplane's windows or doors.

(2) The airplane must be in a normal attitude with landing gear extended.

(3) Stands or ramps may be used for descent from the wing to the ground, and safety equipment such as mats or inverted life rafts may be placed on the floor or ground to protect participants. No other equipment that is not part of the airplane's emergency evacuation equipment may be used to aid the participants in reaching the ground.

(4) Except as provided in paragraph (c)(1) of this section, only the airplane's emergency lighting system may provide illumination.

(5) All emergency equipment required for the planned operation of the airplane must be installed.

(6) Each external door and exit, and each internal door or curtain, must be in the takeoff configuration.

(7) Each crewmember must be seated in the normally assigned seat for takeoff and must remain in that seat until receiving the signal for commencement of the demonstration. Each crewmember must be—

(i) For compliance with this section or § 121.291 of this chapter, a member of a regularly scheduled line crew, or

(ii) For compliance with this section, a person having knowledge of the operation of exits and emergency equipment.

(8) A representative passenger load of persons in normal health must be used as follows:

(i) At least 30 percent must be females.

(ii) At least 5 percent must be over 60 years of age with a proportionate number of females.

(iii) At least 5 percent but not more than 10 percent, must be children under 12 years of age, prorated through that age group.

(iv) Three life-size dolls, not included as part of the total passenger load, must be carried by passengers to simulate live infants 2 years old or younger.

(v) Crewmembers, mechanics, and training personnel, who maintain or operate the airplane in the normal course of their duties, may not be used as passengers.

(9) No passenger may be assigned a specific seat except as the Administrator may require. Except as required by paragraph (c)(12) of this section, no employee of the applicant may be seated next to an emergency exit.

(10) Seat belts and shoulder harnesses (as required) must be fastened.

(11) Before the start of the demonstration approximately one-half of the total average amount of carry-on baggage, blankets, pillows, and other similar articles must be distributed at several locations in the aisles and emergency exits access ways to create minor obstructions.

(12) Each crewmember must be seated in his normally assigned seat for takeoff and must remain in that seat until receiving the signal for commencement of the demonstration.

(13) No prior indication may be given to any crewmember or passenger of the particluar exits to be used in the demonstration.

(14) The applicant may not practice, rehearse, or describe the demonstration for the participants nor may any participant have taken part in this type of demonstration within the preceding 6 months.

(15) The pretakeoff passenger briefing required by § 121.571 of this chapter may be given. The passengers may also be advised to follow directions of crewmembers, but not be instructed on the procedures to be followed in the demonstration.

(16) If safety equipment as allowed by paragraph (c)(3) of this section is provided, either all passenger and cockpit windows must be blacked out or all of the emergency exits must have safety equipment in order to prevent disclosure of the available emergency exits.

(17) Not more than 50 percent of the emergency exits in the sides of the fuselage of an airplane that meet all of the requirements applicable to the required emergency exits for that airplane may be used for the demonstration. Exits that are not to be used in the demonstration must have the exit handle deactivated or must be indicated by red lights, red tape, or other acceptable means, placed outside the exits to indicate fire or other reason why they are unusable. The exits to be used must be representative of all of the emergency exits on the airplane and must be designated by the applicant, subject to approval by the Administrator. At least one floor level exit must be used.

(18) All evacuees, except those using an over-the-wing exit, must leave the airplane by a means provided as part of the airplane's equipment.

(19) The applicant's approved procedures must be fully utilized during the demonstration.

(20) The evacuation time period is completed when the last occupant has evacuated the airplane and is on the ground. Provided that the acceptance rate of the stand or ramp is no greater than the acceptance rate of the means available on the airplane for descent from the wing during an actual crash situation, evacuees using stands or ramps allowed by paragraph (c)(3) of this section are considered to be on the ground when they are on the stand or ramp.

(d) A combination of analysis and tests may be used to show that the airplane is capable of being evacuated within 90 seconds under the conditions specified in § 25.803(c) of this section if the Administrator finds that the combination of analysis and tests will provide data with respect to the emergency evacuation capability of the air-

plane equivalent to that which would be obtained by actual demonstration.

* * * * *

34. By revising § 25.807(a)(7)(vi) to read as follows:

§ 25.807 Passenger emergency exits.

(a) * * *

(7) * * *

(vi) There must be at least one flight attendant seat, which meets the requirements of §§ 25.785 (h) and (i), adjacent to each such exit.

* * * * *

35. By adding new §§ 25.809 (f)(1)(iv) and (f)(1)(v) to read as follows:

§ 25.809 Emergency exit arrangement.

* * * * *

(f) * * *

(1) * * *

(iv) It must have the capability, in 25-knot winds directed from the most critical angle, to deploy and, with the assistance of only one person, to remain usable after full deployment to evacuate occupants safely to the ground.

(v) For each system installation (mockup or airplane installed), five consecutive deployment and inflation tests must be conducted (per exit) without failure, and at least three tests of each such five-test series must be conducted using a single representative sample of the device. The sample devices must be deployed and inflated by the system's primary means after being subjected to the inertia forces specified in § 25.561(b). If any part of the system fails or does not function properly during the required tests, the cause of the failure or malfunction must be corrected by positive means and after that the full series of five consecutive deployment and inflation tests must be conducted without failure.

* * * * *

36. By revising § 25.811(e) to read as follows:

§ 25.811 Emergency exit marking.

* * * * *

(e) The location of the operating handle and instructions for opening exits from the inside of the airplane must be shown in the following manner.

(1) Each passenger emergency exit must have, on or near the exit, a marking that is readable from a distance of 30 inches.

(2) Each Type I and Type A passenger emergency exit operating handle must—

(i) Be self-illuminated with an initial brightness of at least 160 microlamberts; or (ii) Be conspicuously located and well illuminated by the emergency lighting even in conditions of occupant crowding at the exit.

(3) Each Type III passenger emergency exit operating handle must be self-illuminated with an initial brightness of at least 160 microlamberts. If the operating handle is covered, self-illuminated cover removal instructions having an initial brightness of at least 160 microlamberts must also be provided.

(4) Each Type A, Type I, and Type II passenger emergency exit with a locking mechanism released by rotary motion of the handle must be marked—

(i) With a red arrow, with a shaft at least three-fourths of an inch wide and a head twice the width of the shaft, extending along at least 70 degrees of arc at a radius approximately equal to three-fourths of the handle length.

(ii) So that the centerline of the exit handle is within ±1 inch of the projected point of the arrow when the handle has reached full travel and has released the locking mechanism, and

(iii) With the word "open" in red letters 1 inch high, placed horizontally near the head of the arrow.

* * * * *

37. By deleting the parenthetical expression in § 25.812(e)(1) and by revising §§ 25.812 (e)(2) and (e)(3) to read as follows:

§ 25.812 Emergency lighting.

* * * * *

(e) * * *

(2) There must be a flight crew warning light which illuminates when power is on in the airplane and the emergency lighting control device is not armed.

(3) The cockpit control device must have an "on," "off," and "armed" position so that when armed in the cockpit or turned on at either the cockpit or flight attendant station the lights will either light or remain lighted upon interruption (except an interruption caused by a transverse vertical separation of the fuselage during crash landing) of the airplane's normal electric power. There must be a means to safeguard against inadvertent operation of the control device from the "armed" or "on" positions.

* * * * *

38. By revising § 25.813(c)(1) to read as follows:

§ 25.813 Emergency exit access.

* * * * *

(c) * * *

(1) For airplanes that have a passenger seating configuration, excluding pilot's seats, of 20 or more, the projected opening of the exit provided may not be obstructed and there must be no interference in opening the exit by seats, berths, or other protrusions (including seatbacks in any position) for a distance from that exit not less than the width of the narrowest passenger seat installed on the airplane.

* * * * *

39. By revising § 25.863(a) and adding a new § 25.863(d) to read as follows:

§ 25.863 Flammable fluid fire protection.

(a) In each area where flammable fluids or vapors might escape by leakage of a fluid system, there must be means to minimize the probability of ignition of the fluids and vapors, and the resultant hazards if ignition does occur.

* * * * *

(d) Each area where flammable fluids or vapors might escape by leakage of a fluid system must be identified and defined.

40. By adding a new § 25.901(d) to read as follows:

25.901 Installation.

* * * * *

(d) Each auxiliary power unit installation must meet the applicable provisions of this subpart.

41. By revising the heading of § 25.1103, by revising §§ 25.1103 (a), (b)(2), and (d), and by adding new §§ 25.1103 (e) and (f), to read as follows:

§ 25.1103 Induction system ducts and air duct systems.

(a) Each induction system duct upstream of the first stage of the engine supercharger and of the auxiliary power unit compressor must have a drain to prevent the hazardous accumulation of fuel and moisture in the ground attitude. No drain may discharge where it might cause a fire hazard.

(b) * * *

(2) Fire resistant if it is in any fire zone for which a fire-extinguishing system is required, except that ducts for auxiliary power units must be fireproof within the auxiliary power unit fire zone.

* * * * *

(d) For turbine engine and auxiliary power unit bleed air duct systems, no hazard may result if a duct failure occurs at any point between the air duct source and the airplane unit served by the air.

(e) Each auxiliary power unit induction system duct must be fireproof for a sufficient distance upstream of the auxiliary power unit compartment to prevent hot gas reverse flow from burning through auxiliary power unit ducts and entering any other compartment or area of the airplane in which a hazard would be created resulting from the entry of hot gases. The materials used to form the remainder of the induction system duct and plenum chamber of the auxiliary power unit must be capable of resisting the maximum heat conditions likely to occur.

(f) Each auxiliary power unit induction system duct must be constructed of materials that will not absorb or trap hazardous quantities of flammable fluids that could be ignited in the event of a surge or reverse flow condition.

42. By adding a new § 25.1142 to read as follows:

§ 25.1142 Auxiliary power unit controls.

Means must be provided on the flight deck for starting, stopping, and emergency shutdown of each installed auxiliary power unit.

43. By revising § 25.1195(b) to read as follows:

§ 25.1195 Fire extinguishing systems.

* * * * *

(b) The fire extinguishing system, the quantity of the extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires. It must be shown by either actual or simulated flights tests that under critical airflow conditions in flight the discharge of the extinguishing agent in each designated fire zone specified in paragraph (a) of this section will provide an agent concentration capable of extinguishing fires in that zone and of minimizing the probability of reignition. An individual "one-shot" system may be used for auxiliary power units, fuel burning heaters, and other combustion equipment. For each other designated fire zone, two discharges must be provided each of which produces adequate agent concentration.

* * * * *

44. By revising § 25.1207 to read as follows:

§ 25.1207 Compliance.

Unless otherwise specified, compliance with the requirements of §§ 25.1181 through 25.1203 must be shown by a full scale fire test or by one or more of the following methods:

(a) Tests of similar powerplant configurations;

(b) Tests of components;

(c) Service experience of aircraft with similar powerplant configurations;

(d) Analysis.

§ 25.1307 [Amended]

45. By striking the words "and safety belt," from § 25.1307(a).

46. By adding a new § 25.1329(h) to read as follows:

§ 25.1329 Automatic pilot system.

* * * * *

(h) If the automatic pilot system can be coupled to airborne navigation equipment, means must be provided to indicate to the flight crew the current mode of operation. Selector switch position is not acceptable as a means of indication.

47. By revising §§ 25.1411 (a) and (d) to read as follows:

§ 25.1411 General.

(a) *Accessibility.* (1) Required safety equipment to be used by the crew in an emergency must be readily accessible.

(2) At least one public address system microphone intended for flight attendant use must be positioned at each floor level exit in a passenger compartment and be readily accessible to a flight attendant seated in any seat adjacent to that exit.

* * * * *

(d) *Liferafts.* (1) The stowage provisions for the liferafts described in § 25.1415 must accommodate enough rafts for the maximum number of occupants for which certification for ditching is requested.

(2) Liferafts must be stowed near exits through which the rafts can be launched during an unplanned ditching.

(3) Rafts automatically or remotely released outside the airplane must be attached to the airplane by means of the static line prescribed in § 25.1415.

(4) The stowage provisions for each portable liferaft must allow rapid detachment and removal of the raft for use at other than the intended exits.

* * * * *

48. By adding a new § 25.1416 to read as follows:

§ 25.1416 Pneumatic de-icer boot system.

If certification with ice protection provisions is desired and a pnuematic de-icer boot system is installed—

(a) The system must meet the requirements specified in § 25.1419,

(b) The system and its components must be designed to perform their intended function under any normal system operating temperature or pressure, and

(c) Means to indicate to the flight crew that the pneumatic de-icer boot system is receiving adequate pressure and is functioning normally must be provided.

49. By adding a new § 25.1522 to read as follows:

§ 25.1522 Auxiliary power unit limitations.

If an auxiliary power unit that meets the requirements of TSO-C77 (§ 37.183) is installed in the airplane, the limitations established for that auxiliary power unit under the TSO, including the categories of operation, must be specified as operating limitations for the airplane.

§ 25.1561 [Amended]

50. By inserting the words "the easy" between the words "facilitate" and "removal" in § 25.1561(c).

§ 25.1583 [Amended]

51. By deleting § 25.1583(g) and marking it "[Reserved]".

52. By adding new §§ 25.1585 (d) and (e) to read as follows:

§ 25.1585 Operating procedures.

* * * * *

(d) Information must be furnished which indicates that when the fuel quantity indicator reads "zero" in level flight, any fuel remaining in the fuel tank cannot be used safely in flight.

(e) Information on the total quantity of usable fuel for each fuel tank must be furnished.

PART 27—AIRWORTHINESS STANDARDS. NORMAL CATEGORY ROTORCRAFT

53. By revising § 27.79(b)(2) to read as follows:

§ 27.79 Limiting height-speed envelope.

* * * * *

(b) * * *

(2) For multiengine helicopters, one engine inoperative (where engine isolation features insure continued operation of the remaining engines), and the remaining engines at the greatest power for which certification is requested, and

* * * * *

54. By deleting the word "and" at the end of § 27.603(a); by deleting the

period at the end of § 27.603(b) and inserting a semicolon and the word "and" in its place; and by adding a new § 27.603(c) to read as follows.

§ 27.603 Materials.

* * * * *

(c) Take into account the effects of environmental conditions, such as temperature and humidity, expected in service.

55. By redesignating § 27.605 as § 27.605(a) and adding a new § 27.605(b) to read as follows:

§ 27.605 Fabrication methods.

* * * * *

(b) Each new aircraft fabrication method must be substantiated by a test program.

56. By revising the lead-in of § 27.613(d) to read as follows:

§ 27.613 Material strength properties and design values.

* * * * *

(d) Design values must be those contained in the following publications (available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402) or other values approved by the Administrator:

* * * * *

57. By revising § 27.675(d)(1) to read as follows:

§ 27.675 Stops.

* * * * *

(d) * * *

(1) Stops that are appropriate to the blade design must be provided to limit travel of the blade about its hinge points; and

* * * * *

58. By adding a new § 27.863 to read as follows:

§ 27.863 Flammable fluid fire protection.

(a) In each area where flammable fluids or vapors might escape by leakage of a fluid system, there must be means to minimize the probability of ignition of the fluids and vapors, and the resultant hazards if ignition does occur.

(b) Compliance with paragraph (a) of this section must be shown by analysis or tests, and the following factors must be considered:

(1) Possible sources and paths of fluid leakage, and means of detecting leakage.

(2) Flammability characteristics of fluids, including effects of any combustible or absorbing materials.

(3) Possible ignition sources, including electrical faults, overheating of equipment, and malfunctioning of protective devices.

(4) Means available for controlling or extinguishing a fire, such as stopping flow of fluids, shutting down equipment, fireproof containment, or use of extinguishing agents.

(5) Ability of rotorcraft components that are critical to safety of flight to withstand fire and heat.

(c) If action by the flight crew is required to prevent or counteract a fluid fire (e.g. equipment shutdown or actuation of a fire extinguisher) quick acting means must be provided to alert the crew.

(d) Each area where flammable fluids or vapors might escape by leakage of a fluid system must be identified and defined.

59. By revising § 27.1545(a) to read as follows:

§ 27.1545 Airspeed indicator.

(a) Each airspeed indicator must be marked as specified in paragraph (b) of this section, with the marks located at the corresponding indicated airspeeds.

* * * * *

§ 27.1583 [Amended]

60. By deleting § 27.1583(f) and marking it "[Reserved]".

61. By adding new §§ 27.1585 (e) and (f) to read as follows:

§ 27.1585 Operating procedures

* * * * *

(e) If the unusable fuel supply in any tank exceeds five percent of the tank capacity, or one gallon, whichever is greater, information must be furnished which indicates that when the fuel quantity indicator reads "zero" in level flight, any fuel remaining in the fuel tank cannot be used safely in flight.

(f) Information on the total quantity of usable fuel for each fuel tank must be furnished.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

61. By deleting the period at the end of § 29.75(b)(5) and inserting a semicolon and the word "and" in its place; and by adding a new § 29.75(b)(6) and revising §§ 29.75 (c)(2)(i) and (c)(2)(ii) to read as follows:

§ 29.75 Landing.

* * * * *

(b) * * *

(6) The horizontal distance required to land and come to a complete stop (or to a speed of approximately three knots for water landings), from a point 50 feet above the landing surface, must be determined from the approach and landing paths established in accordance with paragraphs (b)(2) through (b)(4) of this section.

(c) * * *

(2) * * *

(i) Paragraph (c)(1) of this section; or

(ii) Paragraphs (b)(2) through (b)(6) of this section.

63. By deleting the word "and" at the end of § 29.603(a); by deleting the period at the end of § 29.603(b) and inserting a semicolon and the word "and" in its place; and by adding a new § 29.603(c) to read as follows:

§ 29.603 Materials.

* * * * *

(c) Take into account the effects of environmental conditions, such as temperature and humidity, expected in service.

64. By redesignating § 29.605 as § 29.605(a) and adding a new § 29.605(b) to read as follows:

§ 29.605 Fabrication methods.

* * * * *

(b) Each new aircraft fabrication method must be substantiated by a test program.

65. By revising the lead-in of § 29.613(d) to read as follows:

§ 29.613 Material strength properties and design values.

* * * * *

(d) Design values must be those contained in the following publications (available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402) or other values approved by the Administrator:

* * * * *

66. By revising § 29.675(d)(1) to read as follows:

§ 29.675 Stops.

* * * * *

(d) * * *

(1) Stops that are appropriate to the blade design must be provided to limit travel of the blade about its hinge points; and

* * * * *

67. By deleting § 29.853(b) and by marking it "[Reserved]" and by revising § 29.853(a) to read as follows:

§ 29.853 Compartment interiors.

* * * * *

(a) The materials (including finishes or decorative surfaces applied to the materials) must meet the following test criteria as applicable:

(1) Interior ceiling panels, interior wall panels, partitions, galley structure, large cabinet walls, structural flooring, and materials used in the construction of stowage compartments (other than underseat stowage compartments and compartments for stowing small items such as magazines and maps) must be self-extinguishing when tested vertically in accordance with the applicable portions of Appendix F of Part 25 of this chapter, or other approved equivalent methods. The average burn length may not exceed 6 inches and the average flame time after removal of the flame source may not exceed 15 seconds. Drippings from the test specimen may not continue to flame for more than an average of 3 seconds after falling.

(2) Floor covering, textiles (including draperies and upholstery), seat cushions, padding, decorative and non-decorative coated fabrics, leather, trays and galley furnishings, electrical conduit, thermal and acoustical insulation and insulation covering, air ducting, joint and edge covering, cargo compartment liners, insulation blankets, cargo covers, and transparencies, molded and thermoformed parts, air ducting joints, and trim strips (decorative and chafing) that are constructed of materials not covered in paragraph (a)(3) of this section, must be self extinguishing when tested vertically in accordance with the applicable portion of Appendix F of Part 25 of this chapter, or other approved equivalent methods. The average burn length may not exceed 8 inches and the average flame time after removal of the flame source may not exceed 15 seconds. Drippings from the test specimen may not continue to flame for more than an average of 5 seconds after falling.

(3) Acrylic windows and signs, parts constructed in whole or in part of elastometric materials, edge lighted instrument assemblies consisting of two or more instruments in a common housing, seat belts, shoulder harnesses, and cargo and baggage tiedown equipment, including containers, bins, pallets, etc., used in passenger or crew compartments, may not have an average burn rate greater than 2.5 inches per minute when tested horizontally in accordance with the applicable portions of Appendix F of Part 25 of this chapter, or other approved equivalent methods.

(4) Except for electrical wire and cable insulation, and for small parts (such as knobs, handles, rollers, fasteners, clips, grommets, rub strips, pulleys, and small electrical parts) that the Administrator finds would not contribute significantly to the propagation of a fire, materials in items not specified in paragraphs (a)(1), (a)(2), or (a)(3) of this section may not have a burn rate greater than 4 inches per minute when tested horizontally in accordance with the applicable portions of appendix F of part 25 of this chapter, or other approved equivalent methods.

* * * * *

68. By amending § 29.863 to read as follows:

§ 29.863 Flammable fluid fire protection.

(a) In each area where flammable fluids or vapors might escape by leakage of a fluid system, there must be means to minimize the probability of ignition of the fluids and vapors, and the resultant hazards if ignition does occur.

(b) Compliance with paragraph (a) of this section must be shown by analysis or tests, and the following factors must be considered:

(1) Possible sources and paths of fluid leakage, and means of detecting leakage.

(2) Flammability characteristics of fluids, including effects of any combustible or absorbing materials.

(3) Possible ignition sources, including electrical faults, overheating of equipment, and malfunctioning of protective devices.

(4) Means available for controlling or extinguishing a fire, such as stopping flow of fluids, shutting down equipment, fireproof containment, or use of extinguishing agents.

(5) Ability of rotorcraft components that are critical to safety of flight to withstand fire and heat.

(c) If action by the flight crew is required to prevent or counteract a fluid fire (e.g. equipment shutdown or actuation of a fire extinguisher), quick acting means must be provided to alert the crew.

(d) Each area where flammable fluids or vapors might escape by leakage of a fluid system must be identified and defined.

69. By adding a new § 29.901(d) to read as follows:

§ 29.901 Installation.

* * * * *

(d) Each auxiliary power unit installation must meet the applicable provisions of this subpart.

70. By deleting § 29.923(l) and marking it "[Reserved]", by revising §§ 29.923(a), (b), (c), (d), (e), (f), (h), (j), and (k), and by adding new § 29.923(o) to read as follows:

§ 29.923 Rotor drive system and control mechanism tests.

(a) *Endurance tests, general.* Each rotor drive system and rotor control mechanism must be tested, as prescribed in paragraphs (b) through (n) of this section, for at least 200 hours plus the time required to meet paragraphs (b)(2) and (k) of this section. These tests must be conducted as follows:

(1) Ten-hour test cycles must be used.

(2) The tests must be conducted on the rotorcraft.

(3) The test torque must be—

(i) Determined by the powerplant limitations; and

(ii) Absorbed by the actual rotors to be installed.

(b) *Endurance tests, takeoff torque run.* The takeoff torque run endurance test must be conducted as follows:

(1) Except as prescribed in paragraph (b)(2) of this section, the takeoff torque run must consist of 1 hour of alternate runs of 5 minutes at the torque corresponding to takeoff power and speed, and 5 minutes at as low an engine idle speed as practicable. The engine must be declutched from the rotor drive system, and the rotor brake, if furnished and so intended, must be applied during the first minute of the idle run. During the remaining 4 minutes of the idle run, the clutch must be engaged so that the engine drives the rotors at the minimum practical r.p.m. Acceleration of the engine and the rotor drive system must be done at the maximum rate. When declutching the engine, it must be decelerated rapidly enough to allow the operation of the overrunning clutch.

(2) For helicopters for which the use of 2½-minute power is requested, the takeoff torque run must be conducted as prescribed in paragraph (b)(1) of this section, except for the third and sixth run for which the torque corresponding to takeoff power and speed is prescribed in that paragraph. For these two takeoff torque runs, the following apply.

(i) Each run must consist of at least one period of 2½ minutes with the torque corresponding to takeoff power and speed on all engines.

(ii) Each run must consist of at least one period, for each engine in sequence, during which that engine simulates a power failure and the remaining engines are run at the torque corresponding to 2½-minute power and speed for 2½ minutes.

(c) *Endurance tests, maximum continuous run.* Three hours of continuous operation at the torque corresponding to maximum continuous power and speed must be conducted as follows:

(1) The main rotor controls must be operated at a minimum of 15 times each hour through the main rotor pitch positions of maximum vertical thrust, maximum forward thrust component, maximum aft thrust component, maximum left thrust component, and maximum right thrust component, except that the control movements need not produce loads or blade flapping motion exceeding the maximum loads of motions encountered in flight.

(2) The directional controls must be operated at a minimum of 15 times each hour through the control extremes of maximum right turning torque, neutral torque as required by the power applied to the main rotor, and maximum left turning torque.

(3) Each maximum control position must be held for at least 10 seconds, and the rate of change of control position must be at least as rapid as that for normal operation.

(d) *Endurance tests; 90 percent of maximum continuous run.* One hour of continuous operation at the torque corresponding to 90 percent of maximum continuous power must be conducted at maximum continuous speed.

(e) *Endurance tests; 80 percent of maximum continuous run.* One hour of continuous operation must be conducted at the torque corresponding to 80 percent of maximum continuous power and minimum speed intended for this power.

(f) *Endurance tests; 60 percent of maximum continuous run.* Two hours, or, for helicopters for which the use of 30-minute power is requested, 1 hour of continuous operation at the torque corresponding to 60 percent of maximum continuous power must be conducted at the minimum rotational speed intended for this power.

* * * * *

(h) *Endurance tests; overspeed run.* One hour of continuous operation must be conducted at the torque corresponding to maximum continuous power and at the maximum rotational speed expected in service, assuming that speed and torque limiting devices, if any, function properly.

* * * * *

(j) *Endurance tests, clutch and brake engagements.* A total of at least 400 clutch and brake engagements, including the engagements of paragraph (b) of this section, must be made during the takeoff torque runs and, if necessary, at each change of torque and speed throughout the test. In each clutch engagement, the shaft on the driven side of the clutch must be accelerated from rest. The clutch engagements must be accomplished at the speed and by the method prescribed by the applicant. During deceleration after each clutch engagement, the engines must be stopped rapidly enough to allow the engines to be automatically disengaged from the rotors and rotor drives. If a rotor brake is installed for stopping the rotor, the clutch, during brake engagements, must be disengaged above 40 percent of maximum continuous rotor speed and the rotors allowed to decelerate to 40 percent of maximum continuous rotor speed, at which time the rotor brake must be applied. If the clutch design does not allow stopping the rotors with the engine running, or if no clutch is provided, the engine must be stopped before each application of the rotor brake, and then immediately be started after the rotors stop.

(k) *Endurance tests, 30-minute torque run.* For helicopters for which the use of 30-minute power is requested, a run at the torque corresponding to 30-minute power and speed must be conducted as follows:

(1) For each engine, in sequence, that engine must be inoperative and the remaining engines must be run for a 30-minute period.

(2) The number of periods prescribed in paragraph (k)(1) of this section may not be less than the number of engines, nor may it be less than two.

* * * * *

(o) Each part tested as prescribed in this section must be in a serviceable condition at the end of the tests. No intervening disassembly which might affect test results may be conducted.

71. By revising § 29.927(b), and adding new §§ 29.927 (d) and (e) to read as follows:

§ 29.927 Additional tests.

* * * * *

(b) If turbine engine torque output to the transmission can exceed the highest engine or transmission torque limit, and that output is not directly controlled by the pilot under normal operating conditions (such as where the primary engine power control is accomplished through the flight control), the following test must be made:

(1) Under conditions associated with all engines operating, make 200 applications, for 10 seconds each, of torque that is at least equal to the lesser of—

(i) The maximum torque used in meeting § 29.923 plus 10 percent; or

(ii) The maximum torque attainable under probable operating conditions, assuming that torque limiting devices, if any, function properly.

(2) For multiengine rotorcraft under conditions associated with each engine, in turn, becoming inoperative, apply to the remaining transmission torque inputs the maximum torque attainable under probable operating conditions, assuming that torque limiting devices, if any, function properly. Each transmission input must be tested at this maximum torque for at least fifteen minutes.

* * * * *

(d) *Overspeed test.* The rotor drive system must be subjected to 50 overspeed runs, each 30±3 seconds in duration at a speed of at least 120 percent of maximum continuous speed. These runs must be conducted as follows:

(1) Overspeed runs must be alternated with stabilizing runs of from 1 to 5 minutes duration each at 60 to 80 percent of maximum continuous speed.

(2) Acceleration and deceleration must be accomplished in a period not longer than 10- seconds, and the time for changing speeds may not be deducted from the specified time for the overspeed runs.

(3) Overspeed runs must be made with the rotors in the flattest pitch for smooth operation.

(e) The tests prescribed in paragraphs (b) and (d) of this section must be conducted on the rotorcraft and the torque must be absorbed by the rotors to be installed, except that other ground or flight test facilities with other appropriate methods of torque absorption may be used if the conditions of support and vibration closely simulate the conditions that would exist during a test on the rotorcraft.

72. By revising §§ 29.1091 (a), (b), and (f)(1) to read as follows:

§ 29.1091 Air induction.

(a) The air induction system for each engine and auxiliary power unit must supply the air required by that engine and auxiliary power unit under the operating conditions for which certification is requested.

(b) Each engine and auxiliary power unit air induction system must provide air for proper fuel metering and mixture distribution with the induction system valves in any position.

* * * * *

(f) For turbine engine powered rotorcraft and rotorcraft incorporating auxiliary power units—

(1) There must be means to prevent hazardous quantities of fuel leakage or overflow from drains, vents, or other components of flammable fluid sys-

tems from entering the engine or auxiliary power unit intake system; and

* * * * *

73. By revising the heading and paragraphs (a) and (d) of § 29.1103, and by adding new § 29.1103(e) and (f), to read as follows:

§ 29.1103 Induction systems ducts and air duct systems.

(a) Each induction system duct upstream of the first stage of the engine supercharger and of the auxiliary power unit compressor must have a drain to prevent the hazardous accumulation of fuel and moisture in the ground attitude. No drain may discharge where it might cause a fire hazard.

* * * * *

(d) Each duct within any fire zone for which a fire-extinguishing system is required must be at least—

(1) Fireproof, if it passes through any firewall; or

(2) Fire resistant, for other ducts, except that ducts for auxiliary power units must be fireproof within the auxiliary power unit fire zone.

(e) Each auxiliary power unit induction system duct must be fireproof for a sufficient distance upstream of the auxiliary power unit compartment to prevent hot gas reverse flow from burning through auxiliary power unit ducts and entering any other compartment or area of the rotorcraft in which a hazard would be created resulting from the entry of hot gases. The materials used to form the remainder of the induction system duct and plenum chamber of the auxiliary power unit must be capable of resisting the maximum heat conditions likely to occur.

(f) Each auxiliary power unit induction system duct must be constructed of materials that will not absorb or trap hazardous quantities of flammable fluids that could be ignited in the event of a surge or reverse flow condition.

74. By adding a new § 29.1142 to read as follows:

§ 29.1142 Auxiliary power unit controls.

Means must be provided on the flight deck for starting, stopping, and emergency shutdown of each installed auxiliary power unit.

75. By adding a new § 29.1195(d) to read as follows:

§ 29.1195 Fire extinguishing systems.

* * * * *

(d) It must be shown by either actual or simulated flight tests that under critical airflow conditions in flight the discharge of the extinguishing agent in each designated fire zone will provide an agent concentration capable of extinguishing fires in that zone and of minimizing the probability of reignition.

76. By adding a new § 29.1522 to read as follows:

§ 29.1522 Auxiliary power unit limitations.

If an auxiliary power unit that meets the requirements of TSO–C77 is installed in the rotorcraft, the limitations established for that auxiliary power unit under the TSO including the categories of operation must be specified as operating limitations for the rotorcraft.

77. By revising § 29.1545(a) to read as follows:

§ 29.1545 Airspeed indicator.

(a) Each airspeed indicator must be marked as specified in paragraph (b) of this section, with the marks located at the corresponding indicated airspeeds.

* * * * *

§ 29.1583 [Amended]

78. By deleting § 29.1583(g) and marking it "[Reserved]".

79. By adding new §§ 29.1585(e) and (f) to read as follows:

§ 29.1585 Operating procedures.

* * * * *

(e) If the unusable fuel supply in any tank exceeds 5 percent of the tank capacity, or 1 gallon, whichever is greater, information must be furnished which indicates that when the fuel quantity indicator reads "zero" in level flight, any fuel remaining in the fuel tank cannot be used safely in flight.

(f) Information on the total quantity of usable fuel for each fuel tank must be furnished.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

80. By revising § 121.291(a) by inserting at the beginning a phrase that reads "For airplanes that were not shown to be in compliance with § 25.803(c)(7)(i) of this chapter in effect on December 1, 1978, during type certification," and by adding a new § 121.291(c) to read as follows:

§ 121.291 Demonstration of emergency evacuation procedures.

* * * * *

(c) For airplanes that were shown to be in compliance with § 25.803(c)(7)(i) of this chapter in effect on December 1, 1978, during type certification, the operator must show that its emergency evacuation procedures and the training provided its crewmembers with respect to those procedures will provide emergency evacuation results equivalent to those obtained under § 25.803(c) of this chapter during airplane type certification.

81. By adding new §§ 121.310(d)(4) and 121.310(l) to read as follows:

§ 121.310 Additional emergency equipment.

* * * * *

(d) * * *

(4) After December 1, 1980, each light must have a cockpit control device that has an "on", "off", and "armed" position.

* * * * *

(l) *Portable lights.* After December 1, 1980, no person may operate a passenger-carrying airplane unless it is equipped with flashlight stowage provisions accessible from each flight attendant seat.

82. By revising § 121.318(b)(2) to read as follows:

§ 121.318 Public address system.

* * * * *

(b) * * *

(2) It must be accesssible for use from at least one normal flight attendant station in the passenger compartment, and, after December 1, 1980, at least one public address system microphone intended for flight attendant use must be positioned at each floor level exit in a passenger compartment and be readily accessible to a flight attendant seated in any seat adjacent to that exit.

* * * * *

83. By revising §§ 121.319 (b)(1), (b)(3), (b)(4), and (b)(5)(i) to read as follows:

§ 121.319 Crewmember interphone system.

* * * * *

(b) * * *

(1) After December 1, 1980, it must provide a means of two-way communication between the pilot compartment and—

(i) Each passenger compartment; and

(ii) Each galley located on other than the main passenger deck level.

* * * * *

(3) It must be accessible for use from at least one normal flight attendant station in each passenger compartment;

(4) It must be capable of operation within 10 seconds by a flight attendant at those stations in each passenger compartment from which its use is accessible; and

(5) * * *

(i) It must be accessible for use at enough flight attendant stations so that all floor level emergency exits in each passenger compartment are observable from one or more of those stations so equipped;

* * * * *

84. By adding a sentence to § 121.339(a)(2) to read as follows:

§ 121.339 Emergency equipment for extended over-water operations.

(a) * * *

(2) * * * Unless excess rafts of enough capacity are provided, the bouyancy and seating capacity beyond the rated capacity of the rafts must accommodate all occupants of the airplane in the event of a loss of one raft of the largest rated capacity.

* * * * *

(Secs. 313(a), 601, 603, 604, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423, 1424), sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

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

LANGHORNE BOND,
Administrator.

[FR Doc. 78-30348 Filed 10-27-78; 8:45 am]

Federal register

MONDAY, OCTOBER 30, 1978
PART III

SECURITIES AND EXCHANGE COMMISSION

■

COLLECTION, DISSEMINATION, AND DISPLAY OF TRANSACTION REPORTS AND QUOTATION INFORMATION

Proposed Rulemaking

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release No. 34-15250; File No. S7-758]

COLLECTION AND DISSEMINATION OF TRANSACTION REPORTS

Proposed Rulemaking

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments.

SUMMARY: The Commission proposes to amend its rule governing the collection and dissemination of transaction reports and last sale data in listed securities. The proposal, if adopted, would restate that rule in reversed format, would add explicit procedures for amending transaction reporting plans filed with and declared effective by the Commission pursuant to the rule and would provide that no national securities exchange may prohibit retransmission of the entire data stream of transaction reports on a current and continuous basis for the purpose of creating a moving ticker display.

DATES: Comments should be submitted on or before December 15, 1978.

ADDRESSES: Persons wishing to submit written views data and arguments should file ten copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to file No. 758 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Brandon Becker, Division of Market Regulation, Securities and Exchange Commission, Room 303, 500 North Capitol Street, Washington, D.C. 20549, 202-755-8748.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission announced today that it has proposed to amend rule 17a-15 (17 CFR 240.17a-15) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)) (the "Act") which currently governs the manner of collection and dissemination of last sale information with respect to securities listed or admitted to unlisted trading privileges on national securities exchanges ("exchanges"). The proposed amendments would restate the rule in a revised format, redesignate the rule 11Aa3-1 under the Act (17 CFR 240.11Aa3-1), add explicit procedures governing the amendment of transaction reporting plans filed with and declared effective by the Commission pursuant to the rule and would provide that no exchange or national securities association ("association") may prohibit retransmission of the entire data stream of transaction reports contained in the consolidated transaction reporting system ("consolidated system") on a current and continuous basis for the purpose of creating a continuous moving ticker display ("moving ticker"). In addition, those provisions of rule 17a-15 which currently govern the display of last sale reports would be relocated in a separate rule (proposed rule 11Ac1-2) being proposed simultaneously with these proposed amendments, which would set forth further requirements specifying the manner in which price and volume information with respect to completed securities transactions ("transaction reports"), data contained in transaction reports ("last sale data") and quotation information are displayed by vendors of market information.[1]

I. Background

The concept of a consolidated transaction reporting system, presenting last sale data from all markets in a single data stream, was first proposed by the Commission in its February 2, 1972, Statement on the Future Structure of the Securities Markets.[2] Soon after the release of that statement, the Commission published rule 17a-15 for comment.[3] Following the initial comment period, the rule was republished for further comment in August, 1972,[4] and adopted in November of that year.[5] The rule as adopted required every exchange and association, and every broker-dealer who was not an exchange or association member and who effected transactions in listed securities which were not reported by an exchange or association pursuant to the rule, to file with the Commission a plan providing for the collection, processing and dissemination of last sale reports in securities registered or admitted to unlisted trading privileges on an exchange. The rule also provided that, after a certain date, no exchange, association or broker-dealer subject to its provisions could make available last sale data on a current and continuing basis except pursuant to such a plan declared effective by the Commission.

After some delay,[6] the New York Stock Exchange, Inc. ("NYSE"), American Stock Exchange, Inc. ("Amex"), Midwest Stock Exchange, ("MSE"), Pacific Stock Exchange, Inc. ("PSE"), PBW Stock Exchange, Inc. (predecessor to the Philadelphia Stock Exchange, Inc.) ("Phlx") and the National Association of Securities Dealers, Inc. ("NASD") filed a joint industry plan (the "Joint Industry Plan" or the "Plan") with the Commission on March 2, 1973.[7] The Commission solicited public comment on the Plan,[8] twice published its own comments[9] and declared the Plan effective in May 1974.[10]

The Plan provided for the creation of an unincorporated association called the Consolidated Tape Association ("CTA") to administer the Plan and the employmnent of the Securities Industry Automation Corp. ("SIAC") as the initial processor of the consolidated system contempiated by the Plan. A pilot phase of the consolidated system in a limited number of securities began operation on October 18, 1974, and, on July 16, 1975, network A [11] was fully implemented on a

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[1] See Securities Exchange Act release No. 15251 (Oct. 20, 1978) (the "Proposed Rule 11Ac1-2 Release").

[2] 37 FR 5286.

[3] Securities Exchange Act release No. 9530 (Mar. 8, 1972), 37 FR 5761. See Commission file No. S7-433.

[4] Securities Exchange Act release No. 9731 (Aug. 14, 1972), (the "Second Proposal Release") 37 FR 19148.

[5] Securities Exchange Act release No. 9850 (Nov. 8, 1972), (the "Adopting Release") 37 FR 24172.

[6] See Securities Exchange Act release Nos. 9924 (Jan. 3, 1973) and 9981 (Feb. 2, 1973), 38 FR 1121 and 3591.

[7] The Boston Stock Exchange, Inc. ("BSE"), Cincinnati Stock Exchange ("CSE"), Detroit Stock Exchange, ("DSE") (which ceased operations on June 30, 1976) and Institutional Networks Corp. ("Instinet") subsequently filed plans with the Commission. These plans were declared effective by the Commission upon the condition that each entity operate under the Plan as "other reporting parties." Securities Exchange Act release No. 11255 (Feb. 18, 1975), 40 FR 8397.

The Intermountain and Spokane Stock Exchanges have been granted exemptions from the reporting requirements of the rule. Securities Exchange Act release Nos. 11385 (Apr. 30, 1975) and 14651 (Apr. 11, 1978), 40 FR 19888 and 43 FR 16582.

[8] Securities Exchange Act release No. 10026 (Mar. 5, 1973), 38 FR 6443.

[9] Securities Exchange Act release Nos. 10218 (June 13, 1973) (the "First Plan Release") and 10671 (Mar. 8, 1974) (the "Second Plan Release"), 38 FR 15999 and 39 FR 10034.

