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WEDNESDAY, NOVEMBER 8, 1978

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

Monday	Tuesday	Wednesday	Thursday	Friday
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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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rules and regulations

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

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

[3410-02-M]

Title 7—Agriculture

CHAPTER I—AGRICULTURAL MARKETING SERVICE [1] (STANDARDS, INSPECTIONS, AND MARKETING PRACTICES), DEPARTMENT OF AGRICULTURE

PART 26—GRAIN STANDARDS

Fees for Certain Grain Inspection and Weighing Services

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Final rulemaking.

SUMMARY: This amendment reduces the fees for weighing services and orginal inspection of grain in barges, ships, and bins performed by the FGIS in the United States. During fiscal year 1978, retained earnings were accumulated more repidly than previously estimated. The changes are expected to generate income adequate for fiscal year 1979 operating costs plus maintaining a nominal operating reserve.

DATES: The changes in fees become effective December 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Leslie E. Malone, Assistant Deputy Administrator, Program Operations (Staff), Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 1627, Washington, D.C. 20250, 202-447-9166.

SUPPLEMENTARY INFORMATION: Pursuant to the authority in sections 7 and 7A of the U.S. Grain Standards Act, as amended, (7 U.S.C. 71 et. seq.) (hereinafter cited as the Act). The Federal Grain Inspection Service (FGIS) is amending § 26.71(a) of the regulations (7 CFR 26.71(a)) under the Act to reduce the fees for certain grain inspection and weighing services performed in the United States by representatives of the Administrator of FGIS.

Sections 7(j) and 7A(1) of the Act (7 U.S.C. 79(j) and 79a(1)) authorizes the charging and collection of fees for the inspection and weighing of grain and related services performed by representatives of the Administrator of FGIS. Further, the Act provides that the fees shall be reasonable to cover the estimated costs to the FGIS incident to the performance of the services.

FGIS fees for services performed by its representatives in the United States were published in the FEDERAL REGISTER of December 8, 1977 (42 FR 61987-61991). In publishing the fees, it was indicated that further evaluations of the fees would be made and adjusted as necessary.

During fiscal year 1978, retained earnings were accumulated more rapidly than previously estimated. Previous estimates were based on expected employment levels, and estimated costs and revenues. As a result, a nominal operating reserve has now been established. Therefore, fees for the original inspection of grain in barges, ships, and bins performed by representatives of the Administrator of FGIS in the United States are being reduced by 12.5 percent. Also, all hourly rates for weighing services performed by representatives of the FGIS in the United States are being reduced by 20 percent.

The changes in fees are based on estimated income and expenses for fiscal year 1979, including the cost of a Federal pay increase which became effective on October 8, 1978. The changes are expected to generate income adequate for fiscal year 1979 operating costs plus maintaining a nominal operating reserve. The changes will not affect the FGIS original inspection fees for trucks and railcars or reinspection or appeal inspections in the United States or the fees for inspection and weighing services in Canada.

Further evaluations are being made with regard to other aspects of the fee schedule including the feasibility of unit and hourly fees for inspection services and the assessment of standby time at export locations where FGIS inspection services are performed on a routine basis. These evaluations are expected to be completed by the end of 1978.

The costs to the FGIS of providing the services for which the fees are prescribed are matters known only to the FGIS and the collection of fees for such services is prescribed by law.

Therefore, it is found upon good cause that publication of a notice of proposed rulemaking and other public procedures on the changes in the provisions of § 26.71(a) of the regulations are impractical and unnecessary and good cause is found for making these changes effective December 3, 1978.

Accordingly, pursuant to sections 7(j) and 7A(1), (7 U.S.C. 79(j) and 79a(1)) of the United States Grain Standards Act, as amended, § 26.71(a) of the regulations (7 CFR 26.71(a)) under the Act are hereby amended or restated to read as follows:

§ 26.71 Fees for official services performed by the Service.

(a) The fees shown in schedules A and B apply to official grain inspection and weighing services performed by the Service in the United States and Canada.

SCHEDULE A.—*Fees for Official Inspection and Weighing Services Performed by the Service in the United States* [1]

TABLE 1

Inspection services (bulk or sacked grain)	Original inspection service	Reinspection or appeal inspection service [2] [3]
(1) Official sample-lot inspection service (white certificate):		
(i) For official grade and official factor determinations:		
(A) Based on official sample (fee includes cost of sampling):		
(1) Truck or trailer (per truck or trailer or part truck or part trailer)	$6.50	$16.00
(2) Boxcar (per car or part car)	10.00	19.60
(3) Hopper car (per car or part car)	13.50	23.80
(4) Barge (per 1,000 bushels or fraction thereof)	2.50	3.50
(5) Ship, bin, and all other lots of grain (per 1,000 bushels or fraction thereof)	2.50	3.50
(B) Based on official file sample (any lot or part lot, per sample)	(4)	13.50
(ii) For official factor or official criteria determinations:		
(A) Based on sample used for official grade and official factor determinations:		
(1) Factor determinations (per factor)	4.20	5.45
(2) Protein test (per sample)	3.35	4.35
(B) Based on new sample (any lot or part lot)	(5)	(5)
(2) Special inspection services (sampling, stowage examination, testing of inspection equipment, demonstrating official inspection functions, furnishing standard illustrations, and related services) (per man-hour per Service representative)[6]	16.80	21.80

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

SCHEDULE A.—*Fees for Official Inspection and Weighing Services Performed by the Service in the United States*[1]

TABLE 1—Continued

Inspection services (bulk or sacked grain)	Original inspection service	Reinspection or appeal inspection service[2,3]
(3) Warehousemen's sample-lot inspection service (yellow certificate) or submitted sample inspection service (pink certificate):		
(i) For official grade and official factor determinations (per sample)	5.50	13.50
(ii) For official factor or official criteria determinations:		
(A) Factor determinations (per factor)	4.20	5.45
(B) Protein test (per sample)	3.35	4.35
(4) Minimum fee per service request (applicable when the request for service is cancelled after the Service representative(s) arrive at the point of service—fee does not include standby):		
(i) Grain in trucks, trailers, boxcars, or hopper cars	(4)	(4)
(ii) All other lots of grain and special services (per service representative)	33.60	43.60
(5) Standby (per man-hour per Service representative)[5]	16.80	21.80
(6) Extra copies of certificates (per copy)	2.50	2.50

NOTE.—The footnotes for table 1 are shown at the end of table 2.

TABLE 2

Weighing services (bulk or sacked grain)	Official weighing services					
	Specified inspection point				Noninspection point	
	Contract service		Noncontract service		Contract service	
	Regular workday	Nonregular workday	Regular workday	Nonregular workday	Regular workday	Nonregular workday
(1) Official weighing or supervision of weighing services (per man-hour per Service representatives)	$11.20	$14.40	$12.80	$16.00	$11.20	$14.40
(2) Special weighing services (stowage examination, testing of weighing equipment, checkweighing sacked grain, checkloading sacked grain, demonstrating official weighing functions, and related services) (per man-hour per Service representative)[6]	11.20	14.40	12.80	16.00	11.20	14.40
(3) Minimum fee per service request (applicable only when request is cancelled after Service representative arrives at point of service—fee does not include standby) (per Service representative)	(4)	14.40	12.80	16.00	(4)	14.40
(4) Standby (per man-hour per Service representative[5]	(4)	14.40	12.80	16.00	(4)	14.40
(5) Carrier condition and/or scale record report (not available as a single service)	(5)	(5)	5.00	5.00	(5)	(5)
(6) Extra copies of certificates (per copy)	2.50	2.50	2.50	2.50	2.50	2.50

[1] The fees include the cost of performing official inspection and official weighing or supervision of weighing functions by Service representatives. For incidental costs included in the fees, and fees in addition to the unit and the hourly fees, see § 26.72, pars. (a) and (b).

[2] If it is found that there was a material error in the inspection from which a reinspection, a field appeal inspection, or a Board appeal inspection is taken, the specified reinspection, field appeal inspection, or Board appeal inspection fee shall not be assessed. (But see § 26.72(b) for fees that are assessed in all instances.)

[3] Board appeal inspections are based on file samples. The fee for Board appeal inspection service shall be $34 per sample.

[4] Not applicable.

[5] Same fees as in (1)(ii)(A), plus applicable sampling charge—see (2).

[6] Only one inspection fee or one weighing fee, as applicable, will be charged for these services whether performed singly or concurrently.

[7] The unit fee.

[8] For application of fee for standby, see § 26.72(b).

[9] No charge.

(Secs. 8(j), 9(l), Pub. L. 94-582, 90 Stat. 2873, 2875, 2884 (7 U.S.C. 79(j), 79a(e)).)

Dated: November 1, 1978.

L. E. MALONE,
Acting Administrator.

[FR Doc. 78-31471 Filed 11-7-78; 8:45 am]

[6320-01-M]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER B—PROCEDURAL REGULATIONS

[Regulation PR-183; Amendment No. 45]

PART 302—RULES OR PRACTICE IN ECONOMIC PROCEEDINGS

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., November 2, 1978.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The Board recently adopted rules to govern unused authority proceedings under the Airline Deregulation Act of 1978. This amendment of those rules simplifies the application requirements. The Board also takes this occasion to elaborate on the environmental implications of unused authority proceedings.

DATES: Adopted: November 2, 1978. Effective: November 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Mark Schwimmer, Civil Aeronautics Board, Office of the General Counsel, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION: The Airline Deregulation Act of 1978, Pub. L. 95-504, added a new section 401(d)(5) to the Federal Aviation Act of 1958, concerning unused nonstop route authority. This provision became effective on October 24, 1978. Anticipating a large number of applications for new certificates under section 401(d)(5), we adopted PR-180 on October 18.[1] That amendment added a new subpart R governing unused authority proceedings to part 302 of the procedural regulations (14 CFR Part 302), effective immediately.

The second sentence of §302.1805(c)(4) of subpart R requires an application for new authority along a dormant route to include copies of the relevant portions of the Official Airline Guide (OAG) necessary to demonstrate that the incumbent carrier's authority has in fact been unused. In connection with General Accounting Office review under the Federal Reports Act, 44 U.S.C. 3512, of the new rule's requirements for submission of information, several carriers objected to this aspect of paragraph (c)(4) as unnecessarily burdensome, particularly in view of the general requirement of §302.3(c) that applications be submitted in 20 copies. Upon reflection, we agree. Therefore, we are amending subpart R to permit applications to contain simple citations, by publication date and page number, of the relevant portions of the OAG, instead of copies of the actual pages. Applicants will not be prejudiced by exercising this option. This amendment should substantially reduce the size of applications, and hence the burden of preparing them. There is no change in the 20-copy requirement, however.

Because of the need to obtain speedy GAO clearance of subpart R, we find that notice and public procedure on this amendment are impracticable and contrary to the public interest. Since the amendment relieves a restriction and creates no additional burden, we also find that an immediate effective date is in the public interest. Finally, we will give the amendment retroactive effect by not rejecting any applications already filed for failure to include copies of actual OAG pages.

Section 302.1811 of subpart R eliminates the need for applicants for unused authority to file the environmental evaluations and energy information usually required by 14 CFR 312.12 and 313.5. Although we are not amending §302.1811, we would like to take this opportunity to elaborate on the environmental implications of unused authority proceedings.

There are three types of actions the Board may take in these proceedings. First, there are those cases in which an applicant asks to serve a market that receives no round-trip nonstop service or receives such service from only one carrier. In these cases Congress has directed the Board to certificate the first applicant that certifies that it complies with FAA regulations and is able to comply with Board regulations. Because the Board is given no discretion in these cases, granting certificates in these markets under section 401(d)(5)(A) or (5)(B) cannot be construed as a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). It is therefore unnecessary to determine whether granting these certificates will have a significant impact on the quality of the human environment, as NEPA requires when a major Federal action is being considered.

The second type of action the Board may take in an unused authority proceeding is to grant a certificate, under section 401(d)(5)(D) or (5)(E), in a market that receives round-trip nonstop service from at least two carriers. In these cases, there are already at least three carriers authorized to serve the market. These are therefore situations in which there is a high level of service and potential for competition even before certification of the new carrier. The addition of a single new carrier in these markets is thus likely to have little effect on the amount of service provided. This is especially true because these are markets in which at least one incumbent carrier has determined that there is not enough demand to support service by it. Normally, therefore, granting authority in these markets would not significantly affect the quality of the environment.

Finally, the Board is directed by section 401(d)(5)(J) to suspend all dormant authority in markets receiving round-trip nonstop service from not more than one carrier unless it finds that suspension is not ncessary to encourage continued service by the newly authorized carrier. Suspending a certificate that has not been used by its holder may have some effect on the level of service received by the market, but the impact of such an action is likely to be insignificant. This is especially true in the long run, as econom-

[1] 43 FR 49529, Oct. 24, 1978.

ic pressures adjust the amount of service provided to the level that the market demands. Similarly, a decision not to suspend dormant authority is not likely to have a significant impact on the level of service provided, since there would be even less reason for the inactive carrier or carriers to reenter the market after a new competitor is introduced.

We therefore conclude that ordinarily none of the actions we might take in unused authority proceedings would constitute major Federal actions significantly affecting the quality of the human environment. Having made this finding, we believe that the environmental evaluations and energy information normally required of route applicants would impose an undue burden on applicants in these cases. However, if unusual circumstances exist, our staff will prepare an analysis of the environmental and energy implications in particular cases.

Accordingly, the Civil Aeronautics Board amends part 302 of its Procedural Regulations, *Rules of Practice in Economic Proceedings* (14 CFR Part 302), as follows:

In Subpart R—Rules Applicable to Unused Authority Proceedings, § 302.1805 is amended by revising the second sentence of paragraph (c)(4), so that it reads:

§ 302.1805 Contents of applications.

* * * * *

(c) * * *

(4) For each carrier named in paragraph (c)(3) of this section, the dates of below-minimum service during the time described in paragraph (c)(1) upon which the application is based. The application shall include citations by publication date and page number, or a copy, of the relevant portions of the Official Airline Guide necessary to demonstrate that the carrier has not provided the minimum level of service. The absence from the Official Airline Guide of a listing for any service shall create a rebuttable presumption that the service was not provided.

* * * * *

(Secs. 204 and 401 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 754; 14 U.S.C. 1324, 1371.)

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31508 Filed 11-7-78; 8:45 am]

[1505-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-5985, IC-10419, File No. S7-578]

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

Advertising Rule Amended to Permit Notice of Certain Special Offerings to Mutual Fund Shareholders

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

Prospectus Delivery Requirements in Special Offerings to Mutual Fund Shareholders

PART 271—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

Sales Load Variation in Special Offerings to Permit Mutual Fund Shareholders to Purchase Additional Shares

Correction

FR Doc. 79-29098 which was published at page 47492 in the FEDERAL REGISTER for Monday, October 16, 1978, contained an interpretative release which will be reflected in the tables codified under 17 CFR Parts 231 and 271. However, only a heading showing Part 230—which was also amended by that document—appeared at the top of FR Doc. 79-29098 as it was printed on page 47492. Therefore the headings for that document are corrected by adding headings for Parts 231 and 271 to read as set forth above.

[4810-22-M]

Title 19—Customs Duties

CHAPTER I—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 78-411]

PART 153—ANTIDUMPING

Clear Sheet Glass Weighing Over 28 Ounces Per Square Foot From West Germany

AGENCY: United States Treasury Department.

ACTION: Revocation of Dumping Finding.