[10] Securities Exchange Act release No. 10787 (May 10, 1974) (the "Approval Release"), 39 FR 17799.

[11] The Plan provides that the consolidated system consist of two discrete data streams, network A and network B. Network A reports transactions in securities listed on the NYSE and network B reports transactions in securities listed or admitted to unlisted trading privileges on the Amex as well as certain securities traded on participating regional exchanges. See note 63 infra for a description of the particular securities included within the system.

low speed basis.[12] After several postponements,[13] the entire system became fully operational on April 30, 1976.

In the interest of assuring that the consolidated system commence operations without undue delay, the Commission approved the Plan and the implementation of the system without having fully resolved certain isssues relating to the Plan. For example, during the comment period following the filing of the Plan, the Commission raised concerns regarding Plan amendment procedures which were not adequately addressed in the Plan.[14] In addition, as a result of its review of the operation of the consolidated system over the past 2 years, the Commission believes that certain adjustments are necessary to conform the operation of the system with the Commission's overall efforts to facilitate the establishment of a national market system.[15]

II. Proposed Rule 11Aa3-1

Proposed rule 11Aa3-1 constitutes a restatement and amendment of those portions of rule 17a-15 which deal with the filing and approval of transaction reporting plans. The proposed amendment retains the basic regulatory approach of rule 17a-15; it would require all exchanges and associations and non-member brokers or dealers trading in reported securities to file plans for collecting, processing and making available transaction reports in reported securities. Since the proposal would amend rule 17a-15, any plans previously filed and declared effective under that rule, any amendments thereto and any Commission action with respect to such plans or amendments would remain in effect without further action by the Commission.[16]

The proposed amendment differs from the existing rule in two respects. First, the proposal sets forth procedures for amending transaction reporting plans filed under the rule. Second, the proposal contains a provision which would preclude any transaction reporting plan from prohibiting retransmission of the entire data stream of transaction reports for purposes of providing a moving ticker display. In addition to these substantive distinctions, proposed rule 11Aa3-1 has been drafted to reflect changes in the Act resulting from the Securities Act Amendments of 1975 (the "1975 amendments").[17]

A. The 1975 Amendments

Rule 17a-15 was proposed and adopted in 1972 under section 17 of the Act pursuant to authority granted in sections 10(b), 15(c), 17(a) and 23(a) of the Act.[18] Prior to the adoption of the 1974 amendments, there existed some controversy as to the Commission's authority under the Act to require the implementation of the consolidated system or to regulate the manner in which vendors of market information disseminated and displayed transaction reports.[19]

The legislative history of the 1975 amendments indicates that the amendments were in part designed to eliminate any uncertainty over the Commission's regulatory power with respect to the dissemination of last sale or quotation information. The Senate Committee on Banking, Housing, and Urban Affairs, in its Report to Accompany S. 249,[20] stated that:

> arguments about the SEC's authority are not in the best interest of investors or the industry, for they can only result in substantial delays in implementing the communications systems necessary for the national market system. S. 249 is designed to make the SEC's authority over such systems and the operations of a national market system clear.[21]

Because the 1975 amendments now place explicit Commission authority to regulate the consolidated system in section 11A of the Act, the Commission has determined, in conjunction with its consideration of ways of improving the operation of the consolidated system, to propose its amendments to rule 17a-15 under section 11A of the Act as well as the other sections of the Act previously cited as authority for that rule, and to renumber the rule under that section.

In addition to consolidating and explicitly stating the Commission's power to regulate the dissemination and use of last sale and quotation information, the 1975 amendments also include certain provisions which render portions of rule 17a-15 either unnecessary or inappropriate. For example, rule 17a-15, as amended in 1974,[22] contains procedures permitting any person who is denied or limited access to last sale reports disseminated pursuant to an effective plan to appeal such action to the Commission.[23] This provision is redundant and in some technical respects inconsistent with the extensive procedures set forth in section 11A(a)(5) of the Act which govern denial or limitation of access by registered securities information processors.[24] Similarly, rule 17a-15 indirectly imposes certain minimal display standards on vendors of market information by requiring that any plan filed pursuant to the Rule impose these display standards on vendors. This indirect procedure was used because, prior to the adoption of the 1975 amendments, the Commission did not directly regulate securities information processors. However, section 11A(c)(1) now provides the Commission with plenary authority to regulate the manner in which vendors display transaction reports.[25] In addition, rule 17a-15 is limited in its application to "securities registered or admitted to unlisted trading privileges on an exchange," [26] whereas section 11A(a)(2) permits the Commission to designate any security (other than an exempted

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[12] Prior to Apr. 30, 1976, all last sale data was disseminated over low speed data transmission lines at 900 characters per minute, the rate at which characters are displayed on moving ticker displays. Since Apr. 30, 1976, last sale data with respect to both network A and network B securities has also been disseminated over high speed data transmission lines; interrogation devices which are supplied data over these lines remain current notwithstanding delays in the low speed lines. See note 55.

[13] See Securities Exchange Act release No. 11273 (Mar. 3 1975), 40 FR 11389.

[14] See the First Plan Release, supra note 9, at 2-3, 38 FR 15999 and the Second Plan Release, supra note 9, at 2-3, 39 FR 10034.

[15] On January 26, 1978, the Commission issued a statement setting forth its views as to those initiatives which should be taken over the next year to facilitate the establishment of a national market system. One of the initiatives discussed in that statement was the consideration of certain changes in the consolidated system. See Securities Exchange Act release No. 14416 (Jan. 26, 1978) (the "Market Structure Statement"), 43 FR 4354.

[16] However, those provisions of the Plan prohibiting retransmission of data for purposes of creating a moving ticker display would be modified by paragraph (e) of proposed rule 11Aa3-1.

[17] Pub. L. 94-29 (June 4, 1975).

[18] See the adopting release, supra note 5, at 2, 37 FR 24173.

[19] Certain exchanges, in responding to the proposal of the rule, challenged the Commission's authority to adopt the rule under the provisions of the Act cited by the Commission; they argued that the Commission's sole authority over last sale reports, at that time, rested in section 19(b) of the Act and, therefore, the consolidated system would be required to be implemented pursuant to the procedures set forth in that section of the Act.

[20] S. 249 contained provisions which were the basis fof section 11A of the Act.

[21] Senate Committee on Banking, Housing, and Urban Affairs, Report to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st sess. 3 (1975) (the "Senate Report"), at 9.

[22] See Securities Exchange Act release No. 11097 (Nov. 13, 1974), 39 FR 40941.

[23] See rule 17a-15(i).

[24] For example, section 11A(b)(5)(A) of the Act is substantively identical to rule 17a-15(i) (1) and (2) with the exception that the statute requires registered securities information processors to file initially with the Commission a notice of denial and also permits the Commission to grant stays summarily. However, because the provisions of rule 17a-15(i) are somewhat broader in scope than the provisions of section 11A(b)(5), these procedures have been retained in the proposal in modified form.

[25] See section 11A(c)(1) (A) AND (B). These display requirements, currently contained in rule 17A-15, would be relocated in proposed rule 11Acl-2 which is being proposed simultaneously with these amendments. See proposed rule 11Acl-2 release, supra note 1.

[26] Rule 17a-15(a).

security) as qualified for trading in the national market system.[27] Proposed rule 11Aa3-1 has been revised to reflect these and other changes in the regulatory structure of the Act.

B. RETRANSMISSION

The term "retransmission" refers to the communications process by which the entire data stream of transaction reports disseminated through the consolidated system would be received by a vendor and retransmitted to its subscribers as a moving ticker display.[28] While rule 17a-15 does not address retransmission, the Joint Industry Plan provides:

> Vendors will not be permitted to retransmit on a continuous basis the consolidated last sale prices received by them, except as may be incidental to the operation of approved interrogation devices or display devices.[29]

The Commission believes that the retransmission prohibition may have an anticompetitive impact on vendors of securities information which is not necessary or appropriate in furtherance of the purposes of the Act. Accordingly, the Commission has proposed to include a provision in rule 11Aa3-1 which would eliminate the retransmission prohibition contained in the Plan as of March 1, 1979.[30] However, in order to assure the continued availability of transaction information in accordance with the objectives of the Act, the Commission proposes to permit any exchange, association or person authorized to implement or administer a plan under the rule to condition retransmission upon appropriate undertakings by a vendor to assure that (i) subscriber charges for the receipt of transaction reports on moving ticker displays are collected; (ii) transaction reports which are retransmitted for display in moving tickers are displayed at substantially the same rate and time as reports directly disseminated by the exchange, association or plan processor; and (iii) the vendor maintains procedures and facilities sufficient to ensure the accurate and reliable display of transaction reports.

1. *Background.* Prior to the implementation of the consolidated system, the NYSE and Amex each operated and maintained a nationwide network of telecommunication lines leased from Western Union ("ticker network") supplying, on an exclusive basis, all last sale data displayed on moving tickers. Securities information processors were permitted to use this information to create a data base from which subscribers could, upon separate inquiry, recall market information over the vendor's proprietary communication lines for display in interrogation devices. However, the exchanges required that any moving ticker, whether displayed in an interrogation device or on a separate wall unit, be supplied data directly from the ticker network.

Vendors of securities information were not then required to pay the NYSE or Amex for the receipt of last sale data displayed on moving tickers or through interrogation devices;[31] however, subscribers of the vendors were required to pay a fee directly to the NYSE and Amex in addition to the charges imposed by vendors for particular display units.[32] Prior to 1968, the exchanges' fee were assessed on a geographc basis, according to the distance of the subscriber from New York City. However, in 1968, this practice was altered to provide that exchange fees be imposed on a geographically uniform basis throughout the United States. Fees were assessed for each display device[33] and were based upon the amount of equipment and services provided by the exchanges. The highest fee was for receipt of last sale reports through a ticker tape device furnished by an exchange (with data supplied through the ticker network); a lesser charge was imposed if last sale reports were to be displayed on a moving ticker leased from a vendor either on a separate wall unit or through an interrogation device (with data supplied through the ticker network); the smallest charge was for the receipt of transaction information, upon separate inquiry, through an interrogation device to which data was supplied over the vendor's proprietary transmission lines.[34]

In response to the publication of both proposed versions of rule 17a-15, the Commission received commentary[35] requesting that the exchanges be permitted to maintain their uniform charges and that the rule specifically include a retransmission prohibition in order to assure the collection of these fees and thereby the viability of the ticker network. In the second proposal of the rule and in the version adopted, the Commission included a provision expressly permitting the maintenance of this fee structure. Rule 17a-15(f) provides:

> Nothing in this section shall preclude any exchange or association, separately or jointly: (1) From imposing reasonable, uniform charges (irrespective of geographic location) for distribution of last sale reports; nor (2) from requiring any vendor which distributes or displays last sale reports to make the last sale reports it distributes or displays available to all qualified subcribers throughout the continental United States and to impose uniform charges on its subscribers (irrespective of geographic location).

While declining to include a retransmission prohibition in the rule, the Commission did not raise any objection to its inclusion in the Plan:

> In not objecting to the Plan's limitations on retransmission, the Commission recognized that the principal effect of this provision would be to maintain in the self-regulatory bodies (through the CTA) the control that the primary exchanges currently exercise over their own ticker distribution networks. Independent vendors would be able to engage in the distribution of last sale data via monitoring or interrogation devices and to market equipment for the display of data via a ticker; however, they would not be permitted to distribute a continuous stream of data for ticker display purposes. This function would remain the sole prerogative of the CTA.[36]

In support of its retransmission position, the Commission identified four potentially harmful effects from eliminating the prohibition. First, it was felt that the loss of geographically uniform charges for ticker information, because vendors would be free to charge rates differing from the CTA's for supplying ticker displays, could impede the dissemination of last sale data to distant locations, thereby having anticompetitive effects on brokers in those areas. Second, because vendors would presumably concentrate their marketing efforts on easily accessible urban areas thereby leaving distribution to remote areas to the

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[27] See market structure statement, supra note 15, at 45-46, 43 FR 4360-61.

[28] The term "retransmission" as used in this release should not be confused with the use of that term in the Commission's recent proceedings *In the Matter of Bunker Ramo Corporation, GTE Information Systems Incorporated* and *Options Price Reporting Authority* announced in Securities Exchange Act Release No. 14784 (May 19, 1978), 43 FR 22469. In that proceeding, the term "retransmission" referred to a feature provided by the processor for the Options Price Reporting Authority whereby a vendor can identify and recapture messages which have not been sent properly as a result of a malfunction in the processor's computer or transmission facilities or which, while transmitted by the central processor, have (1) been lost or garbled through interference on the communications circuit, or (2) not been received properly as a result of a breakdown in the vendor's equipment. Id. n. 3.

[29] Section VIII(a) and (b) of the Plan. See section V(c) of the Plan which provides that last sale information made available to vendors by the processor shall be "for the purpose of servicing approved interrogation devices * * * and not for the purposes of furnishing a ticker display."

[30] See proposed rule 11Aa3-1(e).

[31] Currently, vendors are required to pay the CTA for the receipt of data over high speed data transmission lines.

[32] Persons wishing to receive an actual printed ticker tape could, however, lease the printer directly from the NYSE or Amex.

[33] However, charges were reduced for multiple devices at a single location.

[34] If an interrogation device was capable of displaying a moving ticker two fees were assessed: One for the moving ticker and one for the interrogation device itself.

[35] See file No. S7-433.

[36] Second Plan Release, supra note 9, at 8-9.

CTA, the CTA would be forced to increase its general level of charges which might threaten the entire financial viability of the ticker network.[37] Third, concerns were raised that there might be a deterioration of ticker reliability because vendors might not maintain sufficient back-up systems. Finally, retransmission would result in the loss of direct regulatory oversight by the Commission because vendors were not then subject to its express regulation.[38]

The Commission also considered the possible anticompetitive effects on vendors of retaining the retransmission prohibition. While recognizing that competition in the distribution of ticker information might lower subscriber costs, particularly in metropolitan areas, the Commission concluded that the "widespread availability of ticker services is more important to the public interest than selective price cutting." [39] Moreover, the Commission expressed confidence that the prohibition would not impair competition among vendors in the types of ticker services offered:

> The vendors would still be free to develop new and better interrogation and monitoring devices and to continue to upgrade the variety of software packages available in conjunction with this type of service. Even in the market for ticker services alone, there is no restriction on the competitive marketing of various kinds of devices which may be used to display the ticker nor on various ways of presenting it, such as selective tickers.[40]

The Plan thus continued the historical control enjoyed by the NYSE and Amex over the distribution of last sale reports by transferring control of the ticker network to the CTA. As a result, although vendors receive transaction reports on a current basis over high speed data transmission lines for use, in response to specific inquiry, on their interrogation devices,[41] every moving ticker in the country [42] is supplied data over the low speed data transmission lines constituting the ticker network. The Plan also retains the geographically uniform fee structure permitted by rule 17a-15 which has provided substantial revenue to the CTA.[43]

[37] See discussion infra.

[38] Id. at 9-10.

[39] Id. at 10.

[40] Id.

[41] Due to the use of high speed data transmission lines implemented as part of the consolidated system, this data remains current even when the ticker network, which uses low speed lines, is late. See note 12 supra.

[42] The CTA indicates that there are presently in service approximately 15,000 network A and 8,000 network B moving tickers, as compared with more than 45,000 interrogation devices (some of which display moving tickers and hence are counted twice).

[43] For the fiscal year ended December 31, 1977, aggregate CTA ticker network revenue was approximately $4,260,000 for network A and $1,725,000 for network B. Operating expenses for the ticker networked (e.g., maintenance of the low speed data transmission lines) were approximately $1,900,000 and $1,130,000, respectively, for the same period.

2. *Reuters' request.* In March 1976, the Commission published for public comment a letter received from Reuters Ltd. ("Reuters") requesting that the Commission modify or eliminate the retransmission prohibition contained in the Joint Industry Plan to enable Reuters to market a new moving ticker display device called the "Monitor." [44] Reuters proposed to service the device solely with information received from the CTA over high speed data transmission lines and transmitted to subscribers over its proprietary communications network.[45] This procedure would permit the creation of a moving ticker in a novel format [46] from information received over high speed data transmission lines rather than linking the device directly to the CTA ticker network and would thereby permit creation of a moving ticker display which is not subject to the same delays as the ticker network.[47] The CTA and certain vendors submitted written comments in response to the Commission's request for comment.[48]

Following expiration of the formal comment period, representatives of Reuters and the CTA held extensive discussions concerning those circumstances under which the CTA might permit Reuters to retransmit. In August 1976, the CTA solicited further comment from vendors,[49] and, on August 18, 1976, the Legal and Policy Committee of the CTA considered and rejected the Reuters request. No further action was taken by the Commission with respect to the retransmission prohibition contained in the Plan prior to the market structure statement, in which the Commission stated that it would reconsider retransmission at this time.

In conjunction with its proposed amendments to rule 17a-15, the Commission believes that it is appropriate to reexamine the retransmission prohibition. In addition to the various policy matters considered at the time of the adoption of rule 17a-15 and the approval of the Plan, the 1975 amendments expressly extended the authority of the Commission to assure that market information is made available by exchanges, associations and persons acting on their behalf in a manner which is consistent with the Act, including the development of a national market system.[50]

The statutory scheme set forth in section 11A of the Act contemplates that exclusive processors such as the CTA may exercise exclusive control over collecting and processing certain securities information. However, the Act further contemplates that exclusive processors will function as neutral suppliers of that information to competing vendors for distribution to subscribers.[51] The continued existence of the CTA's control over the CTA ticker network may thus be inconsistent with the balance sought by the Act between the potential for efficiency derived from centralized data collection and the need for competition in the distribution of securities information.

2. *Summary of comments.* In response to the Reuters Release, the Commission received comment letters from Reuters, the four principal vendors of moving ticker displays and from the CTA. Commentary focused on the anticompetitive effects of the prohibition and its continued validity under the Act, as well as the need to maintain the current financial arrangements and operational integrity of the network. The Commission has carefully considered these comments and, in proposing an end to the retransmission prohibition, has included certain conditions intended to respond to these concerns.

In its initial request that the Commission reexamine the retransmission prohibition, Reuters argued that the prohibition was anticompetitive in nature and inconsistent with the Act:

[44] See Securities Exchange Act Release Nos. 12162 (Mar. 3, 1976) ("Reuter release") and 12138 (Apr. 6, 1976), 41 FR 10499 and 41 FR 15924. See Commission file No. S7-620.

[45] Because the Monitor would only receive information from a single data source, it would not require duplicative computer hardware necessary to read both Reuters' data transmission and the ticker network.

[46] The moving ticker which Reuters proposed to make available on the Monitor was a so-called "cascading" ticker; i.e., each transaction report would be displayed horizontally and would move down the screen, rather than across. Use of this format would permit Reuters to include additional information with each transaction report, such as a more complete description of the security and net price change. Although a similar display might be created from ticker network data, if each display device were programmed to retrieve additional data from the vendor's proprietary data base, this procedure would be significantly more costly than permitting centralized processing at the vendor's data base center with a single communications line to each display device.

[47] See note 55, infra.

[48] See file No. S7-620.

[49] See Id.

[50] See, e.g., sections 11A(b)(5) and 11A(c)(1) of the Act. The CTA and SIAC, the processor for the Plan, are each "exclusive processors" registered with the Commission. The terms "exclusive processor" and "securities information processor," the statutory designation for vendors, are defined in section 3(a)(22) of the Act. In addition, section 23(a)(2) of the Act specifically requires that the Commission balance the anticompetitive impact of its regulatory proposals against the regulatory purposes of the Act.

[51] See Senate Report, supra note 21, at 11-12.

Requiring Reuters to utilize (the ticker network) as existing vendors do makes it necessary for Reuters to develop at great cost, and for subscribers to take at a higher price, otherwise completely unnecessary additional equipment to be attached to the Monitor receiver * * *. The effect of the retransmission prohibitions is to protect the few existing vendors which utilize (the ticker network) provided by the CTA against the development of new and more efficient forms of competition—to maintain them in a virtual monopoly position.[51]

Reuters pointed out that in the 1975 amendments the Congress had charged the SEC with an explicit and pervasive obligation to eliminate all present and future competitive restraints that could not be justified by the purposes of the Exchange Act. The Commission was directed to remove existing burdens on competition and to refrain from imposing, or permitting to be imposed, any new regulatory burden "not necessary or appropriate in furtherance of the purposes of the Exchange Act."[52]

Reuters concluded by noting that all of the concerns previously raised by the Commission as a basis for permitting the retransmission prohibition were addressed and alleviated by its proposed Monitor system.

In response to the Reuters release, certain vendors and the CTA responded to the asserted anticompetitive effects of the prohibition against retransmission. First, these commentators rejected the notion that the retransmission prohibition was anticompetitive. According to these commentators, the ability of all vendors to receive transaction data upon equal terms permitted fair and open competition and sufficiently allowed vendors to compete and innovate in the manner of display of this information. These commentators argued, in effect, that the 1975 amendments do not require competition in the dissemination of market information to vendors and specifically contemplate that an exclusive processor might perform this function. In addition, these commentators argued that removal of the retransmission prohibition may have certain anticompetitive effects. It was asserted that, since Reuters would be the only vendor immediately capable of utilizing high speed data transmission for purposes of creating a moving ticker, it would be at a technological advantage with respect to the other vendors. Furthermore, it was argued that permitting vendors to act as integrated moving ticker processors would put other vendors who only market moving ticker display devices at an economic disadvantage, especially if the ticker network were to be discontinued.[54] Finally, some commentators asserted that making a moving ticker available only in conjunction with other services provided on an interrogation device constituted a tie-in arrangement which was inconsistent with basic antitrust principles and, therefore, with the Act.

Apart from arguments regarding the anticompetitive nature of the retransmission prohibition, most commentary concerned the continued financial integrity of the ticker network if vendors were permitted to retransmit transaction data. Commentators argued that the ticker network would be destroyed if retransmission were allowed because vendors would capture the more lucrative urban ticker business through differential pricing, thereby raising rates for subscribers in remote areas. Additionally, certain vendors questioned the negative impact upon competition among vendors if subscribers who received moving ticker displays consisting of retransmitted data were to pay less than subscribers who received a display of data transmitted over the ticker network.

Commentators also expressed concerns about certain operational aspects concerning retransmission. First, the CTA and certain vendors questioned the reliability of vendor proprietary transmission lines and whether there were in existence sufficient backup facilities (including both computers and data transmission lines) to assure uninterrupted service. Second, vendors expressed concern regarding the uniformity of data presentation. Because of the unitary nature of the ticker network, all moving tickers receive last sale data at the same time in the same format, including the deletion of certain information during periods of active trading. Some commentators noted that retransmission might alter this synchronization by permitting a vendor receiving information over high speed data transmission lines to display that information on a moving ticker prior to the display of that information on a moving ticker fed by the low speed ticker network, and including material which was deleted from the ticker network.[55] Additionally, despite the 1975 amendments, some commentators questioned the ability of the Commission to regulate these matters adequately absent the registration of vendors under section 11A of the Act.

Finally, certain commentators discussed the usefulness of the ticker network in the current environment in which the same information is available, without delay, by means of high speed data transmission lines. The CTA argued that maintenance of the ticker network is necesssary, in addition to its utility in providing broad dissemination of market information, to preserve the complete and official record of all transaction data. To the contrary, one vendor argued that the ticker network is redundant and is no longer the official record of trading since transaction reports are logged by SIAC at the time they are received, not at the time they are displayed on moving tickers. This vendor argued that ultimately the ticker network should be entirely replaced by the high speed data transmission system which is not subject to delays and provides information to all display devices at the same time.

4. *Proposal.* After consideration of these comments, the Commission has initially determined that the prohibition against retransmission may have anticompetitive effects which are not necessary or appropriate in furtherance of the purposes of the Act. The prohibition, in effect, requires that vendors providing interrogation devices which also display a moving ticker pay for the maintenance of duplicative and redundant data transmission lines and receptor mechanisms. Additionally, the prohibitions may impede development of innovative moving ticker displays by requiring de-

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[51] Reuters release, supra note 44, 41 FR at 10500 and 10502.

[52] Committee of Conference, Report to Accompany S. 249, H.R. Rep. No 94-249, 94th Cong., 1st Sess. 94 (1975). See Reuters release, supra note 44, 41 FR at 10501-2.

[54] In this connection, one vendor requested that the Commission, if it were to permit retransmission, require that vendors make this information available to other vendors through a standard computer interface at reasonable charges.

[55] The ticker network provides information to moving tickers at the rate of 900 characters per minute, the maximum speed at which a linear wall display of this information would be legible. As a result of this speed limitation, during periods of active trading complete transaction reports may not be disseminated without considerable delay. Therefore, the CTA has adopted procedures whereby, during periods of active trading, certain information, such as the volume of a transaction, is deleted from the ticker network (but not the high speed data transmission line). Despite these measures, the ticker network often reports transactions several minutes after they are reported on the high speed lines. It has been argued that the flexibility of interrogation device cathode ray tube terminals would permit a vendor creating a moving ticker from the high speed lines to avoid these delays or at least include deleted information without incurring further delays. In addition, the CTA has approved for usage certain types of moving tickers which display only transaction reports with respect to selected securities. Since these "selective" moving tickers are required to be supplied data from the ticker network, they are subject to the same delays and deletions as are moving tickers displaying transaction reports for all securities on that network. If vendors were permitted to retransmit data to create a selective moving ticker, such a display would not be delayed even if data were displayed at 900 characters per minute. See note 12, supra.

centralized processing by vendors to create those displays.[56]

However, the Commission continues to believe that the ticker network is an important mechanism for dissemination of market information and should be retained. It provides a means whereby investors, brokers, and dealers can obtain current last sale data at a reasonable price. Furthermore, through its geographically uniform fee structure, the ticker network assures that this important market information is disseminated to remote areas of the country at costs which are not prohibitive.[57] Therefore, the Commission believes that removal of the retransmission prohibition should be accompanied by measures designed to assure the continued viability of the ticker network.

The Commission proposes to permit a vendor to use its proprietary communications network, through which the vendor presently services subscriber interrogation devices, to transmit ticker information to subscribers. The ticker information would be in any CTA-approved format;[58] however, the CTA would be permitted to charge each subscriber receiving moving ticker information retransmitted by a vendor the same fee paid by subscribers to the CTA ticker network. Accordingly, vendors would be provided with improved competitive opportunities with respect to the provisions of moving ticker displays by permitting increased communications flexibility and more varied ticker formats.[59] However, all subscribers, whatever their source of moving ticker information, could be required by the CTA to pay a uniform access charge for that information. Therefore, the proposed rule would not alter the current CTA revenue stream.[60] In addition, the rule would permit the CTA to assure, by amendment to the joint industry plan, that any vendor providing retransmission services does so accurately and reliably and that the display of the entire data stream of transaction reports is substantially synchronized.[61]

C. DESCRIPTION OF PROPOSED RULE 11Aa3-1

Proposed rule 11Aa3-1 retains the basic regulatory approach of rule 17a-15; however, it is potentially broader in its scope, applying to transaction reports[62] in "reported securities," i.e., any securities or class of securites with respect to which transaction reports are required to be disseminated pursuant to the joint industry plan[63] (or any other transaction reporting plan declared effective by the Commission) as well as any other security or class of securities designated by the Commission as a "qualified security" pursuant to section 11A(a)(2) of the Act and as to which transaction reports are required to be collected, processed, and made available pursuant to the rule.[64] The proposal requires every exchange to file a transaction reporting plan[65] with the Commission with respect to transactions in all reported securities effected through the facilities of such exchange.[66] Similarly, every association whose members effect over-the-counter transactions in reported securites and every nonmember broker or dealer who effects transactions in reported securites which are not otherwise reported and made available in accordance with the Rule must file transaction reporting plans.[67] Since the proposal represents an amendment to rule 17a-15, it will not be necessary for the sponsors of the joint industry plan or any other plan, or amendment thereto, filed with and declared effective by the Commission pursuant to rule 17a-15 to refile plans with the Commission for approval under rule 11Aa3-1.[68]

The proposal retains the requirement contained in rule 17a-15 that any plan filed thereunder include copies of all governing documents relating to any entity (including a transaction reporting association[69] like the CTA) authorized to implement or adminster the plan and specify: (1) The manner of collecting, processing, and disseminating transaction reports, (2) applicable standards and methods assuring promptness of reporting, accuracy, and completeness of transaction

[56] For example, a vendor could not create a selective moving ticker at its central data base center but would be required instead to have data selection occur in each of its receptor devices connected to the CTA ticker network. Similarly, a vendor proposing to provide a cascading moving ticker would be required to program each interrogation device to recall data from the vendor's central data base rather than creating a single centralized data stream.

[57] See note 60, infra.

[58] The CTA, through its contracts with vendors, retains the power to approve the display format of any moving ticker or interrogation device. We understand that the CTA has never disapproved a proposed display format.

[59] For example a vendor may provide a "selective" ticker of transaction reports for only certain specified securities which would be less subject to delay than such a display created from the ticker network. Together with the opportunity to provide ticker formats adapted to the particular needs of subscribers, vendors may achieve certain technical economies resulting from not having to accommodate the CTA ticker network feed, thereby possibly reducing the costs to subscribers of leasing retransmitted displays from vendors.

[60] While this may alleviate the concern that competitive pricing would eventually lead to the demise of the CTA network, it may also be criticized because vendor subscribers would be receiving no separate service from the CTA and, accordingly, would be subsidizing all other persons receiving information by means of the ticker network. The Commission wishes to specifically solicit comment on the necessity of this subsidy.

[61] The Commission understands that vendors may program their interrogation devices to display transaction reports at approximately the same rate as the moving ticker. However, due to the use of deletion modes on the ticker network (see note 55, supra), it may not be feasible during periods of active trading for vendors to display retransmitted data at precisely the same time as the ticker network. In addition, a vendor providing a selective moving ticker may provide transaction reports at the same rate as the entire moving ticker while a vendor receiving such data over the ticker network would, in effect, be displaying data at a slower rate.

[62] The term "transaction report" is defined in paragraph (a)(1) of the proposal as a report containing the price and volume associated with a completed transaction involving the purchase or sale of a security ("transaction") and is used in lieu of the term "last sale report" which is employed in Rule 17a-15.

[63] The joint industry plan requires dissemination of transaction reports in "eligible securities" which are defined as all stocks and long-term warants listed or admitted to unlisted trading privileges on the NYSE or Amex on the date of full implementation of the consolidated system (Apr. 30, 1976), all stocks and long-term warrants listed or admitted to unlisted trading privileges on any other exchange which, on Apr. 30, 1976, met either NYSE or Amex listing standards, all stocks and long-term warrants listed or admitted to unlisted trading privileges on any exchange after Apr. 30, 1976, and which substantially meets either NYSE or AMEX listing standards and any right to acquire an eligible security which is traded on the same exhange as the eligible security.

[64] Proposed rule 11Aa3-1(a)(4).

[65] The term "transaction reporting plan" is defined in par. (a)(2) of the proposal as any plan for collecting, processing, and making available transaction reports with respect to transactions in reported securities filed with the Commission and meeting the requirements of the rule. Rule 17a-15 does not specifically define the term "plan;" however, it requires the filing of a plan "for the dissemination of information required to be reported pursuant to this section." See Rule 17a-15(a).

[66] Proposed rule 11Aa3-1(b)(1). This requirement is currently contained in rule 17a-15(a).

[67] Proposed rule 11A-301(b) (1) and (2). This rquirement is currently contained in rule 17a-15 (a) and (b).

[68] Similarly, any exemptions granted pursuant to rule 17a-15(h) or any existing Commission interpretation of rule 17a—15, to the extent relevant, would remain in effect. See Securities Exchange Act Release No. 11317 (Mar. 28, 1975), 40 FR 15461. See also Securities Exchange Act Release Nos. 11385 (Apr. 30, 1975) and 14651 (Apr. 11, 1978), 40 FR 19888 and 43 FR 16582.

[69] The term "transaction reporting association" is defined in par. (a)(5) of the proposal as any person authorized to implement or administer any transaction reporting plan on behalf of persons acting jointly in filing, amending, implementing or administering a transaction reporting plan. See proposed rule 11A-3-1(a)(3) which would specifically permit such joint action.

reports, and (3) rules or procedures designed to assure that transaction reports will not be disseminated in a fraudulent or manipulative nammer.[70] In addition, the current rule and the proposal both require a statement regarding the terms of access to information made available pursuant to plan although the proposal would require a more specific statement which should conform to the general standards set forth in section 11A(b) of the Act.[71] The proposal would also require that a transaction reporting plan specify broker-dealer reporting requirements and the manner in which transaction reports will be consolidated to assure that the single data stream contemplated by the rule is achieved.[72]

Proposed rule 11Aa3-1 differs from rule 17a-15 in two principal respects. First, unlike rule 17a-15, proposed rule 11Aa3-1 explicitly sets forth the manner in which any effective transaction reporting plan may be amended. The proposal requires that any proposed amendment to a plan be filed with the Commission, noticed for public comment and approved by the Commission prior to effectiveness.[73] However, if the Commission finds that the proposed amendment is of a technical or ministerial nature, or if such action is necessary or appropriate in the public interest, for the the protection of investors or the maintenance of fair and orderly markets, to facilitate the establishment of a national market system or otherwise in furtherance of the purposes of the Act, the proposal would permit the Commission to declare an amendment effective on a temporary basis not to exceed 120 days, upon publication of notice of such amendment.[74]

The proposal would also differ from rule 17a-15 in specfically adressing retransmission. The rule would provide that, on and after March 1, 1979, no exchange or association may prohibit, condition, or otherwise limit retransmission of the entire data stream of transaction reports on a current and continuous basis for the purpose of creating a moving ticker display.[75] The rule would, however, permit an exchange or association to condition retransmission by provisions included in an effective transaction reporting plan[76] to assure that: (i) Charges imposed upn vendors and their subscribers which are otherwise permitted by the rule[77] are collected, (ii) transaction reports available on a moving ticker via retransmission are displayed at substantially the same rate as transaction reports available through the ticker network,[78] and (iii) any vendor which retransmits transaction reports maintain procedures and facilities to insure the accurate and reliable display of such reports.

In addition, the proposal would amend rule 17a-15 in certain technical respects, including the following:

(1) The proposal would prohibit any broker or dealer from effecting transactions in (or inducing or attempting to induce the purchase or sale of) any reported security without disseminating transaction reports with respect to such transaction.[79] Rule 17a-15 does not explicitly contain any similar prohibition but does require the filing of plans achieving this same result prior to February 26, 1973. Proposed rule 11Aa3-1 is designed to maintain the requirement that all exchanges, associations and nonmember brokers and dealers file plans; therefore, it contains this prohibition which, in effect, would require the filing of a transaction reporting plan as a condition precedent to trading in a reported security.[80]

(2) Paragraph (l) of rule 17a-15, which sets forth procedures governing appeals to the Commission by persons who are denied or limited access to last sale reports, has been amended to apply only in those instances in which section 11A(b) of the Act would not govern appeal procedures.[81]

(3) The provisions of rule 17a-15 which indirectly prescribe the manner in which market information vendors display transaction reports have been incorporated into proposed rule 11Ac1-2 which is being proposed simultaneously with this proposal.[82]

Finally, the Commission notes that the provisions of rule 17a-15(f), which explicitly permit self-regulatory organizations to charge geographically uniform fees[83] for the receipt of transaction reports, have been retained in rule 11Aa3-1. However, we wish to emphasize that the retention of these provisions is only meant to reflect the Commission's current neutrality on this issue.[84]

III. Text of Proposed Amendment

The Securities and Exchange Commission hereby proposes to amend rule 17a-15 under the Act (17 CFR 240.17a-15) and to redesignate it as rule 11Aa3-1 under the Act (17 CFR 240.11Aa3-1) pursuant to its authority under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)) and particularly sections 2, 3, 6, 9, 10, 11A, 15, 15A, 17, and 23 thereof (15 U.S.C. 78b. 78c, 78f, 78i, 78j, 78k-1, 78o, 78o-3, 78g, and 78w).

§ 240.11Aa3-1 Dissemination of transaction reports with respect to transactions in reported securities.

(a) *Definitions.* For purposes of this section:

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[70] Proposed rule 11Aa3-1(b)(4) (ii), (iv), and (v); rule 17a-15(b)(a) (2) and (3).

[71] Proposed rule 11Aa3-1(b)(4)(vi); rule 17a-15(b)(4).

[72] Proposed rule 11Aa3-1(b)(4) (i) and (iii).

[73] Proposed rule 11Aa3-1 (b)(5), and (c)(1), and (2).

[74] Proposed Rule 11Aa3-1(c)(3). Cf. sec. 19(b)(3) of the Act.

[75] Proposed rule 11Aa3-1(e). While the proposal would not require that the participants of the CTA amend the joint industry plan, it would render the retransmission provisions of the plan inoperative.

[76] An "effective transaction reporting plan" is defined in par. (a)(3) of the rule as any transaction reporting plan approved by the Commission pursuant to the rule.

[77] See proposed rule 11Aa3-1(f).

[78] Although such a condition would permit substantial synchronization of moving tickers displaying the entire data stream of transaction reports, "selective" tickers displaying retransmitted transaction reports at 900 characters per minute might display those reports prior to the time they are displayed on moving tickers supplied data via the ticker network.

[79] Proposed rule 11Aa3-1(d)(2).

[80] The proposal also retains those provisions of rule 17a-15 which prohibit an exchange, association, or member thereof from making available transaction reports with respect to transactions in reported securities except pursuant to an effective transaction reporting plan and which require every broker or dealer who is an exchange or association member to promptly transmit to such exchange or association all information required by an effective transaction reporting plan. See proposed rule 11Aa3-1(d) (2), (3), and (4), and rule 17a-15 (a) and (d).

[81] Proposed rule 11Aa3-1(g).

[82] See rule 17a-15(b) and proposed rule 11Ac1-2 release, supra note 1. Proposed rule 11Aa3-1 would, however, still require that any transaction reporting plan filed pursuant to the rule provide that transaction reports made available to any vendor for purposes of display on interrogation devices be accompanied by a market identifier.

[83] This provision of rule 17a-15 requires continuation of the practice of geographically uniform pricing with respect to supplying last sale data through moving ticker displays which was established 1968. See discussion infra. To the extent that commentators believe that, either in connection with the Commission's proposed amendments to rule 17a-15 permitting retransmission, or otherwise, uniform geographic pricing imposes burdens on competition which are not necessary or appropriate in furtherance of the purposes of the Act, such commentators should provide the commission with the basis for that belief including an indication of those cost factors (other than the cost of obtaining current last sale data) which would justify the alteration of such a rate structure. Persons favoring elimination of geographically uniform pricing for either self-regulatory organizations or vendors should also provide estimates of the costs of providing subscribers with last sale information in various parts of the country.

[84] Although a similar provision contained in the initial proposed version of rule 11Ac1-1 under the Act was eliminated from the rule, as adopted, that action also reflected the Commission's neutrality. See Securities Exchange Act Release Nos. 13626 (June 14, 1977), and 14415 (Jan. 26, 1978), 42 FR 32418 and 43 FR 4342.

(1) The term "transaction report" shall mean a report containing the price and volume associated with a completed transaction involving the purchase or sale of a security ("transaction").

(2) The term "transaction reporting plan" shall mean any plan for collecting, processing, and making available transaction reports with respect to transactions in reported securities filed with the Commission pursuant to, and meeting the requirements of, this section.

(3) The term "effective transaction reporting plan" shall mean any transaction reporting plan approved by the Commission pursuant to this section.

(4) The term "reported security" shall mean (i) any security or class of securities designated as "qualified securities" by the Commission pursuant to section 11A(a)(2) of the Act and for which transaction reports are required to be collected, processed, and made available pursuant to this section; and (ii) any other security or class of securities for which transaction reports are required to be collected, processed, and made available pursuant to any effective transaction reporting plan.

(5) The term "transaction reporting association" shall mean any person authorized to implement or administer any transaction reporting plan on behalf of persons acting jointly under paragraph (b) of this section.

(6) The term "plan processor" shall mean any national securities exchange ("exchange"), national securities association ("association") or securities information processor acting as an exclusive processor with respect to any transaction reporting plan.

(7) The term "interrogation device" shall mean any securities information retrieval system capable of making available transaction reports or last sale data, upon inquiry, on a current basis on a terminal or other display device, or by any other means.

(8) The term "moving ticker" shall mean any continuous real-time moving display of transaction reports whether made available on a discrete display unit or included on an interrogation device.

(9) The term "vendor" shall mean any securities information processor engaged in the business of disseminating transaction reports with respect to transactions in reported securities to brokers or dealers on a real-time or other current and continuing basis, whether through an electronic communications network, moving ticker or interrogation device.

(10) The term "last sale data" shall mean any price or volume data contained in a transaction report.

(b) *Filing of transaction reporting plans.* (1) Every exchange shall, with respect to transactions in reported securities effected through its facilities, and every association shall, with respect to transactions in reported securities effected by its members otherwise than on an exchange, file with the Commission a transaction reporting plan.

(2) Every broker or dealer who is not a member of an exchange or association and who effects transactions in any reported security (a "nonmember broker or dealer") shall file with the Commission a transaction reporting plan with respect to such transactions unless transaction reports with respect to such transactions are collected, processed, and made available by an exchange or association pursuant to an effective transaction reporting plan.

(3) All exchanges, associations, and nonmember brokers and dealers are authorized to act jointly in filing a transaction reporting plan or any amendment thereto, or implementing or administering an effective transaction reporting plan.

(4) Every transaction reporting plan filed pursuant to this section shall include copies of all governing or constituent documents relating to any transaction reporting association or other entity which may be established to implement or administer the plan and shall specify, at a minimum:

(i) Reporting requirements with respect to transactions in reported securities for any broker or dealer subject to the plan;

(ii) The manner of collecting, processing, sequencing, and disseminating transaction reports;

(iii) The manner of consolidating such transaction reports with transaction reports from other exchanges, associations, and nonmember brokers and dealers;

(iv) The applicable standards and methods which will be utilized to insure promptness of reporting, and accuracy and completeness of transaction reports;

(v) Any rules or procedures which may be adopted to insure that transaction reports or last sale data will not be disseminated in a fraudulent or manipulative manner; and

(vi) Specific terms of access to transaction reports disseminated pursuant to the plan.

Each such plan shall also provide that transaction reports made available to any vendor for display on an interrogation device identify the marketplace where each transaction was executed.

(5) Any person or persons who have filed a transaction reporting plan which has been approved by the Commission pursuant to this section may propose an amendment to such plan by filing the form of such proposed amendment with the Commission, together with a statement of the purpose of, and the basis under the Act for, such amendment.

(c) *Effectiveness of transaction reporting plans.* (1) The Commission shall publish notice of the filing of any transaction reporting plan, or any proposed amendment to any effective transaction reporting plan ("proposed amendment"), together with the terms of substance in the filing or a description of the subjects and issues involved, and shall provide interested persons an opportunity to submit written comments.

(2) No transaction reporting plan filed pursuant to this section, or amendment to an effective transaction reporting plan, shall become effective unless the Commission, having due regard for the public interest, the protection of investors, the maintenace of fair and orderly markets, and the need to remove impediments to, and perfect the mechanisms of, a national market system shall, after appropriate notice and opportunity for comment, by order approve such plan or amendment, with such changes or subject to such conditions as the Commission may deem necessary or appropriate.

(3) Notwithstanding the provisions of paragraph (c)(2) of this section, a proposed amendment may be put into effect upon publication of notice of such amendment, on a temporary basis not to exceed 120 days, if the Commission finds that (i) such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to facilitate the establishment of a national market system or otherwise in furtherance of the purposes of the Act, or (ii) the proposed amendment involves only technical or ministerial matters.

(d) *Prohibitions and reporting requirements.* (1) No broker or dealer may effect any transaction in, or induce or attempt to induce the purchase or sale of, any reported security;

(i) On or through the facilities of an exchange unless transaction reports with respect to transactions in such reported security effected on or through such exchange facilities are required to be reported pursuant to and effective transaction reporting plan; or

(ii) Otherwise than on an exchange unless transaction reports with respect to transactions in such reported security effected otherwise than on an exchange by such broker or dealer are required to be reported pursuant to an effective transaction reporting plan.

(2) No exchange or member thereof shall make available, on a current and continuing basis, transactions reports with respect to transactions in any reported security effected through the facilities of such exchange except pursuant to an effective transaction reporting plan filed by such exchange

(either individually or jointly with other persons).

(3) No association or member thereof shall make available, on a current and continuing basis, transaction reports with respect to transactions in any reported security effected by a member of such association otherwise than on an exchange except pursuant to an effective transaction reporting plan filed by such association (either individually or jointly with other persons).

(4) Every broker or dealer who is a member of an exchange or association shall promptly transmit to the exchange or association of which it is a member all information required by any effective transaction reporting plan filed by such exchange or association (either individually or jointly with other exchanges and/or associations).

(e) *Retransmission of transaction reports.* On and after March 1, 1979, notwithstanding any provision of any effective transaction reporting plan, no exchange or association may, either individually or jointly, by rule, stated policy or practice, transaction reporting plan or otherwise, prohibit, condition or otherwise limit, directly or indirectly, the ability of any securities information processor to retransmit, for display in moving tickers, transaction reports made available pursuant to any effective transaction reporting plan: *Providing, however,* That an exchange or association may, by means of an effective transaction reporting plan, condition such retransmission upon appropriate undertakings by securities information processors to assure that (1) any charges for the distribution of transaction reports in moving tickers permitted by paragraph (f)(1) of this section are collected, (2) transaction reports which are retransmitted for display in moving tickers are displayed at substantially the same rate as reports distributed for display in moving tickers directly by a plan processor, and (3) any securities information processor which retransmits transaction reports for display in moving tickers maintains procedures and facilities sufficient to insure that such display is accurate and reliable.

(f) *Availability and charges.* Nothing in this section shall preclude any exchanges or association, separately or jointly, pursuant to the terms of an effective transaction reporting plan: (1) From imposing reasonable, uniform charges (irrespective of geographic location) for distribution of transaction reports; nor (2) from requiring any vendor which distributes or displays transaction reports to make the transaction reports it distributes or displays available to all qualified subscribers throughout the continental United States and to impose uniform charges on its subscribers (irrespective of geographic location).

(g) *Appeals.* The Commission may entertain appeals in connection with the operation of any effective transaction reporting plan as follows:

(1) Any action taken or failure to act by any person in connection with an effective transaction reporting plan (other than a prohibition or limitation of access reviewable by the Commission pursuant to section 11A(b)(5) or section 19(d) of the Act) shall be subject to review by the Commission, on its own motion or upon application by any person aggrieved thereby (including but not limited to exchanges, associations, brokers, dealers, issuers, vendors, and other users of transaction reports), filed within 30 days after such action or failure to act or within such longer period as the Commission may determine.

(2) Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of any such action unless the Commission determines otherwise, after notice and opportunity for hearing on the question of a stay (which hearing may consist only of affidavits or oral arguments).

(3) In any proceedings for review, if the Commission, after appropriate notice and opportunity for hearing, and upon consideration of any proceedings conducted in connection with such action or failure to act and such other evidence as it deems relevant, determines that the action or failure to act is in accord with the applicable provisions of such plan and is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system, the Commission shall dismiss the proceeding. Otherwise, the Commission shall require such action with respect to the matter reviewed as the Commission deems appropriate in accordance with the public interest and the protection of investors and consistent with such plan, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

(h) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any exchange, association, broker, dealer or specified reported security if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to, and perfection of the mechanisms of, a national market system.

IV. Effects on Competition and Request for Public Comment

Section 23(a)(2) of the Act requires the Commission, in adopting rules under the Act, to consider the anticompetitive effects of such regulation and to balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has discussed in some detail the competitive impact of the retransmission prohibition and the Commission's proposal to end the prohibition and has, as a preliminary matter, determined that the perceived anticompetitive effects of the proposal is outweighed by the regulatory purposes to be achieved by the proposals. The Commission's mandate under section 11A(a) of the Act to facilitate the establishment of a national market system and its authority granted under section 11A(c) to assure prompt, accurate, reliable and fair collection, processing distribution and publication of last sale information in a fair and useful format would appear to be significantly furthered by the adoption of these proposals. However, in addressing the regulatory proposals discussed in this release, commentators should specifically address the competitive impact of this regulation so that the Commission may further evaluate its proposals in the light of section 23(a)(2).

Interested persons are invited to submit written presentations of views, data and arguments concerning the proposed rule 11Aa3-1 under the Act and the issues discussed above. Persons wishing to make such submissions should file ten copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549, not later than December 15, 1978. All submissions should refer to file No. 758, and will be available for public inspection at the Commission's Public Reference Room, Room 6106, 1100 L Street NW., Washington, D.C.

By the Commission.

George A. Fitzsimmons,
Secretary.

October 20, 1978.

[FR Doc. 78-30506 Filed 10-27-78; 8:45 am]

[8010-01-M]

[17 CFR Part 240]

[Release No. 34-15251; File No. S7-759]

DISSEMINATION AND DISPLAY OF TRANSACTION REPORTS AND QUOTATION INFORMATION

Proposed Rulemaking

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission proposes to adopt a rule which is designed to improve the manner in which transaction reports and quotation information are displayed by vendors of securities information. In connection with this proposal, the Commission has withdrawn a portion of a prior interpretive release which has permitted display of transaction reports in a manner which would be inconsistent with the proposed rule.

DATES: Comments should be submitted on or before December 15, 1978.

ADDRESSES: Persons wishing to submit written views, data and arguments should file ten copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to file No. S7-759 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Andre Weiss, Division of Market Regulation, Securities and Exchange Commission, Room 303, 500 North Capitol Street, Washington, D.C. 20549, 202-755-8970.

SUPPLEMENTARY INFORMATION: The Securities Exchange Commission announced today that it has proposed rule 11Ac1-2 (17 CFR 240.11Ac1-2) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1978)) (the "Act") which is designed to improve the manner in which price and volume data with respect to completed securities transactions ("transaction reports") and bids, offers and quotation sizes ("quotation information") are displayed by vendors of securities information.

Proposed rule 11Ac1-2 would contain those provisions currently governing the display of last sale reports which are contained in rule 17a-15 (17 CFR 240.17a-15) the Commission's rule governing the collection, processing and dissemination of last sale reports in listed securities.[1] In addition, the proposed rule would impose further requirements specifying the manner in which transaction reports, data contained in transaction reports ("last sale data") and quotation information are displayed by vendors of market information. In particular, the rule would require that (i) transaction reports or last sale data made available on a consolidated basis on continuous moving ticker displays ("moving tickers") or by means of securities information retrieval systems ("interrogation devices") be reported without identification as to the market place of execution; (ii) consolidated displays of transaction reports, last sale data and quotation information available on interrogration devices be retrievable in response to an inquiry which is simpler or more prominent[2] than the inquiry used to retrieve individual market last sale or quotation information;[3] (iii) all individual market displays of transaction reports, last sale data and quotation information available on interrogation devices be retrievable in response to equally complex inquiries; (iv) consolidated displays of last sale data available on interrogation devices contain all categories of market information retrievable with respect to any display of last sale data from any individual market; (v) monitoring services available on interrogation devices which dynamically update last sale data with respect to selected securities on an individual market basis also be available on a consolidated basis; (vi) vendors displaying quotation information on interrogation devices with respect to any equity security make available a consolidated best bid and offer derived from quotations from all reporting market centers; and (vii) no vendor may provide any representative bid or offer with respect to any equity security.

I. Background

The Securities Acts Amendments of 1975 ("1975 Amendments") granted the Commission broad authority to regulate the manner in which vendors of market information display transaction reports and quotation information. In particular, the 1975 Amendments added section 11A(c)(1) of the Act, which provides:

> No self-regulatory organization, member thereof, securities information processor, broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to collect, process, distribute, publish, or prepare for distribution or publication any information with respect to quotations for or transactions in any security other than an exempted security, to assist, participate in, or coordinate the distribution or publication of such information, or to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any such security in contravention of such rules or regulations as the Commission shall prescribe as necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of this title to * * *
>
> (B) assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information.

Until this time, the Commission has given vendors broad latitude regarding the manner in which they display market information, including transaction and quotation information. The results achieved in this unregulated environment have been mixed; although some progress has been made to assure that market information is made available to brokers, dealers, and investors in a nondiscriminatory manner, the Commission is also aware that some practices have continued or arisen which tend to impede the availability of important market information.[4] Furthermore, the Commission's experience in attempting to rectify certain of these perceived difficulties through informal means has indicated an unwillingness on the part of certain vendors to alter voluntarily the manner in which they currently display market information unless the Commission were to establish mandatory, industrywide minimum display criteria. For these reasons, the Commission is at this time proposing rule 11Ac1-2 under the Act. This rule would set forth comprehensive requirements governing the manner in which vendors display transaction reports in securities with respect to which transaction reports are disseminated pursuant to proposed rule 11Aa3-1 (current rule 17a-15) ("reported securities") and quotation information with respect to certain equity securities.

II. Availability of Consolidated Market Information

In its January 1978 statement concerning those steps which should be taken during 1978 to facilitate the establishment of a national market system, the Commission indicated that it was particularly concerned about

[1] Simultaneously with this proposal, the Commission is proposing amendments to rule 17a-15 which, among other things, would redesignate the rule as rule 11Aa3-1 and would delete these display requirements from that rule. See Securities Exchange Act release No. 15250 (Oct. 20, 1978) ("Proposed Rule 11Aa3-1 Release").

[2] See discussion infra.

[3] In connection with this proposal, the Commission has withdrawn a portion of a prior interpretive release (Securities Exchange Act Release No. 11317 (Mar. 28, 1975) (the "Interpretive Release"), 40 FR 15461, which had permitted the display of transaction reports in a manner which would be prohibited by this provision and which the Commission now believes is inconsistent with the development of a national market system.

[4] See discussion infra.

the manner in which vendors of market information provide for the recall of consolidated last sale data with respect to reported securities on interrogation devices.[5] Vendors currently provide primary market transaction information in response to an inquiry consisting of the letter or combination of letters (the "consolidated system symbol") used to identify the particular security involved in the consolidated transaction reporting system ("consolidated system") followed by a single information request key. However, in most cases, additional letters or symbols must be used to recall consolidated transaction information from any market center other than the primary market.[6]

To date, this practice has been permitted by the Commission pursuant to an interpretation of rule 17a-15, issued in March 1975,[7] in which the Commission stated that:

vendors may use the consolidated tape ticker symbol (the old NYSE symbol in the case of a NYSE listed security) to interrogate for last sale information from the NYSE and some other symbol to interrogate for consolidated data. However, any symbol which differs from the consolidated tape symbol which is used to interrogate for consolidated data must be simple and easy for brokers and dealers to use.[8]

The Commission indicated in the market structure statement that it had reconsidered that interpretation in light of its experience with the consolidated system and no longer believed that vendors should be permitted to provide consolidated last sale data in response to any inquiry which was more complex that the inquiry required to recall the last sale data from the primary market. The Commission stated that this practice;

discourages use of consolidated information, has anticompetitive consequences for markets as to which last sale data may be recalled only by relatively more difficult and time consuming interrogation routines, and impedes progress toward a national market system. Consequently, the Commission believes vendors would modify their systems promptly to confide use of consolidated system symbols in their interrogation and display devices to the recall of consolidated last sale data.[9]

The Commission concluded by noting its intention to rescind its prior interpretation at this time.

In response to this discussion in the market structure statement, two vendors of market information informally contacted the staff of the Commission indicating their willingness to voluntarily change the manner in which consolidated market information is recalled on their interrogation devices. However, both vendors expressed concern that voluntary compliance by less than all vendors would place those complying at a competitive disadvantage.[10] A third vendor has refused to advise the Commission's staff whether it will change the manner in which consolidated market information is recalled on its interrogation devices. This vendor has indicated that such a change would entail considerable programing and systems changes at a significant expense to it; however, it has not furnished any cost estimates or other data substantiating its assertion or which would permit the Commission to evaluate this claim.

Discussions with these vendors have led the Commission to conclude that an unregulated environment may not provide a sufficient impetus for vendors to change voluntarily the manner in which they display market information. To the contrary, it appears that customer pressure may actually influence vendors to retain and create displays which highlight (both in terms of format and ease of access) primary market transaction and quotation data. Therefore, the Commission is at this time proposing display requirements in rule 11Ac1-2 which are designed to assure that vendors provide consolidated market data in an easily accessible and useful format. The rule would address three distinct aspects of the manner in which consolidated market data is displayed: (i) Ease of access to transaction and quotation information; (ii) comparability of individual market and consolidated transaction data; and (iii) comparability of individual market and consolidated monitoring services.

In response to the Commission's concerns raised in the market structure statement regarding ease of access to consolidated market data, the rule would require that, on and after March 1, 1979, vendors who provide on an interrogation device transaction reports or quotation information with respect to a particular reported security from an individual market center also provide on that device consolidated transaction reports and quotation information by the simplest and most prominent form of interrogation request.[11] The proposal does not explicitly require vendors to program these interrogation devices to access consolidated transaction reports and quotation information with consolidated system symbols for reported securities because we understand that in most cases vendors currently use these symbols. Furthermore, we understand that use of the consolidated system symbol for the remaining small number of securities (primarily preferred stocks) would require significant programing changes. The Commission expects that vendors will continue to use the consolidated system symbol to recall last sale and quotation information with respect to reported securities wherever possible and is interested in receiving comments as to whether a Commission requirement to that effect is necessary.

In addition, the rule would require that all individual market displays of transaction reports or quotation information be available in response to equally complex inquiries. The Commission believes that the alternative possibilities, in which primary market information will be available in response to a significantly easier request than market information from regional exchanges and the third market, is discriminatory and anticompetitive. The Commission is aware, however, that one vendor has asserted that equalization of the inquiry routines for all individual market displays will entail significant expense. Therefore, the Commission is specifically requesting comment on the feasibility of this portion of its proposal. In particular, if any vendor believes that equalization of the inquiry routines for all individual market displays will impose significant costs which are not justified by the Commission's regulatory concerns, such securities information processor should provide sufficient information (including detailed cost estimates) [12] to

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[5] Securities Exchange Act release No. 14416 (Jan. 26, 1978) ("Market Structure Statement") at 41-44, 43 FR 4360.

[6] One type of interrogation device currently in use provides consolidated and primary market transaction information by the same number of key strokes; however, it has been asserted that the location and label of the particular keys used to recall primary market last sale data are significantly more prominent than the keys used to recall consolidated data. See note 11 infra.

[7] Interpretive release, supra note 3, at 5, 40 FR at 15461.

[8] Id. at 5, 40 FR at 15462.

[9] Market structure statement, supra note 5, at 43, 43 FR at 4360.

[10] This argument is apparently based on an assumption that subscribers of market information vendors would prefer to obtain primary market last sale data by the easiest inquiry. Such an assumption reinforces the Commission's belief that this practice should be termninated.

[11] The rule would require that consolidated market data for a particular security be retrievable by a request involving no greater number of key strokes than is required to access individual market center data with respect to that security; however, because the Commission is also concerned that, if consolidated and primary market transaction and quotation information are available in response to equally complex retrieval instruction, the location and prominence of the particular keys used to recall primary market information may discourage recall of consolidated data, the rule would require that in such an event the key to access consolidated data be more prominent. See discussion infra and note 6 supra.

[12] See rule 24-2 under the Act (17 CFR 240.24b-2) which sets forth procedures for requesting confidential treatment of any statement, correspondence, notice or other document filed with the Commission pursuant to the Act. See also rule 80 of the Com-

Footnotes continued on next page

the Commission so that the basis for its claims may be evaluated.

The Commission also remains concerned that, to some extent, brokers do not request consolidated displays on their interrogation devices because there is significantly less information contained on consolidated displays than is contained on individual market displays. For example, the display of primary market information provided on a vendor's interrogation device might include last sale, open, high, low, previous close, bid, offer, volume and net change, whereas the consolidated last sale display available on that interrogation device might only include consolidated last sale, open, high, low, volume and net change thus excluding previous close, bid and offer. In our view, the omission from a consolidated last sale display of market data which is provided on an individual market display may cause the consolidated display to be less useful and informative to investors and market professionals. Therefore, in order to help assure the use of consolidated market data, in conjunction with the rule's requirements concerning the ease of access to such data, rule 11 Ac1-2 would require that the consolidated last sale display available on an interrogation device contain the same market data as is available on any individual market last sale display. Because such a requirement may entail significant systems changes by certain vendors, the Commission is especially interested in receiving commentary on the cost of compliance with such a requirement and the extent to which vendors believe that certain of their existing systems should receive exemptive relief from such a provision, if adopted.

Finally, rule 11Ac1-2 contains provisions designed to assure that consolidated last sale data is used in connection with market monitor services provided by vendors. In 1975, the Commission issued an interpretation of rule 17a-15 which currently permits vendors to provide monitoring services (i.e., dynamically up-dated interrogation device displays of transactions reports in preselected securities) on an individual market basis.[13] However, the Commission at that time also indicated that it would not interpret rule 17a-15 to permit vendors to provide selective moving tickers (i.e., a moving ticker display of transactions in selected securities) on an individual market basis.[14] Commentators, especially certain regional exchanges and third market makers, have maintained that monitoring services available on interrogation devices are similar to selective moving ticker displays, and therefore, these commentators argue, the Commission should only permit interrogation device monitoring services to be offered on a consolidated basis. Although the Commission is unable to conclude, at this time, that interrogation device monitoring services must be provided exclusively on a consolidated basis, we recognize the argument that these services should be provided in a manner which is consistent with requirements for display of other types of transaction data. Therefore, the Commission proposes to require that any vendor who provides a monitoring service with respect to a reported security on an individual market basis also provide such monitoring service for such security on a consolidated basis.

The Commission is not, however, at this time proposing identical display requirements for monitoring services and selective tickers.[15] It has tentatively reached this conclusion because there arguabley are differences in the display capabilities (and therefore use by the brokerage industry) of selective tickers and monitoring services which would warrant disparate treatment by the Commission. It would appear that the selective moving ticker is primarily used by brokers to obtain a feel for the market (generally or with respect to a large sampling of securities) and is not used to specifically monitor (or continuously display) transaction reports with respect to a limited number of securities so as to directly affect trading decisions in those securities. Therefore, it may be argued that the differences in design and use of these display devices warrant a limited disparity in the display requirements imposed upon vendors marketing these devices. The Commission is specifically requesting comment on these views and would be especially interested in receiving arguments concerning the advisability of imposing identical display requirements on monitoring services and selective tickers.

III. Market Identification

The issue of whether transactions reported in the consolidated system should be accompanied by an indication of the market of execution ("market identifier") has been the subject of extensive debate. While the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex") have consistently supported the concept of market identification, the regional exchanges and certain third market makers have opposed inclusion of identifiers as an anticompetitive device designed to preserve the concept of a primary market.

In response to the initial publication of proposed rule 17a-15, a number of regional exchanges submitted comments which opposed any market identification in the consolidated system, including on interrogation device displays. The Pacific Stock Exchange ("PSE") termed market designation a form of advertising that serves to perpetuate the historical competitive advantages of the NYSE and the Amex without conveying any useful information to the public. The Detroit Stock Exchange (which has since ceased operations) and the National Association of Securities Dealers ("NASD") argued that designation of markets would only serve to continue the concept of a primary market as opposed to other market centers. The Midwest Stock Exchange ("MSE") recommended that the Commission go beyond a ban on market designation and adopt measures to replace the separate NYSE ticker and stock tables with a "true composite tape and tables." Only the NYSE, the Amex and one vendor, Ultronics (now GTE information Services), supported the market identifier concept.[16]

Prior to republication of the proposed rule, the Commission's Advisory Committee on Market Disclosure[17] issued its "Report on a Composite Transaction Reporting System."[18] In that report, the Committee recommended that both moving ticker displays and interrogation devices include a market identifier. In this regard, the Advisory Committee report stated as follows:

> In determining that identification of market place is desirable we are persuaded that until regulation in all marketplaces is appropriately equal for the protection of the public interest the public is entitled to know where the activity in a particular stock is occurring and under what regulatory conditions a transaction is taking place.[19]

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mission's rules of organization; conduct and ethics; and information and requests (17 CFR 200.80) which states that the Commission will generally not publish, make available to any person, or disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

[13] Interpretive Release, supra note 3, at 3, 40 FR at 15462.

[14] See id. at 6, 40 FR at 1546.

[15] The Commission could achieve identical display requirements either by permitting selective tickers to display transaction reports on an individual market basis or by requiring monitoring services to display transaction reports exclusively on a consolidated basis.

[16] See file No. S7-433.

[17] This committee was one of three advisory committees established by the Commission following issuance of the Commission's Statement on the Future Structure of the Securities Markets, 37 FR 5286 (1972).

[18] Report to the Securities and Exchange Commission by the Advisory Committee on Market Disclosure on a Composite Transaction Reporting System, July 17, 1972 (the "Advisory Committee Report").

[19] Id. at 6. One member of the Committee dissented from this view on the grounds that to disclose the marketplace would discriminate against third market dealers and

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As a result of the Advisory Committee Report, proposed rule 17a-15 was republished for comment in August 1972 containing an explicit requirement that transactions reported pursuant to the rule's provisions be identified as to market of execution.[20] Comments received from the NASD and the regional exchanges in response to the republished rule reiterated their opposition to market identifiers.

Rule 17a-15, as finally adopted, contained a provision requiring market identification on both moving tickers and interrogation devices. Paragraph (b) of the rule provides that

> [each] composite tape or interrogation system, in displaying last sale reports, shall identify the marketplace where each transaction was executed.[21]

In conformity with this requirement, the joint industry plan filed with and declared effective by the Commission pursuant to Rule 17a-15 (the "Plan" or "Joint Industry Plan") also contains provisions requiring market identification.[22] The Plan currently provides that moving ticker displays, whether provided in conjunction with interrogation devices or on discrete wall-mounted units, are required to identify transaction reports emanating from markets other than the NYSE and Amex by an ampersand followed by a single alphabetic character identifying the market of execution.[23] However, the Plan contemplates that transactions occurring on the NYSE or the Amex are to be "identified" by the absence of any identifier.[24] The Plan also requires interrogation devices marketed by each of the vendors to identify transaction reports from all market centers, including the primary exchanges. Vendors currently achieve this identification by use of a single numeric or alphabetic symbol denoting the market of execution.

Subsequent to the implementation of the consolidated system in June 1975, the regional exchanges and Weeden & Co., Inc. ("Weeden") continued to urge deletion of market identifiers.[25] However, no action was taken to address these concerns until, on March 5, 1978, the NYSE, Amex, PSE, Boston Stock Exchange ("BSE") and Philadelphia Stock Exchange ("Phlx") jointly filed with the Commission a "Plan Submitted to the Securities and Exchange Commission for the Purpose of Creating and Operating an Intermarket Communications linkage pursuant to section 11A(a)(3)(B) of the Securities Exchange Act of 1934" ("ITS Plan").[26] The ITS Plan contemplates implementation of an Intermarket Trading System ("ITS") linking the participating exchanges and providing facilities and procedures for (i) rapid and efficient routing of orders and administrative messages between and among the participants, and (ii) participation, under certain conditions, by all participating exchanges in opening transactions in the primary market.[27] In connection with implementation of the ITS Plan, the participants requested that the Commission either amend Rule 17a-15 under the Act or issue an exemptive order pursuant to paragraph (h) of that Rule to permit the deletion of market identifiers from moving ticker displays for all transactions effected in any market center participating in the ITS (including transactions not effected through, and securities not traded in, the system). The participants also requested relief from Rule 17a-15 to permit vendors discretion to delete market identifiers from all consolidated last sale displays on interrogation devices.

In response to this request, on April 14, 1978, the Commission issued conditional exemptions to the Consolidated Tape Association ("CTA"), which administers the Joint Plan and the consolidated system, and the Securities Industry Automation Corp. ("SIAC"), the processor of the consolidated system, from the market identification requirements of Rule 17a-15 insofar as such requirements apply to moving ticker displays.[28] However, the Commission also noted that, in its view, removal of market identifiers for only those market centers participating in ITS would be discriminatory and anticompetitive as to those market centers whose transactions would continue to be reported with identifiers. Accordingly, the Commission granted a temporary[29] exemption ("temporary exemption") from Rule 17a-15 conditioned upon the removal, as soon as technically feasible, of market identifiers on moving ticker displays for all transactions as to which last sale information is reported in the consolidated system, regardless of the market of execution.[30] The Commission also at that time requested comment with respect to this exemption.

In response to this action, identifiers were removed from moving ticker displays with respect to ITS participants on April 17, 1978, and with respect to all market centers on April 24, 1978. In addition, on April 25, 1978, the participants to the Joint Industry Plan submitted an amendment to the Plan requiring the deletion of market identifiers on moving ticker displays in accordance with the Exemptive Order. Simultaneously with the issuance of this release, the Commission is also providing public notice of this proposed amendment to the Plan and in that notice specifically requesting public comment on this change in the

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regional exchanges by exposing their positions and, by maintaining the "primacy" of the NYSE as the Nation's leading marketplace, might also discourage certain investors from trading in the third market and on regional exchanges for fear that they would be criticized simply for not going to the NYSE, even if the price they obtained were competitive. The dissenter also felt that if marketplace were to be disclosed, all dealer trades should be identified, including the names of the individual market makers and block positioners. Id.

[20] See Securities Exchange Act release No. 9731 (Aug. 14, 1972), 37 FR 19148.

[21] Rule 17a-15(b).

[22] Joint Industry Plan, Sections V (e) and VIII (f). However, the participants to the Plan have filed amendments to the Plan altering these requirements and, in fact, market identifiers have been removed from moving ticker displays. *See* discussion *infra*.

[23] The market identifiers previously in use were Boston Stock Exchange: B; Cincinnati Stock Exchange:C; Midwest Stock Exchange:M; National Association of Securities Dealers:T; Pacific Stock Exchange:P; Philadelphia Stock Exchange:X; and Institutional Networks Corp.:O.

[24] The disparity in identification treatment between the NYSE and Amex and regional markets has been rationalized as a means of avoiding additional tape delays.

[25] *See* letter from Edward W. Wedbush, Chairman of the Board, PSE, to the Honorable Robert Eckhardt, Chairman, Subcommittee on Consumer Protection and Finance, and the Honorable John E. Moss, Chairman, Subcommittee on Oversight, July 6, 1977; letter from Kenneth I. Rosenblum, Senior Vice President and Counsel, MSE to Douglas Scarff, Assistant Director, Division of Market Regulation, Dec. 8, 1977; letter from Donald E. Weeden, Weeden & Co. Inc., to Harold Williams, Chairman, Jan. 13, 1978, in File No. S7-433.

[26] *See* Securities Exchange Act Release Nos. 14661 (Apr. 14, 1978) and 15058 (Aug. 11, 1978) 43 FR 17419 and 43 FR 36732.

[27] The ITS also contemplates the display of composite quotation information on the floors or each of the participating exchanges so that brokers on participating exchanges will be able to determine readily the best bid and offer for a particular multiply-traded security available from any participant.

[28] *See* Securities Exchange Act Release No. 14662 (Apr. 14, 1978) (the "Exemptive Order"), 43 FR 17422.

[29] The exemption was to continue in effect until such time as the Commission took final action with respect to the ITS participants' request that the Commission issue an order pursuant to section 11A(a)(3)(B) of the act with respect to the planning, development, operation or regulation of ITS in accordance with the ITS Plan, or 120 days from the date of the order, whichever occurred first. *Id.* at 8, 43 FR at 17423. On Aug. 10, 1978, the Commission extended its temporary approval of the ITS Plan for a period of 12 months from the date of that order. *See* Securities Exchange Act Release No. 15058 (Aug. 11, 1978), 43 FR 26732. Simultaneously, the Commission extended the exemption from Rule 17a-15 for a 12-month period pending the outcome of this rulemaking proceeding. Securities Exchange Act Release No. 15059 (Aug. 11, 1978), 43 FR 36736.

[30] Exemptive Order, *supra* note 28, at 7, 43 FR at 17423.

manner of display of transaction reports.[31]

In granting the temporary exemption, the Commission noted that, in its view, although last sale information as to individual market centers is valuable to brokers and investors, the most important sources of this information for such persons are not moving ticker displays but rather vendor interrogation devices, newspapers, and various trade periodicals (*e.g.*, the "Fitch Sheets" [32]):

> Since the proposed deletion of market identifiers would not involve deleting this information from the high speed data transmission line used to provide last sale data for these other sources, the Commission believes that no significant deprivation of market information would occur if moving tickers were permitted to display last sale reports without any market identification.[33]

In addition, the Commission cited two beneficial results which might flow from removal of market identifiers from moving ticker displays. First, deletion of market identifiers would eliminate reporting disparities between the primary exchange markets and other market centers. Such a result is consistent with the underlying purpose of the consolidated system—that the mechanism for disseminating transaction reports in multiply-traded securities not discriminate with respect to, or exclude, transaction reports based upon the market of execution. Second, since tape delays are a function of the number of characters which must be displayed in connection with each transaction, deletion of market identifiers may lessen tape delays (particularly during periods of heavy trading, such as between 10 to 11 a.m. e.s.t.) by reducing the number of characters necessary to report transactions from other than the primary markets. Therefore, the Commission determined that it was not necessary in the public interest or for the protection of investors that, during the limited period the ITS was authorized to operate, last sale reports in securities eligible for reporting in the consolidated system be accompanied by market identifiers when disseminated on moving ticker displays.

In response to the temporary exemption, the Commission has received some limited commentary generally opposing deletion of market identifiers from moving ticker displays because removal no longer permits identification of trades which are "out of sequence." In our view, most of these letters do not directly address the questions presented by removal of market identifiers since the identifiers do not indicate late reports or reports which are necessarily out of sequence. In view of this limited commentary received in response to the temporary exemption and for the reasons stated in the Exemptive Order, the Commission has determined to include in proposed Rule 11Ac1-2 a provision requiring the removal of market identifiers on moving ticker displays. However, the Commission is specifically requesting comment on the effects of removal of market identifiers. The Commission is particularly interested in receiving views as to whether the temporary exemption has achieved the two perceived benefits which the Commission noted in the Exemptive Order or whether, to the contrary, investors and market professionals believe that the loss of market information resulting from removal represents a decrease in the availability of important market information.

Similarly, proposed Rule 11Ac1-2 also contains a provision which would require the elimination of market identifiers from consolidated displays of transaction reports available through interrogation devices. Although the Commission does not believe that progress towards a national market system currently justifies total elimination of market identifiers (such that interrogation devices would be incapable of displaying last sale data from individual market centers),[34] elimination of market identifiers from consolidated displays available on interrogation devices may further the Commission's overall national market system objectives. First, the elimination of the market identifier on interrogation device consolidated displays would be consistent with and designed to achieve certain of the same results as removal of identifiers from the moving ticker displays. Representatives of the regional exchanges and the third market have long argued that market identifiers, whether on moving ticker displays or interrogation devices, contribute to the dominance of the primary market and permit brokers to disregard transaction reports from other than the primary market. Although the Commission has no evidence that this phenomenon in fact occurs, it may be that removal of identifiers from moving ticker displays would not result in a material loss of important information to brokers and investors and may achieve certain national market system objectives by equalizing perceptions as to the "legitimacy" of transactions in different market centers. To the extent removal of market identifiers from the moving ticker achieves this result, elimination of market identifiers on interrogation device consolidated displays would appear to be a necessary corollary action designed to achieve this same end.

Furthermore, with the effectiveness of Rule 11Ac1-1 under the Act and the resultant dissemination of firm quotations from all market centers, the Commission believes that market identification on interrogation device consolidated displays may be of reduced importance. Historically, last sale reports have been the most significant form of market data both to investors and market professionals. Therefore, prior to the adoption of Rule 11Ac1-1, the inclusion of market identifiers on interrogation devices seemed necessary to make such displays valuable to brokers wishing to identify the source of trading activity and, as a corollary matter, useful, as an advertising medium, for markets other than the primary market. However, the Commission believes that the general availability of firm quotations in multiply-traded securities will significantly reduce the value of last sale information to brokers and dealers and eventually assure that quotation information will be a primary tool for order routing decisions. Therefore, the Commission believes that, since all vendor interrogation devices currently, or in the near future, will include consolidated quotation displays with market identifiers, such market identification for last sale reports may no longer be necessary.

Finally, the elimination of market identifiers for transaction reports on consolidated displays may prompt or enable vendors to make these displays more useful and complete. Proposed rule 11Ac1-2 would require that vendors enhance their consolidated displays by including the same information contained on individual market displays. One of the justifications raised by certain vendors for not including more information in their consolidated displays is that the market identifier necessarily requires exclusion of certain other data.[35] Therefore, the Commission believes that elimination of market identifiers on consolidated displays should lead to the improvement and further use of these displays.

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[31] The proposed amendment would also permit deletion of identifiers on the consolidated display of transaction reports available through interrogation devices. However, such a change in the manner of display of transaction reports on interrogation devices would require an appropriate exemption from Rule 17a-15 or an amendment to the Rule as is proposed here.

[32] Fitch, *Stock Sales*.

[33] Exemptive Order, *supra* note 28, at 5, 43 FR at 17423.

[34] If the CTA and SIAC were permitted to eliminate market identifiers from all transaction reports disseminated to vendors, it would be impossible for vendors to create individual market center data bases from which to recall individual market last sale data.

[35] Most vendor interrogation devices are capable of displaying only a limited number of different characters of information. The inclusion of a market identifier for last sale data on certain interrogation devices necessarily requires exclusion of other relevant data.

Since, on balance, the Commission believes that market identification may no longer be necessary on interrogation device consolidated displays, proposed rule 11Ac1-2 contains a provision which would require its removal. However, the Commission would be particularly interested in receiving comment as to the necessity of this prohibition. As an alternative, the Commission is considering deletion of any market identification requirement with respect to interrogation device consolidated displays, thereby permitting each vendor to determine whether to include such an identifier. In addition, the Commission is specifically requesting that commentators address whether deletion of market identifiers results in a material loss of important information to broker-dealers and investors with respect to their trading decisions and to self-regulatory organizations in attempting to fulfill their surveillance obligations.[36] The Commission is especially concerned that the omission of market identifiers may significantly impede the ability of these persons to determine the location of trading activity reported on consolidated displays.

IV. Consolidated Quotation Information

On August 1, 1978, rule 11Ac1-1 under the Act became effective. The rule requires every exchange and association to establish [37] and maintain procedures and mechanisms for collecting, processing, and making available to vendors bids, offers, quotation sizes, and aggregate quotation sizes ("quotation information") in reported securities. The rule does not, however, impose any obligations on vendors to display quotation information which is made available in accordance with the rule. In the quotation release, the Commission explained its rationale for not imposing such obligations on vendors at that time:

[T]he Commission believes that adequate dissemination of quotation information will be achieved without specific vendor requirements formulated by the Commission. For example, it appears that prior to the effective date of the rule, at lease one securities information system will be providing a montage of quotations (including sizes) from all market centers in all multiply traded reported securities. Additionally, the Commission believes that competitive pressures will assure that each of the other vendors will eventually implement similar services or, at least, a best bid and asked display. The Commission will continue to monitor vendor progress in providing quotation information in a comprehensive and nondiscriminatory manner and will reconsider its decision not to impose obligations on vendors if competitive pressures do not assure adequate dissemination and display of this information.[38]

In keeping with these statements, since the adoption of rule 11Ac1-1, the Commission's staff has monitored the progress of vendors in developing quotation displays. Perhaps the most significant step taken to date to enable vendors to display quotations has been the implementation of a plan pursuant to which participating self-regulatory organizations are making available quotation information to vendors in a single data stream. On July 25, 1978, the NYSE and Amex jointly filed a "Plan For the Purpose of Implementing Rule 11Ac1-1 under the Securities Exchange Act of 1934" ("CQ Plan") with the Commission contemplating the formation of the CQ Operating Committee similar in concept to the CTA and (i) establishing joint procedures to govern the collection, processing, and dissemination of quotation information by participating market centers; (ii) providing for selection and evaluation of an exclusive processor to collect quotation information from participating market centers and make that information available to quotation vendors; and (iii) establishing fees relating to the receipt of quotation information. On July 27, 1978, the Commission issued a temporary order, pursuant to section 11A(a)(3)(B) of the Act, approving the CQ Plan for a period of 180 days and noting that "the consolidated quotation data stream contemplated by the [CQ Plan] may provide an appropriate basis for the creation of a composite quotation system—an essential element of a national market system * * *." [39] Since that time the BSE, MSE, and PSE have signed the CQ Plan and the NASD has indicated its intention to join under certain circumstances.

The implementation of the CQ Plan and the effectiveness of rule 11Ac1-1 have also facilitated significant improvements in the quotation displays made available by certain vendors. For example, one vendor who had previously offered a composite best bid and asked quotation display with size from only a limited number of markets, has made necessary programing changes to include in its calculations quotations from all markets disseminating quotations pursuant to the CQ Plan as well as the CSE. Similarly, another vendor which had previously provided a montage display of quotations without size from a limited number of market centers has expanded that display to include quotations and sizes from all market centers making available quotations through the CQ Plan.

Discussions between the Commission's staff and each of the major vendors of market information have indicated that most vendors are in the process of further enhancing their quotation display facilities. However, these discussions have also indicated a hesitancy on the part of at least certain vendors to expend the capital necessary to develop composite quotation displays without some indication from the Commission as to the nature of an acceptable display. These discussions have convinced the Commission that further development in the display of quotation information may, in fact, be impeded because the Commission has not specified minimum display requirements with respect to quotations. Therefore, the Commission is at this time proposing that Rule 11Ac1-2 include minimum quotation display requirements. The rule would require that every vendor making available quotations in reported securities provide, at a minimum, a consolidated quotation display indicating the highest bid and lowest offer, with size, from any market center making available quotations in accordance with Rule 11Ac1-1, and an identifier indicating the market or markets responsible for such bid or offer.[40] The rule would also specify the manner of calculating the best bid and offer in the event that more than one market center were making available bids or offers at the same price. The rule as proposed sets forth two alternative formulas for determining the best bid or offer. One formula would require selection of the best bid or offer first on the basis of price (*i.e.*, the highest bid or lowest offer), then on the basis of time of receipt by the vendor (*i.e.*, the first bid or offer received at such price), then on the basis of the largest size. The other formula would require selection of the best bid or offer first on the basis of price, then on the basis of largest size, then on the basis of time.[41] The Commission is specifically

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[36] Although the rule would not prohibit a self-regulatory organization from operating or maintaining a display of consolidated transaction reports with market identifiers, most self-regulatory organizations receive last sale data from vendors who would be precluded from disseminating this information to their other subscribers. It may be that the cost of providing consolidated last sale displays with market identifiers exclusively to self-regulatory organizations would be significant. In that event, the Commission is requesting that commentators discuss whether market identifiers are necessary to assure proper surveillance and provide estimates of the cost of obtaining that data.