SUMMARY: This notice is to inform the public that clear sheet glass weighing over 28 ounces per square foot from West Germany is no longer being sold to the United States at less than fair value under the Antidumping Act of 1921. In addition, the manufacturers have given assurances that they have not been, and do not intend to resume, selling clear glass weighing over 28 ounces per square foot to the United States. This rule revokes the finding of dumping with respect to certain clear sheet glass from West Germany (T.D. 71-295).

EFFECTIVE DATE: July 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Ms. Barbara J. Victor, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On December 9, 1971, a finding of dumping with respect to clear sheet glass weighing over 28 ounces per square foot from West Germany was published in the FEDERAL REGISTER as Treasury Decision 71-295 (36 FR 23360). A "Notice of Tentative Determination to Modify or Revoke Dumping Finding" with respect to this merchandise from West Germany was published in the FEDERAL REGISTER of July 17, 1978 (43 FR 30635).

Reasons for the tentative determination were published in the above-mentioned notice and interested persons were afforded an opportunity to provide written submissions or request the opportunity to present oral views in connection therewith.

No written submissions or requests having been received, I hereby determine that, for the reasons stated in the "Notice of Tentative Determination to Modify or Revoke Dumping Finding," clear sheet glass weighing over 28 ounces per square foot from West Germany is not being, nor is likely to be, sold at less than fair

value, and T.D. 71-295 is hereby revoked.

§ 153.46 [Amended]

Accordingly, § 153.46 of the Customs Regulations (19 CFR 153.46) is hereby amended by deleting from the column headed "Merchandise," the words "Clear sheet glass weighing over 28 ounces per square foot," from the column headed "Country," the words "West Germany," and from the column headed "T.D.," reference to T.D. 71-295.

This notice is published pursuant to § 153.44(d) of the Customs Regulations (19 CFR 153.44 (d)).

(Secs., 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173.)

Dated: October 31, 1978.

ROBERT H. MUNDHEIM,
General Counsel
of the Treasury.

[FR Doc. 78-31535 Filed 11-7-78; 8:45 am]

[4310-02-M]

Title 25—Indians

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

SUBCHAPTER E—EDUCATION

PART 36—MAINTENANCE AND CONTROL OF STUDENT RECORDS IN BUREAU SCHOOLS

Administrative Regulations and Procedures

OCTOBER 26, 1978.

AGENCY: Bureau of Indian Affairs.

ACTION: Final regulations.

SUMMARY: These regulations will govern the maintenance and control of student records in all educational institutions under the jurisdiction of the Bureau of Indian Affairs, whether operated under contract or otherwise. The passage of the Privacy Act of 1974, the Buckley Amendment, and the Education of All Handicapped Children Act all created the need for these regulations.

DATE: These regulations will become effective November 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Mary F. Asbill, Office of Indian Education Programs, I.E.R.C., Division of Continuing Education, telephone 505-766-3351. Principal author David C. Young, O.I.E.P., I.E.R.C., Division of Evaluation, Research, and Development, telephone 505-766-3354, Albuquerque, N. Mex.

SUPPLEMENTARY INFORMATION: Recent enactments of Congress have reflected a strong legislative intent that Agencies of the Executive Branch of our Government take strong administrative measures to protect the privacy of records kept on individuals. The enactments include (1) the Privacy Act of 1974 (Pub. L. 93-579), which contains special provisions restricting the Federal Government's collection and use of information kept on individuals and which gives the individual greater rights over the access and control of such information; and (2) section 438 of the General Education Provisions Act of 1974, as amended (Pub. L. 93-380), commonly referred to as the Buckley Amendment, which provides that no Office of Education funds shall be made available to any educational agency or institution which denies parents and/or elegible students the right to inspect and review their educational records. The Buckley Amendment contains special provisions designed to protect the privacy rights of parents and students with respect to such records and to promote the maintenance of only such records as are accurate and essential; and (3) the Education of All Handicapped Children Act, commonly referred to as Pub. L. 94-142, which is pertinent to these regulations only with respect to those records maintained on handicapped students enrolled in the Bureau of Indian Affairs school system.

It is to insure that the spirit of these enactments reach all student records maintained by the Bureau of Indian Affairs, that these regulations are being promulgated.

The authority for the Assistant Secretary to issue these regulations is contained under the Act of April 30, 1908 (35 Stat. 72, 25 U.S.C. 295), Pub. L. 93-380, as amended, and (5 U.S.C. 301) and sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 230 DM 1 and 2.

On September 26, 1977, the Bureau of Indian Affairs published a notice of intent to issue proposed rules and regulations governing the maintenance and control of student records in Bureau schools. A draft of the proposed rules was included and the public was invited to submit comments by October 26, 1977.

A total of eight written and two verbal comments were received. Of the eight written comments, four were favorable and required no revision. Each of the comments were carefully reviewed and evaluated by a special Bureau of Indian Affairs Task Force which convened in Albuquerque, N. Mex., on November 8 and 9, 1977. The Task Force was comprised of leading BIA educators from across the Nation. The Task Force decided that two of the comments justified some minor revisions as follows:

The first of those two comments called attention to the possible language problems that could arise in situations involving Native Americans who requested administrative hearings, and who had difficulty understanding the English language. In order to remedy this problem, the Task Force decided to provide for the use of interpreters where necessary. The revised language appears under § 36.12(b).

The second comment called attention to the fact that these regulations must be in harmony with the record-keeping requirements of the Education of All Handicapped Children Act. Accordingly, the Task Force reviewed the special requirements of the Education of All Handicapped Children Act with respect to student records to insure that no conflicts existed between the Act and these regulations.

As a result of that review, the Task Force determined that it was necessary to make the following additional revisions to these regulations so as to conform with this Act:

(1) Under the definition of parent in 25 CFR 36.2(d), it was deemed necessary to include the term "surrogate" as used in the Education of the Handicapped Act. Accordingly, the following sentence was added to that section: "For purposes of the Education of All Handicapped Children Act, the term 'parent' also included a 'surrogate' as referred to in 20 U.S.C. 1415(b)(1)(B)."

(2) The exception to "student records" as set forth under proposed rule 25 CFR 36.2(e)(4) was in conflict with the Education of All Handicapped Children Act, because under that Act, it is mandatory that records maintained by certain professionals relative to the precise nature of the handicap be accessible to the parent, in the event of a dispute as to the proper "evaluation" of the student, and whether the special education and services to be provided to the student are adequate. Under that Act, parents have a right to challenge a school's "evaluation" of the handicapped child. It was noted that the language used in the Buckley Amendment under similar section 20 U.S.C. 1232g(a)(4)(B)(iv) was in harmony with the Education of All Handicapped Children Act, because it only excepted those records maintained by certain professionals on a student who is 18 years of age or older, or is attending an institution of post-secondary education. The Task Force, therefore, decided to revise the language under 25 CFR 36.2(e)(4) so as to conform with the precise language used in the Buckley Amendment, since such language would also conform with the special requirement of the Education of All Handicapped

Children Act. Accordingly, § 36.2(e)(4) now provides as follows: "records on a student who is eighteen years of age or older, or is attending an institution of post secondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice."

(3) Under 25 CFR 36.14(i), it was deemed necessary to include language that would permit the BIA to utilize professional social service organizations and personnel in providing assistance to handicapped students in BIA schools, because such organizations often make their services available free of charge. Thus, § 36.14(i) as revised now reads as follows: "Indian groups, contractors, grantees, and professional social service organizations and personnel performing professional services, when necessary to carry out an official function authorized by the Bureau of Indian Affairs."

Title 25 of the Code of Federal Regulations is amended by adding a new Part 36 to read as follows:

Sec.
36.1 Purpose and scope.
36.2 Definitions.
36.3 Student rights.
36.4 Annual notification of rights.
36.5 Access to records.
36.6 Limitations on access.
36.7 Access rights.
36.8 Destruction of records.
36.9 Procedures for granting access.
36.10 Right to challenge.
36.11 Informal proceedings.
36.12 Right to a hearing.
36.13 Right of appeal.
36.14 Consent.
36.15 Content of consent.
36.16 Copy to be provided to parents or eligible students.
36.17 Release of information for health or safety emergencies.
36.18 Record of access.
36.19 Transfer of information by third parties.
36.20 Directory information.
36.21 Standards for collection and maintenance of student records.
36.22 Assuring integrity of records.
36.23 Conduct of employees.

AUTHORITY: 35 Stat. 72 (25 U.S.C. 295); Pub. L. 93-579, 88 Stat. 1896; Sec. 438, Pub. L. 93-380, as amended; Pub. L. 94-142.

§ 36.1 Purpose and scope.

This part contains the regulations of the Bureau of Indian Affairs, U.S. Department of the Interior, governing the maintenance, control, and accessibility of student records. This part will apply to all educational institutions under the jurisdiction of the Bureau of Indian Affairs, whether operated under contract or otherwise.

§ 36.2 Definitions.

As used in this part:

(a) "Assistant Secretary" means the Assistant Secretary—Indian Affairs, Department of the Interior.

(b) "Educational institution" means any institution operated under the jurisdiction of the Bureau of Indian Affairs either directly or by contract, including, but not limited to, schools or dormitories from which Indian students attend public schools.

(c) "Eligible student" means a student who has become 18 years of age or is attending an institution of post-secondary education. When a student becomes an "eligible student," the permission required of and the rights given to the parents of the student shall thereafter only be required of and given to the student.

(d) "Parent" means a natural parent, an adoptive parent, the legal guardian, or a legal custodian of a student. (Where the natural parents are unavailable, a required written parental consent may be obtained from the person who has assumed custody of the student.) For purposes of the Education of All Handicapped Children Act, the term "parent" also includes a "surrogate" as referred to in 20 U.S.C. 1415(b)(1)(B).

(e) "Student records" means those records, files, documents, and other materials which contain information directly related to a student and which are maintained by an educational institution, or by a person acting for that institution. The term does not include:

(1) Records of any educational personnel which are in the sole possession of the maker and which are not accessible or revealed to any other person except a substitute.

(2) Records made and maintained in the normal course of business which relate exclusively to persons who are employed in an educational institution but do not attend that institution.

(3) Directory information as given in § 36.20.

(4) Records on a student who is 18 years of age or older, or is attending an institution of post-secondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

§ 36.3 Student rights.

The regulations in this part do not prevent educational institutions from giving noneligible students rights similar to those given to parents and eligible students. Educational institutions may do so at their discretion.

§ 36.4 Annual notification of rights.

(a) Each educational institution to which this part applies and which maintains records on students shall inform parents or eligible students of the rights given them by this part.

(b) In meeting the requirement in paragraph (a) of this section the educational institution shall give notice to parents and eligible students at least annually of the following:

(1) The types of education records and information contained in them which are directly related to students and maintained by the institution.

(2) The name and position of the official responsible for maintaining each type of record, the persons who have access to those records, and the purpose for which they have access.

(3) The policies of the institution for reviewing and expunging those records.

(4) The procedures established by the institution under § 36.5.

(5) The procedures for challenging the content of education records including those in § 36.10.

(6) The cost, if any, which will be charged to the parent or eligible student for reproducing copies of records under § 36.5.

(7) The categories of information which the institution has designated as "directory information" under § 36.20.

(c) The notice given to a parent or eligible student under this section shall be in a language considered by the institution to be understandable by the parent or eligible student.

§ 36.5 Access to records.

Educational institutions shall give parents of students or eligible students, who are or have been in attendance at the institutions, access to student records, except as stated in § 36.6.

§ 36.6 Limitations on access.

Educational institutions are not required to make available to students the following materials:

(a) Financial records of the parents of the student or any information contained in those records.

(b) Confidential letters and statements of recommendations, which were placed in any student's record prior to January 1, 1975, and which

are not used for purposes other than those for which they were specifically intended.

(c) Those records listed in § 36.2(e) which are exempt from the definition of "student records."

§ 36.7 Access rights.

The right of access specified in § 36.5 shall include:

(a) The right to obtain a list of the types of student records which are maintained by the institution.

(b) The right to inspect and review the content of those records.

(c) The right to obtain copies of those records, the cost, if any, not to exceed the actual cost to the educational institution of reproducing the copies.

(d) The right to a response from the institution to reasonable requests for explanations and interpretations of those records.

(e) The right to an opportunity for a hearing to challenge the content of records.

(f) If any material or document in the record of a student includes information on more than one student, the right to inspect and review only that portion of such material or document as relates to that particular student or to be informed of the specific information contained in such part of such materials.

§ 36.8 Destruction of records.

This part does not prevent educational institutions from destroying any records, if not otherwise prevented by law. However, access shall be granted under § 36.5 before destroying student records where the parent or eligible student has requested access. Only records which are no longer relevant or necessary may be destroyed, subject to § 36.23(c).

§ 36.9 Procedures for granting access.

Each educational institution shall establish appropriate procedures for granting a request by parents for access to the records of their children, or by eligible students for access to their own records within a reasonable period of time. In no case shall access be withheld more than forty-five (45) days after the request has been made.

§ 36.10 Right to challenge.

Each educational institution shall give parents of students and eligible students, who are or have been in attendance at the institution, an opportunity to challenge the content of the student's records to:

(a) Insure that the records are not inaccurate, misleading, or otherwise violating the privacy or other rights of students.

(b) Provide an opportunity for correcting or deleting any inaccurate, misleading, or otherwise inappropriate data in the record.

(c) Insert into such records a written comment by the parents or eligible students pertaining to the content of such records.

§ 36.11 Informal proceedings.

Educational institutions may attempt to resolve differences with the parent of a student or the eligible student regarding the content of the student's records through informal meetings and discussions with the parent or eligible student.

§ 36.12 Right to a hearing.

Upon the request of the educational institution, the parent, or eligible student, a hearing shall be conducted under the procedures adopted and published by the institution. Such procedures shall include at least the following elements:

(a) The hearing shall be conducted and decided within a reasonable period of time following the request for the hearing.

(b) The hearing shall be informal and a verbatim record of proceedings will not be required. Interpreters will be utilized when necessary.

(c) The hearing shall be conducted by an institutional official or other party who does not have a direct interest in the outcome of the hearing.

(d) The parents or eligible student shall be given a full and fair opportunity to present evidence relevant to the issues raised under § 36.10.

(e) Within a reasonable period of time after the hearing ends, the hearing official shall make his recommendation in writing to the head of the educational institution. Within 20 days after receipt of the recommendation, the head of the institution shall issue his decision in writing to the parent or eligible student.

§ 36.13 Right of appeal.

If any parent or eligible student is adversely affected by the decision of the head of the institution, that party shall have appeal rights as given in 25 CFR Part 2. However, each official decision shall be issued within 30 days from receipt of the appeal.

§ 36.14 Consent.

Educational institutions shall not permit access to or the release of student records or personally identifiable information contained in them, other than directory information of students, without the written consent of the parents or of an eligible student, to any party other than the following:

(a) Local school officials, including teachers within the educational institution, who have been determined by the institution to have legitimate educational interests in the records.

(b) Officials of other schools or school systems at which a student is interested in enrolling. The student or parent must be notified of such release except in cases involving Bureau of Indian Affairs schools. All Bureau of Indian Affairs schools are considered to be components of one school system whether operated under contract or otherwise.

(c) Persons having official involvement with a student's application for or grant of financial aid.

(d) Parents of a dependent student as defined in section 152 of the Internal Revenue Code of 1954, as amended.

(e) Accreditation agencies in order to carry out their accrediting functions.

(f) U.S. Office of Education officials and other governmental education officials when deemed necessary by the institution to carry out their official functions.

(g) An education testing center or similar institution as a part of its validation research which has been authorized by the school.