[37] *See* Securities Exchange Act Release Nos. 14415 (Jan. 26, 1978) (the "Quotation Release") and 14711 (Apr. 27, 1978) 43 FR 4342 and 43 FR 18556.

[38] Quotation Release, *supra* note 37 at 37-38, 43 FR at 4347. (footnote omitted).

[39] Securities Exchange Act Release No. 15009 (July 28, 1978) at 18, 43 FR 34851, 34856.

[40] Such a display would also have to be available by means of the simplest and most prominent form of inquiry. *See* discussion *supra*.

[41] This formula is currently used by participants in the ITS for display on their floors.

requesting that commentators indicate which of these two formulas would be preferable or whether, as an alternative, the Commission should permit vendors to calculate the best bid and offer in either fashion, provided that the method of calculation is clearly disclosed to subscribers.

The rule would also permit vendors to display a montage of quotations and quotation sizes: *Provided*, That quotation information from every market center is displayed separately other than third market quotations which may be represented by a single bid and offer identified by market maker representing the highest bid and lowest offer of all third market makers. In addressing this aspect of the rule, commentators may wish to address whether the Commission should specify the exact nature of any quotation montage if a vendor also provides a consolidated best bid and offer display and, in particular, whether the rule should continue to preclude vendors from providing hybrid montage and best bid and offer displays other than as specified with respect to third market quotations.[42] Additionally, commentators may wish to comment on the rule's requirement that vendors provide a best bid and offer display notwithstanding the fact that they provide a complete montage.

V. Unlisted Securities and Representative Bid and Offer

In formulating minimum display requirements applicable to vendors who make available quotation information in reported securities, the Commission has also examined the manner of display of real-time quotations for unlisted ("OTC") securities. The only quotation vendor now disseminating such quotations is NASDAQ, Inc., the wholly owned subsidiary of the NASD, which operates the National Association of Securities Dealers Automated Quotation ("NASDAQ") system.[43] Although only a small portion of OTC securities are included in the NASDAQ system,[44] trading in those securities accounts for an overwhelming percentage of both the dollar value and share volume of trading in the OTC market.

There are three types of NASDAQ services, denoted "Level 1," "Level 2," and "Level 3," available to NASDAQ subscribers. Level 1, which is used primarily by registered representatives of broker-dealer firms does not display the actual quotations of specified market makers. It displays, instead, for each security quoted in the NASDAQ system, a single "representative bid and ask" quotation ("RBA") consisting of the median bid price and (approximately) the median offer price of all registered market makers[45] who have entered quotations for that security into the NASDAQ system.[46] Level 2, which is generally used by traders and large institutional investors, displays, in a montage, with respect to each security quoted in the NASDAQ system, the bid and offer prices of each registered market maker who enters quotations for that security into the NASDAQ system. Level 3, which is available only to registered market makers,[47] displays the same information as Level 2 and also permits market makers to enter and update bid and offer quotations.[48]

When the NASDAQ system was being developed in the late 1960's, the NASD advised the Commission that it expected that Level 1 service would be used primarily be retail salesmen. It expected, therefore, that retail customers probably would not be advised of the actual quotation information displayed on Level 2 and 3 terminals, but would be quoted the price information immediately available to the registered representatives with whom they dealt, *i.e.*, the information displayed on Level 1. When informed of the NASD's plan to display "representative" quotations on Level 1,[49] the Commission questioned the usefulness of "median" information to retail customers and suggested that a more meaningful display for Level 1 might be the highest market maker bid price and the lowest market maker offer price ("best bid and offer"). The Commission indicated that, in its view, a quotation consisting of the best bid and offer would be more accurate, as a reflection of the prevailing market for a security, than a median quotation. However, in recognition of the potential of the NASDAQ system to improve the quality of the OTC market, the Commission deferred to the NASD and did not raise any objection at that time to the display of the RBA on Level 1. The Commission did, however, indicate to the NASD that this question could be more fruitfully explored after some experience had been gained with the operation of the NASDAQ system and that it might re-examine this issue after the system became operational. The NASDAQ system has been in operation for 7 years, and the Commission believes that it is now appropriate to re-examine the considerations which initially led it to permit the display of RBA on Level 1.

Information supplied by the NASD and representatives of the securities industry indicates that broker-dealer firms tend to supply their registered representatives who deal with the public with Level 1 service exclusively.[50] Level 2 and 3 services are generally maintained by broker-dealer firms

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[42] For example, the rule would prohibit a vendor from providing a display showing the bid, offer and quotation size with respect to a particular security from the NYSE and the PSE while showing only the best bid and offer, with size and market identifier, from all other reporting markets.

[43] The NASD owns NASDAQ, Inc. and rules relating to the operation of the system appear as Schedule D of the NASD's Bylaws. NASDAQ, Inc. is registered with the Commission, pursuant to section 11A(b)(3) of the Act, as an exclusive processor.

[44] For its securities to be eligible for inclusion in the NASDAQ system, an issuer must have at least $1,000,000 in total assets and $500,000 in net assets, a minimum of 100,000 shares outstanding, and a minimum of 300 shareholders of record. NASD Bylaws, Schedule D, Part II. B and C. In addition, the issuer must pay an issuer quotation fee if it wishes to have its securities quoted in the system. *Id.* at Part V.

[45] Anyone wishing to make a market in a NASDAQ-quoted security and to have his quotations for that security displayed on NASDAQ terminals is required to be an NASD member and to register with the NASD as a market maker. Registered market makers are subject to various obligations and restrictions set forth in the NASD's Bylaws. *See* NASD Bylaws, Schedule D at Part IC3.

[46] The nature of the RBA is described in the design specifications of the NASDAQ system as follows:

Representative Bid and Ask—The representative bid for a NASDAQ security is the median of all bids entered into the NASDAQ system by registered NASDAQ market makers. The representative ask f or a NASDAQ security is the figure determined by adding the median of all spreads to the representative bid (a spread is the difference between the bid and ask of registered NASDAQ market makers).

When there is an even number of quotes for a security, the median values are determined by rounding down both the bid and the spread.

Computation of the RBA may be illustrated as follows:

XYZ Corp. Market Maker	Bid	Ask	Spread
1	16⅛	16½	⅜
2	16	16½	½
3	16	16½	½
4	16	16⅜	⅜
5	15⅞	16⅜	½
6	15⅞	16¼	⅜

Although there is an even number of bids, it makes no difference whether No. 3 or No. 4 is used as the median; either way the median bid is 16. However, the median spread could be either ½ or ⅜. Following the practice of rounding down (set forth in the NASDAQ design specifications quoted above), ⅜ is chosen. Therefore, the ask side of the RBA is 16⅜. Thus, although the highest bid and lowest asked price displayed on Levels 2 and 3 would be 16⅛ to 16¼, if market maker No. 1 did not enter a quotation, the RBA would simply be 16 (the median bid)16½ (the median bid plus the median spreak of ½).

[47] NASD Bylaws, Schedule D, at Part IC2.

[48] The same computer hardware is used for Levels 2 and 3. Certain keys are adjusted to permit the entry of quotations if the subscriber is a registered market maker.

[49] The Level 1 display initially proposed by the NASD was somewhat different from the RBA display now in use. The NASD's initial proposal was to display on Level 1, with respect to each security quoted in the NASDAQ system, the median of all bid prices and the median of all asked prices for that security entered into the system.

[50] The cost of Level 1 service, which is made available via interrogation devices provided by vendors other than NASDAQ, Inc., is significantly lower than the cost of Level 2 or Level 3 service. See NASD By-Laws, Schedule D, Part IV.

in their trading rooms for use in connection with trading and market-making activities. Because registered representatives of the larger wirehouses cannot for practical reasons communicate orally with the trading rooms of their firms on a continuous basis to obtain real-time quotations, retail customers of these firms generally do not have access to the information provided by Level 2 and 3 services. Moreover, many smaller, nonclearing firms do not subscribe to Level 2 or Level 3 service and thus are only able to supply their customers with information available on Level 1.[51] Therefore, since most retail customers generally cannot obtain real-time quotations for NASDAQ securities other than through the registered representatives with whom they deal, the practical effect of displaying the RBA on Level 1 is that the vast majority of retail customers are informed only of the RBA.

The Commission believes that the behavior of some broker-dealers in executing their customers' orders may be affected by the knowledge that their customers do not have access to the best bid and offer then available. For example, some commentators have noted that certain broker-dealers execute customers' orders at the RBA displayed on Level 1 without first attempting to obtain more favorable executions. Furthermore, at the Commission's hearings in August 1977 considering the amendment of off-board trading rules ("off-board hearings"),[52] one commentator stated that an integrated firm may deal with its own retail customers at the RBA quoted on Level 1 despite the fact that the firm's quotations, as a marketmaker in NASDAQ, were at a better price.[53]

The Commission believes that it is only feasible for a customer to police his broker's efforts to obtain best execution if he receives information as to the best bid or offer available at the time he places an order to buy or sell a NASDAQ-quoted security. A retail customer who is informed only of the RBA at that time cannot properly evaluate the quality of execution and price of services rendered by the broker-dealer handling his order. This is particularly true when a broker-dealer had executed an order as principal and has confirmed the transaction "net" to the customer because there is currently no required disclosure of the amount of retail markup or markdown included within the "net" price.[54] In addition, retail customers who are not knowledgeable about the operation of the over-the-counter markets may believe that the RBA quotation they generally receive for a NASDAQ-quoted security actually is the best bid or offer available for that security.

The Commission is aware that a broker-dealer who has executed a customer's order at a price other than the best bid or offer may have had justifiable reasons for doing so (e.g., the best bid or offer may not have been firm for the size of the customer's order; the cost of execution and clearing with the market-maker responsible for the best bid or offer might off-set the price advantages to the customer; or the broker might have reason to believe it imprudent to deal with the dealer responsible for the best quotation). We are also aware that, in such circumstances, a customer's knowledge of the best bid or offer might necessitate as an explanation by the executing broker-dealer of the facts and circumstances underlying his decision to execute the order at a price inferior to the best bid or offer. However, it would not appear that providing such an explanation would constitute an unduly heavy burden. Moreover, the Commission believes that the benefits to be achieved by dissemination of the best bid or offer would justify the imposition of such a burden. Therefore, the Commission tentatively concluded that there is no valid regulatory purpose for denying this important market information to public investors.

Accordingly, the Commission has included in proposed rule 11Ac1-2 provisions requiring that every interrogation device providing quotation information with respect to OTC equity securities display, a minimum, the highest bid and the lowest offer for each such security. Proposed rule 11Ac1-2 would also prohibit the display of any representative bid or offer for a security—i.e., any price for a security which is the mean, median, mode, or weighted average of two or more bids or offers or is the result of some other mathematical calculation based on the bid or offer of one or more market-makers.[55]

In publishing these proposals, the Commission in particular seeks comment on the perceived effects of this regulation on the over-the-counter market. It has been asserted on various occasions that, possibly because of inherent differences between dealer and auction markets, some innovations which improve the quality and efficiency of the markets for securities which are suitable for auction-type trading would have a deleterious effect on over-the-counter markets for other types of securities. For example, during the off-board hearings, the NASD suggested that last sale reporting of transactions in OTC securities might discourage market-making in those securities, thus decreasing liquidity in the over-the-counter market.[56] It also implied that the display of best bid and ask prices on Level 1 of NASDAQ would have similar effects.[57] In commenting on the provisions of rule 11Ac1-2 which are applicable to securities other than reported securities, persons should specifically address these concerns.

VI. Description of Proposed Rule 11Ac1-2

Proposed Rule 11Ac1-2 would set forth comprehensive requirements with respect to the display of transaction reports and last sale data in reported securities[58] and quotations and

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[51] As of Dec. 30, 1977, the combined total of Level 2 and Level 3 subscribers was 499, and the approximate number of Level 1 subscribers was 1,900. NASD, "The NASDAQ/OTC Market Fact Book 1977," at 3.

[52] See Securities Exchange Act Release No. 13662 (June 23, 1977), 42 FR 33510.

[53] Prepared statement of the Midwest Stock Exchange, Inc., Aug. 4, 1977, at 47, in File No. 4-180.

[54] Securities Exchange Act Rule 15c1-4 (17 CFR 240. 15c1-4) requires a broker-dealer executing a customer's order as agent to provide the customer with written notification of the amount of any commission or other remuneration received by the broker-dealer in connection with the transaction. The rule does not, however, currently impose a similar requirement on a broker-dealer executing a customer's order as principal. The Commission has, however, included in its recently adopted amendments to Rule 10b-10 a requirement that broker-dealers disclose their markups or markdowns to customers when engaging in so-called "riskless principal" transactions (i.e., when buying a security, as principal, from a marketmaker and reselling to the customer at a higher price including a markup (or at a lower price including a markdown in the case of an order to sell). Securities Exchange Act Release No. 15219 (Oct. 6, 1978) 43 FR 47495. Broker-dealers would not, however, be required to disclose their markup or markdown when acting as a market-maker or engaging in "risk" principal transactions (a transaction in which a broker-dealer sells securities to a customer out of its bona fide inventory or takes a customer's securities into its bona fide inventory). Presumably, most broker-dealers executing customer orders in this manner would continue to advise their customers only of "net" prices; i.e., including any markup or markdown.

[55] Because the display of representative quotation information for reported securities might possibly produce some of the same ill effects flowing from the RBA with respect to OTC securities—and, indeed, might counteract some of the benefits sought to be achieved through the adoption of rules 11Ac1-1 and 11Ac1-2—the prohibition against dissemination of representative quotations would apply to reported securities as well as to OTC securities.

[56] In the matter of off-board trading rules, Securities and Exchange Commission File No. 4-180, transcript pp. 1044-46, Aug. 16, 1977.

[57] Id. at 1046.

[58] The terms "transaction reports," "last sale data," and "reported securities" are defined in paragraph (a)(1) of the proposal to have the same meaning as provided in Rule 11Ac3-1. See Rule 11Aa3-1 release at note 62, supra.

quotation information [59] in subject securities which are defined to include all reported securities as well as any other equity security as to which transaction reports, last sale data or quotation information is disseminated through an electronic interdealer quotation system owned and operated, either directly or indirectly, by an association.[60]

The rule would apply to any vendor, i.e., any securities information processor or self-regulatory organization engaged in the business of disseminating transaction reports, last sale data or quotation information with respect to any subject security to brokers or dealers on a real-time or other current and continuing basis through an electronic communications network (such as the ticker network), moving ticker or interrogation device.[61] However, the rule specifically excludes from this definition any securities information processor or exchange when disseminating market information on the floor of an exchange,[62] thereby permitting an exchange to make available to its members market information for trading and surveillance purposes which would otherwise be precluded by the rule. The rule would also prohibit any broker or dealer from operating or maintaining any display of market data which a vendor would be precluded from making available.[63]

A. LAST SALE DATA

With respect to the display of transaction reports and last sale data, the rule would maintain certain display requirements currently contained in rule 17a-15.[64] Specifically, it would require that no moving ticker display exclude transaction reports on the basis of the market of execution.[65] In addition, the rule would continue to require [66] that any vendor making available on an interrogation device last sale data with respect to a particular reported security, also make available on that device, a consolidated last sale display with respect to that security.[67] The consolidated last sale display would be required to include the price of the most recent transaction report for that security reported by any market center pursuant to an effective transaction reporting plan as well as the volume of that transaction report or the cumulative volume of all transaction reports for that security reported pursuant to an effective transaction reporting plan during the trading day.[68]

In addition to the display requirements contained in rule 17a-15, the rule would impose, effective as of March 1, 1979, additional display requirements with respect to last sale data which are designed to assure the availability and comparability of consolidated last sale data. The rule would require that the consolidated last sale display available on an interrogation device be available by means of the simplest and most prominent retrieval instructions.[69] Thus, it would no longer be permissible for a vendor to provide last sale data from an individual market center in response to an inquiry consisting of the consolidated system symbol plus a request or transmit key while providing consolidated last sale data in response to an inquiry consisting of the consolidated system symbol, an additional key plus the request or transmit key. In addition, if a vendor were to provide both the consolidated last sale display and an individual market center display in response to an inquiry consisting of an equal number of key strokes, the request key used to obtain the consolidated display must be more prominent (in terms of its label, location, size, or a combination of these or other factors) than the key used to obtain individual market last sale data.

In addition to assuring that consolidated last sale data is available on an interrogation device by means of easiest access, the rule would also require that vendors provide consolidated market data and monitoring services on their interrogation devices which are comparable to the data and services available on an individual market basis. The rule would require vendors to provide, on the consolidated last sale display for a particular reported security, all of the same market data that is available on any individual market display.[70] Thus, for example, if a vendor made available an individual market display for a particular reported security which included last sale, bid, offer, open, high, low, close, volume, price earnings ratio, dividend rate, and time of last news, the consolidated last sale display for that security would be required to contain all of the same data on a consolidated basis, where applicable. In addition, the rule would require that any vendor providing a market minder [71] with respect to any reported security based upon transaction reports from an individual market also provide that same market minder service for that security on a consolidated basis.[72]

The rule would also contain provisions which are designed to assure that transaction reports and last sale data from individual market centers are available on a nondiscriminatory basis. First, on and after March 1, 1979, vendors would be precluded from identifying the market of execution of transactions reports or last sale data displayed on either moving tickers or the consolidated last sale display available on an interrogation device.[73] Second, vendors would be required to equalize access to last sale data from individual market centers available on their interrogation devices. The rule would require that any vendor providing last sale displays from more than one individual market center, make all such displays available in response to an equal number of key strokes.[74] Therefore, after March 1, 1979, it would no longer be permissible for a vendor to provide "primary" market last sale data in response to an inquiry consisting of the consolidated system symbol and a request key while providing last sale data, for example, from a regional exchange in response to an inquiry consisting of the consolidated system symbol, a market designation and a request key.

B. QUOTATION INFORMATION

With respect to the display of quotation information, the rule would set forth certain minimum display requirements, effective as of March 1, 1979, which are designed to assure the availability of bids, offers, quotation sizes and aggregate quotation sizes made available pursuant to rule

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[59] The terms "quotations" and "quotation information" are defined in paragraph (a)(3) of the rule. With respect to reported securities, these terms mean bids, offers, quotation sizes and aggregate quotation sizes as defined in Rule 11Ac1-1. With respect to any other subject security, these terms are defined as the most recent bid price or offer price of an over-the-counter market maker disseminated through an electronic interdealer quotation system owned and operated, directly or indirectly, by an association. An "over-the-counter market maker" is defined in paragraph (a)(13) of the rule as any broker or dealer who is authorized by an association which owns and operates, directly or indirectly, an electronic interdealer quotation system to disseminate quotations through that system in a particular security and who makes such quotations available through that system on a regular and continuous basis.

[60] Proposed Rule 11Ac1-2(a)(2). At present the only such inter-dealer quotation system is NASDAQ. See note —— supra.

[61] Proposed Rule 11Ac1-2(a)(12).

[62] Id.

[63] Proposed Rule 11Ac1-2(e).

[64] Proposed rule 11Ac1-2(b)(2)(iv).

[65] The Commission's current interpretation of rule 17a-15 requires vendors to provide such a display. See the Interpretative Release, supra note 3 at 6, 40 FR at 15463.

[66] Proposed rule 11Ac1-2(b)(2)(i).

[67] Id. See proposed rule 11Ac1-2(a)(7) which defines the term "consolidated price."

[68] Id. See proposed rule 11Ac1-2(a)(8) which defines the term "consolidated volume."

[69] Id.

[70] Proposed rule 11Ac1-2(b)(2)(v).

[71] The term "market minder" is defined in paragraph (a)(18) of the rule as any service provided by a vendor on an interrogation device (other than a moving ticker display) which permits monitoring, on a dynamic basis in a single display, of transaction reports or last sale data with respect to two or more reported securities.

[72] Proposed rule 11Ac1-2(b)(2)(vi).

[73] Proposed rule 11Ac1-2(b)(2)(iii).

[74] Proposed rule 11Ac1-2(b)(2)(ii).

11Ac1-1 and quotation information displayed in an interdealer quotation system (such as NASDAQ) which is owned and operated by an association. The rule would require that any vendor which displays quotation information with respect to a particular subject security on an interrogation device also make available on that device a consolidated quotation display with respect to that security.[75] The consolidated display would be required to be available by means of an access inquiry involving a lesser number of key strokes than is used to obtain quotation information from any individual market center and would be required to display (i) the highest bid and lowest offer from any market center making available quotation information for that security,[76] (ii) an identifier indicating the market center responsible for that best bid and best offer, and (iii) in the case of a reported security, the quotation size or aggregate quotation size associated with that bid and offer.[77]

The rule would also set forth the manner of calculating the best bid and offer.[78] As published, the rule sets forth two alternative formulas for determining the best bid or offer. Both formulas require the use of price as the first factor for determining the best bid or offer, i.e., the best bid would be the bid which is highest in price and the best offer would be the offer which is lowest in price. However, the formulas would differ in terms of the manner of selecting between two or more bids or offers at identical prices. One formula would require selection of the best bid or offer first on the basis of time, i.e., the bid or offer received earliest in time by the vendor would be the best.[79] The other formula would first rank bids or offers at identical prices by size (i.e., The bid or offer with the largest quotation size or aggregate quotation size would be the best) and then, as between bids or offers at identical prices with identical sizes, on the basis of time. The Commission currently contemplates selecting one of these formulas for inclusion in the rule rather than permitting each vendor to select from alternative formulas set forth in the rule.[80]

The rule would also permit vendors to make available quotation information (including size)[81] with respect to individual market centers on their interrogation devices either upon separate inquiry (provided that inquiry access routines for all market centers contain an equal number of key strokes) or in a montage.[82] The quotation montage would be required to state separately the quotation of every market center, except, in the case of a montage of quotations with respect to a reported security, all third market maker quotations could be consolidated into a best third market bid with size and best third market offer with size,[83] each identified by the particular third market maker responsible for the bid or offer.[84]

Finally, the rule would preclude any vendor from displaying a representative bid or offer with respect to a subject security; that is, the rule would prohibit any vendor from displaying any bid or offer which is, or is derived from, the mean, median, mode, or weighted average of two or more bids or offers, or which is calculated by adding to or subtracting from an actual bid or offer a commission, commission equivalent, markup, or differential.

C. JOINT DISPLAY OF LAST SALE AND QUOTATION INFORMATION

Although the rule specifies separate minimum display requirements for last sale data and quotation information, it would permit (and in certain cases require) a vendor to combine the consolidated last sale display and consolidated quotation display available on an interrogation device. The rule explicitly permits such a joint display in paragraph (d). However, if a vendor provides both the most recent transaction report and quotation for a security from a particular market center on a single interrogation device display, paragraph (b)(2)(v) of the rule would require that vendor to combine the consolidated last sale and consolidated quotation display with respect to that security. The rule does not expressly prohibit a vendor from combining, on a single display, consolidated and individual market center market information; however, such a combination would be precluded by the access provisions of the rule which do not prmit access to individual market center information by means of the same number of key strokes (or prominence of request key) as are used to access consolidated information. In particular, we are interested in receiving data from the self-regulatory organizations, CTA, the participants in the CQ Plan and SIAC as to the cost of collecting, processing, and making available this type of market information. We are also interested in receiving an explanation of the rationale behind the computer use charges and the CQ Plan charges and a reconciliation of those charges with the purposes of the Act. Finally, the Commission would appreciate comments regarding the advisability of retaining display charges levied directly on vendor subscribers and whether these charges would be more appropriately assessed on vendors either as a single charge or on a per display basis.

VII. TEXT OF PROPOSED RULES

The Securities and Exchange Commission hereby proposes Rule 11Ac1-2 (17 CFR 240.11Ac1-2) pursuant to its authority under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)) and particularly sections, 2, 3, 6, 9, 10, 11A, 15, 15A, 17, and 23 thereof (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78k-1, 78o, 78o-3, 78q, and 78w).

§ 240.11Ac1-2 Display of transaction reports and quotation information.

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

(1) The terms "reported security," "transaction report," "effective transaction reporting plan," "nonmember broker or dealer," "moving ticker," and "last sale data" shall have the meaning provided in § 240.11Aa3-1 (Rule 11Aa3-1 under the Act).

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[75] Proposed rule 11Ac1-2(c)(2)(i).

[76] This requirement is identical to the rule's access requirement with respect to last sale data.

[77] With respect to reported securities, a vendor would be required to include quotations from all market centers making available quotations in accordance with rule 11Ac1-1. With respect to all other subject securities, a vendor would be required to include quotations from all over-the-counter market makers, i.e., all broker-dealers making available quotations in subject securities in an electronic interdealer quotation system such as NASDAQ. Proposed rule 11Ac1-2 (a)(6)(ii), (a)(13) and (a)(14).

[78] Proposed rule 11Ac1-2(c)(2)(i).

[79] The rule would not specify the manner of determining when a bid or offer is received. The Commission is aware that SIAC currently calculates the best bid and offer of ITS participants for use in ITS by use of an algorithm which deems any change of price or size data as an entirely new bid and offer. Thus, if a market center had made available a quotation consisting of a bid of 20 with a size of 400 and an offer of 20¼ and a size of 200 and the market center changed its bid size to 500 shares, SIAC, upon receiving this change, would assume that the market center had entered an entirely new bid and offer. The market center would thus lose whatever time priority it had established. One vendor proposing to provide its subscribers with a best bid and offer composite quotation display has indicated that it is considering an algorithm which would change time priority for a particular bid (or offer) only when the price of that bid (or offer) has changed. The Commission solicits comments on these alternative methods of determining time priority of quotations. In particular, commentators should address whether the rule should specify the method of calculating time priority and if so, what method should be used.

[80] See duscussion, supra.

[81] The rule would require that every quotation with respect to a reported security include a quotation size or aggregate quotation size. Proposed rule 11Ac1-2(c)(2)(iv).

[82] Proposed rule 11Ac1-2(c)(2)(ii).

[83] The rule would require that the calculation of the best third market bid and offer be based upon the same formula as is used to calculate the best bid and offer from all reporting markets.

[84] Proposed rule 11Ac1-2(c)(2)(iii).

(2) The term "subject security" shall mean—

(i) Any reported security; and

(ii) Any other equity security as to which transaction reports, last sale data or quotation information is disseminated through an electronic interdealer quotation system owned and operated, directly or indirectly, by a national securities association ("association").

(3) The terms "quotations" and "quotation information" shall mean bids, offers and, where applicable, quotation sizes and aggregate quotation sizes.

(4) The terms "bid" and "offer" shall—

(i) In the case of a reported security, have the meaning provided in § 240.11Ac1-1 (Rule 11Ac1-1 under the Act); and

(ii) In the case of any subject security other than a reported security, mean the most recent bid price or offer price of an over-the-counter market maker disseminated through an electronic interdealer quotation system owned and operated, directly or indirectly, by an association.

(5) The terms "quotation size," "aggregate quotation size," "third market maker" and "make available" shall have the meaning provided in § 240.11Ac1-1 (Rule 11Ac1-1 under the Act).

(6) The term "consolidated display" shall mean, with respect to a particular reported security—

(i) Any display of last sale data for such security, or information derived therefrom, based on transaction reports from all market centers effecting transactions in such security; and

(ii) Any display of quotation information for that security based on quotations from all market centers making available such information for that security.

(7) The term "consolidated price," when used with respect to a particular reported security, shall mean the price of the most recent transaction report for that security reported pursuant to an effective transaction reporting plan.

(8) The term "consolidated volume," when used with respect to a particular reported security, shall mean—

(i) The volume of the most recent transaction report for that security reported pursuant to an effective transaction reporting plan, or

(ii) The cumulative volume of all transaction reports for that security reported pursuant to an effective transaction reporting plan during the trading day.

(9) The term "individual market center last sale display" shall mean, with respect to a particular reported security, any display of last sale data for such security, or information derived therefrom, based on transaction reports from a single market center effecting transactions in such security, but shall not include any moving ticker or market minder.

(10) The term "individual market center quotation display" shall mean, with respect to a particular subject security, any display of quotation information for that security based on quotations from a particular market center disseminating such information for that security.

(11) The term "interrogation device" shall mean any securities information retrieval system capable of making available transaction reports, last sale data or quotation information, upon inquiry, on a current basis on a terminal or other display device or by any other means.

(12) The term "vendor" shall mean any securities information processor or self-regulatory organization engaged in the business of disseminating transaction reports, last sale data or quotation information with respect to subject securities to brokers or dealers on a real-time or other current and continuing basis, whether through an electronic communications network, moving ticker or interrogation device: *Provided, however,* That no securities information processor or national securities exchange ("exchange") shall be deemed to be a vendor with respect to the dissemination of transaction reports, last sale data, or quotation information on the trading floor of an exchange.

(13) The term "over-the-counter market maker" shall mean, with respect to any subject security other than a reported security, any broker or dealer who is authorized by any association which owns and operates, directly or indirectly, an electronic interdealer quotation system to disseminate through that system quotations in such security, and who makes those quotations available through the system on a regular and continuous basis.

(14) The term "market center" shall mean—

(i) With respect to a reported security, any exchange or third market maker which effects transactions in such security and which collects, processes, and makes available transaction reports with respect to transactions in such security on a current basis pursuant to § 240.11Aa3-1 (Rule 11Aa3-1 under the Act); and

(ii) With respect to a subject security other than a reported security, any person acting in the capacity of an over-the-counter market maker.

(15) The terms "best bid" and "best offer" shall mean—

(i) With respect to quotations for a reported security, the highest bid or lowest offer for that security made available by any market center pursuant to § 240.11Ac1-1 (Rule 11Ac1-1 under the Act): *Provided, however,* That in the event two or more market centers make available identical bids or offers for a reported security, the best bid or best offer (as the case may be) shall be computed by ranking all such identical bids or offers (as the case may be) (first by time (giving the highest ranking to the bid or offer received first in time), then by size (giving the highest ranking to the bid or offer associated with the largest size), (first by size (giving the highest ranking to the bid or offer associated with the largest size), then by time (giving the highest ranking to the bid or offer received first in time)); and

(ii) With respect to quotations for a subject security other than a reported security, the highest bid or lowest offer (as the case may be) disseminated by an over-the-counter market maker in an electronic inter-dealer quotation system owned and operated, directly or indirectly, by an association.

(16) The term "moving ticker" shall mean any continuous real-time moving display of transaction reports, whether made available on a discrete display unit or otherwise, or included on an interrogation device.

(17) The term "quotation montage" shall mean, with respect to a particular subject security, a display on an interrogation device which disseminates simultaneously quotations from all market centers disseminating quotation information with respect to that security.

(18) The term "market minder" shall mean any service provided by a vendor on an interrogation device (other than a moving ticker) which permits monitoring, on a dynamic basis in a single display, of transaction reports or last sale data with respect to two or more reported securities.

(19) The term "representative bid or offer" shall mean any number representing a bid price or an offer price (as the case may be) for a particular subject security which is (i) the mean, median, mode or weighted average of two or more bids or offers of market centers disseminating quotation information with respect to such security, (ii) calculated with reference to or derived from any such mean, median, mode or weighted average, or (iii) calculated by adding to or subtracting from the bid or offer of any market center disseminating quotations with respect to such security any number representing a commission, commission equivalent, mark-up or differential.

(b) *Display requirements for transaction reports and last sale data.* (1) No vendor shall distribute, publish, display or otherwise make available to

brokers and dealers on a real-time or other current and continuing basis, whether through an electronic communications network, moving ticker or interrogation device, transaction reports or last sale data in contravention of the provisions of this section.

(2) On and after March 1, 1979, the following requirements shall be applicable to the display of transaction reports or last sale data with respect to reported securities:

(i) If last sale data with respect to a particular reported security is made available by a vendor on an interrogation device, such vendor shall make available on that device a consolidated display of last sale data for such security which shall include, at a minimum, the consolidated price and the consolidated volume for such security (the "consolidated last sale display"). Such consolidated last sale display shall be accessed by means of retrieval instructions involving a number of key strokes which is fewer than the number of strokes required to access any individual market center last sale display made available on that device for such security: *Provided, however,* That notwithstanding the above requirement, a vendor may make available on that device both the consolidated last sale display and any individual market center last sale displays made available for such security by means of retrieval instructions involving an equal number of key strokes if the information request or transmit key for the consolidated last sale display is the most prominent.

(ii) Subject to the provisions of paragraph (b)(2)(i) of this section, a vendor may make available on an interrogation device an individual market center last sale display for a particular reported security for any market center effecting transactions in such security: *Provided, however,* That all individual market center last sale displays for that security which are made available on that device shall be accessed by means of retrieval instructions involving an equal number of key strokes.

(iii) No moving ticker or consolidated last sale display shall identify the market center in which a particular transaction in a reported security has been executed.

(iv) No moving ticker or consolidated last sale display shall exclude any transaction report or last sale data based upon the market center in which a transaction has been executed.

(v) No vendor may provide any category of market information (including quotation information) in an individual market center last sale display for a particular subject security unless that category of information is also provided, on a consolidated basis, in the consolidated last sale display for that security.

(vi) No vendor may provide any market minder with respect to any reported security based on transaction reports from a single market center unless such vendor also provides a market minder for such security based on transaction reports from all market centers reporting transactions in that security pursuant to an effective transaction reporting plan.

(c) *Display requirements for quotation information.* (1) No vendor shall distribute, publish, display, or otherwise make available to brokers and dealers on a real-time or other current and continuing basis, whether through an electronic communications network, moving ticker, or interrogation device, quotation information with respect to subject securities in contravention of the provisions of this section.

(2) On and after march 1, 1979, the following requirements shall be applicable to the display of quotation information with respect to subject securities:

(i) If quotation information with respect to a particular subject security is made available by a vendor on an interrogation device, such vendor shall make available on that device a consolidated display of quotation information for such security which shall include, at a minimum, the best bid and best offer for such security and, in the case of a reported security, (A) an identifier indicating the market center making available such best bid and the market center making available such best offer, and (B) the quotation size or aggregate quotation size associated with such best bid and the quotation size or aggregate quotation size associated with such best offer (the "consolidated quotation display"). Such consolidated quotation display shall be accessed by means of retrieval instructions involving a number of key strokes which is fewer than the number of strokes required to access any individual market center quotation display made available on that device by such vendors for such security; *Provided, however,* That, notwithstanding the above requirement, a vendor may make available on that device both the consolidated quotation display and any individual market center quotation display made available for such security by means of retrieval instructions involving an equal number of key strokes if the information request or transmit key for the consolidated quotation display is the most prominent.

(ii) Subject to the provisions of subparagraph (c)(2)(i) of this section, a vendor may make available on an interrogation device, (A) an individual market center quotation display for a particular subject security for any market center making available quotation information for such security: *Provided, however,* That all individual market center quotation displays for that security which are made available on that device shall be accessed by means of retrieval instructions involving an equal number of key strokes, or (B) either separately or as part of the consolidated quotation display, a quotation montage for that security.

(iii) No consolidated quotation display or quotation montage made available on an interrogation device shall exclude any quotation information based upon the market center making available such information: *Provided, however,* That for purposes of making available the consolidated quotation display or a quotation montage for any reported security, quotation information from all market centers which are third market makers may be consolidated to derive a best bid and offer for all such market centers if such interrogation device is capable of displaying, either separately or as part of the consolidated quotation display or quotation montage, (A) an identifier indicating the market center making available such best bid and the market center making available such best offer, and (B) the quotation size associated with such best bid and the quotation size associated with such best offer.

(iv) Each individual market center quotation display or quotation montage for a particular reported security shall include the quotation size or aggregate quotation size associated with each bid or offer disseminated as part of such display or montage.

(v) No vendor may provide on any interrogation device a representative bid or offer with respect to any subject security.

(d) *Joint display of transaction reports and quotation information.* Subject to the provisions of paragraphs (b)(2)(i) and (c)(2)(i) of this section regarding the means of access to consolidated last sale displays and consolidated quotation displays, a vendor may combine the consolidated last sale display and the consolidated quotation display for a particular subject security.

(e) *Applicability to brokers and dealers.* No broker or dealer may operate or maintain any display of transaction reports, last sale data or quotation information which would not be permitted to be made available by a vendor under paragraph (b) or (c) of this section.

(f) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any securities information processor, self-regulatory organization, broker,

dealer, or specified subject security if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to, and perfection of the mechanisms of, a national market system.

(Secs. 2, 3, 6, 9, 15, 17, 23, Pub. L. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897, 901, as amended by secs. 2, 3, 4, 11, 14, 18, Pub. L. 94-29, 89 Stat. 97, 104, 121, 137, 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q, 78w, as amended by Pub. L. 94-29 (June 4, 1975)); Sec. 1, Pub. L. 75-719, 52 Stat. 1070, as amended by sec. 12, Pub. L. 94-29, 89 Stat. 127-131 (15 U.S.C. 78o-3, as amended by Pub. L. 94-29 (June 4, 1974)); sec. 7, Pub. L. 94-29, 89 Stat. 111 (15 U.S.C. 78k-1).)

VIII. Withdrawal of Prior Interpretation

The Securities and Exchange Commission hereby withdraws its Interpretive Response to Question 9 set forth in Securities Exchange Act Release No. 11317, 40 FR 15461, 15462.

IX. Effects on Competition and Request for Public Comment

Section 23(a)(2) of the Act requires the Commission, in adopting rules under the Act, to consider the anti-competitive effects of such regulation and to balance any anti-competitive impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has, as an initial matter, examined the proposals announced in this Release in light of the standards cited in section 23(a)(2) and is aware that certain of these proposals might be deemed to affect the ability of vendors to compete. The minimum display requirements set forth in rule 11Ac1-2 prohibit a vendor from presenting certain types of displays and require (under certain circumstances) other types of displays thereby precluding vendors from competing in terms of making available these prescribed displays. Moreover, we understand that the cost of compliance with rule 11Ac1-2 may, in some instances, be considered to have an impact on competition between existing vendors as well as on persons seeking to enter into that field. However, as a preliminary matter, we believe that these and the other perceived anti-competitive effects of these proposals are far outweighed by the regulatory purposes to be achieved by the proposals. The Commission's mandate under section 11A(a) of the Act to facilitate the establishment of a national market system and its authority granted under section 11A(c) to prevent the dissemination of fraudulent, deceptive or manipulative transaction and quotation information and to assure the broad dissemination of accurate and reliable last sale and quotation data in a fair and useful format would appear to be significantly furthered by the adoption of these proposals. However, in addressing the regulatory proposals discussion in this Release, commentators should specifically address the competitive impact of this regulation so that the Commission may further evaluate its proposals in the light of section 23(a)(2).

Interested persons are invited to submit written presentations of views, data and arguments concerning the proposed rule 11Ac1-2 under the Act and the issues discussed above. Persons wishing to make such submissions should file ten copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549, not later than December 15, 1978. All submissions should refer to File No. SF-759, and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street NW., Washington, D.C.

By the Commission.

George A. Fitzsimmons,
Secretary.

October 20, 1978.

[FR Doc. 78-30507 Filed 10-27-78; 8:45 am]

federal register

MONDAY, OCTOBER 30, 1978
PART IV

ENVIRONMENTAL PROTECTION AGENCY

TOXIC SUBSTANCES CONTROL ACT

Third Report of the Interagency Testing Committee; Receipt of Report and Request for Comments

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 995-1]

THIRD REPORT OF THE INTERAGENCY TESTING COMMITTEE

Receipt of the Report and Request for Comments

AGENCY: Environmental Protection Agency.

ACTION: This Notice requests comments on recent additions to the Interagency Testing Committee's Priority List of chemical substances recommended for testing under the Toxic Substances Control Act.

SUMMARY: The Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act (TSCA) has transmitted its Third Report to the Administrator of the Environmental Protection Agency (EPA). This Report revises and updates the Committee's Priority List of chemicals. The Report identifies those additional chemical substances the Committee is recommending to EPA for priority consideration for promulgation of test rules under section 4 of the act.

The Third Report is being published with this Notice. The Agency invites interested persons to submit comments on the Report.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 4 of TSCA authorizes the Administrator of EPA to promulgate regulations requiring testing of chemical substances in order to develop data relevant to determining the risks that such chemical substances may present to health and the environment.

Section 4(e) of TSCA establishes an Interagency Testing Committee to make recommendations of chemical substances to the Administrator of EPA to be given priority consideration for test rules under section 4. The Committee's recommendations are set forth in the form of a Priority List. Up to 50 of the chemical substances on the Priority List may be designated by the Committee for which EPA must within 12 months of designation initiate rulemaking to require testing or publish in the FEDERAL REGISTER its reasons for not doing so.

The Committee's initial recommendations to the Priority List, of four substances and six categories of substances, were published in the FEDERAL REGISTER on October 12, 1977 (42 FR 55026). Revisions to that list appeared in the Committee's Second Report and were published in the FEDERAL REGISTER on April 19, 1978 (43 FR 16684). Those revisions were the addition of four substances and four categories of substances to the Priority List.

In its Third Report, the Committee is recommending the addition of one chemical substance and two categories of chemical substances to the Priority List.

These three additions have also been designated by the Committee for EPA to initiate rulemaking within 12 months or publish its reasons for not doing so.

AVAILABILITY

The Committee's Third Report appears in the FEDERAL REGISTER following this notice.

The information dossiers used by the Committee in developing the recommendations presented in the Third Report will be transmitted by the Committee to EPA in the next few weeks.

Copies of the Third Report and/or dossiers are available from: John B. Ritch, Jr., Director, Industry Assistance Office, Office of Toxic Substances (TS-799), EPA, 401 M Street SW., Washington, D.C. 20460. Call toll free 800-424-9065; in Washington, D.C., call 554-1404.

REQUEST FOR COMMENTS

EPA invites interested persons to submit comments on the Committee's new recommendations. In view of the October 1979 statutory deadline for initiating rulemaking (or publishing reasons for not doing so), the Agency requests that comments be submitted no later than March 30, 1979.

Comments should bear the identifying notation OTS-040005 and should be submitted to Joyce Barbour, Document Control Officer, Chemical Information Division, Office of Toxic Substances (TS-793), Room 711-A, EPA, 401 M Street SW., Washington, D.C. 20460. All written comments will be available for public inspection in Room 711, East Tower, at the same address, between 8:30 a.m. and 4:30 p.m., weekdays.

Dated: October 23, 1978.

STEVEN D. JELLINEK,
Assistant Administrator for Toxic Substances.

THIRD REPORT OF THE TSCA INTERAGENCY TESTING COMMITTEE TO THE ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

OCTOBER 1978.

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TSCA INTERAGENCY TESTING COMMITTEE

STATUTORY MEMBER AGENCIES

Council on Environmental Quality: Carroll Leslie Bastian; Nathan J. Karch, Alternate.

Department of Commerce: Orville E. Paynter; Bernard Greifer, Alternate.

Environmental Protection Agency: Warren R. Muir; Joseph J. Merenda, Alternate.

National Cancer Institute: James M. Sontag.

National Institute of Environmental Health Sciences: Hans L. Falk; Warren T. Piver, Alternate.

National Institute for Occupational Safety and Health: Jean G. French, Vice Chairperson; Vera W. Hudson, Alternate.

National Science Foundation: Marvin E. Stephenson, Chairperson; Carter Schuth, Alternate.

Occupational Safety and Health Administration: Joseph K. Wagoner; Fred W. Clayton, Alternate.

LIAISON AGENCIES

Consumer Product Safety Commission: Joseph McLaughlin.

Department of Defense: Seymour L. Friess.

Department of the Interior: Charles R. Walker.

Food and Drug Administration: Allen H. Heim; Winston deMonsabert.

COMMITTEE STAFF

Executive Secretary: Carol A. Mapes.
Secretary: Madye B. Cole.

ACKNOWLEDGMENTS

The Committee members acknowledge the support and invaluable contributions of the many individuals and groups who have significantly aided us in our work. These include:

The Federal agencies who have cooperated by providing support through the liaison members;

Clement Associates, Inc., technical support contractor;

The U.S. Environmental Protection Agency (EPA) for funding the technical support contract and the National Institute for Occupational Safety and Health, the Council on Environmental Quality, and the National Cancer Institute for assisting in the funding;

Former liaison member Robert Hehir, Consumer Product Safety Commission;

Former EPA staff member Donald G. Barnes, Office of Toxic Substances;

EPA staff members who assisted the Committee in a variety of activities, in particular: John W. Lyon, Office of the General Counsel; Ralph C. Northrop, Jr., Office of Toxic Substances; and Amy Rispin, Office of Toxic Substances;

The numerous experts who prepared presentations and material for the Committee;

The industries that responded to the Contractor's request for information on specific chemical substances and categories; and

The many individuals and organizations who responded to the Committee's previous reports.

SUMMARY

A major section (Sec. 4) of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94-469) provides for the testing of chemicals in commerce which may pose an unreasonable risk to human health or the environment. This section of the Act also provides for establishment of a Committee, composed of representatives from eight designated Federal agencies, to recommend chemical substances or mixtures to which the Administrator of the U.S. Environmental Protection Agency (EPA) should give priority consideration for the promulgation of testing rules. The Committee makes such revisions in the Section 4(e) Priority List as it determines to be necessary and transmits them to the Administrator, at least every 6 months.

As a result of its deliberations during the past six months, the Committee is revising the TSCA Section 4(e) Priority List by the addition of one individual substance and two categories of substances. Each of these new recommendations is being designated by the Committee for action by EPA within 12 months. The Committee considers these additions to be of the same priority as the previous entries. The chemical substance and categories being added to the Priority List are presented alphabetically, together with the types of studies recommended, as follows:

Substance or category	Recommended studies
Chlorinated Benzenes, Tri-, Tetra- and Penta-	Carcinogenicity, mutagenicity, teratogenicity, other toxic effects, environmental effects, and epidemiology.
1,2-Dichloropropane	Carcinogenicity, mutagenicity, teratogenicity, other toxic effects, environmental effects, and epidemiology.
Glycidol and its derivatives	Carcinogenicity, mutagenicity, teratogenicity, other toxic effects, and epidemiology.

Information dossiers on these new entries will be forwarded to the EPA Administrator at the earliest practicable date.

THIRD REPORT OF THE TSCA INTERAGENCY TESTING COMMITTEE TO THE ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

OCTOBER 1978.

CHAPTER 1. INTRODUCTION

1.1 Background

The Interagency Testing Committee (Committee) was established under Section 4(e) of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94-469). The specific mandate of the Committee is to identify and recommend to the Administrator of the U.S. Environmental Protection Agency (EPA) chemical substances or mixtures in commerce which should be tested to determine their potential hazard to human health and/or the environment. The Act specifies that the Committee's recommendations to the Administrator will be in the form of a list (sec. 4(e) Priority List) to be published in the FEDERAL REGISTER. The Committee also is directed to make such revisions in the list as it determines to be necessary and transmit them to the Administrator, at least every 6 months after submission of its initial list.

The Committee has eight statutory members appointed by the Federal agencies identified for membership in Section 4(e)(2)(A) of the Act as well as a number of alternate members as permitted by Section 4(e)(2)(B)(i). In addition, the Committee has invited several other Federal agencies with programs related to the control of toxic substances to designate liaison representatives to participate in its meetings. The current Committee members, alternates, and liaison representatives are identified in the front of this report.

1.2 Previous reports

In July 1977, the Committee published a Preliminary List of 330 chemical substances and categories which it had identified for further consideration (Reference No. 1). Using previously described techniques (Reference No. 2), the Committee ultimately identified approximately 80 chemical substances and categories for detailed review and requested its technical contractor to prepare dossiers on selected chemicals and categories. The review of these dossiers, combined with the knowledge and professional judgment of the Committee members, formed the basis for the Committee's initial recommendations to the EPA Administrator (Reference No. 2) and subsequent additions to the Section 4(e) Priority List (Reference No. 3).

1.3 Committee activities during this reporting period

During the past six months, the Committee completed a detailed review of all chemicals and categories selected for dossier preparation as well as the review of a number of additional chemicals, with the following exceptions: (a) Those chemical substances and categories for which dossiers are being prepared and will be reviewed prior to the Committee's April, 1979, report; and (b) those chemicals whose further consideration has been deferred pending receipt of additional information.

1.4 Future committee activities

The Committee is currently updating its Master File of chemicals. This effort will be followed by a selection of chemicals and scoring procedures similar to those described in previous Committee reports (Reference Nos. 2 and 3). These procedures will provide one method for identifying additional chemicals for detailed review and, simultaneously, will enable a periodic re-evaluation of those chemicals which have been reviewed, but not selected for inclusion in the section 4(e) Priority List.

CHAPTER 2. AVAILABILITY OF TESTING FACILITIES AND PERSONNEL

The Committee again emphasizes its concerns about the National capability for conducting long-term tests of biological effects, as expressed in its second report to the EPA Administrator (Reference No. 3). As previously stated, the Committee's paramount concern is for the availability of adequately trained personnel. The Committee, therefore, reiterates its belief that the Civil Service Commission could do much to stimulate interest in professions such as toxicology, pathology, epidemiology, and related environmental and occupational health specialties by creating series and registers for these professions.

- The Committee supports current efforts by the Environmental Protection Agency to initiate the establishment of a Civil Service Commission series for toxicologists.
- The Commitee again recommends a National survey to assess the future availability of personnel and testing facilities.
- The Committee again recommends that this survey also determine the adequacy of the supply of test organisms for assessing specific health and environmental effects.

To determine whether the number of personnel and facilities are adequate to meet the predicted needs of TSCA/EPA, there also must be some assessment of the TSCA testing requirements in relation to those of other Federal agencies and the private sector.

- The predicted competition for these facilities by users from the Federal and private sectors might be partially alleviated if some short-term, national-testing-priority scheme were developed to enable the most crucial needs to be met as additional personnel and facilities are developed.

CHAPTER 3—RECOMMENDATIONS OF THE COMMITTEE

3.1 Chemical substances and categories recommended for testing

The Interagency Testing Committee is revising the TSCA section 4(e) priority list by the addition of one individual substance and two categories of substances for which testing is recommended. These chemicals were selected after consideration of the factors identified in TSCA section 4(e)(1)(A), other relevant factors identified by the Committee, and the knowledge and professional judgment of Committee members. The recommended studies deemed appropriate for determining the potential hazard(s) of each new entry and the reasons for such recommendations are described in section 3.3 of this report. As in the case of the Committee's previous recommendations, each chemical substance and category is being designated by the Committee for action by EPA within 12 months.

Table 1 presents the complete section 4(e) priority list including the date by which the EPA Administrator must take action on each entry. As in previous Committee reports (Reference Nos. 2 and 3), the entries are listed alphabetically. The Committee considers each of its new entries to the list to be of equal importance. Therefore, each of these new entries should be given the same priority for purposes of initiating action as required under TSCA section 4(e). Unless stated otherwise, the chemical substance recommended for testing is the product to which the population is exposed.

3.2 Designated substances on which studies are planned or ongoing

The Committee is aware that it has added to the section 4(e) priority list certain chemical substances which are either currently under study or have been selected for study by other groups. Such studies may concern one or more of the effects for which the Committee has recommended testing. Set forth below is the Committee's reasoning for its past and future designation of such substances.

The Committee generally does not regard knowledge that studies are planned or ongoing as a sufficient basis to defer consideration of a substance for designation for the effect under investigation or for any other effect. The Committee's judgment as to whether a substance has been adequately tested for health and environmental effects must rest with the data that are presently available. Such data do not exist for planned studies and may be in various stages of generation for ongoing studies. In addition, the Committee is unable to predict if an ongoing study would be successfully concluded (i.e., disease, toxicity, or other unforeseen events may cause a study to be aborted). Whenever they have been identified, planned and ongoing studies are noted in the dossiers on designated substances.

TABLE 1—THE TSCA SECTION 4(e) PRIORITY LIST, ARRANGED ALPHABETICALLY

Chemical substance or category	Designated for action by
Acrylamide	April 1979.
Alkyl epoxides	October 1978.
Alkyl phthalates	October 1978.
Aryl phosphates	April 1979.
Chlorinated benxenes, mono- and di-	October 1978.
Chlorinated benzenes, tri-, tetra- and penta-	October 1979.
Chlorinated naphthalenes	April 1979.
Chlorinated paraffins	October 1978.
Chloromethane	October 1978.
Cresols	October 1978.
Dichloromethane	April 1979.
1,2-Dichloropropane	October 1979.
Glycidol and its derivatives	October 1979.
Halogenated alkyl epoxides	April 1979.
Hexachloro-1,3-butadiene	October 1978.
Nitrobenzene	October 1978.
Polychlorinated terphenyls	April 1979.
Pyridine	April 1979.
Toluene	October 1978.
1,1,1-Trichloroethane	April 1979.
Xylenes	October 1978.

The above statement does not mean that the Committee's consideration of substances will never include planned or ongoing studies. If the details of a study are know and its conclusions imminent, the Committee may delay considering the substance until the results become available. When the Committee considers that a chemical substance is under sufficient assessment by other groups, it may defer consideration of the substance. Because the Committee recognizes that each case must be judged individually, it has not establish formal criteria regarding the impact that planned or ongoing studies may have on its recommendations.

3.3 Reasons for Recommending Testing of the Additional Substances and Categories

Table 2 summarizes the studies recommended for each additional entry on the section 4(e) priority list. As directed by TSCA section 4(e)(1)(B) the Committee also is presenting its reasons for recommending specific types of studies. In addition to the rationales presented herein, supporting dossiers of information are being finalized and will be transmitted to the Administrator, EPA, at the earliest practicable date.

Table 2. Summary of Recommended Studies

Substance or Category	Carcino-genicity	Muta-genicity	Terato-genicity	Other* Toxic Effects	Environ-mental Effects	Epidemiology
1. Chlorinated Benzenes, Tri-, Tetra- and Penta-	X	X	X	X[a]	X	X
2. 1,2-Dichloropropane	X	X	X	X[b]	X	X
3. Glycidol and Its Derivatives	X	X	X	X[c]		X

*The systems of particular concern are as follows: a) neurological and hematopoietic; b) reproductive and neurological; and c) reproductive.

3.3.A Chlorinated benzenes, tri-, tetra- and penta-

Recommended studies: Carcinogenicity, mutagenicity, teratogenicity, other toxic effects, environmental effects, and epidemiology.

Category identification: This category consists of: 1,2,3-trichlorobenzene (CAS No. 87-61-6); 1,2,4-trichlorobenzene (CAS No. 120-82-1); 1,3,5-trichlorobenzene (CAS No. 108-70-3); 1,2,3,4-tetrachlorobenzene (CAS No. 634-66-2); 1,2,3,5-tetrachlorobenzene (CAS No. 634-90-2); 1,2,4,5-tetrachlorobenzene (CAS No. 95-94-3); and pentachlorobenzene (CAS No. 608-93-5).

Reasons for Recommendations. *Production, release, and exposure*—Although the Committee was not able to obtain accurate production, environmental release, and worker exposure figures, one source suggests that over 1 million workers are exposed to trichlorobenzenes. The Committee also judges that a variety of sources are responsible for the observed contamination of air, water, soil and food chains by chlorinated benzenes. Possible sources of contamination include the use of chlorobenzenes as chemical intermediates and solvents in the manufacture of dyes, lubricants and pesticides as well as other uses such as transformer oils. Recent decreases in the use of polychlorinated biphenyls may result in an increase usage of trichlorobenzenes as transformer oils. Chlorinated benzenes are also present as contaminants in and degradation products of pesticides and occur in chlorinated municipal, agricultural and industrial effluents. The predicted partition coefficients of chlorobenzenes suggest that they may accumulate in biological systems. The high probability for exposure to the human population and environment of these relatively persistent and toxic substances in emphasized in the following recommendations.

Carcinogenicity: No carcinogenicity studies on tri-, tetra- and pentachlorobenzenes were found in the searched literature, although hexachlorobenzene is a demonstrated animal carcinogen. The Committee, therefore, recommends that tests be conducted to assess the carcinogenic potential of these chemicals.

Mutagenicity: Although a single mutagenicity study for 1,2,4-trichlorobenzene was negative, additional testing is needed to assess the mutagenix potential of the chlorobenzenes.

Teratogenicity: Pentachlorobenzene administered to pregnant rats reduced the mean number of live fetuses per litter and increased the incidence of sternal defects and extra ribs. Studies are recommended to assess the teratogenic potential of the chlorobenzenes.

Other toxic effects: Degeneration of liver cells and hepatic porphyria have been observed in rodents exposed to chlorobenzenes. Dose-related increases in liver to body weight ratios in highly porphyric rats were accompanied by the induction of hepatic microsomal enzymes. Monkeys given high doses of 1,2,4-trichlorobenzene showed severe weight loss and fine tremors. Guinea pigs given high doses of chlorobenzenes have been reported to convulse and die. The Committee recommends testing, with emphasis on the neurological and hematopoietic systems, to further assess the toxic effects of the chlorobenzenes.

Environmental effects: There is a paucity of information on the acute and chronic effects of tri-, tetra- and pentachlorobenzenes on wild and domestic birds and mammals, fish, amphibians, reptiles, invertebrates, plants and algae. Since residues have been detected in aquatic situations, particular emphasis should be placed on long-term environmental studies in freshwater and marine environments with concern for the biological significance of residues and effects on reproduction, behavior and survival of fish, fish-eating birds and mammals, and food chain organisms.

Epidemiology: Since the nature of human exposure to chlorobenzenes is extremely broad, the Committee believes that epidemiological studies may be important in assessing the effects of long-term exposure to chlorobenzenes.

3.3.B 1,2-dichloropropane

Recommended studies: Carcinogenicity, mutagenicity, teratogenicity, other toxic effects, environmental effects, and epidemiology.

Substance identification: CAS No. 78-87-5.

Reasons for recommendations. *Production, release, and exposure*—1,2-dichloropropane is produced in large quantities with a production rate in 1976 of 71 million pounds. Because of its widespread use as a solvent, as well as a multiplicity of other uses, 1,2-dichloropropane has a potentially high occupational exposure (over 1 million workers). Its potential use in many consumer products also may lead to wide general exposure. Little is known about the release rate of 1,2-dichloropropane into the environment.

Carcinogenicity: The testing carried out thus far on the carcinogenicity of 1,2-dichloropropane is insufficient to allow an appropriate appraisal of its carcinogenicity. The Committee, therefore, recommends that additional carcinogenicity studies be conducted.

Mutagenicity: Although positive mutagenicity tests have been reported in *Salmonella typhimurium* and in *Aspergillus nedulans* for dichloropropane, the isomer was not specified. The Committee recommends that mutagenicity testing be done specifically on 1,2-dichloropropane.

Teratogenicity: Because no information on the teratogenicity of 1,2-dichloropropane was found in the searched literature, the Committee recommends that teratogenicity tests be conducted.

Other toxic effects: Fatty degeneration of the liver and kidney and necrosis of the adrenals have been observed in experimental animals following acute, high-level exposures to 1,2-dichloropropane. Although one low-level exposure study has been reported, it is considered to be inadequate to assess the chronic effects of 1,2-dichloropropane. Since this compound is structurally similar to 1,2-dibromo-3-chloropropane, the Committee recommends that particular emphasis be placed on the reproductive and neurological effects of this chemical.

Environmental effects: In view of its volatility and high specific gravity, the ecological impact of 1,2-dichloropropane may be localized to those environments receiving continuous exposure associated with this chemical's use and disposal. The potential for bioaccumulation suggests the need for further testing to determine the biological significance of exposure to wild and domestic birds, mammals, fish, and invertebrates. Specific areas of environmental concern include: Chronic toxicity to fish and invertebrates; effects on avian and mammalian reproduction and behavior; and effects on soil invertebrates and terrestrial insects.

Epidemiology: There is no information available on chronic effects in humans exposed to 1,2-dichloropropane over an extended period of time. Because of the potentially widespread exposure, epidemiological studies may be particularly important in assessing the human health effects of 1,2-dichloropropane.

3.3.C Glycidol and Its Derivatives

Recommended studies: Carcinogenicity, mutagenicity, teratogenicity, other toxic effects, and epidemiology.

Category identification: This category consists of glycidol (CAS No. 556-52-5) and its derivatives. Example chemicals in this category are glycidyl acrylate (CAS No. 106-90-1), glycidyl methacrylate (CAS No. 106-91-2), allyl glycidyl ether (CAS No. 106-92-3), n-butyl glycidyl ether (CAS No. 2426-08-6), para-cresyl glycidyl ether (CAS No. 2186-24-5), phenyl glycidyl ether (CAS No. 122-60-1), and the diglycidyl ether of bisphenol A (CAS No. 1675-54-3).

Reasons for recommendations.

Production, release, and exposure—Most of these commercially significant chemicals have annual production volumes in excess of 1,000 pounds (1976). Although exposure estimates are not available for all the chemicals in this category, NIOSH estimates that 105,000, 118,000, and 105,000 workers are exposed to glycidol, glycidyl ethers, and glycidyl methacrylate, respectively.

Carcinogenicity: Although glycidol and glycidyl methacrylate have been tested for carcinogenicity, neither meets current testing standards. In view of the potential alkylating properties of glycidol and its derivatives and the demonstrated carcinogenicity of certain members of this category (e.g., diglycidyl resorcinol ether and glycidyl oleate), the Committee recommends carcinogenicity studies.

Mutagenicity: Since glycidol, allyl glycidyl ether, n-butyl glycidyl ether, and phenyl glycidyl ether have been reported to be mutagenic in several assay systems, the mutagenic potential of other category members should be determined.

Teratogenicity: With the exception of negative test results on phenyl glycidyl ether, the teratogenic potentials of these compounds have not been evaluated. The Committee, therefore, recommends studies to evaluate the teratogenic potential of other Compounds in this category.

Other toxic effects: Most of these chemicals are skin and eye irritants, while some induce sensitization and cross-sensitization reactions in exposed workers. A diversity of toxic effects also has been observed in experimental animals following administration of these compounds. The most frequently observed effects are CNS depression, incoordination and ataxia, although some of these compounds reportedly induce testicular atrophy and temporary sterility in rats. Adverse effects on the kidneys, liver, pancreas, and adrenals also have been observed in experimental animals. The Committee, therefore, recommends studies to evaluate the toxicity of these chemicals. The reproductive system is of particular interest.

Epidemiology: Epidemiology studies should be conducted to assess the extent of human health effects.

REFERENCES

1. *Preliminary List of Chemical Substances for Further Evaluation*, Toxic substances Control Act Interagency Testing Committee, July 1977.

2. *Initial Report to the Administrator, Environmental Protection Agency*, TSCA Interagency Testing Committee, October 1, 1977. Published in the FEDERAL REGISTER, Vol. 42, No. 197, Wednesday, October 12, 1977, pp. 55026-55080. The report and supporting dossiers also were published by the Environmental Protection Agency, EPA 560-10-78/001, January 1978.

3. *Second Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency*, TSCA Interagency Testing Committee, April 1978. Published in the FEDERAL REGISTER, Vol. 43, No. 76, Wednesday, April 19, 1978, pp. 16684-16688. The report and supporting dossiers also were published by the Environmental Protection Agency, EPA 560-10-78/002, July 1978.

[FR Doc. 78-30336 Filed 10-27-78; 8:45 am]

federal register

MONDAY, OCTOBER 30, 1978
PART V

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

■

REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE AND ALLOCATION OF HOUSING ASSISTANCE FUNDS

Final Rule

[4210-01-M]

Title 24—Housing and Urban Development

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

[Docket No. R-78-529]

PART 891—REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE AND ALLOCATION OF HOUSING ASSISTANCE FUNDS

Final Rule

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: HUD is adopting for immediate effect revised regulations on reviewing applications for assisted housing and allocating housing assistance.

EFFECTIVE DATE: October 30, 1978.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On April 24, 1978, the Department of Housing and Urban Development (HUD) published proposed amendments (43 FR 17448) to subparts A through D of Part 891, Chapter VIII, 24 CFR. Interested parties were given until May 24, 1978, to submit written comments. All comments received with respect to the proposed rules were given due consideration. As a result of the comments received, a number of changes have been made to the proposed regulations. The revisions and comment disposition are discussed below. Subparts E and F will be revised at a later date for consistency.

Definitions

In response to a comment from a nonprofit organization, the definition of applications for section 202 projects has been revised to refer to "elderly and handicapped." This is consistent with the community development block grant (CDBG) regulations (43 FR 8434) and gives recognition to the fact that handicapped needs are separate and distinct from those of the elderly.

One problem which has appeared in connection with approving applications for housing for the handicapped is that communities have met their elderly housing goals under the HAP's without having adequately served handicapped persons. In preparing HAP's, communities have been advised that the needs of the nonelderly handicapped should not necessarily be considered to be met or addressed even though the category covering both elderly and handicapped may have been served disproportionately when compared to family and large family housing goals. In preparing their HAP's, communities are encouraged to develop a separate narrative section on the housing needs of the nonelderly handicapped and to note goals which are set for the handicapped separately from those set for the elderly. A definition for Federal fiscal year has been added.

Other minor changes have been made in the definitions to reflect recent programmatical and organizational changes within the Department.

General Applicability

Some comments questioned the exclusion from consideration of small projects involving 12 or fewer units and housing in new communities where the Secretary determines they are necessary. Both of these exclusions are statutory and are, therefore, not subject to change. In addition, one comment suggested that language be provided to allow for local government review if the size of a project decreased by more than 12 units, since provision is made for reviews when the project increases in the same fashion. Since the primary purpose of the review is to ascertain housing assistance plan (HAP) consistency, it is considered that the outcome of the review would not be changed if the project only decreased in size. Therefore, this comment was not adopted. One commenter requested that the preamble include clarification for the field offices and local governing bodies concerning which HAP is applicable for fiscal year 1979 allocations. Therefore, we have added the following:

For the purpose of allocation of fiscal year 1979 housing funds and the review and comment for consistency of housing proposals generated by that allocation, all fiscal year 1978 community development block grant housing assistance plans are subject to this part including where appropriate: (1) Annual housing action plans for transition year housing assistance plans (§ 570.306(a)(4)); and (2) housing assistance plans for small cities CDBG recipients (24 CFR 570, Subpart F) approved under fiscal year 1978 community development block grant funding.

In response to a comment the local government is required to submit comments to the clearinghouse. A comment suggesting new or amended HAP's be sent to the A-95 clearinghouse for review was not adopted since it is beyond the scope of these regulations.

Local Review and Comment

One comment suggested that opportunity for local reviews be required after the formal submission of an application to HUD even if previous comments were submitted. This comment has been followed. It is considered that the best interests of the Department and the local government will be served if the formal 30-day comment period is observed. However, local government comments may still be submitted at the beginning of the comment period to save processing time.

Two commenters requested a clarification of policy with respect to changes in HAP's during processing. The determination of whether the new or amended HAP will be used has been left to the discretion of the field office, taking into consideration local government comments. See § 891.203(b).

Local Government Response

Comments were received from a variety of municipal and regional organizations raising questions regarding the limits established for local government objections, Specific areas for objections have been purposely limited by the Department in order to insure that the comments will be constructive and contribute to expeditious processing of the applications. However, the local government may object if the housing is "inconsistent with any other limiting factors set forth in the HAP." See § 891.204(b)(3).

Two commenters indicated that specific sites within the general locations may be inappropriate for various reasons (e.g., inconsistent with the locality's adopted general plan relating to zoning). Issues beyond those related to HAP consistency are addressed in detail during the project review by the Field Office. One commenter objected that the limitation to sites within the general locations was unduly restrictive for applications for housing for the handicapped. Although the comment was fully considered, it was not adopted. General locations for housing in the approved HAP's must include a sufficient number of sites to insure competitive proposals within the locality. It is considered that through the normal requirements for general locations approved in a HAP that these areas would not be restrictive to any type of housing, including housing for the handicapped.

One commenter suggested that these provisions be clarified to incorporate the 15 percent minimum housing goal requirement of § 570.306. This suggestion was not adopted since the 15 percent minimum housing goal only

applies to the establishment of the 3-year goals and not to each specific application. Another commenter suggested that an objection be included relating to applications which exceed the 1-year goal. This suggestion was also not adopted since it is contrary to the intention of the revised regulations which do not restrict variations from one year goals.

A few commenters requested clarification of the "expressly excluded" phrase, including one who recommended that the provision be clarified to indicate that arbitrary program exclusions would not be allowed. In recognition of the noted confusion, this factor has been eliminated as a basis for objection. It is covered in concept since an express exclusion in the HAP would be a limiting factor under § 891.204(b)(3).

HAP Variations

One commenter suggested that local government should have complete discretion as to when HAP goals should be amended. HAP amendments are necessary before applications which exceed the 3-year goals by more than 20 percent may be approved. This is considered reasonable and should not place an unnecessary burden on the local government. See § 891.206.

One commenter suggested that the Chief Executive should be informed by official notification when an application or applications would exceed the 3-year HAP goals. Provision for this procedure was already made in § 891.202(b)(2).

One commenter indicated that the references to housing type and household type were confusing and suggested that the basis of comparison should only be by housing type. Proportionality of goals by household type is a specific requirement for the preparation of the HAP. Proportionality by housing type, on the other hand, is not required in the HAP preparation, but rather a directive by the Department to utilize the assisted housing funds in a manner consistent with the resulting proportions by housing types in prepared HAPs.

One commenter inquired whether a field office manager may approve applications exceeding goals by 20 percent or less if the locality does not object. As detailed in § 891.206(a), field office managers may not approve such applications unless the local government provides a written statement in accordance with § 891.204(a) and the application meets the appropriate criteria.

One commenter indicated that some plans allow for a goal adjustment process short of a formal HAP amendment and suggested that the 20 percent provision should not override such local provisions. The present regulations are intended to minimize the number and frequency of need for HAP amendments in any local government. To the extent they are applicable, they should be adhered to in every locality with an approved HAP.

Two commenters noted that the language in § 891.206(b) might be construed as precluding the necessity to follow the formal HAP amendment procedures. In consideration of this comment, the language of this section has been clarified.

Notifications of HUD Determination

One commenter suggested that inclusion of a provision for notifying an applicant when HAP problems arise, and the designation of an appropriate appeal mechanism. All decisions of the field offices may be appealed through appropriate channels to headquarters, if necessary.

Need for Housing Assistance

One commenter suggested that the determination regarding the availability of adequate public facilities and services under subpart C should be a requirement in areas with HAP's as well as those without. The requirement is statutorily imposed for areas without HAP's in recognition of the likelihood that the application for housing assistance was not anticipated by the local government. On the other hand, in areas with HAP's it is presumed that the adequacy of public facilities and services is taken into consideration during the normal course of planning and goal establishment.

Lower Income Housing Needs Determination

Several commenters representing a cross section of public and private interest groups wrote with suggestions and/or requested clarification of the procedures relative to the determination of housing needs under § 891.402. One commenter suggested that the age of housing should be included in the criteria. The Department has explored this option in the past and has determined that its inclusion would provide an undesirable distortion to the results. The age of the house does not conclusively indicate a housing need. Therefore, this comment has not been adopted. One commenter suggested that the language in the regulations be modified to read, "and other, objectively measurable conditions." As worded the language is as stated in the statute. However, it is not considered to preclude the use of other factors. In fact the present formula includes the factors listed, in addition to a factor for a rent/income ratio. To the extent that the factors are based on data available for the entire nation and have a direct correlation to housing need, they may be considered for inclusion. Two commenters questioned the validity of the Census data utilized in the allocation process. Althouth the age of the data is subject to question, these are the only data that are available on a national basis. Population data becomes available more frequently and is updated accordingly.

Two commenters requested clarification of the high cost adjustment relative to the provision of housing among field office jurisdictions. Data for this survey is derived from a uniform survey of construction costs conducted by each field office on an annual basis.

One commenter suggested that the determination of the lower-income housing needs and the initial allocation to areas and localities is contradictory to the purpose and intent of AHOP's. It is essential that the initial determination and allocation be based on a comparative assessment using nationally available data. Only a few areas actually have an approved AHOP. Thus after the initial determination of need is made in allocating contract authority, field office managers may, pursuant to § 891.404(a)(2), make an adjustment of not more than 15 percent to reflect differing needs and goals in HAP's, State housing plans and approved AHOP's.

Allocation to HUD Offices

The regulations have been modified to resolve the issue which arises each year regarding how much of the available funds will be allocated on a "fair share" basis. The additional wording in § 891.403 specifies that contract authority assigned for a specific purpose from the headquarters reserve is not available for "fair share" allocation when carried over into the next fiscal year. The two most notable programs subject to this provision are the neighborhood strategy area (NSA) and AHOP programs.

Two commenters requested clarification of the basis for allocating funds directly to the field office. This provision was made to give headquarters the means to expedite the allocation process when the time to accomplish specific objectives is shorter than desirable, and reflects the recent HUD field reorganization.

One commenter suggested that some provision should be made for a locality to update goals using local data such as waiting lists for assisted housing. Goals in a HAP are based on the housing needs of the community. The needs of the community may be based on data derived on a national basis such as the decennial census, or locally generated data, subject to the review and approval of the local field office. However, in general, data based on waiting lists for assisted housing would not be acceptable since they fre-

quently include persons who are ineligible for the program, deceased, live in another jurisdiction, already reside in assisted housing, etc.

ALLOCATION TO AREAS AND LOCALITIES

Two significant revisions have been made to § 891.404(a)(4). These modifications were made after considering all comments received, previous departmental performance and an assessment of new requirements based on new programs and recent restructuring of the organization. (1) Approved AHOP's must be designated as separate allocation areas. (2) Formula entitlement block grant recipients may be established as separate allocation areas where the amount of the allocation is sufficient to achieve proportionality over a 3-year period and to provide feasible projects.

Several commenters requested further clarification of the role of the various regional, State, and areawide (AHOP) plans in establishing relative needs. It is essential that national data derived from the same source be utilized in determining the needs for lower income housing assistance under this part. Census data, albeit several years old, are the only source that fulfills the requirement. Regional and State plans even in the aggregate only cover a small geographic area and therefore are used on an adjustment basis only and at the discretion of the field office manager. Clarifying language has been added to § 891.404(a)(4) to require that approved AHOP's be used as the basis for the distribution of all contract authority within allocation areas with approved AHOP's and the allocation of contract authority by housing type and household type in those areas.

One commenter requested an exception for the section 202 program from the requirement that allocation areas be identical for all housing programs. This comment also reflects congressional concern that section 202 invitations be broad enough to support economically feasible projects. In view of the concerns expressed, appropriate language has been included to permit aggregation of allocation areas for the section 202 program.

One commenter suggested a revision in the regulations to require the Department to deliver housing in proportion to HAP goals and of a type specific in the HAP. The Department's allocation process reflects the implementation of legislation, requiring certain aspects of the process to be initiated at headquarters. After provisions are made for the set-asides established by Congress, every attempt is made at the field office level to distribute contract authority for programs that will be in concert with local HAP's. Because of the wide variance of needs and goals throughout the country, it is not possible to assure that each locality will receive housing assistance in amounts and types specified in the HAP.

One commenter suggested a requirement to use State housing plans to adjust the county housing needs percentage. Although not a requirement, there is a provision in § 891.404(a)(4) for this type of adjustment at the discretion of the field office. In view of the number of plans which exist, their varying quality, and the fact that some have overlapping jurisdictions, the current provision is considered appropriate.

One commenter suggested that the allocation of housing resources should be based on the community's needs rather than the goals. The present allocation system is already based on the needs of the community. See § 891.404(a).

One commenter suggested the elimination of the limitation on the size of the adjustment in the housing needs percentage on the grounds that it is an unnecessarily restrictive requirement which would result in an unfair distribution of contract authority. This adjustment provides the field office some flexibility to allow for variations to reflect local HAP plans, State and regional plans and the need to promote spatial deconcentration. The adjustment reflects HUD's commitment to support as much as possible the plans prepared by local and State governments, and regional planning organizations. The 15 percent limitation has been eliminated in the case of approved AHOP's. Field office managers may request waivers of this section where it is felt that the 15 percent limitation is too restrictive.

One commenter requested clarification of the term "other relevant considerations" in § 891.404(a)(3). This phrase would include such considerations as the management capability of the housing authority as well as the status of previously approved programs. Since the considerations will vary with the individual circumstances, it is considered appropriate to be left to the discretion of the field office manager.

One commenter suggested a revision in the allocation procedure to recognize programs that are unworkable in an area. This comment received careful consideration but was not adopted in the final rule. The determination that a program is unworkable in a given area is considered a rare exception, can be taken care of under current procedures, and need not be included in the regulations.

One commenter suggested that a designated portion of the allocation area be set-aside for each county in a SMSA. Another commenter suggested that the needs of one county should not be spread over other counties. A third commenter suggested that careful reviews be required to insure sufficient funds in allocation areas for economically feasible projects. Although a housing needs percentage is developed for each county in the county under the allocation system, it is often necessary to combine two or more localities into one allocation area in order to assure an economically feasible project. The needs of the localities are not combined; rather the contract authority is combined. Each application submitted in response to a HUD invitation must be in accordance with the approved HAP of the locality in which the project will be located. The necessity to have sufficient authority to support economically feasible projects is adequately addressed in § 891.404(d).

Numerous comments were received from representatives of regional, state and local government offices as well as profit and nonprofit organizations addressing the allocation procedures at the field office level. The transition to an allocation system based on 3-year HAP goals is expected to provide more flexibility for local governments in meeting their HAP goals on a proportional basis. In response to some of the specific concerns raised in the comments, clarifying language has been provided. The most significant clarification addresses certain limitations that may arise in some allocation areas regarding goal performance because of the necessity to insure economically feasible proposals. Allocated units are required to be proportional by housing type and by household type within each tenure type (a recent modification to provide consistency with § 570.306(c)(1) of the block grant regulation (43 FR 8434)), except that adjustments are made to reflect the remaining unsatisfied goals identified in individual HAPs during the second and third year of the 3-year period.

In response to a suggestion for Housing Finance Development Agency (HFDA) input into the actual allocation of units, the Department considers it important for the housing industry to be prepared to respond to goals identified in approved HAP's. However, in view of the time constraints on the allocation process and the divergent capacities of the HFDA's, no requirement is made for such input into preparation of the plan; however, the field office manager must discuss the plan and coordinate with the HFDA (§ 891.4.4(e)).

A one word revision recommended by a comment involved the substitution of the word "underserved" for the word "unserved" in reference to household types for which 3-year goals have not been satisfied. This sug-

gestion has been adopted in all appropriate sections of the final rule.

One commenter suggested a revision to show an additional purpose of establishing allocation areas as providing a broader geographical choice of housing opportunities for low-income families and minorities. Although the Department acknowledges that there are additional objectives to be met through the provision of housing assistance, it is considered unnecessary to include them in this section of the regulation. The provision of a broader geographical choice is a review responsibility of the field office when considering local HAP's for approval.

One commenter suggested that a provision be made for consultation with localities prior to field office allocations and that the time period to complete the field office actions be extended to 45 days. The Department recognizes the advantage of consulting with localities in preparation of allocation plans; therefore, language has been added to § 891.4 to provide for consultation with central cities that are separate allocation areas in the preparation of the plan for those areas. However, the time period for field office actions has not been extended.

In response to a commenter who questioned the need for state setasides, it should be noted that setasides are established by the Department in order to meet national objectives. Compensating allowances are made by the Department for areas without the agencies (e.g., HFDA's) or the programs (e.g. FmHA, Indian Housing, etc.) designated for setasides.

Several commenters indicated that any reallocation from the targeted field office should be done only as a last resort. Although this was the intention of the reallocation procedures, additional language was added in § 891.405 to permit the provision of housing assistance to localities within the allocation area that have already met their housing goals, as a last step prior to reallocation. Once commenter suggested more field office flexibility to transfer funds from one allocation area to another. A second commenter recommended local input prior to fund reallocation. Within the guidelines established in the regulations the field office already has the flexibility to transfer funds. It is also considered that the field office carefully evaluated the fund assignment prior to the initial allocation and the decision to reallocate should not be arbitrary. When it is anticipated that the field office will maintain contact with the local government regarding the utilization of funds, no requirement will be made, rather it will be at the discretion of the field office manager.

NEED FOR IMMEDIATE EFFECT

The Department has determined that these regulations must be published for immediate effect in order to assure that housing assistance for fiscal year 1979 is provided in a manner consistent with new Department policies and regulations concerning housing assistance plans, consultation and cooperation with local governments, the provision of block grant assistance, the needs of the nonelderly handicapped and the expansion of housing opportunities. In order to meet the fiscal year 1979 goals and deadlines, HUD must immediately commence the allocation process in accordance with the provisions of this rule. Therefore, any delay in the effective date of the regulations will seriously hamper the Department's ability to operate its assisted housing programs efficiently in fiscal year 1979, and lead to increased project costs.

A finding of inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this finding of inapplicability will be available for public inspection during regular business hours in the office of the rules docket clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

Issued at Washington, D.C., October 25, 1978.

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

Accordingly, 24 CFR, Part 891 is revised to read as follows:

PART 891—REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE AND ALLOCATIONS OF HOUSING ASSISTANCE FUNDS

Subpart A—General Provisions

Sec.
891.101 Applicability and scope.
891.102 Definitions.

Subpart B—Applications for Housing Assistance in Areas with Housing Assistance Plans

891.201 General.
891.202 Notification of local government.
891.203 Review and comment period.
891.204 Local government response.
891.205 HUD review of applications for housing assistance.
891.206 Variation from HAP goals.
891.207 Notifications of HUD determination.

Subpart C—Applications for Housing Assistance in Areas Without Housing Assistance Plans

891.301 General.
891.302 Finding of need of housing assistance.
891.303 Notification of local government.
891.304 Review and comment period.
891.305 HUD review of applications for housing assistance.