(h) In an emergency, any person to whom the information is necessary in the discretion of the school's administration in order to protect the student's health and safety, subject to § 36.17.

(i) Indian groups, contractors, grantees, professional social service organizations and personnel performing professional services, when necessary to carry out an official function authorized by the Bureau of Indian Affairs.

(j) Pursuant to the order of a court of competent jurisdiction; however, the parent or eligible student must be notified of such order in advance of compliance therewith by the educational institution.

§ 36.15 Content of consent.

The consent of a parent or eligible student requested under this part for the release of student records shall be in writing, signed and dated by the person giving the consent. The consent shall include:

(a) A specification of the records to be released.

(b) The reasons for release.

(c) The names of the parties to whom the records will be released.

§ 36.16 Copy to be provided to parents or eligible students.

Where the consent of a parent or eligible student is required under this part for the release of student records, a copy of the records to be released shall be provided on request to:

(a) The student's parents or the eligible student.

(b) The student who is not an eligible student, if desired by the parents.

§ 36.17 Release of information for health or safety emergencies.

(a) Educational institutions may release information from student records to appropriate persons in an emergency if the information is necessary to protect the health or safety of a student or other person. The factors to be used in determining whether records may be released under this section include the following:

(1) The seriousness of the threat to the health or safety of the student or other persons.

(2) The need for those records to meet the emergency.

(3) Whether the persons to whom the records are released are in a position to deal with the emergency.

(4) The extent to which time is of the essence in dealing with the emergency.

§ 36.18 Record of access.

(a) Each educational institution shall maintain a record kept with the student records of each student, which will indicate all parties other than those specified in § 36.14 which have requested or obtained access to those records and which will indicate specifically the legitimate interest that each party had in obtaining this information.

(b) A record of access shall be available only to:

(1) Parents or eligible students.

(2) The school official and his or her assistants who are responsible for the custody of such records.

(3) Persons or organizations authorized in and under the conditions of § 36.14.

§ 36.19 Transfer of information by third parties.

(a) Educational institutions shall not release personal information on a student except on the condition that the party to which the information is being transferred will not permit any other party to have access to the information without the written consent of the parents or of the eligible students.

(b) With any information released to a party under paragraph (a) of this section, educational institutions shall include a written statement which informs the party of the requirement in paragraph (a) of this section.

§ 36.20 Directory information.

(a) Any educational institution making public directory information shall make a reasonable effort to individually notify the parent or eligible student of the categories of information which it has designated as directory information. The institution shall allow a reasonable period of time after notice has been given for a parent or eligible student to inform the institution that any or all of the information designated should not be released without the prior consent of the parent or eligible student.

(b) Directory information may include the following: A student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student, tribe, agency, area, name of parent, sex, and classification (grade). No other information may be included. Educational institutions have the right to limit the content of directory information.

§ 36.21 Standards for collection and maintenance of student records.

(a) Records shall contain only information about an individual which is relevant and necessary to accomplish a purpose of the Bureau required to be accomplished by statute or Executive order of the President.

(b) Student records which are used in making any determination about any student shall be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the student in making the determination.

(c) Information which may be used in determining a student's rights, benefits, and privileges under Federal programs shall be collected directly from the student or his parents, to the greatest extent practicable. In deciding whether collection of information from a parent or eligible student, as opposed to a third-party source is practicable, the following factors among others may be considered:

(1) Whether the nature of the information sought is such that it can only be obtained from a third party.

(2) Whether the cost of collecting the information from the parent or student is unreasonable, when compared with the cost of collecting it from a third party.

(3) Whether there is a risk that information collected from third parties, if inaccurate, could result in an adverse determination to the student concerned.

(4) Whether the information, if supplied by the parent or student, would have to be verified by a third party.

(5) Whether provisions can be made for verification by the parent of student of information collected from third parties.

(d) Each individual parent or eligible student who is asked to supply information about himself which will be added to a system of student records shall be notified of the basis for requesting the information, how it may be used, and what the consequences, if any, are of not supplying the information. At a minimum, the notice to the parent or eligible student must state:

(1) The authority (whether granted by statute or Executive order of the President) which authorizes requesting the information and whether disclosure of such information is mandatory or voluntary.

(2) The principle purpose or purposes for which the information is intended to be used.

(3) The routine uses which may be made of the information.

(4) The effects, if any, of not providing all or any part of the requested information.

(e) When information is collected on a standard form, the notice to the parent or eligible student shall be on the form or on a tear-off sheet attached to the form or on a separate sheet, whichever, is most practical.

(f) When information is collected by an interviewer, the interviewer shall provide the parent or eligible student with a written notice which the individual may retain. If the interview is conducted by telephone, however, the interviewer may summarize the notice for the individual and need not provide a copy to the individual unless the individual requests that a copy be mailed to him.

(g) A parent or eligible student may be asked to acknowledge, in writing, that he has been given the notice required by this section.

(h) No student records may be maintained describing how any individual exercises rights guaranteed by the first amendment to the Constitution unless:

(1) Expressly authorized by statute or by the individual about whom the student record is maintained; or

(2) Pertinent to and within the scope of an authorized law enforcement activity.

§ 36.22 Assuring integrity of records.

(a) Student records shall be maintained with appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfariness to any individual on whom information is maintained.

(b) When maintained in manual form, student records shall be maintained, at a minimum, subject to the following safeguards, or safeguards giving comparable protection:

(1) Areas in which the student records are maintained or regularly used shall be posted with an appropriate warning, stating that access to the records is limited to authorized persons.

The warning shall also summarize the requirements of § 36.23 and state that employees may be subject to a criminal penalty for the unauthorized disclosure of student records.

(2) During working hours, the area in which the student records are maintained or regularly used shall be occupied by authorized personnel, or access to the student records shall be restricted by their storage in locked metal file cabinets or a locked room.

(3) During nonworking hours, access to the student records shall be restricted by their storage in locked metal file cabinets or a locked room.

(4) Where a locked room is the method of security provided for a system, the educational institution responsible for the system shall, no later than December 31, 1978, supplement that security by:

(i) Providing lockable file cabinets or containers for the student records, or

(ii) Changing the lock or locks for the room so that they may not be opened with a master key. For the purpose of this paragraph, a master is a key which may be used to open rooms other than the room containing student records, unless those rooms are used by officials or employees authorized to have access to the student records.

(c) When maintained in computerized form, student records shall be maintained, at a minimum, subject to safeguards based on those recommended in the National Bureau of Standards' booklet, "Computer Security Guidelines for Implementing the Privacy Act of 1974" (May 30, 1975), and any supplements to it, which are adequate and appropriate to assure the integrity of records in the system.

(d) The education institution responsible for a system of student records shall be responsible for assuring that specific procedures are developed to assure that the student records in the system for which it is responsible are maintained with security meeting the regulations in this section. These procedures shall be in writing and shall be posted or otherwise periodically brought to the attention of employees working with the student records contained in the system.

§ 36.23 Conduct of employees.

(a) Employees whose duties require handling of student records shall, at all times, take care to pfotect the integrity, security, and confidentiality of these records.

(b) No employee of the educational institution may disclose student records unless disclosure is permitted under § 36.14 or made to the parent of the student or eligible student to whom the record pertains.

(c) No employee of the educational institution may alter or destroy a student record, unless:

(1) Alteration or destruction is properly undertaken in the course of the employee's regular duties, or

(2) Alteration or destruction is required by an authorized administrative decision or the decision of a court of competent jurisdiction.

(d) The educational institution responsible for a system of student records shall be responsible for assuring that employees with access to the system are made aware of the requirements of this section.

NOTE.—It is hereby certified that the economic and inflationary impacts of this final regulation have been carefully evaluated in accordance with Executive Order 11821. The Assistant Secretary has determined that the provisions of Executive Order 11821 do not apply.

FORREST J. GERARD,
Assistant Secretary,
Indian Affairs.

[FR Doc. 78-31529 Filed 11-7-78; 8:45 am]

[4830-01-M]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7570]

PART 6—TEMPORARY INCOME TAX REGULATIONS UNDER THE BANK HOLDING COMPANY TAX ACT OF 1976

Elections Under the Bank Holding Company Tax Act of 1976

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to elections under the Bank Holding Company Tax Act of 1976. These regulations affect all bank holding companies and provide them with the guidance needed to comply with the law.

DATE: The regulations apply to elections to be made after September 30, 1977.

FOR FURTHER INFORMATION CONTACT:

Jack A. Levine of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, attention: CC:LR:T, 202-566-3474, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains temporary regulations relating to elections by bank holding companies under sections 1103(g), 1103(h), and 6158 of the Internal Revenue Code of 1954 as added by the Bank Holding Company Tax Act of 1976. A new part 6, Temporary Income Tax Regulations under the Bank Holding Company Tax Act of 1976, is added by this document to title 26 of the Code of Federal Regulations. A notice of proposed rulemaking relating to divestitures of assets by bank holding companies will be published in the future. The notice will afford the public the opportunity to comment on the rules contained in these temporary regulations as well as on other rules relating to the divestitures of assets by bank holding companies prior to their adoption as final regulations.

EXPLANATION OF PROVISIONS

In general, the Bank Holding Company Act Amendments of 1970 (12 U.S.C 1841 et seq.) require a bank holding company to divest either its banking or nonbanking properties on or before December 31, 1980. However, the Act provides exemptions from this requirement for certain closely held bank holding companies and for property representing pre-June 30, 1968, activities. The Bank Holding Company Tax Act of 1976 provides relief from the tax burden resulting from the divestitures required under the amendments of 1970. The relief is available in two forms. First, the Bank Holding Company Tax Act provides that a bank holding company may distribute either bank or nonbank property to its shareholders or security holders without recognition of gain by either the shareholders or the security holders. Second, the Tax Act permits a bank holding company selling its bank or nonbank property to elect to pay the resulting income tax in installments over a 10-year period. The Tax Act also allows bank holding companies to elect to forego the exemptions provided by the Bank Holding Company Tax Act so as to enable them to divest themselves of exempt property without incurring a tax burden.

In order to receive the tax relief provided by the Bank Holding Company Act, a bank holding company must be granted a certification by the Federal Reserve Board stating that the pending sale or distribution is necessary or appropriate to effectuate section 4 or the policies of the Bank Holding Company Act. The certification must be made before the sale of the distribution. Where a bank holding company plans to elect to forgo the exemptions provided by the Bank Holding Compa-

ny Act, the Federal Reserve Board may grant it a certification that is conditioned upon the bank holding company's making the election. The regulations provide that both the certification and the election must be made prior to the sale or distribution in order for the bank holding company to receive the tax relief.

The regulations also provide a formula for determining the tax attributable to sales with respect to which an election has been made to pay the resulting income tax in installments.

Additionally, the regulations describe the time and manner in which the elections permitted by the Bank Holding Company Tax Act are to be made and the scope of the elections.

DRAFTING INFORMATION

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

WAIVER OF PROCEDURAL REQUIREMENTS OF PROPOSED TREASURY DIRECTIVE

The bank holding companies affected by this regulation are in need of immediate guidance in order to be able to comply with the Bank Holding Company Tax Act of 1976. For this reason, it has been determined by one of the undersigned. Jerome Kurtz, Commissioner of Internal Revenue, that it is impractical to follow the procedures of paragraphs 8 through 13 of the proposed Treasury directive for regulatory reform (54 FR 22319).

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, a new part 6, Temporary Income Tax Regulations under the Bank Holding Company Tax Act of 1976, is added to title 26 of the Code of Federal Regulations and the following temporary regulations are adopted:

§ 6.1 Election by a bank holding company to forego grandfather provision for all property representing pre-June 30, 1968, activities.

(a) *In general.* For purposes of sections 1101 through 1103 and 6158 of the Code, a bank holding company may elect under section 1103(g) to have the determination of whether property is prohibited property or is property eligible to be distributed without recognition of gain under section 1101(b)(1) made under the Bank Holding Company Act (12 U.S.C. 1841 et seq.) as if the Act did not contain the proviso of section 4(a)(2) thereof.

(b) *Manner of making election.* The election under section 1103(g) shall be made in a written statement filed with the Federal Reserve Board indicating that by resolution of its board of directors, the bank holding company is electing to apply the provisions of section 1103(g). In addition, the bank holding company shall indicate on its income tax return for each taxable year in which the election applies to a distribution or sale of property (in the manner specified in the Internal Revenue Service's instructions for the preparation of the return) that it has made the election under section 1103(g). The election shall be considered to be made on the date on which the written statement is received by the Federal Reserve Board.

(c) *Scope of election.* The election under section 1103(g) applies to all determinations of whether property is prohibited property or is property eligible to be distributed without recognition of gain under section 1101(b)(1).

(d) *Election; binding effect.* An election made under section 1103(g) is irrevocable.

(e) *Final certification.* An election under section 1103(g) shall not apply unless the final certification referred to in section 1101(e) or section 6158(c)(2), as the case may be, includes a certification by the Federal Reserve Board that the bank holding company has disposed of either all banking property or all nonbanking property (including property described in the proviso of section 4(a)(2) of the Bank Holding Company Act).

(f) *Conditional certification.* A certification by the Federal Reserve Board under section 1101 (a)(1)(B), 1101 (b)(1)(B), 1101 (c)(2)(C), 1101 (c)(3)(C), or 6158(a) that is conditioned upon the bank holding company's making an election under section 1103(g) shall not be considered to be made before the distribution or sale unless the certification and the election are made before the distribution or sale.

§ 6.2 Election by certain family-owned bank holding companies to divest all banking or nonbanking property.

(a) *In general.* For purposes of sections 1101 through 1103 and 6158 of the Code, a bank holding company may elect under section 1103(h) to have the determination of whether property is prohibited property or is property eligible to be distributed without recognition of gain under section 1101(b)(1) made under the Bank Holding Company Act (12 U.S.C. 1841 et seq.) as if the Act did not contain clause (ii) of section 4(c) thereof.

(b) *Manner of making election.* The election under section 1103(h) shall be made in a written statement filed with the Federal Reserve Board indicating that by resolution of its board of directors, the bank holding company is electing to apply the provisions of section 1103(h). In addition, the bank holding company shall indicate on its income tax return for each taxable year in which the election applies to a distribution or sale of property (in the manner specified in the Internal Revenue Service's instructions for the preparation of the return) that it has made the election under section 1103(h). The election shall be considered to be made on the date on which the written statement is received by the Federal Reserve Board.

(c) *Scope of election.* The election under section 1103(h) applies to all determinations of whether property is prohibited property or is property eligible to be distributed without recognition of gain under section 1101(b)(1).

(d) *Election; binding effect.* An election made under section 1103(h) is irrevocable.

(e) *Final certification.* An election under section 1103(h) shall not apply unless the final certification referred to in section 1101(e) or section 6158(c)(2), as the case may be, includes a certification by the Federal Reserve Board that the bank holding company has disposed of either all banking property or all nonbanking property.

(f) *Conditional certification.* A certification by the Federal Reserve Board under section 1101 (a)(1)(B), 1101 (b)(1)(B), 1101 (c)(2)(C), 1101 (c)(3)(C), or 6158(a) that is conditioned upon the bank holding company's making an election under section 1103(h) shall not be considered to be made before the distribution or sale unless the certification and the election are made before the distribution or sale.

§ 6.3 Election by a qualified bank holding corporation to pay in installments the tax attributable to sales under the Bank Holding Company Act.

(a) *In general.* Under section 6158(a) of the Code, a qualified bank holding corporation may elect to pay in installments the tax under chapter 1 of the Code attributable to the sale of bank property or prohibited property (as those terms are defined in section 6158(f) (2) and (3)) if—

(1) It meets the conditions described in paragraph (b) of this section, and

(2) It files an election in accordance with the rules set forth in paragraph (c) of this section.