Subpart D—Allocation of Contract and Budget Authority for Housing Assistance

891.401 General.
891.402 Determinations of lower-income housing needs.
891.403 Allocation to HUD offices.
891.404 Allocation to areas and localities.
891.405 Reallocation of uncommitted contract authority.

AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (45 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 891.101 Applicability and scope.

(a) These policies and procedures apply to the allocation of loan and contract authority and the review and approval of applications for housing assistance under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), sections 235 and 236 of the National Housing Act (12 U.S.C. 1715z, 1715z-1), section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), and section 202 of the Housing Act of 1959 (12 U.S.C. 1701q). These provisions do not apply to applications for public housing modernization or operating subsidy assistance, or to applications for converting section 23 leased housing projects either to the section 8 housing assistance payments program or to the public housing program.

(b) This part covers the policies and procedures relating to the role and responsibilities of HUD and local governments, under section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 5301), in reviewing and making determinations with respect to applications for housing assistance made available under the housing programs specified in paragraph (a) of this section.

(c) The determinations to be made by the local government and HUD, with respect to applications for housing assistance, and HUD allocations of contract authority in proportion to the HAP goals for housing type and by household type within each tenure type shall be based on the applicable 3-year HAP period. The applicable HAP period will begin on the first day of the Federal fiscal year succeeding the approval of the HAP by HUD. Where no 3-year HAP is available, the current annual goal (e.g., small cities, single purpose HAP) will be used.

§ 891.102 Definitions.

Act. The Housing and Community Development Act of 1974.

AHOP. See areawide housing opportunity plan.

Allocation area. A municipality, county, or group of contiguous municipalities or counties or Indian areas identified by the field office or in an approved AHOP for the purpose of allocating housing assistance to support economically feasible housing projects.

Application for housing assistance. For the purpose of this part, the following definitions establish the documentation which constitutes an application for housing assistance within the meaning of section 213 of the Act.

(a) *Section 8 new construction and substantial rehabilitation.* A preliminary proposal containing the elements listed in § 880.205 of the regulations governing the section 8 housing assistance payments program—new construction (24 CFR Part 880) or the elements listed in § 881.205 of the regulations governing the section 8 housing assistance payments program—substantial rehabilitation (24 CFR Part 881).

(b) *Section 8 existing housing.* An application containing the elements listed in § 882.204 of the regulations governing the section 8 housing assistance payments program—existing housing (24 CFR Part 882) submitted by a public housing agency (PHA), including a State housing finance and development agency (HFDA). In cases where no PHA has been organized or where the PHA is unable or unwilling to implement the program, HUD's determination to administer a section 8 existing housing program shall be considered an application for purposes of this part.

(c) *Section 8 housing finance and development agencies—new construction and substantial rehabilitation projects from set-aside.* A housing finance and development agency's application for assignment of a portion of its set-aside to a specific project (form HUD 52516), if a specific site is designated. If the site is not designated, the new construction or substantial rehabilitation proposal designating the site that is submitted by the HFDA. See the regulations governing the section 8 housing assistance payments program—State housing finance and development agencies (24 CFR Part 883 Subparts A-D).

(d) *Section 8/Farmers Home Administration—new construction set-aside.* A proposal submitted by the Farmers Home Administration (FmHA), Department of Agriculture, pursuant to the regulations governing the section 8 housing assistance payments program, new construction set-aside for section 515 rural rental housing projects (24 CFR Part 883, Subparts G-H).

(e) *Section 8 housing assistance payments program—special allocations.* (1) An application containing the elements listed in § 886.105 of the regulations governing the section 8 housing assistance payments program—additional assistance program for projects with HUD-insured and HUD-held mortgages (24 CFR Part 886, Subpart A).

(2) A preliminary proposal containing the elements listed in § 886.207 of the regulations governing the section 8 housing assistance payments program—additional assistance program for the disposition of HUD-owned projects (24 CFR Part 886, Subpart B).

(3) The identification of projects meeting the eligibility criteria described in § 886.304 of the regulations governing the section 8 housing assistance payments program—section 8 existing housing assistance program for the disposition of HUD-owned projects (24 CFR Part 886, Subpart C).

(f) *Public housing (including Indian public housing).* If a specific site is designated, an application for a public housing program reservation, for the construction or acquisition of housing, submitted by a PHA (24 CFR Part 841) or Indian housing authority (24 CFR Part 805) or, if the site is not designated, either the preliminary site report submitted by the PHA or the development program identifying the proposed neighborhoods for property acquisition as specified in the applicable program regulations.

(g) *Section 235 mortgage insurance and assistance payments for homeownership and project rehabilitation.* A request for preliminary reservation of contract authority submitted by a builder or seller.

(h) *Section 236 mortgage insurance and interest reduction payments for rental projects.* The first application for project mortgage insurance either for site appraisal and market analysis (SAMA), conditional commitment, or firm commitment.

(i) *Section 101 rent supplement payments.* The first application for project mortgage insurance, either for SAMA, conditional commitment, or firm commitment which will utilize rent supplement payments.

(j) *Section 202 housing for the elderly and handicapped.* An application containing the elements listed in § 885.210 of the regulations governing loans for housing for the elderly or handicapped (24 CFR Part 885).

Approved areawide housing opportunity plan (approved AHOP). An areawide housing opportunity plan approved by HUD in accordance with subpart E to serve, to the extent practicable, as the basis for the distribution of all contract authority allocated by HUD within the plan area pursuant to subpart D.

Areawide housing opportunity plan (AHOP). A plan to implement activities developed by an APO and participating jurisdictions pursuant to subpart E, and approved by HUD, which specifically addresses areawide housing assistance needs and goals in accordance with program objective.

AHOP area. The entire jurisdiction of an APO which has prepared and received approval of an AHOP.

AHOP program objective (program objective). To encourage, facilitate, and provide a broader geographical choice of housing opportunities for lower-income households (with particular attention to families and large families) outside areas and jurisdictions containing undue concentrations of low income or minority households.

Areawide planning organization (APO). An organization authorized by law or local agreement to undertake planning under section 701 of the Housing Act of 1954 (40 U.S.C. 461) and/or OMB Circular A-95 either for a multi-county area (including county-municipality combinations) or for a single county whose boundaries are coterminous with a designated SMSA.

Budget authority. The amount authorized by Congress to obligate the Federal Government by contract under the various assisted housing programs, with the result that the budget authority limits the maximum amount payable over the maximum term of the contracts.

Chief executive officer of a unit of general local government (chief executive officer). The elected official or the legally designated official who has the primary legal responsibility for the conduct of a unit of general local government's affairs. Examples of the "Chief Executive Officer" of a unit of local government are the elected mayor of a municipality; the elected county executive of a county; the chairman of a county commission or board in a county that has no elected county executive; the official designated as the executive pursuant to law by the governing body of the unit of local government; and the chairman, governor, chief, or president of an Indian tribe or Alaskan native village.

Contract authority. The maximum amount authorized for annual payments under the assistance contracts.

Federal fiscal year (fiscal year). The official operating period of the Federal Government, beginning on October 1 and ending on September 30, as established by the Congress of the United States.

Field office manager. (a) Area office managers, and (b) those service office supervisors who have been delegated the responsibility of managers under the assisted housing programs.

Household type. The three household types are (1) elderly and handi-

capped, (2) family, and (3) large family.

Housing assistance plan (HAP). (a) A local housing assistance plan approved by HUD meeting the requirements of § 570.306 of the community development block grant regulations (24 CFR Part 570).

(b) A local housing assistance plan approved by HUD meeting the requirements of § 570.306 submitted by a local government not participating in the block grant program.

Housing program. One or more of the assisted housing programs listed in § 891.101(a).

Housing type. The three housing types are new construction, rehabilitation, and existing housing.

HUD. The Department of Housing and Urban Development.

Loan authority. The loans authorized for payment for all eligible costs relating to planning and development of a public housing or section 202 project.

Metropolitan area. A standard metropolitan statistical area (SMSA) as established by the Department of Commerce.

New communities. HUD approved new community developments under title IV of the Housing and Urban Development Act of 1968 (42 U.S.C. 3901) or title VII of the Housing and Urban Development Act of 1970 (42 U.S.C. 4501).

Participating jurisdiction. A jurisdiction (including a county or other unit of local government) within an AHOP area, with which the APO (or a county, in accordance with § 891.504(a)) has reached agreement on numerical or percentage goals for the distribution of contract authority and on activities for the implementation of the AHOP.

Program objective. See areawide housing opportunity plan program objective.

Recipient jurisdiction. Any jurisdiction (whether or not it is a participating jurisdiction) recommended by the APO in accordance with § 891.605(h) and designated by the field office to receive contract authority made available by a special allocation pursuant to subpart F.

SMSA. See metropolitan area.

Special allocation. An allocation of contract and budget authority for housing assistance made available pursuant to subpart F.

Tenure type. The two tenure types are owners and renters.

Unit of general local government (local government). Any city, county, town, township, parish, village, or other general purpose political subdivision of a State, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by the Secretary; the District of Columbia; the Trust Territory of the Pacific Islands; Commonwealth of the Northern Marianas, and Indian tribes, bands, groups, and nations, including Alaska Indians, Aleuts, Eskimos and any Alaskan native village of the United States. Such terms also include a State or local public body or agency (as defined in section 711 of the Housing and Urban Development Act of 1970), a community association or other entity, which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 712 of the Housing and Urban Development Act of 1970 (42 U.S.C. 4501) or title IV of the Housing and Urban Development Act of 1968 (942 U.S.C. 3901).

Subpart B—Applications for Housing Assistance in Areas With Housing Assistance Plans

§ 891.201 General.

This subpart establishes the policies and procedures governing reviews and determinations pursuant to section 213 (a) and (b) of the Act with respect to applications for housing assistance, under the programs identified in § 891.101(a), to be provided in areas for which a HAP is applicable. This subpart does not apply to the following applications for housing assistance, and the field office is not required to submit these applications for local government review and comment:

(a) Applications for assistance involving 12 or fewer units in a single project or development.

(b) Applications for assistance with respect to housing in new community developments which the Secretary determines is necessary to meet the housing requirements in the developments.

(c) Applications for assistance with respect to housing financed by loans or loan guarantees from a State or agency thereof (including loans which also have Federal mortgage insurance or co-insurance), unless the local government in which the assistance is to be provided objects in its HAP to the exemption. Where the local government does not object in its HAP to the exemption under this paragraph, the policies and procedures governing reviews, determinations and local government comments shall be in accordance with subpart C.

(d) Applications amending previously approved applications, which initially were submitted for local government review and comments, if the amended application (1) does not increase the number of units by more than 12, (2) does not cause a change in household type of more than 12 units, and (3) does not change the proposed location.

§ 891.202 Notification of local government.

(a) The field office shall notify the chief executive officer of the local government having a HAP, no later than 10 working days after receipt (or completion of any preliminary review and determination that the application is acceptable for further processing), that an application for housing assistance to be provided in that jurisdiction has been received and is under consideration. Simultaneous with the notification of the chief executive officer the field office shall also notify the A-95 clearinghouse and initiate the A-95 review process for determining consistency with state areawide and local comprehensive planning and other coordination matters.

(1) When the application is for housing assistance in an area which is covered by more than one HAP (e.g., a municipality which has a HAP located in a county which also has a HAP covering the municipality), the field office shall notify each chief executive officer.

(2) When the application is for housing assistance in several non-overlapping political jurisdictions (e.g., a scattered site project), the field office shall notify the chief executive officer of each local government having a HAP. If such application is also for housing assistance in a jurisdiction for which a HAP is not applicable, the notification shall also be in accordance with subpart C.

(3) For a section 8 existing housing application, submitted pursuant to 24 CFR part 882, the field office shall notify the chief executive officers of the localities identified in the application for existing housing as primary areas from which households to be assisted will be drawn.

(b) The notification to the chief executive officer shall:

(1) Indicate that the field office has received and is considering an application for housing assistance, identify the housing program, the housing type, the number of units by bedroom size and household type, and the proposed location(s).

(2) Indicate whether the number of units by housing type or household type exceeds the number of units in the 3-year HAP goals. In such instances, the notification letter shall indicate that the field office cannot consider the application for approval unless the requirements of § 891.206 are satisfied by the chief executive officer.

(3) Indicate that any objection to the approval of the application, based on inconsistency with the approved

HAP, must be received within 30 calendar days from the date of the field office letter.

(4) Invite the submission of any other comments, which are relevant to a determination by the field office, concerning approval of the proposed housing assistance (e.g., comments on the site; whether the project is approvable under local codes and zoning ordinances).

(5) Indicate that any objections or comments should be sent by the chief executive officer to the appropriate A-95 clearinghouse simultaneously with, or prior to, the submission to the field office.

§ 891.204 Review and comment period.

(a) The chief executive officer shall have a 30 calendar day comment period, beginning on the date of the notification letter described in § 891.202, to submit a written objection to the field office's approval of the application on the ground that it is inconsistent with the local government's HAP, and the reasons for the objection. The field office manager shall consider the comment period closed for that local government when the written objection or other comments pursuant to this subpart are received. In no case shall the field office be obligated to consider subsequent or revised objections unless the initial response indicated that additional comments would be provided and such comments are received prior to the expiration of the 30-day comment period.

(b) Section 202, section 8 and public housing applications submitted in response to an invitation, notification of fund availability (NOFA) or notification of housing assistance availability (NOHAA) shall be reviewed for consistency with the HAP on which the invitation or notification was based. If a HAP was not in effect at the time that the invitation or notification was issued, the field office shall not be required to review the applications for consistency with any subsequently approved HAP. However, where a new or amended HAP is approved prior to approval the chief executive officer may indicate that special circumstances require its consideration in the review of application(s) received. These special circumstances shall be specified in the written local government determination, and the field office shall make an independent determination as to whether or not consideration of the new or amended HAP is in the best public interest.

§ 891.201 Local government response.

(a) *No objection.* If the local government determines that it does not want to object to the application on the ground that the application is inconsistent with the applicable HAP, the field office may be notified in writing of this determination by the chief executive officer at any time within the 30-day comment period.

(1) In addition, the chief executive officer may submit, on behalf of the local government, in writing and within the 30-day period, other comments on the application which are relevant to a determination by the Field Office concerning the proposed housing assistance.

(2) If an application for housing assistance exceeds the total number of units for the specified housing type or household type by no more than twenty percent and there is no objection to the approval of such application, the chief executive officer should submit, on behalf of the local government, the written statement required by § 891.206(a).

(b) *Objection.* The chief executive officer, on behalf of the local government, may submit within the 30-day comment period a written objection to the approval of an application for housing assistance on the ground that the application is inconsistent with the applicable HAP, and the reasons for the objection. The objections may be based on one or more of the following:

(1) The proposed number of dwelling units exceeds the 3-year HAP goal by housing type or by household type within either tenure type.

(2) The proposed location of newly constructed or substantially rehabilitated units is not within the general locations specified in the applicable HAP, and is objectionable to the local government for specified reasons.

(3) The proposed housing assistance is inconsistent with any other limiting factors set forth in the HAP.

(c) *No response.* The local government may choose not to comment with respect to an application for housing assistance.

§ 891.205 HUD review of applications for housing assistance.

(a) *Review period.* The field office shall review each application for housing assistance to determine if it is consistent or inconsistent with the applicable HAP for the area in which the proposed housing is to be located. The field office determination shall be completed within 30 calendar days after the close of the comment period specified in § 891.203(a) or within 30 calendar days after the receipt of the comments of the local government, whichever is earlier.

(b) *Review process.* 1The field office finding of consistency or inconsistency shall be based on the information provided in the HAP, the application for housing assistance, and an analysis of the comments of the local government, including comments submitted by the chief executive officer on behalf of the local government and the A-95 clearinghouse on planning consistency and coordination.

(1) HUD review when response indicates no objection. The field office may approve the application unless it makes an independent determination that it is inconsistent with the applicable HAP. The field office shall give consideration to other comments provided by the local government, if any, which are relevant to a determination concerning approval of the application for housing assistance.

(2) HUD review when objections are received. The field office shall concur in an objection by the local government unless it makes an independent determination of consistency, based on substantial evidence, that the application is consistent with the applicable HAP.

(3) HUD review when no response is received. The field office may approve the application unless it makes an independent determination that it is inconsistent with the applicable HAP.

(c) *Review factors.* The field office determination shall be based on the factors set forth in § 891.204(b) and any comments submitted by the chief executive officer on behalf of the local government. In addition, the determination shall be considered in accordance with the following requirements and procedures:

(1) The field office shall not approve an application which exceeds the total number of units by housing type or household type in the 3-year HAP goals by 20 percent or less unless the local government provides a written statement in accordance with § 891.206(a) except as provided in § 891.206(c). Accordingly, if no response has been received during the 3 day comment period and the field office has determined that the application is otherwise approvable, the chief executive officer shall be advised of this determination and shall also be advised that unless the required written statement is received within 10 calendar days, the application will not be approved.

(2) The field office shall not approve an application which exceeds the total number of units by housing type or by household type within either tenure type in the 3-year HAP goal by more than 20 percent unless the local government submits and the field office approves an amended HAP as required by § 891.206(b) except as provided in § 891.206(c).

(3) Although a specific application may be determined consistent on the basis of the review factors, the field office shall not approve the application: (i) If the application, taken into consideration together with other ap-

plications previously approved or to be approved simultaneously, exceeds the total number of units in the 3-year HAP goal for the number of units by housing type or by household type within either tenure type unless the local government has submitted a written statement or HAP amendment as required by § 891.206, or except as provided in § 891.206(c). (ii) If the application, together with previously approved applications, would make it unlikely that the housing assistance applications approved during the 3-year period would be proportionate to the 3-year HAP goal by household type. In making this determination, the field office shall give consideration to the anticipated allocation of housing assistance during the balance of the applicable 3-year HAP period.

(4) Notwithstanding the other provisions of this subpart, in the case of a local government required to emphasize a particular household type pursuant to § 570.306(c)(1)(B), the field office shall not approve an application which exceeds the HAP goals for other household types until that requirement is met.

§ 891.206 Variation from HAP goals.

The field office shall not approve an application for housing assistance which, together with previously approved applications, would exceed the total number of units in the applicable 3-year HAP goals by housing type or household type unless the following conditions are satisfied:

(a) *Applications which exceed the 3-year HAP goals by no more than 20 percent.* The field office, prior to approving an application which would exceed the 3-year HAP goals by no more than 20 percent, must receive a written statement from the chief executive officer, on behalf of the local government, indicating that: (1) There is a need for the housing assistance proposed, (2) there are or will be available in the area sufficient public facilities and services to serve the units proposed (this finding is not required with respect to an application for section 8 existing housing), and (3) there is no objection to the approval of such application for housing assistance. The field office manager shall not approve any such application unless approval is necessary: (i) To obtain a project of feasible size and type, (ii) to meet urgent unforeseen needs (e.g., displacement due to natural disasters), or (iii) to utilize residual contract authority after applications have been selected for funding, and unless approval will not create a disproportionate distribution by household type.

(b) *Applications which exceed the 3-year HAP goals by more than 20 percent.* The field office manager, prior to approving an application which would exceed the 3-year HAP goals by more than 20 percent, must receive and approve a HAP amendment submitted in accordance with § 570.312(b).

(c) *Applications under 24 CFR Part 886.* Applications for section 8 assistance pursuant to 24 CFR, Subparts A, B, and C, may be approved without regard to variations from 3-year HAP goals. However, all other requirements and restrictions in the HAP shall apply (e.g., general location).

§ 891.207 Notifications of HUD determination.

The field office shall notify the chief executive officer and the applicant in writing of the finding made with respect to the consistency or inconsistency of the application with the HAP. The notification shall be made within 30 calendar days after the close of the comment period indicating the reasons for the determination and, as appropriate, state that the field office will, or will not, continue to process the application for housing assistance. In the event an objection is received during the comment period, this notification shall be made within 30 calendar days of receipt of the objection.

Subpart C—Applications for Housing Assistance in Areas Without Housing Assistance Plans

§ 891.301 General.

This subpart establishes the policies and procedures governing reviews and determinations, pursuant to section 213(c) of the Act, with respect to applications for housing assistance, under the programs identified in § 891.101(a), to be provided in areas for which a HAP is not applicable and to HFDA applications where the local government does not object in its HAP to exemption for these applications (see § 891.201(c)).

§ 891.302 Finding of need for housing assistance.

With respect to each application for housing assistance to be provided in an area which does not have a HAP, the field office is required to make a determination as to whether there is a need for such housing and whether there is or will be available in the area public facilities and services adequate to serve the proposed housing.

(a) The initial determination of need for housing assistance within an allocation area is made as part of the allocation process pursuant to § 891.404. In making this determination, the field office shall give consideration to the contents of any applicable State housing plan or AHOP proposing housing assistance in the area as well as generally available data with respect to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, or other objectively measurable conditions pertaining to lower income housing needs.

(b) Prior to making a determination with regard to a specific application, the field office shall give the local government in which the proposed assistance is to be provided an opportunity to provide comments, during a 30 calendar day period, concerning the need for housing assistance and the adequacy of public facilities and services. If the local government finding is negative, it must be accompanied by supporting evidence.

§ 891.303 Notification of local government.

(a) The field office shall notify the chief executive officer no later than 10 working days after receipt (or completion of any preliminary review and determination that the application is acceptable for further processing) that an application for housing assistance to be provided in that jurisdiction has been received and is under consideration. Simultaneous with the notification to the chief executive officer, the field office shall notify the A-95 clearinghouse and initiate the A-95 review process for determining consistency with State, areawide, and local comprehensive planning and other coordination matters.

(1) When the application is for housing assistance in newly constructed or rehabilitated housing within the overlapping jurisdictions of more than one local government (e.g., a municipality which is also within a county), the field office shall notify the chief executive officer of each local government.

(2) When the application is for housing assistance in newly constructed or rehabilitated housing within several nonoverlapping political jurisdictions (e.g., a scattered site project), the field office shall notify the chief executive officer of each local government where housing assistance is proposed. If such application is also for housing assistance in a jurisdiction for which a HAP is applicable, notification shall also be given in accordance with subpart B.

(3) For section 8 existing housing applications, submitted pursuant to 24 CFR Part 882, Subparts A and B, the field office shall notify the chief executive officers of the localities identified in the application for existing housing as primary areas from which households to be assisted will be drawn.

(b) The notification to the chief executive officer shall:

(1) Indicate that the field office has received and is considering an application for housing assistance, identify

the housing program, the housing type, the number of units by bedroom size and household type, and the proposed location(s).

(2) Invite the submission, within a period of 30 calendar days from the date of the field office letter, of a statement on behalf of the local government concerning the need for housing assistance and the adequacy of public facilities and services and any other comments which are relevant to a determination by the field office concerning the proposed housing assistance (e.g., comments on the site; whether the project is approvable under local codes and zoning ordinances).

(3) Request that any comments be sent by the chief executive officer to the appropriate A-95 clearinghouse simultaneously with, or prior to, the submission to the field office.

§ 891.304 Review and comment period.

The chief executive officer shall have a 30 calendar day comment period, beginning on the date of the notification letter described in § 891.303, to submit written comments relevant to a determination by the field office concerning the approval of an application for housing assistance. The field office shall consider the comment period closed when the written comments are received. In no case shall the field office manager be obligated to consider subsequent or revised comments unless the initial response indicated that additional comments would be provided and comments are received prior to the expiration of the 30-day comment period.

§ 891.305 HUD review of applications for housing assistance.

(a) The field office shall not approve an application for housing assistance prior to either: (1) Receipt of comments pursuant to § 891.304, or (2) expiration of the 30-day comment period, whichever occurs earlier.

(b) In determining whether an application will be approved, the field office shall consider the comments provided by the local government including comments submitted by the chief executive officer on behalf of the local government and the A-95 clearinghouse on planning consistency and coordination. The field office shall make an independent determination as to whether there is a need for housing assistance and whether the facilities and services are adequate before approving the application.

(c) The field office shall promptly notify both the chief executive officer, the applicant of the HUD determination with respect to the approval or disapproval of the application for housing assistance.

Subpart D—Allocation of Contract and Budget Authority for Housing Assistance

§ 891.401 General.

This subpart establishes the policies and procedures governing the allocation of contract authority, pursuant to section 213(d) of the Act, for housing assistance under the programs identified in § 891.101(a). It describes, in sequence, the actions to be taken in allocating contract authority by the Assistant Secretary for Housing to the regional administrators or directly to the field office managers, by the regional administrators to the field office managers, and by the field office managers to allocation areas within their jurisdiction. The references to allocations of contract authority in this subpart are also applicable to loan authority for the section 202 program.

§ 891.402 Determinations of lower-income housing needs.

(a) Prior to allocating contract and budget authority for the housing assistance programs identified in § 891.101(a), the Assistant Secretary for Policy Development and Research shall determine the relative need by program type for lower-income housing assistance in each HUD field office jurisdiction. The determination of housing needs shall be based, so far as practicable, on the most recent national census data available relating to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, or other objectively measurable conditions pertaining to lower-income housing needs. The actual statistical data elements used in determining housing needs for a specific housing program may be modified to meet the objectives of that program by taking into consideration the age, income, or other relevant characteristics of the prospective program participants.

(b) The Assistant Secretary for Policy, Development, and Research on the basis of paragraph (a) of this section shall develop a separate housing needs percentage for each field office jurisdiction. This housing needs percentage shall be adjusted to reflect the relative cost of providing housing among field office jurisdictions.

§ 891.403 Allocation to HUD offices.

(a) The Assistant Secretary for Housing shall determine the amount of contract and budget authority to be allocated by considering as available any unreserved contract and budget authority from prior fiscal years, as well as any newly appropriated contract and budget authority, for each housing program. The Assistant Secretary for Housing shall consider contract and budget authority to be reserved for the purpose of this subpart when the field office manager has reserved the authority under the appropriate program regulations. Contract authority assigned by the Assistant Secretary for Housing from the reserve under paragraph (b) of this section for a particular purpose (e.g., AHOP's) but not reserved as of the end of the fiscal year may be reassigned to field offices without regard to the fair share formula.

(b) A portion of the contract and related budget authority available during any fiscal year for the housing programs listed in § 891.101(a), not to exceed 20 percent of the available contract authority on an aggregate basis, may be retained by the Assistant Secretary for Housing for subequent allocations to specific areas and communities. Such contract authority and the applicable budget authority may be used for:

(1) Housing needs which were unforeseeable or could not practicably be measured by the formula described in § 891.402, such as natural disaster and relocation needs.

(2) Activities designed to meet lower-income housing needs as described in HAP's submitted by local governments or combinations of such units of local government, including but not limited to, activities carried out under AHOP's pursuant to subparts E and F.

(3) Applications for assistance with respect to housing in new communities.

(4) Alternative methods for meeting lower-income housing needs or implementing innovative housing programs.

(5) Housing needs of community development block grant recipients whose application approval has been conditioned or otherwise sanctioned on improved HAP performance.

(c) Contract authority, excluding that set-aside pursuant to § 891.403(b), shall be allocated, so far as practicable, for each housing program in accordance with § 891.402. Of these amounts at least 20 percent, but not more than 25 percent, shall be allocated on a nationwide basis for use in nonmetropolitan areas. However, the allocation of the field office will be based upon the proportion of nonmetropolitan housing needs within the field office jurisdiction, rather than the nationwide ratio.

(d) The Assistant Secretary for Housing may allocate contract authority to the regional administrators, or directly to the field managers. If the contract authority is allocated to the regional administrator, the regional administrator shall suballocate all the authority to the field office managers within 15 working days from receipt of

the allocations from the Assistant Secretary for Housing.

(e) The total amount of contract authority to be suballocated to each field office manager shall reflect: (1) The housing needs percentages developed in accordance with § 891.402, (2) the amount of budget authority required for each housing program, and (3) the proportions by housing type reflected in the annual housing action program.

§ 891.404 Allocation to areas and localities.

(a) In establishing the amount of contract authority to be allocated to allocation areas within their jurisdiction the Field Office shall:

(1) Develop for each county, a separate housing needs percentage based on the criteria set forth in § 891.402.

(2) Multiply the amount of contract authority allocated to the field office for a specific housing program by the housing needs percentage developed pursuant to paragraph (a)(1), of this section. In the case of a county in a SMSA, the percentage shall be applied to the contract authority allocated for use in metropolitan areas, and for a county not in an SMSA, the percentage shall be applied to the contract authority allocated for use in nonmetropolitan areas. The field office may, for the section 8 and public housing programs (excluding Indian public housing), apply the housing needs percentage to the combined contract authority (metropolitan or nonmetropolitan, whichever is applicable) for both housing programs. In such instances, the ultimate use of contract authority for either section 8 or public housing in each county shall be determined by the field office on the basis of HAP's, community needs and housing strategy, and other relevant considerations.

(3) Establish regional or other allocation areas, such as SMSA's or groups of rural counties, broad enough to support economically feasible housing programs. Allocation area boundaries shall be identical for all housing programs except that where "fair share" of section 202 loan authority to an allocation area is insufficient for a feasible project size, two or more entire allocation areas may be combined into a separate section 202 allocation area for the sole purpose of advertising for applications for section 202 fund reservations. In establishing allocation areas, consideration should be given to State, county and other planning district boundaries, topographical barriers, and established community patterns as well as housing plans developed by an HFDA, and approved AHOP's developed by an APO. Each approved AHOP area shall be established as a separate allocation area. In addition, SMSA central cities, except those which are participating jurisdictions in an AHOP, shall be established as separate allocation areas if the amount of contract authority would be sufficient to achieve feasible projects and meet housing type and household type goals over a 3-year period. The field office may also establish any formula entitlement block grant recipient, including an urban county, as a separate allocation area where the above feasiblity test can be met.

(4) Adjust if necessary the housing needs percentage developed for each county within the allocation area to reflect housing needs and goals set forth in HAP's, and State housing plans. The housing needs percentage shall be adjusted by not more than 15 percent. However, in areas with an approved AHOP, the AHOP shall serve as the basis for the distribution of all contract authority allocated within the AHOP area, and the 15 percent limitation shall not apply.

(b) After the effective date of this subpart, priority shall be given to the extent practicable to targeting, within allocation areas, the allocation of contract authority to localities which have previously been underfunded relative to their needs and the funding of the needs of other localities in that allocation area.

(c)(1) When the amount of contract authority for each allocation area has been established, the field office shall develop a matrix indicating a distribution of units by housing type and household type within tenure type. This allocation plan shall be prepared for each allocation area using housing assistance plans, approved areawide housing opportunity plans, and data developed in the field for units of general local government not having a housing opportunity plan. For those central cities and other entitlement recipients which are established as separate allocation areas under paragraph (a)(4) of this section, the field office shall consult with the chief executive officer or his representative in the preparation of the allocation plan. To the maximum extent practicable, the number of units in the allocation plan shall be proportionate by housing type and household type within each tenure type to the 3-year goals in the annual housing action program identified in HAP's and goals in AHOP's prepared pursuant to subpart E and approved by HUD. For those allocation areas with an approved AHOP under the provisions of subpart E, the approved AHOP shall serve, to the extent practicable, as the basis for allocation of contract authority by housing type and household type.

(2) In some allocation areas, project feasibility and the amount of the allocation may limit the utilization of the annual allocation to only one housing type within the 3-year goals. The determination, however, of the number of units for a specific allocation area must take into consideration the proportion of units previously approved by household type. If as a result of this consideration, the field office finds that the proposed allocation would make it unlikely that the housing assistance provided in the 3-year period would be proportionate to the 3-year HAP goal, contract authority shall be made available in such allocation areas only for those household types that have been underserved during the applicable period. Consideration must also be given to the amount of budget authority available to ensure the feasibility of approving applications for housing assistance.

(d) Where contract authority allocated to an allocation area pursuant to paragraph (a) of this section is not adequate for a feasible project, the field office may either: (1) Divert the contract authority from such allocation area and use it in another, (2) allocate additional contract authority from another allocation area so sufficient authority is available for a feasible project or (3) combine allocation areas. Future allocations shall be adjusted to reflect these actions.

(e) The Assistant Secretary for Housing may direct that contract authority be set aside for use by an HFDA or in conjunction with the FmHA program. In such instances, the field office shall meet with the officials from HFDA or FmHA to reach agreement on their participation in the allocation plan which has been developed in compliance with paragraphs (a) and (d) of this section. The field office shall assure that the total contract authority planned for an allocation area by the HFDA, FmHA, and HUD will provide for units by housing type and household type as reflected in applicable HAP's or AHOP's and be consistent with allocation plans. If agreement cannot be reached, the field office manager shall notify the Regional Administrator, who shall resolve the differences in a manner consistent with the requirements of this paragraph. The Regional Administrator shall coordinate the use of any HFDA or FmHA set-aside when more than one field office jurisdiction is involved.

(f) The field office manager shall determine the number of units by housing program, housing type and household type for which HUD will invite applications, after considering to what extent the goals for an allocation area will be met by the HFDA or FmHA.

(g) The field office managers shall complete the actions set forth in paragraphs (a) through (f) of this section within 30 days from receipt of their suballocations.

(h) The field office manager shall make public as soon as possible:

(1) The total contract authority allocated to the field office for SMSA's and non-SMSA's for each housing program;

(2) The initial distribution of authority to each allocation area;

(3) The approximate number of newly constructed, rehabilitated and existing units such authority could support;

(4) The amount of any HFDA or FmHA set-aside; and

(5) A tentative schedule for inviting the submission of applications in each allocation area.

(i) If application for housing assistance are not received in proportion to the housing types identified in the field office allocation plan, the field office shall make every effort to encourage the submission of applications for those housing types that have not been used. If applications for existing units would not use the contract authority designated for the existing housing program, such contract authority shall be used for inviting new construction or substantial rehabilitation applications within the same allocation area to meet underserved household type goals. If applications for new construction or substantial rehabilitation would not use the available contract authority, such contract authority shall be moved between those two housing types and, if sufficient applications are still not forthcoming, shall be reallocated to another allocation area pursuant to § 891.405.

(j) If applications for housing assistance are not received in proportion to household types identified in the field office allocation plan, the field office shall make every effort to encourage the submission of applications (including changes in housing type) for those household types that have been underserved. If approvable applications are still not forthcoming, housing assistance may be provided to localities within the allocation area that have already met their goals in a proportionate manner. Any contract authority remaining after pursuing these alternatives shall be reallocated to another allocation area pursuant to § 891.405. Reallocations shall be consistent with the objectives of this § 891.404.

§ 891.405 Reallocation of uncommitted contract authority.

(a) If the field office manager determines that the allocation of contract or budget authority for a particular allocation area is not likely to be used during the fiscal year, the authority may be reallocated in the same fiscal year to another area where it is likely to be used.

(b) If the Regional Administrator or Assistant Secretary for Housing determines that the allocation of contract or budget authority suballocated to a field office is not likely to be used during the fiscal year, the authority may be reallocated in the same fiscal year to another field office where it is likely to be used.

(c) Only the Assistant Secretary for Housing may reallocate contract authority among Regional Administrators.

(d) In addition to meeting the requirements of § 891.403(c) any reallocations made pursuant to this paragraph must be consistent with the allocation of contract authority for a specific housing program, any established set-asides and HAP requirements and conditions as well as any additional requirements established by the Assistant Secretary for Housing.

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Federal Register

MONDAY, OCTOBER 30, 1978
PART VI

ADVISORY COUNCIL ON HISTORIC PRESERVATION

■

PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

[4310-10-M]

Title 36—Parks, Forests, and Public Property

CHAPTER VIII—ADVISORY COUNCIL ON HISTORIC PRESERVATION

PART 800—PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

Amendments to existing regulations

AGENCY: Advisory Council on Historic Preservation.

ACTION: Amendments to regulations and supplementary information.

SUMMARY: The Advisory Council on Historic Preservation is amending its current regulations to reflect changes and additions to its authorities and its experience in working with these regulations since 1974. These regulations implement the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment" (36 FR 8921, 16 U.S.C. 470), and the President's Memorandum on Environmental Quality and Water Resources Management, July 12, 1978.

The 1976 amendments (Pub. L. 94-422) to the National Preservation Historic Act established the Council as an independent agency of the United States; extended the Council's protective responsibilities under Section 106 of the Act to properties "eligible for inclusion" in the National Register of Historic Places; enlarged membership on the Council to include the Secretary of State; the Secretary of Defense; the Secretary of Health, Education, and Welfare; the President of the National Conference of State Historic Preservation Officers; the Chairman of the Federal Council on the Arts and Humanities; the Chairman of the Council on Environmental Quality; and the Architect of the Capitol; and gave the Council rulemaking authority.

These regulations set forth certain steps for Federal agencies to follow to fulfill their responsibilities under Section 106 of the National Historic Preservation Act, Sections 1(3) and 2(b) of Executive Order 11593, and the President's Memorandum on Environmental Quality. The regulations are also intended as a guide for the development of agencies' internal procedures that, under Section 1(3) of Executive Order 11593, are required to be developed in consultation with the Council.

DATE: Comments must be received on or before November 29, 1978.

ADDRESS: Comments should be addressed to Executive Director, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT:

John Fowler, Director, Office of Intergovernmental Programs and Planning, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, D.C. 20005, 202-254-3495.

SUPPLEMENTARY INFORMATION: The Council is publishing these proposed amendments to its regulations for public review and comment. The amendments refine and clarify the way Federal agencies can get the Council's comments on proposed Federal, federally assisted and licensed undertakings that affect historic properties which the Secretary of the Interior lists in or determines to be eligible for listing in the National Register of Historic Places. These amendments reflect the methods to simplify the Council's commenting process that have been developed in the last 4 years.

While the major procedural steps in the Council's process are basically the same, there are several substantive amendments that will make the process for getting the Council's comments easier and faster. In addition, the existing regulations have been reorganized. Sections 800.4-7 deal with "Site-Specific Undertakings" and § 800.8-9 deal with "Non Site-Specific Undertakings." Other major changes are:

1. Section 800.4(a), *Identification of Historic and Cultural Properties.* This section has been reorganized to clarify existing provisions related to agency responsibilities for identifying and evaluating historic and cultural properties that may be affected by a Federal, federally assisted or licensed undertaking.

2. Section 800.4(b), *Determinations of No Effect.* This section has been modified to stipulate the manner in which the Council may question an agency's finding that an undertaking will not affect any historic or cultural properties. Previously, this provision was contained in section 800.7.

3. Section 800.5, *State Historic Preservation Officer Responsibilities.* This section is new. It provides that State Historic Preservation Officers should respond within 15 working days to requests for opinions concerning the significance of identified properties and the effect of a proposed action on such properties. If the State Historic Preservation Officer does not respond within 30 working days, concurrence with the agency's views will be presumed. In addition, this Section provides that the State Historic Preservation Officer will normally be a part of the consultation process described in section 800.6 and that in those instances where a State Historic Preservation Officer fails to sign a Memorandum of Agreement detailing measures to avoid or mitigate adverse effects on National Register or eligible properties, the Council and the agency will not be precluded from concluding such an Agreement. We believe that this section will expedite the commenting process by setting definite time limits for important parts of the process and by reducing the possibility for any continuing uncertainty about the views of a State Historic Preservation Officer.

4. Section 800.6(a), *Response to Determinations of No Adverse Effect.* The time period for Council review of agency determinations that an undertaking will not adversely affect a National Register or eligible property has been reduced. The Executive Director would have 30 days to object after receipt of an adequately documentated determination. Current regulations allow for a 45-day review period.

5. Section 800.6(a)(2) is new. This provision allows the Executive Director to condition acceptance of a no adverse effect determination. If the agency accepts the conditions, the Executive Director will not object to the determination. The Council believes that this provision will simplify and significantly speed up the process of getting the Council's comments.

6. Section 800.6(d), *Memorandum of Agreement.* This provision allows the Agency Official to prepare a proposal specifying the measures to avoid or mitigate adverse impacts that were agreed upon by the agency, the State Historic Preservation Officer, and the Council in a consultation. The proposal, with the written concurrence of the State Historic Preservation Officer, would be sent to the Executive Director for inclusion in a Memorandum of Agreement that would then be sent directly to the Chairman for approval. The current regulations require the Executive Director to prepare a Memorandum of Agreement, to circulate it to the agency and the State Historic Preservation Officer for signature, and then send it to the Chairman. This revision will speed up the Council's commenting process.

7. Section 800.6(e), *Council Meetings.* Subsection (e)(2) is new and would allow the Chairman to appoint a panel of 5 Council members to consider an undertaking instead of having the full Council meet to consider it. A panel meeting will generally be held within 30 days of its appointment by the Chairman. This provision will allow the Council membership to respond more quickly when the agency, the State Historic Preservation Officer, and the Executive Director fail to agree on alternatives to avoid or miti-

gate adverse effects. Comments are particularly requested on this subsection.

8. Section 800.7, *Resources Discovered During Construction.* This is a new section. It sets up an expedited process for obtaining the Council's comments when a previously unidentified historic or cultural property is discovered after construction has actually started. This section deals with a problem that was not previously considered in the regulations and it will greatly expedite the compliance process in such instances. Comments are particularly invited on this Section.

9. Sections 800.8 and 800.9 are new and concern non-site-specific undertakings. These Sections allow the Council to execute Programmatic Memoranda of Agreement with agencies when there is a class, a program, or a series of undertakings which would otherwise require the Council to review many similar individual actions. In instances where a Programmatic Memorandum of Agreement can be reached, there will be a substantial reduction in paper work and processing time for the Council, other Federal agencies, and State Historic Preservation Officers.