(b) *Conditions.* (1) The sale of bank property or prohibited property must take place after July 7, 1970.

(2) The Federal Reserve Board must certify before the sale of the bank property or prohibited property that the divestiture of such property is necessary or appropriate to effectuate section 4 or the policies of the Bank Holding Company Act (12 U.S.C. 1841 et seq.).

(3) If bank property is sold, the qualified bank holding corporation (or a corporation having control of it or a subsidiary of it) must not have—

(i) Previously elected to apply section 6158 to a sale of prohibited property, or

(ii) Previously distributed prohibited property under section 1101(a).

(4) If prohibited property is sold, the qualified bank holding corporation (or a corporation having control of it or a subsidiary of it) must not have—

(i) Previously elected to apply section 6158 to a sale of bank property, or

(ii) Previously distributed bank property under section 1101(b).

(5) The qualified bank holding corporation must not have elected to return the income from the sale under the installment provisions of section 453.

(c) *Time and manner of making election.* (1) Except as provided in paragraph (c)(2) of this section, a qualified bank holding corporation shall make the election under section 6158(a) by—

(i) Attaching a statement to its income tax return for the taxable year in which the prohibited property or bank property is sold showing the tax computation under paragraph (f) of this section and the amount of the installment paid with the return, and

(ii) Entering the amount of the installment payment followed by the words "computed under section 6158" in the appropriate place on the tax return.

(2) If the qualified bank holding corporation filed its income tax return for the year of sale before February 6, 1979 (without electing under section 6158(a)), then it shall make the election under section 6158(a) by attaching a statement to its claim for credit or refund (amended tax return) for its overpayment of income tax attributable to the application of section 6158 showing the tax computation under paragraph (f) of this section and entering the amount of the credit or refund followed by the words "attributable to the application of section 6158" in the appropriate place on the claim. In order for the election to be effective, the claim must be filed before the earlier of—

(i) The expiration of the period of limitation for the filing of the claim, or

(ii) February 6, 1979.

(d) *Scope of election.* An election under section 6158 will apply only to the particular sale or sales of property with respect to which the election is being made.

(e) *Special rule for certifying sales.* For purposes of section 6158(a) and paragraph (b)(2) of this section, in the case of a sale which takes place after July 7, 1970, and before January 1, 1977, a certification by the Federal Reserve Board shall be treated as made before the sale if application for such certification was made before January 1, 1977.

(f) *Tax attributable to sales.* The tax under chapter 1 of the Code attributable to sales with respect to which an election under section 6158 has been made shall be the amount, if any, by which the tax under chapter 1 on the taxable income of the qualified bank holding corporation (computed without regard to section 6158) for the taxable year during which the sales occur exceeds the greater of—

(1) The tax under chapter 1 for such year on the taxable income of the corporation exclusive of gains on sales of property with respect to which an election under section 6158 has been made, or

(2) The tax under chapter 1 for such year on the taxable income of the corporation exclusive of gains and losses on all sales of the type of property (either bank property or prohibited property) with respect to which an election under section 6158 has been made.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 1103 (g) and (h), 6158 (a) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1511 and 1512 and 68A Stat. 917; 26 U.S.C. 1103 (g) and (h), 6158 (a) and 7805).

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: October 25, 1978.

DONALD C. LUBICK,
Assistant Secretary of the Treasury.

[FR Doc. 78-31473 Filed 11-7-78; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER 1—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 982-4]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Approval of Oklahoma Regulation No. 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves revisions to Oklahoma Regulation No. 3, Defining Terms Used in Oklahoma Air Pollution Control Regulations. The revision to Regulation No. 3 includes the addition of new terms and words, and changes to previously defined terms and words. Oklahoma's definition of "Best Available Control Technology (BACT)" is disapproved. This revision, which is a general update of Regulation No. 3, should allow a better interpretation, implementation, and administration of Oklahoma's air pollution control program.

EFFECTIVE DATE: November 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Anita B. Turpin, Air Program Branch, Environmental Protection Agency, Region VI, Dallas, Tex. 75270, 214-767-2742.

SUPPLEMENTARY INFORMATION: On November 28, 1977, after adequate notice and public hearing, the Governor of Oklahoma submitted revisions to Regulation No. 3, defining Terms Used in Oklahoma Air Pollution Control Regulations. The revisions include amendments adopted by the state on June 2, 1974, and June 11, 1977.

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart LL—Oklahoma

1. In § 52.1920, paragraph (c) is amended by adding a new paragraph (12) as follows:

§ 52.1920 Identification of plan.

* * * * * * *

(c) * * *

(12) Revision to Oklahoma Regulation No. 3, Defining Terms Used in Oklahoma Air Pollution Control Regulations, were submitted by the Governor on November 28, 1977. The revisions include amendments adopted by the State on June 2, 1974 and June 11, 1977. (See § 52.1926(a).)

2. Subpart LL is amended by adding § 52.1926 as follows:

§ 52.1926 General requirements.

(a) The definition of "Best Available Control Technology (BACT)", as submitted by the Governor on November 28, 1977, is disapproved.

* * * * *

With the exception of the definition for "Best Available Control Technology (BACT)", revisions to Regulation No. 3 were proposed for approval in the FEDERAL REGISTER on June 26, 1978. The definition of BACT was proposed for disapproval since it was not acceptable for determining control technology requirements or for the administration of New Source Performance Standards.

Interested persons were provided 30 days in which to comment on EPA's proposed action. No comments were received. No additional information was received which indicated that a change in the proposed action was warranted.

CURRENT ACTION

This action approves the new definition of terms and words to Regulation No. 3 and the revision of existing terms and words, except the definition of "Best Available Control Technology (BACT)".

This notice of final rulemaking is issued under the authority of section 110(a) of the Clean Air Act, as amended, 42 U.S.C. 7410-(a).

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

[FR Doc. 78-31497 Filed 11-7-78; 8:45 am]

[6560-01-M]

[FRL 975-1]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for City of Cleveland, Cleveland, Ohio

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of EPA issues a delayed compliance Order to the city of Cleveland. The Order requires the city of Cleveland to bring air emissions from its boilers at the Division Pumping Statiion in Cleveland, Ohio, into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP). The city of Cleveland's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered in the Order.

DATES: This Order takes effect on November 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Peter Kelly, Attorney, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Ill. 60604, telephone 312-353-2082.

SUPPLEMENTARY INFORMATION:

On May 31, 1978, the Acting Regional Administrator of EPA's Region V Office published in the FEDERAL REGISTER (43 FR 23611) a notice setting out the provisions of a proposed Federal delayed compliance Order for the city of Cleveland. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order.

Only the city of Cleveland submitted comments. No other comments and no request for a public hearing were received in response to the proposed notice.

Therefore, a delayed compliance Order effective this date is issued to the city of Cleveland by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places the city of Cleveland on a schedule to bring its boilers at the Division Pumping Station, Cleveland, Ohio, into compliance as expeditiously as practicable with Ohio Regulation AP-3-11 and 40 CFR 52.1881 et seq., part of the Ohio State Implementation Plan. The city of Cleveland is unable to immediately comply with these regulations. The Order also imposes interim requirements which meet sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit the city of Cleveland to delay compliance with the SIP regulations covered by the Order until July 1, 1979.

Compliance with the Order by the city of Cleveland will preclude Federal enforcement action under section 113 of the Act for violations of the SIP regulations covered by the Order. Citizen suits under section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be intitated, however, for violations of the terms of the Order, and for violations of the regulations covered by the Order which occurred before the Order was issued by EPA or after the Order is terminated. If the Administrator determines that the city of Cleveland is in violation of a requirement contained in the Order, one or more of the actions required by section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under section 307(b) of the Act.

The provisions of the Order will be summarized, as set forth below, in 40 CFR 65. The provisions of 40 CFR Part 65 will be promulgated by EPA soon, and will contain the procedure for EPA's issuance, approval, and disapproval of an Order under section 113(d) of the Act. In addition, Part 65 will contain sections summarizing Orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for Part 65, published at 40 FR 149876 (April 2, 1975), will be withdrawn, and replaced by a notice promolgating these new regulations.

EPA has determined that the Order shall be effective on November 8, 1978, because of the need to immediately place the city of Cleveland on a schedule for compliance with the Ohio State Implementation Plan.

(42 U.S.C. 7413(d), 7601)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.400 to read as follows:

By amending the table in § 65.400 by adding the following entry:

§ 65.400 Federal delayed compliance Orders issued under Section 113(d) (1), (3), and (4) of the Act.

* * * * *

Source	Location	Order No.	Date of FR Proposal	SIP regulation involved	Final compliance date
City of Cleveland.....	Cleveland, Ohio..	EPA-5-78-A-8.....	May 31, 1978.	AP-3-11 and 40 CFR § 52.1881 et seq.	July 1, 1979.

[FR Doc. 78-31354 Filed 11-7-78; 8:45 am]

[6560-01-50]

[FRL 978-3]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for the Town of Washburn, Maine

AGENCY: Environmental Protection Agency.

ACTION: Final Rule

SUMMARY: The Administrator of EPA hereby issues a Delayed Compliance Order to the town of Washburn, Maine. The Order requires the town to bring air emissions from its open burning dump into compliance with certain regulations contained in the federally approved Maine State Implementation Plan (SIP). The town of Washburn's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on November 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert O'Meara, engineer, 617-223-5610 or Mr. Wesley Marshall, attorney, 617-223-5600 both at EPA, Region I, Room 2103, J.F.K. Federal Building, Boston, Mass. 02203.

ADDRESSES: The Delayed Compliance Order, supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing issuance of the Order are available for public inspection and copying during normal business hours at: EPA, Region I, Room 2103, J.F.K. Federal Building, Boston, Mass. 02203.

SUPPLEMENTARY INFORMATION: On July 5, 1978, the Regional Administrator of EPA's Region I Office published in the FEDERAL REGISTER, 43 FR 29013, a notice setting out the provisions of a proposed delayed compliance order for the town of Washburn, Maine. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments or requests for a public hearing were received in response to the proposal notice.

Therefore, a delayed compliance order effective this date is issued to the town of Washburn, Maine by the Administrator of EPA pursuant to the authority of section 113(d)(1) of the Clean Air Act, 42 U.S.C. 7413(d)(1). The Order places the town of Washburn, Maine on a schedule to bring its solid waste disposal system into compliance as expeditiously as practicable with § 100.2.2 of the Maine Department of Environmental Protection Air Pollution Control Regulations, a part of the federally approved Maine State Implementation Plan. The Order also imposes interim requirements which meet sections 113(d)(1)(C) and 113(d)(7) of the act, and reporting requirements. Although section 113(d)(C) of the act normally requires emission monitoring in an order, no reasonable system of emission monitoring for the town of Washburn's open burning dump site exists. If the conditions of the order are met, it will permit the town of Washburn to delay compliance with the SIP regulations covered by the order until July 1, 1979. The Town is unable to immediately comply with these regulations.

EPA has determined that the order shall be effective November 8, 1978 because of the need to immediately place the town of Washburn, Maine on a schedule for compliance with the applicable requirement of the Maine State Implementation Plan.

(Authority: 42 U.S.C. 7413(d), 7601.)

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

By amending the table in § 65.240 by adding the following entry:

§ 65.240 Federal delayed compliance orders issued under section 113(d) (1), (3), and (4) of the act.

* * * * *

Source	Location	Order No.	Date of FR Proposal	SIP regulation involved	Final compliance date
Town of Washburn	Maine	A-SS-77-560	July 5, 1978	§ 100.2.2	July 1, 1979

[FR Doc. 78-31499 Filed 11-7-78; 8:45 am]

[6560-01-M]

SUBCHAPTER E—PESTICIDE PROGRAMS

[FRL 1003-7; OPP—250011]

PART 162—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Subpart A—Registration, Reregistration and Classification Procedures

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

ACTION: Notification to Secretary of Agriculture of final regulation relating to Special Packaging of Pesticides.

SUMMARY: Notice is hereby given as required by section 25(a)(2)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (Pub. L. 92-516, 86 Stat. 973; Pub. L. 94-140, 89 Stat. 753; 7 U.S.C. 136 et seq., hereinafter referred to as FIFRA) that the Administrator of the Environmental Protection agency (EPA) has forwarded to the Secretary of the U.S. Department of Agriculture, a copy of EPA's final regulation designed to implement section 25(c)(3) of FIFRA (which will be designated 162.16) which authorizes the Administrator to establish standards for the special packaging of pesticides.

FOR FURTHER INFORMATION CONTACT:

Maureen Grimmer, Office of Pesticide Programs (TS-766), EPA, Room 537, East Tower, 401 "M" Street SW., Washington, D.C. 20460, 202-755-8030.

SUPPLEMENTARY INFORMATION:

Section 25(a)(2)(B) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture a copy of any final regulation at least 30 days prior to signing it for publication in the FEDERAL REGISTER. If the Secretary comments in writing regarding the regulation within 15 days after receiving it, the Administrator shall publish in the FEDERAL REGISTER (with the final regulation) the comments of the Secretary, if requested by the Secretary, and the response of the Administrator. If the Secretary does not comment in writing within 15 days after receiving the final regulation, the Administrator may sign the regulation for publication in the FEDERAL REGISTER anytime after the 15 day period.

Pursuant to FIFRA Section 25(a)(3), a copy of this final regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate. The special packaging regulation was also submitted to the FIFRA Scientific Advisory Panel on October 3, 1978, as required by section 25(d).

Dated: October 31, 1978.

JAMES M. CONLON,
Acting Deputy Assistant Administrator for Pesticide Programs.

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.

[7550-01-M]

NATIONAL MEDIATION BOARD

[29 CFR Part 1202]

RULES OF PROCEDURE

AGENCY: National Mediation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed text provides specific page limitations for briefs filed in NMB hearing proceedings. This approach has become nessary in order to control the filing of unreasonably lengthy briefs before the Board. It is intended that the proposed limitations will promote the more effective use of Agency staff resources, ease the regulatory burden on the public, and facilitate the processing of hearing cases before the Board.

DATES: Consideration will be given to all written comments received on or before January 8, 1979.

ADDRESS: Written comments should be addressed to Mr. Rowland K. Quinn, Jr., Executive Secretary, National Mediation Board, Washington, D.C. 20572.

FOR FURTHER INFORMATION CONTACT:

Rowland K. Quinn, Jr., Executive Secretary, National Mediation Board, telephone: 202-523-5920.

SUPPLEMENTARY INFORMATION: These proposed regulations are issued pursuant to the authority of 44 Stat. 577, as amended, 45 U.S.C. section 151, et seq.

By direction of the National Mediation Board.

Dated: November 3, 1978.

ROWLAND K. QUINN, Jr.,
Executive Secretary.

It is proposed that 29 CFR 1202.15, which currently is vacant, be issued as follows:

§ 1202.15 Length of briefs in NMB hearing proceedings.

(a) In the event briefs are authorized by the Board or the assigned Hearing Officer, prinicpal briefs shall not exceed fifty (50) pages in length and reply briefs, if permitted, shall not exceed twenty-five (25) pages in length.

(b) The page limitations provided by this section (§ 1202.15) are exclusive of those pages containing the table of contents, tables of citations, and any copies of administrative or court decisions which have been cited in the brief.

(c) Briefs not complying with this section (§ 1202.15) will be returned promptly to their initiators.

[FR Doc. 78-31534 Filed 11-7-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

[32 CFR Chapter I]

[41 CFR Chapter 1]

ANTI-INFLATION MEASURES

Invitation for Public Comment

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget.

ACTION: Notice of proposed rules concerning anti-inflation measures affecting Federal contracts.

SUMMARY: The President has determined that the Government will benefit by contracting only with firms which cooperate in the fight against inflation. This means that whenever possible, the Government will refrain from awarding contracts to business units which do not cooperate in anti-inflation efforts by keeping price and wage increases within established standards. Proposed regulations and procedures are set forth.

DATE: Comments must be received on or before December 7, 1978.

ADDRESSES: Comments are to be submitted to the Office of Federal Procurement Policy, OMB, 726 Jackson Place NW., Room 9013, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT:

Mr. LeRoy J. Haugh, Associate Administrator for Regulations and Procedures, 202-395-6166.

LESTER A. FETTIG,
Administrator.

[OFPP Policy Letter 78-]

Subject: Wage and Price Standards for Federal Contractors

A program of voluntary wage and price standards was announced by President Carter on October 24, 1978. The President directed that Federal procurement of property and services be conducted so as to recognize anti-inflationary efforts and to benefit Federal contracting by doing business with those firms which limit wage and price increases. Accordingly, the following regulations are furnished for compliance by all executive agencies.

The following provisions will be added to general policies in section I, part 3, of the Defense Acquisition Regulation (DAR) and the Federal Procurement Regulations (FPR):

Wage and price standards for Federal contractors: (a) The Government will, to the maximum practicable extent, purchase goods and services only from those firms in compliance with the wage and price standards. Firms in noncompliance with the standards will be ineligible for Federal contracts or subcontracts except in accordance with paragraph h below.

(b) *Solicitation provision.* All solicitations issued on or after January 1, 1979, expected to result in new contracts, orders under existing contracts, or supplemental agreements to existing contracts, in excess of $5 million will contain the following provision:

The offeror hereby certifies that he is in compliance with the wage and price standards announced by the President on October 24, 1978.

(c) *Contract provision.* All new contracts, orders under existing contracts, and supplemental agreements to existing contracts, in excess of $5 million, resulting from solicitations issued on or after January 1, 1979, will contain the following provision:

The contractor hereby certifies that he is in compliance with the wage and price standards announced by the President on October 24, 1978. If it is later determined that the contractor was in fact not in compliance as of the date of this action, and knew or should have known that he was not in compliance, then this contract may be terminated in accordance with the provisions of the Termination for Default Clause.

(d) *Compliance determinations.* For purposes of certification, companies will determine for themselves whether or not they are in compliance, unless they are listed as noncompliant. The Council on Wage and Price Stability (CWPS) has established procedures to monitor overall compliance with the Federal Wage and Price Standards. CWPS will from time to time publish a list of companies which it determines to be in noncompliance. The Office of Federal Procurement Policy (OFPP)

will disseminate to all procuring agencies a current list of noncompliant companies.

(e) *Effect on prior awards.* Contractors who are determined to be noncompliant, but are already performing under Federal contracts will be treated as follows:

1. If their contracts do not contain the certification provision, they will continue to perform those contracts, but will be ineligible for any further awards until they are removed from the noncompliance list.

2. If they were awarded contracts with a compliance certification, but are later found by CWPS not be in compliance, such contracts may be terminated for default in accordance with the contract provision in paragraph (c) above.

3. If they were awarded contracts with a compliance certification, but it is determined that they become noncompliant after the award of such contracts, they will continue to perform those contracts, but will be ineligible for any further awards until they are removed from the concompliance list.

(f) *Application to subcontractors.* Certification requirements shall be included in all subcontracts over $5 million. The same penalties provided with respect to prime contractors shall also apply to subcontractors who are determined by CWPS not to be in compliance. Any waiver or relaxation of these penalties with respect to subcontractors can only be made by the head of the procuring agency involved.

(g) *Reduced penalties.* (1) termination for default of contractors or subcontractors who were not in compliance at the time of certification may be waived by the agency head if he determines in writing that:

1. The agency's need for the product or service is essential to National security or public safety, and

2. There are no alternative sources of supply, or that seeking alternative sources is not feasible because of:

a. urgency of requirements, or

b. disruption of essential program functions.

(2) Termination for default may also be waived by the agency head if he determines that such action would result in severe financial hardship, particularly for small and minority business firms. Such waivers should be limited to those contractors or subcontractors whose ability to survive, if terminated for default, is in question.

(3) In any case in which termination for default is determined to be feasible the agency shall consider negotiating a reduction in the contract price to ensure that the contractor does not profit from his failure to comply with the wage and price standards.

(h) *Waiver of certification.* (1) Waiver of the contract certification should be considered only in situations where the Government cannot forgo or postpone a procurement because of an urgent national security or public safety and where there are no alternative sources.

(2) Such waivers will be granted only by the head of the procuring agency involved, and only after thoroughly exhausting all reasonable alternatives.

(3) Waivers shall be in writing, and a copy of such waiver shall be forwarded within 10 days to the Administrator for Federal Procurement Policy.

(4) A contractor's refusal to accept the certification provision shall be considered in future determinations of responsibility until such time as the contractor accepts the certification provision or is otherwise determined to be in compliance.

(i) *Contract pricing actions.* while determinations of noncompliance are the concern of CWPS, all procuring agencies must be cognizant of the wage and price standards and make every effort to stay within these standards in pricing actions under negotiated contracts. Such pricing actions include cost and price analyses, forward pricing rate agreements, price negotiation objectives, and contract pricing structures.

[FR Doc. 78-31581 Filed 11-3-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1003-8]

STATE OF MARYLAND

Proposed Revision of the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The State of Maryland has submitted a proposed revision of the State Implementation Plan (SIP) consisting of a Consent Order for the Chalk Point Generating Station of the Potomac Electric Power Co. (PEPCO) at Aquasco, Md. The schedule would require PEPCO to achieve compliance with Maryland's particulate regulation by December 31, 1980, and specifies other milestones which the company must meet toward that end. The sulfur dioxide air quality standards are being met. A further review will be conducted by July 1, 1979.

DATE: Comments must be submitted on or before December 8, 1978.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Air Programs Branch, Curtis Building, 6th and Walnut Streets, Philadelphia, Pa. 19106. Attn: William E. Belanger.

Bureau of Air Quality and Noise Control, State of Maryland, 201 West Preston Street, Baltimore, Md. 21201. Attn: George Ferreri.

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street SW. (Waterside Mall), Washington, D.C. 20460.

All comments on the proposed revision submitted on or before December 8, 1978, will be considered and should be directed to:

Mr. Howard Heim, Chief, Air Programs Branch (3AH10), Air and Hazardous Materials Division, U.S. Environmental Protection Agency, Region III, Sixth and Walnut Streets, Philadelphia, Pa. 19106. Attn: AH013MD.

FOR FURTHER INFORMATION CONTACT:

William E. Belanger (3AH13), U.S. Environmental Protection Agency, Region III, Sixth and Walnut Streets, Philadelphia, Pa. 19106, telephone 215-597-8188.

SUPPLEMENTARY INFORMATION: On March 21, 1978, the Governor of Maryland submitted to EPA, Region III a proposed revision of the Maryland State Implementation Plan consisting of a Consent Order for the Chalk Point Generating Station of the Potomac Electric Power Co. (PEPCO). In his letter, Acting Governor Blair Lee III certified that the Order was adopted in accordance with the public hearing and notice requirements of 40 CFR, Part 51.4 and all relevant State procedural requirements, and asked that EPA consider the Consent Order as a revision of the State Implementation Plan. The Order states that PEPCO at Chalk Point is not now in compliance with the State's particulate limitation applicable to this facility, and establishes a schedule for compliance with that limitation. It also provides for measurement of sulfur dioxide emissions and levels around the plant. By July 1, 1979, there will be a new evaluation and projection of sulfur dioxide ambient air levels, based on these measurements. If no standards violations are measured or projected, the evaluation will be repeated every five years. The proposed SIP change would reduce particulate matter from boiler units 1 and 2 (coal burning) according to the following schedule:

April 1, 1977—complete upgrade of precipitator on Unit 2 so emissions do not exceed .24 pounds per million Btu. This has been reported complete by PEPCO.

July 1, 1977—complete upgrade of precipitator on Unit 1 to meet the same limitation. This has been reported complete by PEPCO.

January 1, 1978—select a method to secure compliance of both units with Regulation 10.03.39.03B. Cold electrostatic precipitators have been chosen by PEPCO and the following schedule applies:

April 30, 1978—Award engineering and construction contracts.

June 30, 1978—Award precipitator contracts and begin site preparation.

May 31, 1979—Begin construction.

June 30, 1980—Begin precipitator installation.

September 30, 1981—Have precipitators operational.

December 31, 1981—Full compliance.

Until December 31, 1981, visible emissions are limited to No. 2 on the Ringelmann Smoke Chart (40 percent opacity) and coal ash content is limited to 15 percent by weight.

For sulfur oxides, PEPCO determined the impact of the plant through proper use of EPA's CRSTER model based on one year's meteorological data. The model shows the plant to be in compliance with applicable national ambient air quality standards.

PEPCO is required to submit new projections, based on actual ambient air measurements and emissions, by July 1, 1979. If the study then finds or projects a violation, PEPCO has agreed to come into compliance expeditiously on a preset schedule.

Therefore, it is the tentative decision of the Administrator to approve the proposed revision of the Maryland State Implementation Plan.

The public is invited to submit to the address stated above, comments on whether the Chalk Point Consent Order should be approved as a revision of the Maryland State Implementation Plan.

The Administrator's decision to approve or disapprove the proposed revision will be based on the comments received and on a determination whether the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

(42 U.S.C. 7401.)

Dated: October 31, 1978.

JACK J. SCHRAMM,
Regional Administrator.

[FR Doc. 78-31496 Filed 11-7-78; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 611]

PRELIMINARY FISHERY MANAGEMENT PLAN

Pacific Billfishes and Sharks

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Supplemental notice of public hearings.

SUMMARY: On October 20, 1978, the National Marine Fisheries Services (NMFS) published a notice of public hearing in the FEDERAL REGISTER (43 FR 49024). Three additional meetings will be held (see below for dates, time, and place).

In addition to the particular issues mentioned in the previous notice, NMFS would like input on consideration of setting aside portions of the total allowable foreign fishing (TALFF) for each species by sub-area as a "reserve" in the event domestic fishing is greater than projected. The domestic fishery is quite variable, and catches from year to year may differ greatly. The estimates of expected U.S. harvest are based on average catches over a period of years (adjusted for increased fishing capacity), and the harvest in a given year may exceed the estimates given. Several commentators have maintained that past U.S. harvests were underestimated. The "reserve" approach would provide flexibility in management by allowing allocations to be based on actual experience in the fishery. NMFS is contracting for a survey of recreational fishing to determine catch and effort data. Information from this survey could be used to monitor the fishery for subsequent actions on the reserve if necessary. It is possible, given the migratory nature of the stocks and the variability of the fishery, that the "reserve" could be shifted from one area to another to alleviate special problems as they arise.

DATES: Comments will be received until December 24, 1978.

ADDRESSES: November 28, Kona Hilton, Kona, Hawaii, 4 p.m., November 29, Pagoda Hotel, Honolulu, Hawaii, 4 p.m., November 28, California Department of Fish and Game, 350 Golden Shores Drive, Long Beach, California, 4 p.m.

FOR FURTHER INFORMATION CONTACT:

Mr. Gerald V. Howard, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, Telephone: (213) 548-2575.

Dated: November, 1978.

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

[FR Doc. 78-31509 Filed 11-7-78; 8:45 am]

[3510-22-M]

[50 CFR Parts 611 and 671]

TANNER CRAB OFF THE COAST OF ALASKA

Fishery Management Plan Amendment

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Notice of approval of fishery management plan amendment.

SUMMARY: The fishery management plan (FMP) for the commercial Tanner Crab fishery off the coast of Alaska is amended to extend the period of time during which the FMP will be effective through October 31, 1979. The plan originally was effective until December 31, 1978. The North Pacific Management Council has submitted to the Secretary of Commerce an amendment to extend the effective date of the FMP through October 31, 1979. This amendment to the FMP is proposed for public comment.

DATE: Comments will be received until December 22, 1978.

ADDRESS: Comments should be addressed to the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C. 20235. Please mark "Alaska Tanner crab" on outside of the envelope.

FOR FURTHER INFORMATION CONTACT:

Mr. Harry L. Rietze, Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99807, telephone 907-586-7221.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The FMP for the commercial Tanner Crab fishery which was prepared by the North Pacific Fishery Management Council was approved by the Secretary of Commerce (Secretary) and published in the FEDERAL REGISTER on May 16, 1978 (43 FR 21180). That FMP contained conservation and management measures for both the foreign and domestic Tanner crab fisheries off the coast of Alaska under authority of the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 et seq. Proposed regulations to implement the plan were published on May 16, 1978. See 43 FR 21170 regulating

foreign vessels, and 43 FR 21171 regulating vessels of the United States.

The FMP was designed to conserve and manage Tanner crab resources off the coast of Alaska during 1978. The purpose of this amendment to the FMP is to extend the period of time during which the FMP will be in effect through October 31, 1979. No adverse impact is anticipated to the Tanner crab resource or to the domestic or foreign fishermen because the management measures remain unchanged from those published in both the FMP and the proposed regulations.

The Assistant Administrator for Fisheries, under the delegation of authority from the Secretary, has determined that the amendment to the FMP extending the effective date of this FMP through October 31, 1979; (1) is necessary and appropriate to the conservation and management of Tanner crab resources off the coast of Alaska; (2) is consistent with the National Standards and other provisions of the Act and other applicable law; and (3) does not constitute a major Federal action requiring the preparation of an environmental impact statement.

The FMP is revised as follows:

1. On page 21176, Section I.C., 1st paragraph, line 7, delete "1978".

2. On page 21176, Table A, Title, delete "for the 1977/78" and add "for the 1978/79".

3. On page 21180, Table A and Table 11, delete ". . . 1977/78" and add ". . . 1978/79".

4. On page 21195, Table 11 delete ". . . 1977/78" and add "1978/79".

5. On page 21199, Section 7.0, 1st paragraph, line 22, delete "for the 1978 fishing season".

6. On page 21210, Section A.5.3., 4th paragraph, line 4, delete "during the 1977/78 season".

7. On page 21210, Section A.5.3, 8th paragraph, line 5, delete "during the 1977/78 season".

8. On page 21215, Section B.6.3, 1st paragraph, line 3 delete "1977/78".

9. On page 21227, Section C.6.3, 1st paragraph, line 2 delete "for the 1977/78 season".

10. On page 21232, Section D.7.0, 1st paragraph, line 2, delete "for 1977/78".

11. On page 21237, Section E.4.7.1, 1st paragraph, line 13, delete ". . . has . . .".

12. On page 21238, Section E.5.3, 1st paragraph, line 10, delete "1977/78 . . ." and insert "1978/79".

13. On page 21238, Section E.5.3, 1st paragraph, line 14, delete ". . . for the 1977/78 season . . .".

14. On page 21238, Section E.7.0, 1st paragraph, line 2, delete "for 1977/78".

15. On page 21249, Section F.6.2.d, 2nd paragraph, line 7, delete "during the 1977/78 season".

16. On page 21249-21250, Section F.6.2.f, 2nd paragraph, line 1, delete ". . . 1978 . . ." and insert ". . . 1979 . . .".

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

Signed in Washington, D.C., this 2nd day of November 1978.