10. Section 800.10, *Coordination with the National Environmental Policy Act.* This section specifies how agencies should coordinate their separate responsibilities under the National Historic Preservation Act and the National Environmental Policy Act. The Section describes how the Council's comments should be included in draft and final environmental impact statements. Currently, a discussion of these responsibilities is contained in section 800.2 of the existing regulations.

11. Sections 800.11 and 800.12 concern the responsibility of Federal agencies to develop procedures to protect historic and cultural resources under the authorities of Executive Order 11593 and the Presidential Memorandum on Environmental Quality.

12. Section 800.14, *Investigation of Threats to Historic Properties.* This section is new. It provides that the Executive Director may investigate threats to historic properties resulting from an undertaking that may have a Federal involvement but for which the Council has not been provided an opportunity to comment.

13. The Supplementary Guidelines published with these proposed amendments are designed to help Federal agencies and State Historic Preservation Officers in meeting their responsibilities under the regulations. The various guidelines set forth decisions of the Executive Director and may be modified from time to time. They are published with the proposed amendments for informational purposes only and will not be codified in the *Code of Federal Regulations.* Changes or additions to this section will be published in the FEDERAL REGISTER. The Council welcomes comments on all of its Supplementary Guidelines. The National Register Criteria (Supplementary Guideline I) were codified by the Secretary of the Interior in 36 CFR Part 60 and are only included for informational purposes.

The Council has determined that an economic impact statement pursuant to Executive Orders 11821 and 11949 is not required since these are amendments to existing regulations and do not constitute a major regulatory proposal.

The Council has determined that these amendments are not significant regulations within the meaning of Executive Order 12044 and consequently do not require a regulatory analysis. The purpose of these amendments is to simplify existing procedures and to clarify language in conformance with the goals enunciated by Executive Order 12044.

The Council has determined that an Environmental Impact Statement under the National Environmental Policy Act is not required.

ROBERT R. GARVEY, Jr.,
Executive Director.

OCTOBER 25, 1978.

36 CFR is amended by revising Part 800 to read as follows:

PART 800—PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

Sec.
800.1 Purpose and authorities.
800.2 Definitions.
800.3 Criteria of effect and adverse effect.

SITE-SPECIFIC UNDERTAKINGS

800.4 Federal agency responsibilities.
800.5 State historic preservation officer responsibilities.
800.6 Council comments.
800.7 Resources discovered during construction.

NON-SITE-SPECIFIC UNDERTAKINGS

800.8 Application.
800.9 Council comments.

FEDERAL PROGRAM COORDINATION

800.10 Coordination with the National Environmental Policy Act (42 U.S.C. 4321 et seq.).
800.11 Coordination with section 1(3) of Executive Order 11593.
800.12 Coordination with the Presidential Memorandum on Environmental Quality and Water Resources Management.

OTHER PROVISIONS

800.13 Other powers of the Council.
800.14 Investigation of threats to historic properties.
800.15 Reports to the Council.

SUPPLEMENTARY GUIDELINES

I. Criteria for the National Register of Historic Places.
II. Documentation for determination of no adverse effect.
III. Determinations of adverse effect and no adverse effect for archeological resources.
IV. Preliminary case reports.

AUTHORITY: Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470); Pub. L. 94-422, 90 Stat. 1320 (16 U.S.C. 470i); E.O. 11593, 3 CFR 1971 Comp., p. 154; Presidential Memorandum on Environmental Quality and Water Resources.

§ 800.1 Purpose and authorities.

(a) The National Historic Preservation Act of 1966, as amended, established the Advisory Council on Historic Preservation as an independent agency of the United States to advise the President and the Congress on matters involving historic preservation, to coordinate Federal historic preservation activities, and to protect designated historic properties threatened by Federal action. Its members are the Secretary of the Interior, the Secretary of Housing and Urban Development, the Secretary of Commerce, the Administrator of General Services, the Secretary of the Treasury, the Attorney General, the Secretary of Agriculture, the Secretary of Transportation, the Secretary of State, the Secretary of Defense, the Secretary of Health, Education, and Welfare, the Chairman of the Council on Environmental Quality, the Chairman of the Federal Council on the Arts and Humanities, the Architect of the Capitol, the Secretary of the Smithsonian Institution, the Chairman of the National Trust for Historic Preservation, the President of the National Conference of State Historic Preservation Officers, and 12 citizen members appointed for 5-year terms by the President on the basis of their interest and experience in the matters to be considered by the Council.

(b) The Council protects properties of historical, architectural, archeological, and cultural significance at the national, State, and local levels by reviewing and commenting on Federal, federally assisted, and federally licensed undertakings affecting properties included in or determined by the Secretary of the Interior to be eligible for inclusion in the National Register of Historic Places in accordance with the following authorities:

(1) *Section 106 of the National Historic Preservation Act.* Section 106 requires that Federal, federally assisted, and federally licensed undertakings affecting properties included in or eligible for inclusion in the National Register of Historic Places be submitted by a Federal agency to the Council for review and comment prior to the agency's approval of any such undertaking.

(2) *Section 1(3) of Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment."* Section 1(3) requires that Federal agencies, in consultation with the Council, establish procedures for their plans and programs to further the preservation and enhancement of nonfederally owned historic and cultural properties.

(3) *Section 2(b) of Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment."* Federal agencies are required by section 2(a) of the Executive order to locate, inventory, and nominate properties under their jurisdiction or control to the National Register. Until such processes are complete, Federal agencies must submit proposals for the transfer, sale, demolition, or substantial alteration of federally owned properties eligible for inclusion in the National Register to the Council for review and comment. Federal agencies must continue to comply with section 2(b) review requirements, even after the initial inventory is complete, when they obtain jurisdiction or control over additional properties that may be eligible for inclusion in the National Register.

(4) *The President's memorandum on environmental quality and water resources management.* The Memorandum directs the Council to issue final regulations under the National Historic Preservation Act by March 1, 1979, and further directs Federal agencies with water resource responsibilities and programs to publish procedures implementing the Act not later than 3 months after promulgation of final regulations by the Council. Federal agencies procedures are to be reviewed and, if they are consistent with the Council's regulations, approved by the Council within 60 days and published in final form.

§ 800.2. Definitions.

As used in these regulations:

(a) "National Historic Preservation Act" means Pub. L. 89-665, approved October 15, 1966, an "Act to establish a program for the preservation of additional historic properties throughout the Nation and for other purposes" (80 Stat. 915, 16 U.S.C. 470; as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976)), hereinafter referred to as "the Act."

(b) "Executive Order" means Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment" (36 FR 8921, 16 U.S.C. 470).

(c) "Undertaking" means any Federal action, activity, or program, or the approval, sanction, assistance, or support of any other action, activity or program, including but not limited to:

(1) Recommendations or favorable reports relating to legislation, including requests for appropriations. The requirement for following these procedures applies to both agency recommendations on their own proposals for legislation and agency reports on legislation initiated elsewhere. In the latter case, only the agency that has primary responsibility for the subject matter involved will comply with these procedures.

(2) New and continuing projects and program activities (or elements of such activities not previously considered under these regulations) directly undertaken by Federal agencies; or supported in whole or in part through Federal contracts, grants, subsidies, loans, loan guarantees, or other forms of funding assistance; or involving a Federal lease, permit, license, certificate, approval, letter of permission, or other form of entitlement; or approval of State plans pursuant to Federal legislation.

(3) The making, modification, or establishment of regulations, rules, procedures, planning guidelines, and program policy guidelines.

(d) "National Register" means the National Register of Historic Places. It is a register of districts, sites, buildings, structures, and objects of national, State, or local significance in American history, architecture, archeology, and culture that is expanded and maintained by the Secretary of the Interior under authority of section 2(b) of the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461) and section 101(a)(1) of the National Historic Preservation Act. The National Register is published in its entirety in the FEDERAL REGISTER each year in February. Addenda are usually published on the first Tuesday of each month.

(e) "National Register property" means a district, site, building, structure, or object included in the National Register.

(f) "Eligible property" means any district, site, building, structure, or object which the Secretary of the Interior determines is likely to meet the National Register criteria (36 CFR 63). As these determinations are made, a listing is published in the FEDERAL REGISTER as a supplement to the National Register.

(g) "National Register Criteria" means the criteria established by the Secretary of the Interior to evaluate properties to determine whether they are eligible for inclusion in the National Register (36 CFR Part 60).

(h) "Decision" means the exercise of or the opportunity to exercise discretionary authority by a Federal agency at any stage of an undertaking where alterations might be made in the undertaking to modify its impact upon historic and cultural properties.

(i) "Agency Official" means the head of the Federal agency having responsibility for the undertaking, or a designee legally authorized to act for the Agency Official.

(j) "Council" means the Advisory Council on Historic Preservation as established by title II of the Act.

(k) "Chairman" means the Chairman of the Advisory Council on Historic Preservation or a member designated to act in his place.

(l) "Executive Director" means the Executive Director of the Advisory Council on Historic Preservation as established by section 205 of the Act, or a designee legally authorized to act for the Executive Director.

(m) "State Historic Preservation Officer" means the official or his designated representative who is responsible for administering the Act within their jurisdictions. These officers are appointed pursuant to 36 CFR 60.5 by the Governors of the 50 States, Guam, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Mayor of the District of Columbia.

(n) "Secretary" means the Secretary of the Interior, or his designee authorized to carry out the responsibilities of the Secretary of the Interior under the Act or Executive Order 11593.

(o) "Area of the undertaking's potential environmental impact" means that area within which direct, indirect, and secondary impacts on historic and cultural properties could reasonably be expected to occur.

§ 800.3 Criteria of effect and adverse effect.

The following criteria shall be used to determine whether an undertaking has an effect or an adverse effect in accordance with these regulations. The Executive Director may issue further guidance to interpret and apply these criteria.

(a) *Criteria of effect.* A Federal, federally assisted, or federally licensed undertaking shall be considered to have an effect on a National Register or eligible property (districts, sites, buildings, structures, and objects) whenever any condition of the undertaking causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archeological, or cultural characteristics that qualify the property for inclusion in the National Register or its setting.

(b) *Criteria of adverse effect.* Generally, adverse effects occur under conditions which include but are not limited to:

(1) Destruction or alteration of all or part of a property;

(2) Isolation from or alteration of its surrounding environment;

(3) Introduction of visual, audible, or atomspheric elements that are out of character with the property or alter its setting;

(4) Transfer or sale of a federally owned property without adequate conditions or rectrictions regarding preservation, maintenance, or use; and

(5) Neglect of a property resulting in its deterioration or destruction.

SITE-SPECIFIC UNDERTAKINGS

§ 800.4 Federal agency responsibilities.

As early as possible before an agency makes a final decision concerning an undertaking and in any event prior to taking any action that would foreclose alternatives or the Council's ability to comment, the agency official shall take the following sequential steps to comply with the requirements of section 106 of the National Historic Preservation Act and section 2(b) of Executive Order 11593.

(a) *Identification of historic and cultural properties.* At the earliest stage of planning or consideration of an undertaking, including comprehensive or areawide planning in which a site-specific undertaking may be proposed, the agency official shall identify or cause to be identified properties located within the area of the undertaking's potential environmental impact that are included in, have been determined eligible for inclusion in, or may be eligible for inclusion in the National Register.

(1) The Agency Offical should consult the National Register, including monthly supplements, to identify properties already included in or determined by the Secretary to be eligible for inclusion in the National Register.

(2) The Agency Offical shall consult with the appropriate State historic preservation officer and the Secretary to determine what actions are necessary to identify properties that may be eligible for inclusion in the National Register. A professional survey of the environmental impact area or parts of the area may be required if the area has not previously been adequately surveyed. The agency official shall apply the National Register criteria to all properties that may possess any historical, architectural, archeological, or cultural value located within the area of the undertaking's potential environmental impact. If there is any question about whether a property possesses such values, the agency official shall refer the matter to the Secretary for a determination of eligibility in accordance with 36 CFR 63. Whenever a State historic preservation officer finds that a property may meet National Register criteria, the agency official shall request a determination of eligibility from the Secretary. Once properties are found, identified, and evaluated, the agency official shall follow the provisions of 36 CFR 63 to determine if any, in fact, are eligible for inclusion in the National Register. This step should be completed prior to requesting the Council's comments pursuant to these regulations. The Secretary's opinion respecting the eligibility of a property for inclusion in the National Register shall be conclusive for the purposes of these regulations.

(b) *Determination of effect.* For each National Register or National Register eligible property that is located within the area of the undertaking's potential environmental impact, the agency official, in consultation with the State historic preservation officer, shall apply the criteria of effect, set forth in § 800.3(a), to determine whether the undertaking will have an effect upon the historic, architectural, archeological, or cultural characteristics of the property that qualified it to meet National Register criteria.

(1) *No effect.* If the agency official and the State historic preservation officer agree that the undertaking will not affect these characteristics, the undertaking may proceed. The agency official shall keep adequate documentation of each determination of no effect, which shall be available for public inspection. If an objection is made to a no effect determination, the Executive Director may review the determination and make a final decision on whether there is an effect or not.

(2) *Effect determined.* If the agency official, the State historic preservation officer, or the Executive Director find that the undertaking will have an effect upon these characteristics, the agency official, in consultation with the State historic preservation officer, shall apply the criteria of adverse effect, set forth in § 800.3(b), to determine whether the effect of the undertaking may be adverse.

(c) *Determinations of no adverse effect.* If the agency official finds the effect on the historical, architectural, archeological, or cultural characteristics of the property not to be adverse, the agency official shall forward adequate documentation of the determination, including written evidence of the views of the State historic preservation officer, to the Executive Director for review in accordance with § 800.6.

(d) *Adverse effect determination.* If the agency official finds the effect on the historical, architectural, archeological, or cultural characteristics of the property to be adverse, or if the Executive Director does not accept an agency official's determination of no adverse effect pursuant to review under § 800.6, the agency official shall:

(1) Request, in writing, the comments of the Council,

(2) Submit a preliminary case report,

(3) Notify the State historic preservation officer of this request, and

(4) Proceed with the consultation process set forth in § 800.6.

Until the Council issues its comments under these regulations, the agency official shall take no action on the proposed undertaking that could result in an adverse effect with respect to a National Register or National Register eligible property or that could foreclose the Council's consideration of alternatives to avoid, mitigate, or minimize the adverse effect.

§ 800.5 State historic preservation officer responsibilities.

(a) Unless a longer time is established by the agency official, State historic preservation officers should respond in writing within 15 working days to adequately documented agency requests pursuant to § 800.4.

(b) Should a State historic preservation officer fail to respond to an agency official's request under § 800.4 within 30 days, such action shall evidence the State historic preservation officer's concurrence with the views of the agency official.

(c) The State historic preservation officer should participate in the consultation process under § 800.6 whenever it concerns an undertaking located within his jurisdiction. The State historic preservation officer, with the agency official and the Executive Director, should be a signatory to any Memorandum of Agreement executed under § 800.6(d) of these regulations.

(d) Failure of a State historic preservation officer to execute a Memorandum of Agreement within 30 days without notifying the Executive Director and the agency official that the State historic preservation officer disagrees with the terms of the agreement shall not preclude the Executive Director and the agency official from concluding the agreement and having it ratified by the Chairman in accordance with § 800.6(d)(2).

§ 800.6 Council comments.

The following subsections specify how the Council will respond to Federal agency requests for the Council's comments required to satisfy an agency's responsibilities under section 106 of the Act and section 2(b) of the Executive Order.

(a) *Response to determinations of no adverse effect.* (1) Upon receipt of a determination of no adverse effect from an agency official, the Executive Director will review the determination and supporting documentation. Unless the Executive Director objects to the determination within 30 days after receipt of an adequately documented determination, the agency official will be considered to have satisfied the agen-

cy's responsibilities under section 106 of the Act, section 2(b) of Executive Order 11593, and these regulations, and may proceed with the undertaking.

(2) If the Executive Director objects to the determination, the Executive Director may specify conditions which will eliminate the objection. If the agency official accepts the conditions in writing, the conditions will be incorporated into the agency's determination and the Executive Director's objection will be withdrawn. The agency official then will be considered to have satisfied the agency's responsibilities under section 106 of the Act, section 2(b) of the Executive Order, and these regulations, and may proceed with the undertaking.

(3) If the agency official does not accept the Executive Director's conditions or if the Executive Director objects without specifying conditions, the agency official shall request the Executive Director to initiate the consultation process pursuant to § 800.6. Until the agency official has received the Council's comments, the agency official shall take no action with respect to the undertaking that could result in an adverse effect on the National Register or eligible property or that would foreclose the Council's consideration of alternatives that could avoid, mitigate, or minimize any adverse effect.

(b) *Response to determination of adverse effect.* Upon receipt of a request for Council comments pursuant to § 800.4(d), or if the Executive Director's objections to a determination of no adverse effect have not been eliminated pursuant to § 800.6(a), the Executive Director shall acknowledge the request and initiate the consultation process.

(c) *Consultation process.* The agency official, the State Historic Preservation Officer, and the Executive Director shall be the consulting parties to consider feasible and prudent alternatives to the undertaking that could avoid, mitigate, or minimize adverse effects on a National Register or National Register eligible property. Grantees, permittees, licensees, or other parties in interest, and representatives of National, State, or local units of government and public and private organizations, may be invited by the consulting parties to participate in the consultation process.

(1) *Preliminary case report.* The Executive Director shall specify the contents of the report that shall be submitted by the agency official to the Council. The agency official also shall provide a copy of the report to the State historic preservation officer and make it available for public inspection.

(2) *On-site inspection.* At the request of any of the consulting parties, the agency official shall conduct an on-site inspection.

(3) *Public information meeting.* At the request of any of the consulting parties, the Executive Director shall conduct a meeting open to the public. The consulting parties and representatives of National, State, or local units of government, representatives of public or private organizations, and interested citizens may receive information and express their views on the undertaking, its effects on historic and cultural properties, and alternate courses of action that could avoid, mitigate, or minimize any adverse effects on such properties. The agency official shall provide adequate facilities for the meeting and shall afford appropriate notice to the public, generally at least 2 weeks in advance of the meeting.

(4) *Consideration of alternatives.* Upon review of the proposed undertaking the consulting parties shall determine whether there are feasible and prudent alternatives to avoid the adverse effects on the National Register or eligible property. If the consulting parties cannot agree on such an alternative, they shall determine if there are alternatives that could satisfactorily mitigate the adverse effects.

(5) *Avoidance or satisfactory mitigation of adverse effect.* If the consulting parties agree upon a feasible and prudent alternative to avoid or satisfactorily mitigate the adverse effects of the undertaking on the National Register or eligible property, they shall execute a Memorandum of Agreement in accordance with § 800.6(d) specifying how the undertaking will proceed to avoid or mitigate the adverse effect.

(6) *Acceptance of adverse effect.* If the consulting parties determine that there are no feasible and prudent alternatives that could avoid or satisfactorily mitigate the adverse effects and agree that it is in the public interest to proceed with the proposed undertaking, they shall execute a Memorandum of Agreement in accordance with § 800.6(d) acknowledging this determination and specifying any measures to minimize the adverse effects that shall be taken before the undertaking proceeds.

(7) *Failure to agree.* Upon the failure of consulting parties to find an unanimously agree upon the terms for a Memorandum of Agreement, the Executive Director shall notify the Chairman of the failure of the consulting parties to reach agreement and shall recommend whether or not the matter should be scheduled for consideration at a Council meeting. The agency official and the State historic preservation officer shall be notified of the Executive Director's recommendation. Upon notification of the recommendation, the agency official shall take no action with respect to the undertaking that could result in an adverse effect on the National Register or eligible property, or that would foreclose the Council's consideration of alternatives that could avoid, mitigate, or minimize the adverse effects until the Council has transmitted its comments to the agency official or the Chairman has given written notice to the agency official that the undertaking will not be considered at a Council meeting.

(d) *Memorandum of Agreement.* (1) *Preparation of Memorandum of Agreement.* It shall be the responsibility of the Executive Director to prepare each Memorandum of Agreement required under these regulations. Unless otherwise requested by the Executive Director, the agency official shall prepare a proposal for inclusion in the agreement that details the actions agreed upon by the consulting parties to be taken to avoid, satisfactorily mitigate, or minimize the adverse effects on the property. The State historic preservation officer's written concurrence shall be included in this proposal by the agency official. The Executive Director shall prepare the required agreement and send it to the Chairman for ratification pursuant to § 800.6(d)(2). The Executive Director may return the proposal to the agency official or submit to the agency official and the State historic preservation officer an agreement revising the proposal if it does not satisfactorily represent the consensus of the consulting parties.

(2) *Review of memorandum of agreement.* Upon receipt of an executed Memorandum of Agreement, the Chairman shall institute a 30-day review period. Unless the Chairman notifies the agency official that the matter has been placed on the agenda for consideration at a Council meeting, the agreement shall become final when signed by the Chairman or upon the expiration of the 30-day review period with no action taken. Notice of executed Memoranda of Agreement shall be published in the FEDERAL REGISTER monthly.

(3) *Effect of memorandum of agreement.* Agreements duly executed in accordance with these regulations shall constitute the comments of the council and shall evidence satisfaction of the Federal agency's responsibilities for the proposed undertaking under section 106 of the Act, section 2(b) of the Executive Order, and these regulations. Failure to carry out the terms of a Memorandum of Agreement is a violation of section 106 and section 2(b) requirements and requires that the Federal agency again request the Council's comments in accordance with these regulations.

(4) *Amendment of a memorandum of agreement.* If a Federal agency cannot carry out the terms of a Memorandum of Agreement or believes that changes are necessary, the agency official shall immediately request an amendment of the agreement. Amendments will be executed in the same manner as the original agreement.

(e) *Council meetings.* The Council does not hold formal administrative hearings to consider comments under these regulations. Reports and statements will be presented to the Council in open session in accordance with a prearranged agenda. Regular meetings of the Council generally occur quarterly.

(1) *Response to recommendation for consideration at Council meeting.* Upon receipt of a notice and recommendation from the Executive Director concerning consideration of the proposed undertaking at a Council meeting, the Chairman shall determine within 10 working days whether or not the undertaking will be considered and shall notify the Executive Director, the agency official, and the State historic preservation officer of his decision. The agency official and the State historic preservation officer shall provide such reports and information as may be required to assist the Chairman in this determination.

If the Chairman decides against consideration of the undertaking at a Council meeting, he will submit a written summary of the undertaking, any recommendations for action by the Federal agency, and his decision to each member of the Council. If a majority of the Council objects to this action within 10 working days of the Chairman's decision, the undertaking will be scheduled for consideration at a Council meeting. If a majority of the Council has no objection, the Chairman shall notify the agency official in writing at the end of the 10-day period that the undertaking may proceed. Such notice will evidence satisfaction of the Federal agency's responsibilities under section 106 of the Act, section 2(b) of the Executive Order, and these regulations.

(2) *Decision to consider the undertaking.* When the Council will consider an undertaking at a meeting, the Chairman shall either designate five members as a panel to hear the matter on behalf of the full Council, or schedule the matter for consideration by the full Council. The panel shall consist of three members appointed by the President, one as Chairman; and two Federal members, neither of whom shall represent the Federal agency involved in the undertaking. The panel will meet to consider the undertaking within 30 days of the Chairman's decision unless the agency official agrees to a longer time. The full Council will consider an undertaking at the next regularly scheduled meeting and no less than 60 days from the date of the Chairman's decision. In exceptional cases the Chairman may schedule the matter for consideration at a special meeting of the full Council to be held less than 60 days from the date of the Decision. Prior to any panel or full Council consideration of a matter, the Chairman will notify the agency official and the State historic preservation officer of the date on which the undertaking will be considered and direct the Executive Director to prepare a case report including reports from the agency official and the State historic preservation officer. (See § 800.15.) Reports required from the agency official and the State historic preservation officer must be received by the Executive Director at least 2 weeks before any meeting. Failure to submit such reports may result in postponement of the meeting.

(3) *Meeting notice.* Two weeks notice of all meetings involving Council consideration of Federal undertakings in accordance with these regulations shall be given by publication in the FEDERAL REGISTER.

(4) *Statements to the Council.* An agenda shall provide for oral statements from the Executive Director; the referring agency official; the applicant or potential recipient, when appropriate; the State historic preservation officer; representatives of national, State, or local units of government, and public and private organizations and individuals. Parties wishing to make oral statements should submit written statements of position to the Executive Director at least 2 weeks before the meeting.

(5) *Comments of the Council.* The written comments of the Council will be issued within 2 weeks after a meeting. Comments shall be made to the head of the Federal agency requesting comment or having responsibility for the undertaking and shall be evidence that the agency has satisfied its responsibilities for the proposed undertaking under section 106 of the Act, section 2(b) of the Executive Order, and these regulations. Immediately after the comments are made to the Federal agency, the comments of the Council will be forwarded to the President and Congress as a special report under authority of section 202(b) of the Act and published in the FEDERAL REGISTER. Comments shall be available to the public upon receipt of the comments by the head of the Federal agency.

(6) *Review of panel decision.* (i) Within 10 working days after issuance of comments by a panel the agency official, the State historic preservation officer, or the Executive Director may make a written appeal to the Chairman to have the matter considered by the full Council at its next regularly scheduled meeting or, in exceptional circumstances, at a special meeting. The Chairman will notify the requesting party of his decision within 10 working days.

(ii) If the proposed undertaking was considered by a panel and the agency is not going to follow the panel's comments, the agency official shall provide written notice of the decision to the Council at least 45 days before taking action. The Chairman may then schedule consideration of the matter before the full Council within 30 days of receipt of such notice. In the interim period the agency official shall take no action with respect to the proposed undertaking that would result in an adverse effect on the National Register or eligible property or foreclose the Council's consideration of alternatives that could avoid, mitigate, or minimize the adverse effect.

(7) *Report of agency action in response to Council comments.* When the Council's commenting process is complete and a final decision regarding the proposed undertaking is reached by the Federal agency, the agency official shall submit a written report to the Council describing the actions taken by the Federal agency subsequent to the Council's comments; the actions taken by other parties pursuant to the actions of the Federal agency; and the ultimate effect that such actions will have on the National Register or eligible property. If necessary, the Council may request supplementary reports.

(8) *Continuing review jurisdiction.* When the Council has commented upon an undertaking such as a comprehensive or area-wide plan that will require subsequent site-specific undertakings by the Federal agency, the Council's comment or approval extends only to the undertaking as reviewed. The Agency Official shall ensure that subsequent actions related to the undertaking that have not been considered by the Council will be submitted to the Council for review in accordance with these regulations.

§ 800.7 Resources discovered during construction.

(a) *Federal agency responsibilities.* If a Federal agency has previously met its responsibilities under section 106 of the Act, section 2 of the Executive Order, these regulations, and the National Environmental Policy Act, including the completion of a professionally adequate survey within the undertaking's area of potential environmental impact, and an agency official finds or is notified after construction has started that an undertaking will have an effect on a previously un-

identified property that may be eligible for inclusion in the National Register, or a National Register or eligible property, the agency official shall take the following steps:

(1) Cease those work activities that may adversely affect the property;

(2) In accordance with the Historic and Archeological Data Preservation Act (16 U.S.C. 469(a)), immediately notify the Secretary and provide such information as is available on the property;

(3) If the Secretary advises the agency official that the adverse effects on the property and the significance of the property require consultation with the Council to determine an appropriate course of action, or if the agency official and the Secretary cannot agree on whether or how the adverse effects should be mitigated, the agency official shall request the comments of the Council in accordance with these regulations.

(b) *Council comments.* Within 30 days of receipt of a request for comments from an agency official under this section, the Executive Director, with the concurrence of the Chairman, shall transmit comments on behalf of the Council to the agency official or the Chairman shall schedule a meeting of the Council, in accordance with § 800.6(e), within 45 days of receipt of the request for comments.

NONSITE SPECIFIC UNDERTAKINGS

§ 800.8 Application.

At the request of an agency official, the Council will consider execution of a Programmatic Memorandum of Agreement to fulfill an agency's responsibilities under section 106 of the Act and sections 1(3) and 2(b) of the Executive Order for a particular program or class of undertakings that would otherwise require numerous individual requests for comments under these regulations. The Executive Director shall make a determination as to whether a Programmatic Memorandum of Agreement may be used in the following situations:

(a) Programs or undertakings, including legislative proposals, policies, and rules and regulations, that will have an effect on undefined or unspecified National Register or eligible properties.

(b) Undertakings that are repetitive in nature and have essentially the same effect on National Register or eligible properties.

(c) Comprehensive or area-wide planning undertakings that do not provide for site-specific undertakings at the time of their development.

(d) Programs that are designed to further the preservation and enhancement of National Register or eligible properties.

(e) Emergency programs that would not permit compliance with these regulations in the normal time period at the time of the undertaking.

(f) Federal or federally approved plans that provide a basis for non-Federal undertakings that may have an effect on National Register or eligible properties.

(g) Other programs, classes, or series of undertakings that the Executive Director determines are appropriate for consideration under this section.

§ 800.9 Council comments.

(a) *Consultation process.* Upon determination by the Executive Director that a Programmatic Memorandum of Agreement is appropriate, the agency official and the Executive Director shall consult to develop a Programmatic Memorandum of Agreement. The Executive Director may invite other parties to participate in the consultation and may hold a public information meeting on the proposed Agreement.

(b) *Programmatic Memorandum of Agreement.* (1) *Preparation of the agreement.* It shall be the responsibility of the Executive Director to prepare each agreement. At least 30 days prior to execution of an agreement the Council shall publish the proposed agreement in the FEDERAL REGISTER and invite comments from Federal, State, and local agencies and the public.

(2) *Execution of the agreement.* After consideration of comments received and completion of any necessary revisions, the consulting parties shall sign the agreement and the Executive Director shall send it to the Chairman for ratification.

(3) *Chairman's approval.* Upon receipt of an executed agreement, the Chairman shall institute a 30-day review period. At the end of 30 days, the Chairman shall take one of the following actions:

(i) Ratify the agreement, at which time it will take effect.

(ii) Return the agreement to the Executive Director with instructions for modifications of the agreement before resubmission.

(iii) Place the agreement on the agenda of the next regularly scheduled Council meeting for approval by the full Council.

(iv) Submit the agreement by mail for approval by the full Council.

(v) Disapprove the agreement.

(4) *Effect of the agreement.* The execution and approval of a Programmatic Memorandum of Agreement shall constitute the comments of the Council on all individual undertakings carried out pursuant to the terms of the agreement and, unless otherwise provided by the agreement, shall satisfy the agency's responsibilities under section 106 of the Act, section 1(3) and 2(b) of the Executive Order, and these regulations for all undertakings carried out in accordance with the agreement.

(5) *Notice.* Notice of an executed agreement shall be published in the FEDERAL REGISTER and copies shall be available for public inspection from the consulting parties.

FEDERAL PROGRAM COORDINATION

§ 800.10 Coordination with the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

Section 101(b)(4) of the National Environmental Policy Act (NEPA) declares that one objective of the national environmental policy is to "preserve important historic, cultural, and natural aspects of our national heritage and maintain, wherever possible, an environment which supports diversity and variety of individual choice." In order to meet this objective, Federal agencies should coordinate NEPA compliance with the separate responsibilities of the National Historic Preservation Act and Executive Order 11593 to insure that historic and cultural properties are given proper consideration in the preparation of environmental assessments and environmental impact statements. Agency obligations pursuant to the National Historic Preservation Act and Executive Order 11593 are independent from NEPA requirements and must be complied with even when an environmental impact statement is not required. Where both NEPA and the National Historic Preservation Act or Executive Order 11593 are applicable, the Council on Environmental Quality, in its proposed National Environmental Policy Act-Regulations (43 FR 25230), directs that compliance with 102(2)(C) of NEPA shall, to the maximum extent possible, be combined with other statutory obligations—such as the National Historic Preservation Act and Executive Order 11593—to yield a single document which meets all applicable requirements. Circulation of a draft environmental impact statement for comment pursuant to section 102(2)(C) of NEPA is not a request for Council comments under these regulations and is not in and of itself sufficient to fulfill a Federal agency's responsibilities under Section 106 of the Act or section 2(b) of the Executive Order. To coordinate the independent responsibilities of the Act and NEPA, Federal agencies should undertake, to the fullest extent possible, compliance with these regulations whenever National Register or eligible properties may be affected by an undertaking.

(a) Federal agencies should initiate compliance with Section 106 of the Act and the Executive Order in accordance with these regulations

during initial environmental assessments that are undertaken to meet the requirements of NEPA and agency environmental procedures. Identification of National Register properties, eligible properties, or properties that may be eligible for the National Register should be carried out in accordance with § 800.4 of these regulations. Potential effects should then be evaluated in accordance with the Criteria of Effect and Adverse Effect in § 800.3 of these regulations so that the environmental assessment or draft environmental impact statement will fully describe any National Register or eligible properties within the area of the undertaking's potential environmental impact and the nature of the undertaking's effect on them.

(b) If evaluation of the effect resulted in a determination of no effect or no adverse effect under § 800.4, that finding, along with any Council's comments, should be included in the environmental assessment or the draft environmental impact statement.

(c) If evaluation of the effect resulted in a determination of adverse effect, that finding and a copy of the agency's request for the Council's comments in accordance with § 800.4(d)(1) of these regulations should be included in the environmental assessment or the draft environmental impact statement. If available, a copy of the Council's comments shall be incorporated into the environmental assessment or the draft environmental impact statement.

(d) Environmental impact statements for undertakings that affect National Register or eligible properties must evidence compliance with section 106 of the Act and the Executive Order, as set forth in these regulations, in order for the statement to be considered adequate by the Council. Comments of the Council obtained pursuant to these regulations shall be incorporated into the final environmental impact statement.

§ 800.11 Coordination with section 1(3) of Executive Order 11593.

Agencies shall consult with the Council and establish procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures, and objects of historical, architectural, or archeological significance.

§ 800.12 Coordination with the Presidential Memorandum on Environmental Quality and Water Resources Management.

Agencies with water resources responsibilities shall, not later than 3 months after publication of these regulations as finally adopted in the FEDERAL REGISTER, publish procedures to implement these regulations as required by the Presidential Memorandum on Environmental Quality and Water Resources Management. Each agency shall consult with the Council while developing its procedures and shall provide an opportunity for public review and comment on their proposed regulations. Agency procedures shall be effective when the Chairman approves them as conforming to the Presidential Memorandum and these regulations. Agency procedures must at a minimum include acceptable measures to prevent or mitigate losses of historic or cultural resources and provisions to insure that all projects not yet constructed will comply with these regulations. Additionally, such procedures shall prescribe a clear way to identify funding for environmental mitigation in an agency's appropriation requests. The procedures shall be approved by the Chairman of the Council within 60 days if they are consistent with these regulations. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are also encouraged to publish explanatory guidance for the procedures.

OTHER PROVISIONS

§ 800.13 Other powers of the Council.

(a) *Comment or report upon non-Federal undertaking.* The Council will exercise the broader advisory powers, vested by section 202(a)(1) of the Act, to recommend measures concerning a non-Federal undertaking that will adversely affect a National Register or eligible property:

(1) Upon request from the President of the United States, the President of the U.S. Senate, or the Speaker of the House of Representatives, or

(2) When agreed upon by a majority vote of the members of the Council.

(b) *Comment or report upon Federal undertakings in special circumstances.* The Council will exercise its authority to comment to Federal agencies under these regulations in certain special situations even though written notice that an undertaking will have an adverse effect has not been received.

§ 800.14 Investigation of threats to historic properties.

The Council is frequently advised by State historic preservation officers and others of undertakings that threaten National Register or eligible properties, or properties that may be eligible for the National Register, that may or may not involve a Federal agency. In order to protect historic properties the Executive Director investigates these matters, generally by writing to the Federal agency that appears to be involved in the undertaking. Federal agencies should respond to these inquiries within 30 days.

§ 800.15 Reports to the Council.

(a) In order to meet responsibilities under these regulations, the Council prescribes that certain reports be made available to it and accepts reports and statement from other interested parties. The content of required reports is set forth below. Generally, the requirements elaborate the principles contained in the Criteria of Effect and in the Criteria of Adverse Effect. The Council recognizes that the Act requires that historic and cultural properties should be preserved "as a living part of our community life and development." Consequently, in arriving at final comments, the Council considers those elements in an undertaking that have relevance beyond historical and cultural concerns. To assist it in weighing the public interest, the Council welcomes information not only bearing upon physical, sensory, or esthetic effects but also information concerning economic, social, and other benefits or detriments that will result from the undertaking.

(b) *Reports for Council meeting.* Consideration of an undertaking by either the full Council or a panel pursuant to section 800.6 is based on reports from the Executive Director, the agency official, the State historic preservation officer, and others. These reports consist of the following:

(1) *Executive Director's report.* The report from the Executive Director will include a verification of the legal and historical status of the property; an assessment of the historical, architectural, archeological, or cultural significance of the property; a statement indicating the special value of features to be most affected by the undertaking; an evaluation of the total effect of the undertaking upon the property; a critcal review of any known feasible and prudent alternatives and recommendations to remove or mitigate the adverse effect.

(2) *Agency official's report.* (i) The report from the agency official requesting comments will include a general discussion and chronology of the proposed undertaking; when appropriate, an account of the steps taken to comply with section 102(2)(A) of National Environmental Policy Act (NEPA); an evaluation of the effect of the undertaking upon the property, with particular reference to the impact on the historic, architectural, archeological, and cultural values; steps taken or proposed by the agency to take into account, avoid, or mitigate adverse effects of the undertaking; a thorough discussion of alternate courses of action; and, if applicable and available, a copy of the draft environmental statement prepared in com-

pliance with section 102(2)(C) of NEPA.

(ii) A report by any applicant or potential recipient when the Council considers comments upon an application for a contract, grant, subsidy, loan, or other form of funding assistance, or an application for a Federal lease, permit, license, certificate, or other entitlement for use. Arrangements for the submission and presentation of reports by applicants or potential recipients shall be made through the agency official having jurisdiction in the matter.

(3) *Other Federal agency reports.* A report from any other Federal agency having under consideration an undertaking that will concurrently or ultimately affect the property, including a general description and chronology of that undertaking and discussion of the relation between that undertaking and the undertaking being considered by the Council.

(4) *State historic preservation officer's report.* A report from the State historic preservation officer will include an assessment of the significance of the property; an identification of features of special value; an evaluation of the effect of the undertaking upon the property and its specific components; an evaluation of known alternate courses of action; a discussion of present or proposed participation of State and local agencies or organizations in preserving or assisting in preserving the property; an indication of the support or opposition of units of government and public and private agencies and organizations within the State; and the recommendation of his office.

(5) *Other reports.* Other pertinent reports, statements, correspondence, transcripts, minutes, and documents received by the Council from any and all parties, public or private. Reports submitted pursuant to this section should be received by the Council at least 2 weeks prior to a Council meeting.

(c) *Coordination of case reports and statements.* In considerations involving more than one Federal department, either directly or indirectly, the agency official requesting comment shall act as a coordinator in arranging for a full assessment and discussion of all interdepartmental facets of the problem and prepare a record of such coordination to be made available to the Council. At the request of the Council, the State historic preservation officer shall notify appropriate governmental units and public and private organizations within the State of the pending consideration of the undertaking by the Council, and coordinate the presentation of written statements to the Council.

SUPPLEMENTARY GUIDELINES I

CRITERIA FOR THE NATIONAL REGISTER OF HISTORIC PLACES

The following are the criteria established by the Secretary of the Interior for use in evaluating and determining the eligibility of properties for listing in the National Register. They are included in this publication for informational purposes.

National Register Criteria for Evaluation (36 CFR Part 60.6). "The quality of significance in American history, architecture, archeology, and culture is present in districts, sites, buildings, structures, and objects of State and local importance that possess integrity of location, design, setting, materials, workmanship, feeling, and association and:

"(a) That are associated with events that have made a significant contribution to the broad patterns of our history; or

"(b) That are associated with the lives of persons significant in our past; or

"(c) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

"(d) That have yielded, or may be likely to yield, information important in prehistory or history.

"Criteria considerations. Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

"(a) A religious property deriving primary significance from architectural or artistic distinction or historical importance;

"(b) A building or structure removed from its original location but which is the surviving structure most importantly associated with a historic person or event;

"(c) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life;

"(d) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events;

"(e) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived;

"(f) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance;

"(g) A property achieving significance within the past 50 years if it is of exceptional importance."

SUPPLEMENTARY GUIDELINES II

DOCUMENTATION FOR DETERMINATION OF NO ADVERSE EFFECT

Adequate documentation of a Federal agency's Determination of No Adverse Effect pursuant to § 800.4 should include the following information:

(1) A description of the agency's involvement with the proposed undertaking with legal citations of the agency's program authority and applicable implementing regulations, procedures, and guidelines;

(2) A description of the proposed undertaking including, as appropriate, photographs, maps, drawings, and specifications, etc. (In the case of restoration and rehabilitation proposals, the best available drawings and specifications should be provided);

(3) A list of National Register properties, eligible properties, or properties that may be eligible for inclusion in the National Register that will be affected by the undertaking, including a description of the property's physical appearance and significance;

(4) A brief statement explaining why each of the Criteria of Adverse Effect (36 CFR Part 800.3(b)) was found inapplicable;

(5) Written views of the State Historic Preservation Officer concerning the determination of no adverse effect;

(6) An estimate of the cost of the undertaking, identifying Federal and non-Federal shares.