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

[FR Doc. 78-31536 Filed 11-7-78; 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.

[4310-01-M]

ADVISORY COUNCIL ON HISTORIC PRESERVATION

PUBLIC INFORMATION MEETING

Notice is hereby given in accordance with section 800.5(c) of the Council's "Procedures for the Protection of Historic and Cultural Properties" (36 CFR Part 800) that on November 15, 1978, at 7 p.m., a public information meeting will be held at the Cedarburg Town Hall, 1293 Highway 143, Cedarburg, Wis. The purpose of this meeting is to provide an opportunity for representatives of public and private organizations, and interested citizens to receive information and express their views on the proposed reconstruction of the Hamilton Bridge and its approaches, an undertaking of the county of Ozaukee assisted by funds from the Federal Highway Administration, that will adversely affect Hamilton Historic District, a property included in the National Register of Historic Places.

The following is a summary of the agenda of the public information meeting:

I. An explanation of the procedures and purpose of the meeting by a representative of the Executive Director of the Council.

II. A description of the undertaking and an evaluation of its effects on the historic district by the Federal Highway Administration, county officials, and consultants who prepared the plans and reports.

III. A statement by the Wisconsin State Historic Preservation Officer.

IV. Statements from local officials, private organizations, and the public on the effects of the undertaking on the historic district.

V. A general question period.

Speakers should limit their statements to 5 minutes. Written statements in furtherance of oral remarks will be accepted by the Council at the time of the meeting. Additional information regarding the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, D.C. 20005, telephone 202-254-3974.

ROBERT M. UTLEY,
Deputy Executive Director.

[FR Doc. 78-31568 Filed 11-7-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Docket Nos. 33411, 33488, 33713, 33717, 33559, 3351, 33715; Order 78-11-4]

ATLANTA-MEMPHIS SERVICE INVESTIGATION

Order of Consolidation

Issued Under Delegated Authority November 1, 1978. Applications of Allegheny Airlines, Inc., Continental Air Lines, Inc., North Central Airlines, Inc., Northwest Airlines, Inc., Ozark Air Lines, Inc., Western Air Lines, Inc.

This investigation was instituted by Order 78-9-61, served September 19, 1978, which consolidated the previously filed applications of Eastern Air Lines, Inc., Braniff Airways, Inc., Frontier Airlines, Inc., Piedmont Aviation, Inc., Southern Airways, Inc., and Texas International Airlines, Inc., into this docket. Further applications and motions to consolidate have been timely filed by Allegheny Airlines, Inc., in Docket 33488, Continental Air Lines, Inc., in Docket 33713, North Central Airlines, Inc., in Docket 33717, Northwest Airlines, Inc., in Docket 33559, Ozark Air Lines, Inc., in Docket 33551, and Western Air Lines, Inc., in Docket 33715.

No answers have been filed to the applications and motions.

All these applications conform to the scope of the proceeding instituted by Order 78-9-61 except that of Delta, which requests additional authority. The applications will be consolidated into Docket 33411 to the extent that they conform to the scope of the investigation as presently delineated. All applicants are also made party to this proceeding.

Accordingly, pursuant to authority delegated to the presiding administrative law judge by Order 78-9-61,

It is ordered that:

1. The motions to consolidate the applications of Allegheny Airlines, Inc., in Docket 33488, Continental Air Lines, Inc., in Docket 33713, North Central Airlines, Inc., in Docket 33717, Northwest Airlines, Inc., in Docket 33559, Ozark Air Lines, Inc., in Docket 33551, and Western Air Lines, Inc., in Docket 33715 into the investigation in Docket 33411 are granted to the extent that the applications conform to the scope of the investigation instituted by Order 78-9-61.

2. The following are made parties to the proceeding in Docket 33411: Allegheny Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Eastern Air Lines, Inc., Frontier Airlines, Inc., North Central Airlines, Inc., Northwest Airlines, Inc., Ozark Air Lines, Inc., Piedmont Aviation, Inc., Southern Airways, Inc., Texas International Airlines, Inc., and Western Air Lines, Inc.

Persons entitled to petition the Board for review of this Order pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within 10 days after the service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

By KATHERINE A. KENT
Administrative Law Judge.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31594 Filed 11-7-78; 8:45 am]

[6320-01-M]

[Docket No. 30635; Order 78-10-89]

ARIZONA SERVICE INVESTIGATION

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 20th day of October, 1978.

By order 78-8-195 in Docket 30635, the Board has granted certificates of public convenience and necessity to Cochise Airlines and Sky West Aviation. We have tentatively found that the public convenience and necessity requires that, once certificated, these carriers be governed by any determinations made by the Board in the *Domestic Passenger Fare Investigation (DPFO)*, including the requirements as to joint fares in Phase 4 of that proceeding.

We made similar findings following the initial certification of Air New England,[1] Air Midwest,[2] and Air Wisconsin[3] and following the grant of au-

[1] *New England Service Investigation*, Order 74-10-102, October 18, 1974.

[2] *Air Midwest Certification Proceeding*, Order 76-11-3, November 2, 1976.

[3] *Air Wisconsin Certification Proceeding*, Order 78-8-197, August 31, 1978.

thority to Pan American to carry domestic traffic between Detroit and Boston.[4] Similar action is warranted here. Therefore we tentatively find and conclude that the above-named carriers shall be bound by the Board's present and future determinations in the *DPFI* as if they had been parties to the original proceeding.

Although most of the *DPFI* requirements can be met unilaterally, participation in Phase 4—which establishes maximum joint fares on interline connecting flights—obviously requires cooperation from other carriers. Accordingly, we tentatively find and conclude that Cochise Airlines and Sky West Aviation on the one hand, and all carriers certificated to provide scheduled service within the 48 contiguous states,[5] on the other, shall enter into and maintain all joint fares which are now, or may in the future be required by the Board in Phase 4 of the *Domestic Passenger Fare Investigation*, Docket 21866-4, as if the former carriers were local service carriers parties to that proceeding; and they shall divide all joint fares by such methods as are or may be prescribed by the Board.[6]

Interested persons will be given 21 days following service of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We expect such persons to support any objections they might have with detailed answers, specifically stating the findings and conclusions to which objection is taken. Such objections should be accompanied by arguments of fact or law and should be supported by legal precedent or detailed economic analysis. If an evidentiary hearing is requested, the objector should state in detail why such a hearing is considered necessary and what relevant and material facts he would expect to establish through such a hearing. General, vague or unsupported objections will not be entertained. Answers may be filed 10 days after the date for filing objections.

Accordingly:

1. The Board directs all interested persons to show cause why it should not issue an order making final the tentative findings and conclusions stated here;

2. Any interested person objecting to the issuance of an order making final the findings and conclusions set forth here shall, no later than November 13, 1978, file with the Board and serve upon all certificated air carriers a statement of objections together with a summary of testimony, statistical data and any other evidence that is expected to be relied upon to support the stated objections, answers to objections shall be filed no later than November 24, 1978;

3. If timely and properly supported objections are filed, full consideration will be accorded the matters or issues raised by the objections before further action is taken by the Board;

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived, and the matter will be submitted to the Board for final action.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board. (All Members concurred except Member Cohen who did not participate at this time.)

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31596 Filed 11-7-78 8:45 am]

[4] *Detroit-Boston Nonstop Route Proceeding*, Order 76-9-168, September 30, 1976.

[5] Except for Aspen Airways and Wright Lines, which are not subject to the *DPFI*.

[6] All the issues involved in this show cause order have been exhaustively litigated in the *DPFI* and the addition of two new carriers results in no appreciable change in any of the conclusions reached in that proceeding. Similarly, in light of the evidentiary record compiled in the *DPFI* we find no need for further hearings directed solely to the addition of Cochise Airlines and Sky West Aviation.

[6320-01-M]

[Docket No. 33151; Order 78-10-92]

BRANIFF AIRWAYS, INC.

Order To Show Cause and Denying Exemption

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 20th day of October, 1978.

On August 4, 1978, Braniff Airways filed an application for exemption authority to operate between Hartford, Conn./Springfield, Mass., and New York, N.Y./Newark, N.J., until final decision on certificate proceedings under section 401 of the Act.

In support, Braniff alleges that: The Hartford-New York segment is not used effectively by incumbent carriers as entry mileage, especially to Midwest and Southwest points; its proposal will provide improved service to numerous points not easily accessible to Hartford passengers,[1] supplement the current Hartford-New York service and offer local passengers a broader selection of service options and low fares; and its operations will result in a profit of over $6 million during the first year.

The Greater Hartford Chamber of Commerce supports the application. Four carriers filed objections.[2] Air New England opposes only that part of Braniff's request which would permit it to operate in the Hartford-LaGuardia market. The other carriers maintain that Braniff's application fails to meet the statutory requirements of section 416(b) of the Act; that the proposal is of doubtful economic feasibility and will offer Hartford-New York passengers no additional benefits; and that improved service between Hartford and the Southwest is now before the Board in other proceedings.[3]

We have decided to issue an order to show cause which proposes to add a new segment to Braniff's certificate for Route 9 between Hartford/Springfield and New York/Newark, and to deny Braniff's exemption request. Our tentative conclusion that Braniff should be authorized to conduct nonstop operations between Hartford and New York is based on the following findings:

Braniff's request, which involves addition of Hartford to its system, falls within the class of cases which can be handled by show-cause procedures because of the absence of any material, determinative issue of fact requiring resolution in a formal evidentiary proceeding.[4] Implementation of its service proposal will significantly benefit the traveling public (Appendix A). It will result in new single-carrier service in three beyond-New York markets, as well as first effective competitive service in five (see Appendix B). Braniff will be able to offer these benefits by a short extension of existing flights, thereby increasing traffic revenues through relatively minor increases in costs.

Braniff claims that its proposal will benefit over 108,000 passengers and will result in profitable operations in the 1979 forecast year. We agree with Delta that Braniff's profit forecast should be reduced for self-diversion. Even so, we find that there is sufficient traffic to sustain profitable operations, if not under the exact operating plan put forward, then under some variation of it.[5] We need not find that Braniff's precise proposal here, or any other specific service pattern, can in fact be profitably operated.[6] If Braniff's proposal or a variation can be operated on a profitable basis, service is likely to be provided, and we are persuaded that has been plausibly shown here.[7] On the other hand, under permissive authority, even if the service is

[1] Oklahoma City, San Antonio, Tulsa, Dallas/Ft. Worth, Houston, Washington (Dulles), Austin, Brownsville, and Lubbock.

[2] Air New England, Allegheny Airlines, American Airlines, and Delta Air Lines.

[3] In the *Baltimore/Washington-Houston Low-Fare Route Case*, Docket 31870, Allegheny is proposing two-stop service between Hartford and Houston via Baltimore and Dulles, and in the *Dallas/Fort Worth/Houston-Philadelphia Service Investigation*, Docket 32343, Allegheny is proposing one-stop service in both the Hartford-Houston and Hartford-Dallas/Fort Worth markets.

[4] E.g., Piedmont Boston Entry, Orders 78-4-69 and 78-8-97, Eastern Albany Entry, Orders 78-6-60 and 78-7-168, and Air New England Hartford/Springfield Entry, Orders 78-7-39 and 78-8-129.

or becomes unprofitable the carrier is free to cease serving the markets. We are satisfied that nothing developed in an oral evidentiary hearing would reverse this conclusion.

The objectors' arguments fail to persaude us from our course of action. The pendency of Allegheny's applications in the above Texas cases does not constitute a valid reason for failing to act on Braniff's now. As for Delta's argument that now it has Hartford-Atlanta nonstop rights it will be in an excellent position to offer single-plane service to some of the points proposed by Braniff, we presume that Braniff's management will respond in an economically rational manner and will gear its services to market conditions and its economic opportunities between Hartford and New York and elsewhere. Whether or not Braniff provides the level of service which it now proposes or serves the market at all,[8] its certification benefits the public by creating a competitive spur to the incumbents to provide the public with the level and kinds of service it wants.[9] Finally, we find that grant of this authority will not threaten the ability of any carrier to perform its certificate obligations.[10]

Interested persons will be given 30 days following the date of service of this order to show cause why these tentative findings and conclusions should not be made final. We expect that objections will be supported by detailed economic or legal arguments. If an oral evidentiary hearing complete with the opportunity for cross-examination is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts the objector would expect to establish through such a hearing that cannot be established through written pleadings. General, vague, or unsupported objections will not be entertained. Answers to objections are due within 10 days after the due date for objections.

We have also decided to deny Braniff's exemption request. Under the circumstances presented here, we feel that show-cause procedures are preferable to exemption procedures.

Accordingly,

1. We direct all interested persons to show cause why the Board should not issue an order under section 204 of the Act, making final these tentative findings and conclusions and amending Braniff's certificate for Route 9 so as to add a new segment authorizing the permissive nonstop scheduled air transportation of persons, property, and mail between the terminal point Hartford, Conn./Springfield, Mass., and the terminal point New York, N.Y./Newark, N.J.;

2. Any interested person having objections to the issuance of an order making final the proposed findings, conclusions, and certificate amendments shall, no later than November 24, 1978, file with the Board and serve upon all persons listed in paragraph 6 a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied upon to support its objections; answers to objections shall be filed by December 4, 1978;

3. If timely and properly supported objections are filed, full consideration will be accorded the matters or issues raised before further action is taken by the Board; [11]

4. In the event no objections are filed to any part of this order, all further procedural steps relating to such part or parts will be deemed to have been waived, and the case will be submitted to the Board for further action;

5. We deny the application of Braniff Airways for an exemption filed in Docket 33151; and

6. We shall serve a copy of this order on all persons named in the service list of Docket 33151.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board. (All Members concurred.)

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31595 Filed 11-7-78; 8:45 am]

[8] We find that the public convenience and necessity require that the authority we propose to grant Braniff be permissive, so that its management can have the discretion to provide service or not as the demands of the market dictate.

[9] We also tentatively conclude that Braniff is fit, willing, and able to perform the air transportation it proposes and to conform to the provisions of the Act and the Board's rules; that, on evaluation of Braniff's environmental submission, our proposed action will not be a major Federal action significantly affecting the quality of the environment within the meaning of the National Environmental Policy Act of 1969; and that approval of Braniff's proposal will not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975, as defined in section 313 of our regulations. Braniff does not have a certificate amendment application on file. We will give the carrier 15 days after the date of service of this order to file such an application.

[10] Air New England has asked that Braniff be prohibited from serving the Hartford-LaGuardia market. We will not grant Air New England's request. The objecting carrier's authority is permissive and hence even under worst case assumptions, it is free to withdraw from the market to avoid losses. The idea is contrary to our general policy of promoting a more competitive environment in the certificated system.

[11] All motions and/or petitions for reconsideration shall be filed within the period allowed for filing objections and no further motions, requests or petitions for reconsideration of this order will be entertained.

[6320-01-M]

[Docket No. 32840; Order 78-10-87]

BROOKER-WHEATON AVIATION, LTD.

Statement of Tentative Findings and Conclusions and Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 20th day of October, 1978.

Application of BROOKER-WHEATON AVIATION LTD. for a foreign air carrier permit pursuant to section 402 of the Federal Aviation Act of 1958, as amended.

By application filed June 9, 1978, Brooker-Wheaton Aviation Ltd. (Brooker-Wheaton) requests a foreign air carrier permit to engage in charter foreign air transportation of persons and their accompanied baggage, and planeload charter foreign air transportation of property, between any point or points in Canada and the United States, using "small aircraft." [1] The application is filed pursuant to the Nonscheduled Air Service Agreement executed on May 8, 1974, by the Governments of the United States and Canada.