SUPPLEMENTARY GUIDELINES III

DETERMINATIONS OF ADVERSE EFFECT AND NO ADVERSE EFFECT FOR ARCHEOLOGICAL RESOURCES

The following provides supplementary guidance to assist Federal agencies in making Determinations of Adverse Effect and No Adverse Effect for National Register and eligible properties that are significant primarily as archeological resources in accordance with the Council's regulations for the "Protection of Historic and Cultural Properties" (36 CFR Part 800).

In accordance with the National Register criteria, archeological proper-

ties are eligible for the National Register because they have "yielded, or may be likely to yield, information important in prehistory or history" (36 CFR Part 60).

Part I: *Policy.* Disturbance of resources eligible under this criterion should be avoided.

(1) Data recovery may be appropriate, however, when properties are primarily significant for the data they contain and when this data can be retrieved in accordance with professional standards.

(2) The goal of archeological data recovery must be to obtain the greatest amount of archeological data for the least amount of archeological resource destruction.

In-place preservation of archeological resources should be examined as a cost-effective alternative to data recovery.

(4) Methods destructive of data or injurious to the natural features of the property should not be employed if nondestructive methods are feasible.

Where a Federal undertaking (as defined in § 800.2) may involve the recovery of data from an archeological property on or eligible for inclusion in the National Register, the Agency Official should take the following steps to decide whether a Determination of No Adverse Effect can be made:

The Agency Official, in consultation with the State Historic Preservation Officer (SHPO), should apply the criteria set forth in Part II below. If the criteria are met, the Agency Official May make a Determination of No Adverse Effect for any data recovery program conducted in accordance with the requirements set forth in Part III below. Documentation that the criteria and requirements set forth in Parts II and III below have been met, along with the written comments of the SHPO, shall be forwarded to the Council for review in accordance with § 800.6.

If the criteria are not met, the Agency Official should request the comments of the Council in accordance with § 800.4.

Part II: *Criteria.* (1) The property is not a National Historic Landmark, a National Historic Site in non-Federal ownership, or a property of national historical significance so designated within the National Park System.

(2) The SHPO has determined that in-place preservation of the property is not necessary to fulfill purposes set forth in the State Historic Preservation Plan.

(3) The SHPO and the Agency Official agree that:

(a) The property (including properties that are subsidiary elements in a larger property defined in Criterion 1) has minimal value as an exhibit in place for public understanding and enjoyment;

(b) Above and beyond its scientific value, the property is not known to have historic or cultural significance to a community, ethnic, or social group that would be impaired by the retrieval of data;

(c) Currently available technology is such that the significant information contained in the property can be retrieved.

(4) Adequate funds and time have been committed to adequately retrieve the data.

Part III: *Data recovery requirements.* (1) Data recovery will be conducted under the supervision of an archeologist who meets the qualifications under Subpart A.

(2) Data recovery will be conducted in accordance with the standards set forth in Subpart B.

(3) A date has been set for the submission of a final report to the Agency Official.

(4) Plans have been made for disposition of the material recovered after it has been analyzed in accordance with Subpart C.

(5) Documentation of the condition and significance of the property after data recovery will be provided by the Agency Official to the SHPO and the National Register for appropriate action, including nomination, boundary change, or removal of National Register or eligibility status in accordance with the National Register's procedures (36 CFR 60.16).

Subpart A: *Qualifications for supervisory archeologist.* Minimum professional qualifications for a Supervisory Archeologist are graduate degrees in archeology, anthropology, or a closely related field, or equivalent training accepted for accreditation purposes by the Society of Professional Archeologists and the following:

(1) At least 16 months of professional experience or specialized training in archeology field, laboratory, or library research, including at least 4 months of experience in general North American archeology and at least 6 months of field experience in a supervisory role.

(2) A demonstrated ability to carry research to completion, usually evidenced by timely completion of a thesis, research reports, or similar documents.

For work involving prehistoric archeology, a Supervisory Archeologist should have at least one year's experience in research concerning archeological resources of the prehistoric period.

For work involving historic archeology, a Supervisory Archeologist should have at least 1 year's experience in research concerning archeological resources of the historic period.

Subpart B: *Professional standards for data recovery programs.* (1) Data recovery should be conducted in accordance with a recovery plan that includes a professionally acceptable research design:

(a) The plan should reflect a familiarity with previous relevant research and be prepared or approved by the Supervisory Archeologist.

(b) The plan should include a definite set of research questions, taking into account relevant previous research, to be answered in analysis of the data to be recovered;

(c) The plan should provide for recovery of a usable sample of data on those significant research topics that can reasonably be addressed.

(d) The plan should specify and justify the methods and techniques to be used for recovery of the data contained in the property.

(2) The plan should provide for adequate personnel, facilities, and equipment.

(3) The plan should insure that full, accurate and intelligible records are made and maintained of all field observations and operations.

(4) The plan should include adequate provisions for modification of the plan to cope with unforeseen discoveries or other unexpected circumstances.

(5) The plan should provide for distributing program results to at least the following: the SHPO, the State archivist, the State archeologist, the Departmental Consulting Archeologist of the Department of the Interior, and the Chairman, Department of Anthropology, Smithsonian Instituion.

Subpart C: *Treatment of recovered materials.* The recommended professional treatment of recovered materials is curation and storage of the artifacts at an institution that can properly insure their preservation and that will make them available for research and public view. If such materials are not in Federal ownership, the consent of the owner must be obtained, in accordance with applicable law, concerning the disposition of the materials after completion of the report.

SUPPLEMENTARY GUIDELINES IV

PRELIMINARY CASE REPORTS

Preliminary case reports should be submitted with a request for comments pursuant to § 800.4 and should include the following information:

(1) A description of the agency's involvement with the proposed undertaking with legal citations of the agency's program authority and applicable implementing regulations, procedures and guidelines.

(2) The status of this project in the agency's approval process.

(3) The status of this project in the agency's National Environmental

Policy Act compliance process and the target date for completion of all environmental responsibilities.

(4) A description of the proposed undertaking including, as appropriate, photographs, maps, drawings, and specifications, etc. (In the case of restoration and rehabilitation proposals, the best available drawings and specifications should be provided),

(5) A description of the properties included or eligible for inclusion in the National Register affected by the undertaking, identifying the significant features of the properties,

(6) A statement of which Criteria of Adverse Effect apply (36 CFR 800.3),

(7) Written views of the State Historic Preservation Officer concerning the effect on the property,

(8) The views of other Federal agencies, State and local governments, and other groups or individuals, when known,

(9) A description and analysis of alternatives that would avoid the adverse effects,

(10) A description and analysis of alternatives that would mitigate the adverse effects,

(11) An estimate of the cost of the undertaking, identifying Federal and non-federal shares.

[FR Doc. 78-30665 Filed 10-27-78; 8:45 am]

federal register

MONDAY, OCTOBER 30, 1978
PART VII

DEPARTMENT OF ENERGY

PASSTHROUGH BY SERVICE STATION OPERATORS OF COSTS FOR VAPOR RECOVERY SYSTEMS AND INCREASED SERVICE STATION RENTS

Amendments to Mandatory Petroleum Price Regulations

[3128-01-M]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION [1]

[Docket No. ERA-R-77-15]

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Amendment to Permit the Passthrough by Service Station Operators of Costs for Vapor Recovery Systems and Increased Service Station Rents

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby adopts amendments to the Mandatory Petroleum Price Regulations that will permit retailers to pass through in the prices of motor gasoline the costs of vapor recovery systems and increased service station rents, without continuing to be subject to the current 3-cent-per-gallon limitation on the recovery of nonproduct costs. These amendments are being issued as an interim measure, pending decontrol of gasoline, to reform certain aspects of the current regulatory framework which limit the ability of service station operators to price gasoline in accordance with actual increased costs and to facilitate the transition of the gasoline market from a controlled to a decontrolled environment. In addition to issuing these amendments, ERA is requesting comments on whether the present regulations with respect to resellers and retailers of gasoline permit an adequate recovery of increased nonproduct costs.

DATES: Effective December 1, 1978. Comments by February 15, 1979, 4:30 p.m.

ADDRESS: All comments to the Office of Public Hearings Management, Economic Regulatory Administration, Room 2313, Docket No. ERA-R-77-15, 2000 M Street NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street NW., Room B110, Washington, D.C. 20461, 202-634-2170.

Chuck Boehl (Office of Regulations and Emergency Planning) Economic Regulatory Administration, 2000 M Street NW., Room 2304, Washington, D.C. 20461, 202-254-7200.

Ben McRae (Office of General Counsel), Department of Energy, 12th and Pennsylvania Avenue NW., Room 5134, Washington, D.C. 20461, 202-566-9565.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Amendments adopted: A. Increased rents, and B. Vapor recovery system costs.
III. Additional comments requested.
IV. Additional matters.

I. Background

Under the price rules applicable to resellers and retailers of motor gasoline, such firms are, in general, allowed to charge for each grade of gasoline an amount equal to the price charged by the firm on May 15, 1973, to the same class of purchaser plus increased product costs. In addition, in January and February of 1974, the Federal Energy Administration (FEA), a predecessor agency to DOE, issued regulations that allow retailers to increase their prices by up to 3 additional cents per gallon to cover actual nonproduct cost increases subsequent to May 15, 1973. A similar 3-cent-per-gallon increased marketing cost figure was allowed for refiners' retail sales.

The 3-cent-per-gallon increased nonprofit cost passthrough limitation was intended to allow dealers to recover nonproduct cost increases incurred by them, and was FEA's then-current estimate of the amount of nonproduct cost increases incurred by retail dealers (plus an indeterminate amount designed to offset at least a portion of dealers' reductions in revenue as a result of their reduction in volumes of gasoline sold during the 1973-74 embargo). While vapor recovery system costs are nonproduct costs of the type that are allowed under the rule, such systems were not generally required of retail dealers until 1975. At this time, the ERA believes that there is a need to allow a cost passthrough for this factor without regard to the 3-cent-per-gallon nonproduct cost ceiling established by FEA in 1974. Also, we perceive the same need with regard to a factor for increased service station rents. This is because, prior to November 11, 1975, FEA and its predecessor agencies regulated, in conjunction with the regulation of gasoline prices, the rents that supplier/lessors could charge their dealers. Applicable regulations generally provided that gasoline service station rents were frozen at the "base rent" level (the rent charged under contract terms prevailing on May 15, 1973). Often those contract terms stated a base rent in terms of a cent-per-gallon rate (for example, 2 cents per gallon of gasoline sold), and in such cases it was this rate which was frozen under applicable regulations rather than an absolute dollar rental amount.

This system of rent control was begun by the Cost of Living Council on August 19, 1973, and, pursuant to the Council's broad authority under the Economic Stabilization Act of 1971 (Pub. L. 92-210), applied initially to all leased real property used in the retailing of gasoline. When the Economic Stabilization Act expired on April 30, 1974, the Federal Energy Office (FEO), as successor to the Council, narrowed the scope of these regulations to conform with the price control authority under the Emergency Petroleum Allocation Act of 1973 (Pub. L. 93-159, EPAA), so that, beginning May 1, 1974, rent controls applied only in those cases in which both the lessor and lessee of the real property in question were subject to the petroleum price regulations as refiners, resellers, reseller-retailers, or retailers of covered products. Although the EPAA did not provide express authority to regulate service station rents, FEO and FEA took the position that, due to the direct and inextricable relationship between the prices charged to dealers for gasoline and their service station rents, it was necessary to continue to regulate rents charged by suppliers in order to carry out effectively the EPAA mandate to allocate refined petroleum products at equitable prices.

On September 30, 1975, FEA issued proposed amendments to the rent regulations (40 FR 47147, October 8, 1975) which, if adopted, would have, among other things, provided for limited rent increases by (1) permitting the base rent to be increased in those cases in which a temporary rent modification agreement was in effect on May 15, 1973, and the circumstances which gave rise to that modification no longer exist, and (2) permitting the lessor to recover increased costs relating to the rental of real property by increasing the rent above the base rent, while permitting the lessee to pass through rent increases above the base rent as a nonproduct cost increase not subject to the cent-per-gallon maximum otherwise applicable to nonproduct cost increases under 10 CFR 212.93(b). In addition, FEA at that time requested comment on how costs related to installation of environmentally mandated vapor recovery equipment were being handled as between lessors and lessees, with a view toward possible modification of the rent increase proposal to take into account these special costs.

On November 11, 1975, the Temporary Emergency Court of Appeals, in the case of *Shell Oil Co.* v. *FEA*, 527 F.

[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.

2d 1243, enjoined FEA from enforcing its rent regulations against Shell on the ground that those regulations, as applied to rentals charged by Shell, were beyond the scope of FEA's statutory authority. In reaching this decision, the court commented that FEA possessed regulatory authority outside its rent regulations to deal effectively with the possibility of gasoline price increases "hidden" in rent increases. The court stated that, "in any instance in which FEA believes a lessor who supplies gasoline to its lessee has raised its rents as a means of obtaining a higher price for its gasoline than would otherwise be allowed * * *," FEA could take action under 10 CFR 210.62(c), a general provision which prohibits "[a]ny practice which constitutes a means to obtain a price higher than is permitted by the regulations in this chapter * * *."

FEA subsequently revoked its rent regulations, effective November 11, 1975, the date of the *Shell* decision (40 FR 60036, December 31, 1975), in view of the decision in the *Shell* case and in order to assure the equal application of that decision to all firms. At the same time, FEA withdrew the rulemaking then pending concerning rent increases under the rent regulations, except for that portion of the rulemaking which related to the possible amendment of the regulations to permit the passthrough of those costs associated with vapor recovery equipment. FEA also at that time called for public participation in the development of "rent guidelines" to aid FEA in determining what rent increases and rental practices might be construed by FEA as constituting a means to obtain prices higher than those permitted under the regulations in violation of 10 CFR 210.62(c).

On April 26, 1977, FEA withdrew its proposal for the development of "rent guidelines" (42 FR 22374, May 3, 1977). Within the same notice, FEA proposed to permit retail gasoline dealers to pass through increased rental charges without regard to the 3-cent-per-gallon maximum authorized under § 212.93(b)(1). This proposal was intended to help ease the burden on retail dealers subject to Subpart F of the price regulations, who had incurred substantially increased rental rates over the past year or more with no corresponding increase in the maximum amount permitted to be charged to reflect non-product cost increases. FEA also proposed to extend this relief to refiners with company-owned retail outlets by a parallel amendment to the 3-cent-per-gallon maximum increased marketing costs authorized for refiner-retailers under § 212.83(c)(2)(iii)(E). At the same time, FEA announced the continued consideration of the possible amendment of the regulations relating to the passthrough of the costs associated with the purchase and installation of vapor recovery equipment.

A public hearing was held in Washington, D.C., on June 21, 1977. Witnesses and written comments on the proposal supported permitting a passthrough of the increased costs under consideration. Prior to its expiration on September 30, 1977, FEA took no action on the proposals to allow the separate passthrough of vapor recovery system costs and increased rental charges. DOE (which effective October 1, 1977, assumed the functions of FEA) has continued consideration of the proposals under section 705 of the Department of Energy Organization Act (Pub. L. 95-91).

II. Amendments Adopted

Gasoline decontrol is still a primary objective of ERA that will be accomplished as soon as possible. However, because of the inequity resulting from the present regulatory constraint upon retail dealers' passing through additional costs of complying with recently imposed environmental controls and rent increases that may be imposed upon them by their suppliers, we are hereby adopting amendments to permit retail gasoline dealers and refiners which operate service stations to pass through in their gasoline prices the nonproduct costs incurred since May 15, 1973, with respect to vapor recovery systems and increased service station rental costs since May 1973, without regard to the 3-cent-per-gallon limitations on the passthrough of retailer's other nonproduct marketing cost increases set forth in §§ 212.93(b) and 212.83(c)(2)(iii)(E). Any costs recovered under these amendments for increased rents and vapor recovery systems will not also be recoverable as part of the 3-cent-per-gallon allowance for actual other nonproduct and marketing cost increases.

A. Increased Rents

Under these amendments, the increased rental costs that will be permitted to be passed through separately will be only the increased rental costs incurred on or after November 1, 1978. These increased rental costs will be expressed as the difference between the rent for a particular service station property, expressed on a cent-per-gallon basis, paid in the month preceding the current month and the month of May 1973. Therefore, in December 1978, the first month that these costs may be separately reflected in gasoline sales, refiners' or resellers' maximum permissible prices may include a factor for increased rental costs incurred in November 1978.

If any portion of the increased rental payments for a particular property is not expressed on a cent-per-gallon basis, it must be converted to a cent-per-gallon basis for purposes of computing the increase. Thus, for example, if a service station operator paid rent of $1,500 and sold 100,000 gallons of gasoline in May 1973 and paid $2,500 rent and sold 125,000 gallons of gasoline in November 1978, the operator's rental cost for May 1973 would be converted to 1.5 cents per gallon, and its rent for November 1978 would be converted to 2 cents per gallon. The rental cost increase of 0.5 cent per gallon would be added to the operator's December 1978 maximum permissible gasoline prices.

To be eligible for passthrough under the amendments adopted today, the increased rent must be paid in an arm's length transaction to a lessor that is not directly controlled by the lessee or by any firm which directly or indirectly controls the lessee.

B. Vapor Recovery System Costs

Also, the amendments will permit service station operators to pass through unrecovered costs incurred since May 15, 1973, with respect to the purchase and installation of gasoline vapor recovery systems. To be eligible for such separate recovery, the costs must be incurred with respect to a system owned by the service station operator and required by a Federal, State, or local governmental authority.

The amendment provides that the cost incurred with respect to a vapor recovery system may be recovered in 1 month or may be prorated over a period of months. Each seller will be required to establish an accounting method by which vapor recovery costs shall be recovered. Once the method is established, the seller will apply the method consistently over the chosen period for the recovery of costs. However, a seller will not be permitted to recover in sales of gasoline a total amount attributable to such costs which exceeds the seller's actual vapor recovery system cost. In any one month, the portion of vapor recovery system costs that are available for recovery in that month shall be applied equally to, and will be deemed to have been recovered on, each gallon of gasoline sold. Thus, no amount of the portion of vapor recovery costs prorated by the seller to a specific month may be used to justify prices in a subsequent month.

For example, if a service station operator purchased and installed in 1976 a vapor recovery system for $10,000, the cost of which has not been recovered to date as a nonproduct or marketing cost, the service station operator may pass through in its sales of gasoline $10,000 attributable to such unrecovered costs. The seller may pass

through the $10,000 in gasoline sales in 1 month as a current expense or may prorate the recovery over a longer period, for instance, 20 months. If the operator chooses to pass through $500 in a particular month and in that month expects to sell 100,000 gallons of gasoline, it may increase its maximum permissible price by 0.5 cent for each gallon of gasoline sold. In such a situation the operator will be deemed to recover the 0.5 cent per gallon for vapor recovery system costs on every gallon of gasoline that it sells.

Section 212.83(f) provides for refiners a sequence of recovery for crude oil costs, purchased product costs, and nonproduct costs. It does not specify a sequence of recovery for specific nonproduct cost items. Such a sequence is necessary with respect to vapor recovery costs which are deemed to be recovered in the month in which they are made available for recovery. To the extent that these costs are deemed recovered, they will not be bankable for future recovery as refiners' other nonproduct costs are. If these costs are required to be recovered before refiners' other nonproduct costs, the costs which are deemed to be recovered will more likely correspond to those costs actually recovered. Therefore, the amendments specify that refiners' vapor recovery costs will be deemed to have been recovered before any other nonproduct costs.

III. Additional Comments Requested

Although we believe the amendments issued today will more equitably allow for recovery of service station operators' increased nonproduct costs, this rulemaking will be continued for the purpose of receiving additional comments on the amendments adopted today and the need, if any, for further increases in the allowance for nonproduct costs permitted resellers and retailers of gasoline.

In particular, we specifically request comments on whether, in lieu of allowing retailers to pass through the actual amount of rent increases and vapor recovery system costs, we should allow a specific cent-per-gallon increase limitation for all retailers that is higher than the present 3 cents per gallon to permit the passthrough of costs for vapor recovery systems and increased rents. Those favoring such an approach are urged to provide data to be used in the determination of such a maximum.

Comments, supported by factual information to the extent possible, are also requested on the adequacy of current nonproduct marketing cost ceilings for retailers, resellers, and refiners. Reference to property taxes and other cost increases applicable to reseller or retail properties owned, rather than rented, by resellers or retailers, should be included. In addition, we request that commenters identify for us any other inequities or other problems that may be created by the present price rules applicable to resellers and retailers and the marketing costs of refiners.

Comments will be received until February 15, 1979. You should submit 15 copies of your comments to Office of Public Hearings Management, Economic Regulatory Administration, Room 2313, Docket No. ERA-R-77-15, 2000 M Street NW., Washington, D.C. All comments received by DOE will be available for public inspection in the DOE Reading Room, Room GA-152, James Forrestal Building, 1000 Independence Avenue SW., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Any information or data considered by you to be confidental must be so identified and submitted in writing, one copy only, in accordance with the procedures set forth in 10 CFR 204.9(f). Any material not accompanied by a statement of confidentiality will be considered to be nonconfidential. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination. While the issues addressed in the comments would not be immediately applicable if motor gasoline is decontrolled, the comments received will nevertheless be considered in the context of our pending proposal on standby product allocation and price regulations (43 FR 29565, July 10, 1978) which would be implemented in the event of a major refined product or crude oil supply interruption.

IV. Additional Matters

In adopting this rule, ERA has considered in accordance with Executive Order 12044, the economic impact of its action. We have prepared a regulatory analysis of these amendments. Copies may be obtained from the ERA, Office of Public Information, 2000 M Street NW., Room B-110, Washington, D.C. 20461, 202-632-2170.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185; Department of Energy Organization Act, Pub. L. 95-91; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 212 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective December 1, 1978.

Issued in Washington, D.C., October 22, 1978.

David J. Bardin,
Administrator, Economic Regulatory Administration.

1. Section 212.83(c)(2)(iii)(E) is amended by adding a definition of "F_i'" at the end of the "N" factor to read as follows:

§ 212.83 Price rule.

* * * * *

(c) *Allocation of increased costs.* * * *

(2) *Formulae.* * * *

(iii) *Definitions.* * * *

(E) *The "N" factor.* * * *

F_i'=the marketing cost increase and is the difference between the cost of marketing covered products in the month of measurement and the cost of marketing covered products in the month of May 1973. "Cost of marketing covered products" means the costs attributable to marketing operations with respect to covered products provided that such costs are included only to the extent that they are so attributable under the customary accounting procedures generally accepted and historically and consistently applied by the firm concerned and are not included in computing May 15, 1973 prices, in computing increased product costs, or in computing other increased non-product costs. A refiner must prepare a schedule itemizing the principal costs included in this category and describing the accounting procedures by which they are calculated. The amount of marketing cost increase which may be applied to compute maximum allowable prices for covered products is, however, limited to the extent that such marketing cost increases may:

(I) Allow an increase in the prices of No. 2 heating oil and No. 2-D diesel fuel above the prices otherwise permitted to be charged for such products pursuant to the provisions of this part by an amount not in excess of one cent per gallon with respect to retail sales and one-half cent per gallon with respect to all other sales; and

(II) (aa) Allow an increase in the price of gasoline above the prices otherwise permitted to be charged for gasoline pursuant to this part by an amount equal to increased rental cost (as defined in § 212.92), plus vapor recovery system cost (as set forth in § 212.92) plus, an amount not in excess of three cents per gallon (for marketing costs not otherwise recoverable under this subpart) with respect to all retail sales; and

(bb) Allow an increase in the price of gasoline, during the 360-day period commencing November 19, 1975, above the prices otherwise permitted to be

charged for gasoline pursuant to this part (including paragraphs (I) and (II) (aa) of this definition) by an amount not in excess of two cents per gallon in retail sales in Alaska; and

(III) Allow an increase in the prices of gasoline above the prices otherwise permitted to be charged for gasoline pursuant to the provisions of this part by an amount not in excess of three-quarter cent per gallon with respect to all sales other than retail sales; and

(IV) Allow an increase in the prices of middle distillates above the prices otherwise permitted to be charged for middle distillates pursuant to the provisions of this part (including the foregoing paragraph (I) of this definition) by an amount not in excess of one cent per gallon with respect to retail sales and not in excess of one-quarter cent per gallon with respect to all other sales, except that, with respect to retail sales of aviation fuels by fixed base operators after November 30, 1975, allow an increase in the amount otherwise permitted to be charged for that item pursuant to the provisions of this part by an amount not to exceed 4 cents per gallon; and

(V) Allow an increase in the prices of residual fuel oil above the prices otherwise permitted to be charged for residual fuel oil pursuant to the provisions of this part by an amount not in excess of three-fourths cent per gallon with respect to retail sales and one-fourth cent per gallon with respect to all other sales; and

(VI) Allow an increase in the price of propane, in sales after September 30, 1975, above the prices otherwise permitted to be charged for propane pursuant to the provisions of this part by an amount not in excess of three cents per gallon with respect to all retail sales except those to the petrochemicals industry, to public utilities, and to synthetic natural gas plants; 1 cent per gallon with respect to retail sales to the petrochemicals industry, to public utilities, and to natural gas plants and one-half cent per gallon with respect to all other sales; and

(VII) Reflect the total dollar amount of non-product costs attributable to includable amounts of commissions incurred during the period "t" beginning with January 1, 1976 with respect to sales through consignee-agents of the covered product or products of the type "i". The includable amount of commission incurred with respect to each item sold through each consignee-agent is the dollar amount per unit of volume by which the commission in the period "t" exceeds the commission in effect on May 15, 1973: *Provided*, That the includable amount shall be an amount reasonably intended to cover increased non-product costs of the consignee-agent, and that it shall not exceed the amount of the non-product cost price increase that would be permitted if the consignee-agent took title to the product it distributes and were a seller subject to § 212.93(b).

N_i^s = the total increased non-product costs attributable to the specific covered product or products of the type "i" computed under "N_i^t" for the month preceding the month of measurement ("s") beginning on or after January 1, 1976 but not recovered in sales of that product during the period "t".

N_i^r = the total increased non-product costs attributable to the specific covered product or products of the type "i" computed under "N_i^t" for all months through the month two months before the month of measurement ("r") beginning on or after January 1, 1976 but not recovered in sales of that product through the period "t".

* * * * *

2. Section 212.92 is amended by adding, in appropriate alphabetical order, definitions of "increased rental cost" and "vapor recovery system cost" to read as follows:

§ 212.92 Definitions.

* * * * *

"Increased rental cost "means the rent, in terms of cents per gallon, with respect to that portion of real property leased for purposes of retail gasoline sales, paid to an independent lessor for the calendar month preceding the calendar month in which gasoline is sold minus the rent, stated in terms of cents per gallon, with respect to the same real property leased for purposes of retail gasoline sales, paid to an independent lessor for the month of May 1973. For purposes of this paragraph, "independent lessor" means a lessor which is not directly or indirectly controlled by the lessee concerned or by any firm which directly or indirectly controls that lessee.

* * * * *

"Vapor recovery system cost" means the unrecovered installation and purchase cost incurred by the seller since May 15, 1973 with respect to a gasoline vapor recovery system required by a Federal, State, or local governmental authority. For purposes of this paragraph, the cost incurred with respect to a vapor recovery system may be recovered in one month or may be prorated over a period of months. Each seller will be required to establish an accounting method by which vapor recovery costs shall be recovered. Once the method is established, the seller will apply the method consistently over the period for the recovery of costs. A seller may not recover in sales of gasoline a total amount attributable to such costs which exceeds the seller's actual vapor recovery system cost. In any one month, the portion of vapor recovery system costs that are available for recovery in that month shall be applied equally to, and shall be deemed to have been recovered on, each gallon of gasoline sold and for purposes of § 212.83(f) shall be deemed to have been recovered before all other non-product costs.

3. Section 212.93 is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii)(A) and by adding new paragraphs (b)(1)(ii)(C) and (b)(1)(ii)(D) to read as follows:

§ 212.93 Price rule.

* * * * *

(b) * * *

(1) With respect to No. 2 oils and gasoline: (i) In retail sales, a seller may charge 1 cent per gallon in excess of the amount otherwise permitted to be charged for that item pursuant to the provisions of this section, and, with respect to all other sales a seller may charge one-half cent per gallon in excess of the amount otherwise permitted to be charged for that item pursuant to the provisions of this section to reflect non-product cost increases that the seller incurred after May 15, 1973. *Provided*, That, subsequent to December 1, 1978, such non-product cost increases shall not include those costs that are or could have been recovered under either subparagraph (1)(ii)(C) or subparagraph (1)(ii)(D) of this paragraph (b).

(ii)(A) Beginning with March 1974, in all retail sales of gasoline, a seller may charge two cents per gallon of gasoline in excess of the amount otherwise permitted to be charged for that item pursuant to this section, including paragraph (b)(1)(i) of this section, to reflect increases in non-product costs incurred by the seller concerned since May 15, 1973. *Provided*, That, subsequent to December 1, 1978, such non-product cost increases shall not include those non-product costs that are or could have been recovered under either subparagraph (1)(ii)(C) or subparagraph (1)(ii)(D) of this paragraph (b).

* * * * *

(C) Beginning December 1, 1978, in retail sales of gasoline, a seller may charge an amount in excess of the price otherwise permitted to be charged for that item pursuant to this section (including subparagraphs (1)(i) and (1)(ii)(A) of this paragraph (b)), which reflects increased rental costs not otherwise recovered.

(D) Beginning December 1, 1978, in retail sales of gasoline, a seller may charge an amount in excess of the price otherwise permitted to be charged for that item pursuant to this section (including subparagraphs (1)(i) and (1)(ii)(A) and (C) of this paragraph (b)), which reflects a portion of vapor recovery system cost as set forth in § 212.92 not otherwise recovered.

[FR Doc. 78-30686 Filed 10-26-78; 12:30 pm]

Federal Register

MONDAY, OCTOBER 30, 1978
PART VIII

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

■

URBAN DEVELOPMENT ACTION GRANTS

Interim Rules

[4210-01-M]

Title 24—Department of Housing and Urban Development

CHAPTER V—OFFICE OF ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-78-578]

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart G—Urban Development Action Grants

INTERIM RULE

AGENCY: Department of Housing and Urban Development.

ACTION: Interim rule.

SUMMARY: This rule provides for a change in the method used by the Department for establishing the minimal standards of physical and economic distress for Action Grant applications and explains HUD policy respecting cities which become ineligible for participation in the Action Grant program by virtue of the use of updated data to determine physical and economic distress.

EFFECTIVE DATE: October 30, 1978.

COMMENTS DUE: November 29, 1978.

ADDRESSES: Send comments to: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Each person submitting a comment should include his/her name and address, refer to the document by the docket number indicated by the headings, and give the reasons for any recommendation. Copies of all written comments received will be available for examination by interested persons in the Office of the Rules Docket Clerk, at the address listed above. The proposal may be changed in light of the comments received.

FOR FURTHER INFORMATION CONTACT:

Sarah Underwood, Office of Action Grant, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-6540.

SUPPLEMENTAL INFORMATION: On January 10, 1978 (43 FR 1602) the Department published final regulations governing the Urban Development Action Grant program.

MINIMUM STANDARDS OF PHYSICAL AND ECONOMIC DISTRESS

Section 570.452, which contains the eligibility requirements for the program, included specific reference to minimum standards of physical and economic distress for fiscal year 1978. In order to avoid constant changes in the regulations, the Department will in the future publish the exact standards which cities must meet in notice form as new data becomes available. Section 570.452 is being changed to delete the minimum standards for fiscal year 1978.

INELIGIBILITY RESULTING FROM DATA CHANGE

In addition, new language is added as § 570.452(c) to describe procedures for handling cities which will become ineligible because of changes in data used to determine the minimum standards of physical and economic distress. The reason for this change is that HUD recognizes the long lead time required for preparation of applications and wishes to protect those cities which are proceeding in good faith. The section formerly numbered § 570.452(c), Results in Providing Housing, has been renumbered as § 570.452(d).

WAIVER OF ELIGIBILITY SUBMISSION DATES

Finally, § 570.455(a) adopts a more flexible approach by the Department in making determinations of eligibility in compelling cases subsequent to 60 days prior to the beginning of the month in which the applicant's first application is to be submitted. The general rule already contained in the regulations, and one based on fairness and administrative convenience, adheres to fixed application submission deadlines and also requires submission of requests for determinations of eligibility at least 60 days prior to the beginning of such month. The present change clarifies the availability of the Secretary's waiver authority under § 570.4 in cases in which the objectives of Subpart G to promote a responsive action program would be frustrated by rigid adherence to this eligibility submission deadline. The present rule addresses only minimum distress standards for fiscal year 1978. This interim regulation provides for necessary standards with respect to fiscal year 1979. In addition the rule would add urgently needed criteria for unemployment data as part of the eligibility requirements under the application. The administration of the program for this fiscal year depends upon the immediate effect of this rule. Accordingly, the Assistant Secretary for CPD has determined that it is impracticable to follow notice of proposed rulemaking procedures and that good cause exists for making these rules effective upon publication. However, interested persons are invited to participate in the making of the final rule by providing written comments. All comments received by November 29, 1978, will be considered in the development of the final rule. Such comments should be filed with the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Copies of comments received will be available for inspection and copying at that address. The Department has determined that an environmental impact statement is not required with respect to this rule. A copy of the Finding of Inapplicability is available for inspection in the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Accordingly, §§ 570.452 and 570.455, 24 CFR Part 570, Subpart G are amended to read as follows:

Section 570.452 (b) (1)(ii) and (c) are amended to read as follows:

§ 570.452 Eligible applicants.

(a) * * *

(b) *Minimum standards of physical and economic distress*—(1) *Metropolitan cities and urban counties* * * *

(ii) Applicants which are metropolitan cities and urban counties must meet three of the six minimum standards of physical and economic distress, based on data for the community as a whole, which HUD will, from time to time, issue in notice form. The HUD notice will establish minimum levels which applicant must meet in the following areas:

(A) Age of housing.
(B) Per capita income.
(C) Population lag/decline.
(D) Unemployment.
(E) Job lag/decline.
(F) Poverty.

If the applicant's percentage of poverty is less than one-half of the HUD established standard, the applicant must meet four of the six factors.

* * * * *

(c) Cities which cease to meet the minimum standards of physical and economic distress by virtue of a change in the data used by HUD, will be permitted to submit an application during the two quarters following the change in the data. HUD will continue to consider those applications which have been submitted and are under review prior to a change in the minimum standards which otherwise make them ineligible.

(d) *Results in providing housing.* * * *

Section 570.455 is amended to read as follows:

§ 570.455 Actions which must be taken prior to submission for an application.

(a) *Determination of eligibility.* In order to provide applicants with a full competitive opportunity to qualify for assistance under this subpart, applicants shall request a determination from the HUD area office on their eligibility to apply for assistance prior to submitting an application. The request for determination shall be submitted on Standard Form 424 as modified by HUD. Small cities (excluding towns and townships) which intend to apply during May 1978, must request a determination of eligibility from the appropriate HUD area office no later than April 14, 1978. Towns and townships will be advised of submission deadlines at a later date in conjunction with notifications of potential eligibility. All potential applicants (except those which have previously been notified of their eligibility) which intend to apply during July 1978, or thereafter, must request a determination of eligibility at least 60 days (or at such later time as authorized by the Secretary pursuant to § 570.4) prior to the beginning of the month in which the applicant's first application is expected to be submitted.

* * * * *

Issued at Washington, D.C., October 25, 1978.

(Title I, Housing and Community Development Act of 1974 (42 USC 5601 et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95-128); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).)

ROBERT C. EMBRY, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 78-30630 Filed 10-27-78; 8:45 am]

[4210-01-M]

[Docket No. R-78-579]

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart G—Urban Development Action Grants

INTERIM RULE

AGENCY: Department of Housing and Urban Development.

ACTION: Interim rule.

SUMMARY: The purpose of this rule is to provide the reporting requirements which were reserved in § 570.459(d) for cities which have been awarded an urban development action grant.

EFFECTIVE DATE: October 30, 1978. Comments due: November 29, 1978.

ADDRESSES: Send comments to: Rules Docket Clerk, Office of General Counsel, room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Each person submitting a comment should include his/her name and address, refer to the document by docket number indicated by the headings, and give the reasons for any recommendation. Copies of all written comments received will be available for examination by interested persons in the Office of the Rules Docket Clerk, at the address listed above. The proposal may be changed in light of the comments received.

FOR FURTHER INFORMATION CONTACT:

Sarah Underwood, Office of Action Grants, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-6540.

SUPPLEMENTAL INFORMATION: On January 10, 1978 (43 FR 1602) the Department published final regulations governing the urban development action grant program. Section 570.459(d), which contains the reporting requirements for cities having been awarded an urban development action grant, was reserved. Because the Department has no method for monitoring the implementation of a city's project, it is necessary to make provisions for those cities having been awarded an urban development action grant, was reserved. Because the Department has no method for monitoring the implementation of a city's project, it is necessary to make provisions for those cities having been awarded grants to inform HUD of the project's status.

This interim rule provides urgently needed data for accurately determining the status of projects and is required in order to fulfill congressional reporting requirements. This rule therefore must be published for immediate effect. Accordingly, the Assistant Secretary for Community Planning and Development has determined that it is impracticable to follow notice of proposed rulemaking procedures and that good cause exists for making these rules effective upon publication. However, interested persons are invited to participate in the making of the final rule by providing written comments. All comments received by November 29, 1978, will be considered in the development of the final rule. Such comments should be filed with the Rules Docket Clerk, Office of General Counsel, room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Copies of comments received will be available for inspection and copying at that address.

The Department has determined that an environmental impact statement is not required with respect to this rule. A copy of the finding of inapplicability is available for inspection in the office of the Rules Docket Clerk, room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

Accordingly, § 570.459(d) 24 CFR Part 570, Subpart G, is amended to read as follows:

§ 570.459 Post-approval requirements.

(d) *Reporting requirements.* Commencing upon the date the applicant's grant award is announced by HUD, applicants shall submit quarterly progress reports as specified by the Secretary to HUD. Copies of the reports shall be submitted to the HUD area office and simultaneously to the office of action grants in headquarters no more than 10 days following the end of each calendar quarter. Effective immediately, and until such time as further detailed reporting requirements are specified, the following information is to be provided:

(1) Prior to removal of contract conditions. Describe in detail each step the applicant has taken to secure the documentation needed to satisfy the conditions contained in the grant contract. Also, describe those steps which remain to be taken and provide a schedule for their accomplishment. If problems have been encountered and the project is falling behind the schedules included in the application and the grant contract, describe the nature of the problems, the steps being taken to resolve them, and estimate the time which will be required to overcome the problems.

(2) If the contract conditions have been removed. Describe in detail the status of implementation of the project including the status of construction contracts, plans and specifications and actual construction. Also, include the amount of funding which has been obligated and the amount drawn down. If problems have been encountered and the project is falling behind the schedules included in the application and in the grant contract, describe the nature of the problems, the steps being taken to resolve them, and estimate the time which will be required to overcome the problems.

(Sec. 7(d), of the HUD Act (U.S.C. 3535(d).)

Issued at Washington, D.C., October 25, 1978.

ROBERT C. EMBRY, Jr.
Assistant Secretary for Community Planning and Development.

[FR Doc. 78-30631 Filed 10-27-78; 8:45 am]

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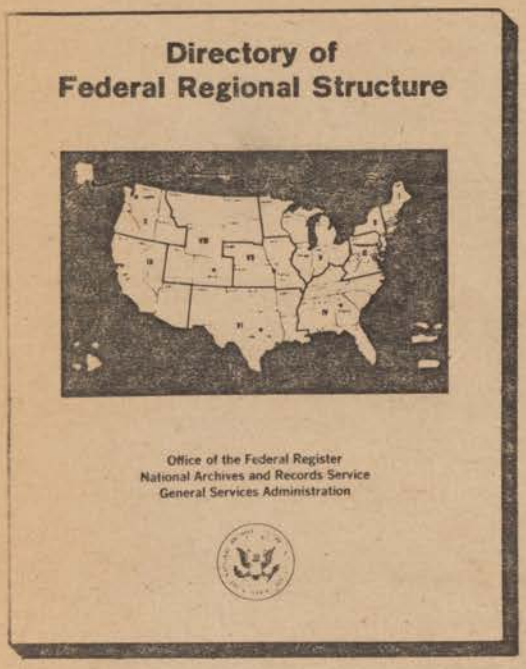

Directory of Federal Regional Structure

[Revised as of May 1, 1978]

The Directory serves as a guide to the regional administrative structure of the departments and agencies of the Federal Government.

Designed to provide the public with practical information about regional offices, the Directory is particularly useful to citizens residing outside the Nation's Capital.

Included in the Directory is a map showing the 10 standard Federal regions followed by tables listing the key personnel, addresses, and telephone numbers for agencies with offices in those regions. In addition, maps and tables are provided for those agencies with regional structures other than that of the standard regional system.

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