No answers to Brooker-Wheaton's application for a foreign air carrier permit have been filed.

FITNESS OF THE APPLICANT

Brooker-Wheaton is incorporated under the laws of the Province of Alberta, as set forth in the Companies Act. The Canadian Air Transport Committee has issued Brooker-Wheaton a license which provides for the operation of a charter commercial air service operated wholly within Canada for the transport of persons or goods originating in Edmonton, Alberta, Canada. The applicant also has obtained from the Air Transport Committee a class 9-4 license which authorizes the holder to operate charter commercial air services within Canada and internationally from a base at Edmonton, Alberta, Canada. Brooker-Wheaton is restricted in its operations to the use of Group A, B, or C aircraft having a maximum authorized weight on wheels no greater than 18,000 pounds.[2] The Canadian Department of Transport, Civil Aviation Branch has

[1] "Small aircraft" are defined by the Nonscheduled Air Service Agreement as aircraft which are not "large aircraft." "Large aircraft" are defined as aircraft having both (a) a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds, and (b) a maximum authorized takeoff weight on wheels greater than 35,000 pounds.

[2] Under Canadian Air Transport Committee Regulations, Group A aircraft can weigh no more than 4,300 pounds, Group B aircraft can weigh no more than 7,000 pounds, and Group C aircraft can weigh no more than 18,000 pounds (maximum authorized takeoff weight on wheels).

issued the operating certificate certifying that the carrier's aircraft are adequately equipped, and it is able to conduct safe operations. Brooker-Wheaton also holds an operating certificate which permits the corporation to operate between points that can be safely served in North America from a base at Edmonton Municipal Airport, Edmonton, Alberta, Canada using Group A, B, or C aircraft.

The applicant's balance sheet as of August 31, 1977, shows total assets of $1,482,133 of which $897,088 is shown as current assets. On the liabilities side, the company shows current liabilities of $844,270 and total liabilities of $1,282,672 resulting in total shareholders equity of $167,214 (with $32,247 in deferred taxes). Brooker-Wheaton is in a profitable position; the corporation showed a net profit of $25,773 for the year ended August 31, 1977, which gave the corporation retained earnings of $162,614 on this date. Brooker-Wheaton owes $581,336 to the Cessna Finance Corp., $200,000 to the Bank of British Columbia, and $165,559 to the Cessna Aircraft Corporation—these are all Canadian corporations.

The carrier lists the following aircraft, which are either owned or leased, as available for charter service between Canada and the United States:

Type of aircraft	Number	Passenger seating capacity	Maximum payload
Cessna 421	1	7	2,200
Cessna 402	1	7	1,950
Cessna 401	1	6	2,100
Cessna 414	1	6	1,915
Cessna 310	1	5	1,570
Cessna 337	1	3	1,790
Cessna 182	1	3	1,300

The applicant states that it has had no safety or tariff violations in the last five years, nor have there been any aircraft accidents during such period. Furthermore, the applicant has stated that it will comply with all necessary insurance conditions.

"PUBLIC INTEREST" IN AWARD OF THE AUTHORITY SOUGHT

The applicant relies on the Non schedule Air Service Agreement signed by the Governments of Canada and the United States of America on May 8, 1974 as the basis for the grant of the requested authority. By diplomatic Note No. ECT-1108, dated June 24, 1976, the Government of Canada designated the applicant under the agreement to perform charter services with small aircraft.

OWNERSHIP AND CONTROL

The only stockholders, officers, directors, and management personnel of the corporation are Donald H. Wheaton, Beverly W. Brooker, and Edward Mitchell. Mr. Wheaton is President, and holds 50 percent of all shares outstanding (6,000 shares of common stock). Ms. Brooker is Secretary and holds the other 50 percent of outstanding shares. Mr. Mitchell is General Manager, Operations Manager, and Sales Manager of Brooker-Wheaton Aviation Ltd. All of the stockholders, officers, directors and management personnel of the corporation are Canadian citizens. Likewise, all creditors to the applicant are Canadian.

The application reveals that neither the applicant, nor its officers, directors or holders of 5 percent or more of the stock of the air carrier, own, either directly or indirectly, any other Canadian carrier or foreign carrier or any person engaged in a phase of aeronautics, or any common carrier, or in any person whose principal business is the holding of stock in, or control of, any such entities.

In view of the foregoing and all of the facts of record, the Board tentatively finds and concludes that:

1. It is in the public interest to issue a foreign air carrier permit to Brooker-Wheaton Aviation Ltd. authorizing it to engage in charter foreign air transportation with small aircraft of persons and their accompanied baggage and planeload charters of property between any point or points in Canada and the United States;

2. Brooker-Wheaton Aviation Ltd. is fit, willing, and able properly to perform the charter foreign air transportation described in the specimen permit, and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board;

3. The public interest requires that the exercise of the privileges granted by the permit shall be subject to the terms, conditions, and limitations contained in the specimen permit attached to this order, and to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board;

4. Brooker-Wheaton Aviation Ltd. is substantially owned and effectively controlled by nationals of Canada;

5. The proposed issuance of Brooker-Wheaton Aviation Ltd.'s foreign air carrier permit will not constitute a "major regulatory action" under the Energy Policy and Conservation Act as defined in subsection 313.4(a)(1) of the Board's regulations; [3]

6. An oral evidentiary hearing is not required in the public interest; [4] and

7. Except to the extent granted, the application of Brooker-Wheaton Aviation Ltd. in Docket 32840 should be denied.

Accordingly,

1. We direct all interested persons to show cause why the Board should not (1) make final its tentative findings and conclusions, and (2) issue a foreign air carrier permit to Brooker-Wheaton Aviation Ltd. in the specimen form attached, subject to the approval of the President pursuant to section 801 of the act;

2. Any interested person having objection to the issuance of an order making final the tentative findings and conclusions and issuing the foreign air carrier permit shall, no later than November 14, 1978, file with the Board and serve upon the persons named in paragraph 5, a statement of objections specifying the part or parts of the tentative findings and conclusions objected to, together with a summary of testimony, statistical data, and concrete evidence relied upon in support of the objections. If an evidentiary hearing is requested, the objector should state in detail why such hearing is considered necessary and what relevant and material facts he would expect to establish through such hearing which he could not establish in written pleadings. Any interested person who wishes to answer these objections shall file such answers no later than November 24, 1978;

3. If timely and properly supported objections are filed, we will accord further consideration to the matters and issues raised by the objections before further action is taken by the Board; *Provided*, That the Board may enter an order in accordance with the tentative findings and conclusions, if it determines that there are no factual issues present that warrant the holding of an oral evidentiary hearing; [5]

4. In the event no objections are filed, we will waive all further procedural steps and the Secretary shall enter an order which (1) shall make final the Board's tenative findings and conclusions set forth in this order, and (2) subject to the approval of the President, shall issue a foreign air carrier permit to the applicant in the specimen form attached; and

5. We shall serve this order upon Brooker-Wheaton Aviation Ltd., the Ambassador of Canada in Washington, D.C. and the U.S. Departments of State and Transportation.

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[3] This is not an action with environmental consequences. See subsection 312.2(a) of the Board's Procedural Regulations regarding Canadian permits for small aircraft charter operations.

[4] Any interested persons having objections to the issuance of an order making final the Board's tentative findings and conclusions and issuing the attached permit, shall be allowed 10 days from the date of service of this order to respond. Answers to objections shall be filed not later than ten (10) days thereafter.

[5] Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

We shall publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

All Members concurred.

UNITED STATES OF AMERICA CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

PERMIT TO FOREIGN AIR CARRIER FOR SMALL AIRCRAFT OPERATIONS

Brooker-Wheaton Aviation, Ltd., is authorized, subject to the provisions set forth, the provisions of the Federal Aviation Act of 1958 and the Board's orders, rules, and regulations, to engage in charter foreign air transportation, as follows:

Charter flights with respect to persons and their accompanied baggage, and planeload charter flights with respect to property, between any point or points in Canada and any point or points in the United States.

The holder shall be authorized to perform those types of charters originating in Canada as are now, or may be, prescribed for carriage by small aircraft in Annex B(III)(B) of the Nonscheduled Air Service Agreement between the United States and Canada, signed May 8, 1974, including amendments, supplements, reservations, or supersessions to that Agreement: *Provided*, That any such charters may be performed only to the extent authorized by the Air Carrier Regulations of the Canadian Transport Commission applicable to operations by small aircraft, and the authority of the holder to perform such charters shall be subject to those Regulations.[1] The authority of the holder to perform United States-originating charters shall, in accordance with Annex B(III)(A) of the Nonscheduled Air Service Agreement, be limited to commercial air transportation of passengers and their accompanied baggage, and property, on a time, mileage or trip basis, where the entire planeload capacity of one or more aircraft has been engaged by a person for his own use or by a person for the transportation of a group of persons and/or their property, as agent or representative of such group, or such small aircraft operations as may be authorized pursuant to any amendment, supplement, reservation or supersession to that Agreement.

This permit shall be subject to the following terms, conditions, and limitations:

(1) In the performance of the charter operations authorized by this permit, the holder shall not use "large aircraft" as defined in Annex A(i)(A) of the Nonscheduled Air Service Agreement between the United States and Canada, signed May 8, 1974, including amendments, supplements, reservations, or supersessions to that Agreement.

(2) The holder shall not engage in foreign air transportation between the United States and any point or points, other than a point or points in Canada, or transport any property or persons whose journey includes a prior, subsequent, or intervening movement by air (except for the movement of passengers independently of any group) to or from a point not in the United States or Canada: *Provided*, That the Board may, upon application by the holder, or by regulation, authorize the performance of charters where such movements are involved.

(3) The holder shall not perform United States-originating charter flights which at the end of any calendar quarter would result in the aggregate number of all United States-originating charter flights performed by the holder on or after May 8, 1974, exceeding by more than one-third the aggregate number of all Canadian-originating charter flights performed by the holder on or after May 8, 1974: *Provided*, That the Board may authorize the performance of charters not meeting the requirements set forth. For the purpose of making such computation the following shall apply:

(a) A charter shall be considered to originate in the United States (or Canada) if the passengers or property are first taken on board in that country, and shall be considered as one flight whether the charter be one-way, round trip, circle tour, or open jaw, even if a separate contract is entered into for a return portion of the charter trip from Canada (or the United States).

(b) The computation shall be made separately for (i) "small aircraft" flights of persons; and (ii) "small aircraft" flights of property.

(c) In the case of a lease of aircraft with crew for the performance of a charter flight on behalf and under the authority of another carrier, the flight shall be included in the computation if the holder is the lessee, and shall not be included if the holder is the lessor.

(d) There shall be excluded from the computation:

(i) Flights utilizing aircraft having a maximum authorized takeoff weight on wheels (as determined by Canadian Transport Commission Regulations) not greater than 18,000 pounds; and (ii) flights originating at a United States terminal point of a route authorized pursuant to the Air Transport Services Agreement between the United States and Canada, signed January 17, 1966, as amended, or any agreement which may supersede it, or any supplementary agreement thereto which establishes obligations or privileges thereunder (if, pursuant to any such agreement, the holder also holds a foreign air carrier permit authorizing individually ticketed or individually waybilled service over such route, and provides some scheduled service on any route pursuant to any such agreement), when the flights serve either (a) a Canadian terminal point on the route, or (b) any Canadian intermediate point authorized for service on the route by the foreign air carrier permit.

(4) The holder may grant stopover privileges at any point or points in the United States only to passengers and their accompanied baggage moving on a Canadian-originating flight operating under a contract for round-trip charter transportation to be provided solely by the holder and as to which the same aircraft stays with the passengers throughout the journey; *Provided*, That the Board may authorize the performance of charters not meeting the requirements set forth.

(5) The Board, by order or regulation and without hearing, may require advance approval of individual charter trips conducted by the holder pursuant to the authority granted by this permit, if it finds such action to be required in the public interest.

(6) The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Canada for Canadian international air service.

(7) The holder shall not operate any aircraft under the authority granted by this permit, unless the holder complies with the operational safety requirements at least equivalent to Annex 6 of the Chicago Convention.

(8) This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Canada shall be parties.

(9) This permit shall be subject to the condition that the holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw convention and The Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

(10) The holder (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of $1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts of liability limits of the third-party liability insurance provided, and (2) shall not provide foreign air transportation with respect to persons unless there is in effect liability insurance sufficient to cover the obligations assumed in CAB Agreement 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request, the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers.

(11) By accepting this permit, the holder waives any right it may posses to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

(12) The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board.

This permit shall become effective on————. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention

[1] Annex B(III)(B) presently authorizes Canadian-originating small aircraft charters of the types prescribed in section (II)(B); but only to the extent applicable to small aircraft pursuant to Canadian Transport Commission Regulations. The applicable types of charters presently authorized are: Single Entity Passenger, Single Entity Property, Pro Rata Common Purpose, and Inclusive Tour (in some instances split passenger charters are authorized).

or agreement, or amendment, which shall have the effect of eliminating the charter foreign air transportation authorized from the transportation which may be operated by carriers designated by the Government of Canada (or in the event of the elimination of part of the charter foreign air transportation authorized, the authority granted shall terminate to the extent of such elimination), or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Canada in lieu of the holder, or (3) upon the termination or expiration of the Nonscheduled Air Service Agreement between the United States and Canada, signed May 8, 1974: *However*, clause (3) of this paragraph shall not apply if, prior to the occurrence of the event specified in clause (3), the operation of the foreign air transporation authorized becomes the subject of any treaty, convention, or agreement to which the United States of America and Canada are or shall become parties.

The Civil Aeronautics Board has directed its Secretary to execute this permit and affix its seal, on the————.

————————,
Secretary.

(SEAL)

Issuance of this permit to the holder approved by the President of the United States on in .

[FR Doc. 78-31597 Filed 11-7-78; 8:45 am]

[6320-01-M]

[Docket Nos. 32708, 32974; Order 78-11-5]

HOUSTON-PHOENIX/TUCSON CASE

Order of Consolidation

Issued under delegated authority November 1, 1978.

North Central Airlines, Inc., has filed an amendment to the application in Docket 32974 that was previously consolidated into Docket 32708. The amended application conforms to the scope of the investigation as expanded by Order 78-9-31, served September 8, 1978, and will be consolidated herein.

Accordingly, pursuant to authority delegated by Order 78-9-31, it is ordered that: Amendment No. 1 to the application of North Central Airlines, Inc., in Docket 32974 is consolidated into the investigation in Docket 32708.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

By Katherine A. Kent, Administrative Law Judge.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31599 Filed 11-7-78; 8:45 am]

[6320-01-M]

[Docket No. 32319; Order 78-10-93]

PIEDMONT AVIATION, INC.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on October 20, 1978.

On April 4, 1978, Piedmont Airlines filed an application to amend its certificate to authorize it to provide nonstop service between Charlotte, Greensboro/High Point, and Columbia, on the one hand, and Tampa, on the other. The application was accompanied by a motion for hearing or, in the alternative, a request for an order to show cause why it should not be granted.

Piedmont alleges, in support of its request, that it will provide two nonstop round trips between Tampa and both Charlotte and Greensboro and one nonstop round trip between Tampa and Columbia, with each flight originating or terminating at other points on its system. It recites several public benefits resulting from implementation of this proposal, including year-round single-plane service in several Tampa markets, improved service between cities already on its system, the reduction of congestion at Atlanta by elimination of connection requirements, fare benefits to passengers, and improved operating conditions resulting from the expected increase in its average passenger haul and aircraft hop. Piedmont also claims that it will achieve a $3 million operating profit, resulting in a $1 million subsidy-need reduction, at the cost of minimal diversion from other carriers.

Answers in support of Piedmont's application were filed by the Raleigh-Durham Airport Authority; the Richmond-Lexington Airport Commission; the Norfolk Port and Industrial Authority; the North Carolina Department of Transportation; the State of Maryland; the Greensboro-High Point Airport Authority; the Greater Charlotte Chamber of Commerce and city of Charlotte; the Commonwealth of Virginia (accompanied by a motion for leave to intervene, which we will grant); and the Tampa Bay Area Parties.[1]

Delta Airlines and Eastern Airlines filed answers in opposition. Delta urges us to take a cautious approach and to defer processing this application until we evaluate the effect of Piedmont's recent extensions to Miami and Boston. It alleges that other, larger and less well-served markets should be given priority in our hearing program, giving as examples its own applications for Atlanta-Greensboro/Ft. Myers/Raleigh authority. Eastern argues that Piedmont has not shown a need for the grant of new authority. It alleges that the Tampa markets are thin and adequately served for their size; that Piedmont's forecast is overly optimistic; that Piedmont's fare proposal is not a significant improvement over existing discount fares; and that Piedmont already has the authority to operate over most of the segments named as part of its service proposal. Piedmont filed a reply to the answers, together with a motion for leave to file an otherwise unauthorized document, which we will grant.

We have tentatively concluded, on the basis of the findings below, that the public convenience and necessity require the amendment of Piedmont's certificate for Route 87 to add a new segment between the terminal point Tampa and the coterminals Greensboro, Charlotte, and Columbia. The authority would be permissive and Category II subsidy-ineligible. We also tentatively find that Piedmont is fit, willing, and able to perform the air transportation it proposes and to conform to the provisions of the Act and to our rules, regulations, and requirements. We also find that our proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, or a major Federal action under the Energy Policy and Conservation Act.

We also tentatively conclude that Piedmont's Tampa application, like its recent Boston and Dallas entry proposals,[2] falls within the class of cases that can be handled by show-cause procedures, because of the absence of any material determinative issue of fact requiring resolution in a formal evidentiary proceeding.

We find that the grant of Piedmont's request will result in significant benefits to the traveling public (see Appendix). Virtually none of the Tampa single-plane markets[3] in Piedmont's proposal received year-round, round-trip single-plane service in 1977. Piedmont's operation will not only provide better service in these markets, but in so doing, will also eliminate the necessity of connecting at At-

[1] Hillsborough County, Pinellas County, the city of Tampa, and the Greater Tampa Chamber of Commerce.

[2] Order 78-4-69, April 14, 1978, made final by Order 78-8-97, August 17, 1978.

[3] These are Tampa-Charlotte, Raleigh, Richmond, Norfolk, Greensboro, Columbia. Only Tampa-New York/BWI received year-round single-plane service.

lanta,[4] thus cutting travel time by about 50 percent in addition to helping to relieve Atlanta's congestion.[5]

Piedmont forecasts a first-year operating profit of $3 million,[6] and we find that there is sufficient traffic in the markets[7] to sustain profitable operations, if not under its proposal, then under a variation. We need not find that Piedmont's precise proposal here, or any other specific service pattern, in fact can be profitably operated. If Piedmont's proposal or a variation can be operated on a profitable basis, service is likely to be provided, and we are persuaded that this has been plausibly shown here.[8] However, even if the service is or becomes unprofitable, the carrier is free, with the permissive, Category II subsidy-ineligible authority we propose to give it, to cease serving the markets. We are satisfied that nothing developed in an oral evidentiary hearing would reverse this conclusion. Finally, neither Delta nor Eastern raised the issue of diversion, and we find that grant of this authority will not threaten the ability of any carrier to perform its certificate obligations or necessarily result in the termination of essential services that cannot be replaced by another carrier.

We will give interested persons 30 days from the date of service of this order to show cause why these tentative findings and conclusions should not ber made final; replies will be due within 10 days thereafter. We expect that objections will be supported by detailed economic or legal arguments. If an oral evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary, and what relevant and material facts the objector would expect to establish through such a hearing that cannot be established in written pleadings. We will not entertain general, vague or unsupported objections.

Accordingly, 1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated here and amending Piedmont's certificate for Route 87 to add a new segment authorizing the nonstop scheduled air transportation of persons, property and mail between the terminal point Tampa/St. Petersburg/Clearwater, Florida, on the one hand, and the coterminal points Greensboro/High Point, N.C., Charlotte, N.C., and Columbia, S.C., on the other;[9]

2. We direct that any interested person having objections to the issuance of an order making final the proposed findings, conclusions, and certificate amendments set forth here shall, no later than November 24, 1978, file with us and serve upon all persons listed in paragraph 7 a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied upon to support the objections; replies to objections shall be filed no later than December 4, 1978;

3. We will give full consideration to the matters raised by timely and properly supported objections before taking further action;[10]

4. In the event no objections are filed to any part of this order, we will deem all further procedural steps relating to such part or parts to have been waived and we will take further action;

5. We grant the motion for leave to intervene filed by the Commonwealth of Virginia;

6. We grant Piedmont's motion for leave to file an otherwise unauthorized document;

7. We will serve a copy of this order upon all persons named in the service list of Docket 32319.

We will publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31598 Filed 11-7-78; 8:45 am]

[4] In FY 1977 about 86 percent of the true O&D in the Tampa-Charlotte, Columbia, Greensboro, Norfolk, Raleigh, Richmond markets used connecting service and about 93 percent of these connections were over Atlanta.

[5] PI-801, Piedmont's motion.

[6] Exhibit PI-401.

[7] In CY 1977 the traffic in various Tampa markets in Piedmont's application was:

Between Tampa and—	True O&D	Interline connex	Total
Charlotte	23,360	1,500	24,860
Columbia, S.C.	10,820	670	11,490
Greensboro	13,050	630	13,680
Norfolk	11,810	120	11,930
Raleigh	15,650	870	16,520
Richmond	11,370	660	12,030
Total	86,060	4,450	90,510

Source: Tables 8 and 10, *O&D Survey.*

[8] As noted in Order 78-4-69, our contention that Piedmont has made a plausible showing that service can be profitably provided is not an element of our tentative public convenience and necessity findings, but rather of our determination to process this application now.

[9] This authority will be permissive and subsidy-ineligible under Category II.

[10] Since we have provided for objections, we will not entertain petitions for reconsideration.

[3510-07-M]

DEPARTMENT OF COMMERCE

Bureau of the Census

ANNUAL SURVEYS IN MANUFACTURING AREA

Consideration

Notice is hereby given that the Bureau of the Census is considering a proposal to initiate or to continue the annual surveys listed below for the year 1978 and for each year thereafter under the authority of Title 13, United States Code, Sections 182, 224, and 225. These surveys, most of which have been conducted for many years, are significant in the manufacturing area. On the basis of information and recommendations received by the Bureau of the Census, the data have significant application to the needs of the public and industry and are not available from nongovernmental or other governmental sources.

The establishments covered by these surveys directly account for the bulk of all manufacturing employment. The information to be developed from these surveys is necessary for an adequate measurement of total industrial production. Government agencies need data on the output of these industries. Manufacturers in the industries involved, as well as their suppliers and customers and the general public, have all requested such data in the interest of business efficiency and stability.

These surveys, if conducted, shall begin not earlier than December 8, 1978.

Most of the following commodity or product surveys provide data on shipments and/or production; some provide data on stocks, unfilled orders, orders booked, consumption, etc. Reports will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys. These surveys have been arranged under major group headings based on the Standard Industrial Classification Manual (1972 edition) promulgated by the Office of Management and Budget for the use of Federal statistical agencies.

MAJOR GROUP 22—TEXTILE MILL PRODUCTS

Broadwoven goods finished; narrow fabrics; and yarn production.

MAJOR GROUP 23—APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS AND SIMILAR MATERIALS

Apparel; brassieres, corsets, and allied garments; and gloves and mittens.

MAJOR GROUP 24—LUMBER AND WOOD PRODUCTS, EXCEPT FURNITURE

Hardwood plywood; softwood plywood; and lumber.

MAJOR GROUP 26—PAPER AND ALLIED PRODUCTS

Pulp, and detailed grades of paper and board.

MAJOR GROUP 28—CHEMICALS AND ALLIED PRODUCTS

Industrial gases; inorganic chemicals; pharmaceutical preparations, except biologicals; and sulfuric acid.

MAJOR GROUP 29—PETROLEUM REFINING AND RELATED INDUSTRIES

Asphalt and tar roofing and siding products.

MAJOR GROUP 30—RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS

Rubber and plastics products.

MAJOR GROUP 31—LEATHER AND LEATHER PRODUCTS

Shoes and slippers (by method of construction).

MAJOR GROUP 32—STONE, CLAY, AND GLASS

Consumer, scientific, technical, and industrial glassware and fibrous glass.

MAJOR GROUP 33—PRIMARY METAL INDUSTRIES

Steel mill products; insulated wire and cable; and magnesium mill products.

MAJOR GROUP 34—FABRICATED METAL PRODUCTS EXCEPT ORDNANCE, MACHINERY, AND TRANSPORTATION EQUIPMENT

Commercial steel forgings; steel power boilers; selected heating equipment; and metal cans.

MAJOR GROUP 35—MACHINERY, EXCEPT ELECTRICAL

Internal combustion engines; tractors, except garden tractors; farm machines and equipment; mining machinery and mineral processing equipment; refrigeration and air-conditioning equipment, including warm air furnaces; computers and office and accounting machines; pumps and compressors; selected industrial air pollution control equipment; and construction machinery.

MAJOR GROUP 36—ELECTRICAL MACHINERY, EQUIPMENT, AND SUPPLIES

Radios, televisions, and phonographs; motors and generators; wiring devices and supplies; switchgear, switchboard apparatus, relays, and industrial controls; selected electronic and associated products, including telephone and telegraph apparatus; electric housewares and fans; electric lighting fixtures; and major household appliances.

MAJOR GROUP 37—TRANSPORTATION EQUIPMENT

Aircraft propellers.

MAJOR GROUP 38—PROFESSIONAL, SCIENTIFIC, AND CONTROLLING INSTRUMENTS; PHOTOGRAPHIC AND OPTICAL GOODS; WATCHES AND CLOCKS

Selected instruments and related products and atomic energy products and services.

The following survey represents an annual supplement of a monthly survey and will cover the same establishments canvassed monthly. There will be no duplication of reporting, however, since the type of data collected on the annual supplement will be different from that collected monthly.

MAJOR GROUP 32—STONE, CLAY, AND GLASS

Glass containers.

The following list of surveys represents annual counterparts of monthly and quarterly surveys and will cover only those establishments which are not canvassed or do not report in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

MAJOR GROUP 20—FOOD AND KINDRED PRODUCTS

Flour milling products.

MAJOR GROUP 22—TEXTILE MILL PRODUCTS

Finishing plant report—broadwoven fabrics; consumption of wool and other fibers, and production of tops and noils; carpet and rugs; and knit fabric production.

MAJOR GROUP 23—APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS AND SIMILAR MATERIALS

Sheets, pillowcases, and towels.

MAJOR GROUP 25—FURNITURE AND FIXTURES

Mattresses and bedsprings.

MAJOR GROUP 26—PAPER AND ALLIED PRODUCTS

Converted flexible packaging products.

MAJOR GROUP 28—CHEMICALS AND ALLIED PRODUCTS

Phosphatic fertilizer materials; and paint, varnish, and lacquer.

MAJOR GROUP 30—RUBBER AND MISCELLANEOUS PRODUCTS

Plastics bottles.

MAJOR GROUP 32—STONE, CLAY, AND GLASS

Flat glass containers; refractories; and clay construction products.

MAJOR GROUP 33—PRIMARY METAL INDUSTRIES

Nonferrous castings; iron and steel foundries; steel inventories (consumers and producers report); and copper inventories.

MAJOR GROUP 34—FABRICATED METAL PRODUCTS EXCEPT ORDNANCE, MACHINERY, AND TRANSPORTATION EQUIPMENT

Plumbing fixtures; steel shipping drums and pails; and closures for containers.

MAJOR GROUP 35—MACHINERY, EXCEPT ELECTRICAL

Construction machinery.

MAJOR GROUP 36—ELECTRICAL MACHINERY, EQUIPMENT AND SUPPLIES

Fluorescent lamp ballasts.

MAJOR GROUP 37—TRANSPORTATION EQUIPMENT

Aircraft engines; complete aircraft; backlog of orders for aircraft, space vehicles, missiles, engines, and selected parts; and truck trailers.

The annual survey of manufactures will collect general statistical data, such as employment; payroll; manhours; capital expenditures; cost of materials consumed; gross book value, retirements, and depreciation of fixed assets; rental payments; supplemental labor costs; information on the quantity of fuels used, etc. This survey, while conducted on a sample basis, will cover all manufacturing industries, including data on plants under construction but not yet in operation.

A survey of research and development (R. & D.) activities will be conducted. The major data to be obtained in this survey will include total R. & D. expenditures by source of funds, the number of scientists and engineers employed, the amounts spent for pollution abatement and energy R. & D., and, for comparative purposes, the total net sales and receipts and the total employment of the company.

A survey of shipments to Federal Government agencies is planned to provide information on the impact of Federal procurement on selected industries and on the economy of States, standard metropolitan statistical areas, and geographic regions.

The annual survey of oil and gas will canvass the industry which provides most of the fuel produced in the United States as well as a substantial portion of the raw material requirements of many industries. The survey will collect information on exploration, development, and production costs; sales volumes and values; drilling activity; and assets in the crude petroleum and natural gas industry.

The annual survey on pollution abatement expenditures is designed to collect from the manufacturing area total expenditures by industry to abate pollutant emissions. The survey covers current operating costs and capital expenditures by industry to reduce pollution in its air, water, or solid forms. It will also obtain the costs recovered from abatement activities and quantities of pollutants abated.

The survey of plant capacity will obtain information such as number of shifts; the actual operating rate; the number of production workers for actual, preferred, and practical operating rates; the reasons for operating at less than capacity; and the length of time required to reach and to maintain practical rates. The survey will be done on a sample basis and will cover all manufacturing industries.

Copies of the proposed forms are available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

Any suggestions or recommendations concerning the subject matter of these proposed surveys should be sub-

mitted in writing to the Director of the Bureau of the Census within 30 days after the date of this publication in order to receive consideration.

Dated: November 3, 1978.

MANUEL D. PLOTKIN,
Director, Bureau of the Census.

[FR Doc. 78-31585 Filed 11-7-78; 8:45 am]

[3128-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

GASOLINE MARKETING ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the Gasoline Marketing Advisory Committee and Ad Hoc Subcommittee will meet Wednesday, November 29, 1978, in the Renaissance Room, and Thursday, November 30, 1978, in the Roman Room of the Biltmore Hotel, 515 South Olive Street, Los Angeles, Calif.

The purpose of the Committee is to provide the Department of Energy with expert and technical advice concerning the wholesale and retail selling of gasoline.

The agenda for the meetings is as follows:

Wednesday, November 29, 1978

Ad Hoc Subcommittee—Renaissance Room, 1 to 4:30 p.m.
Agenda:
- Opening remarks;
- Gasohol in today's motor fleet;
- Potential problems and alternative uses;
- Legislative initiatives;
- Market acceptance;
- Remarks from the floor (10-minute rule).

Thursday, November 30, 1978

Full Committee—Roman Room, 9:30 a.m. to 5 p.m.
Agenda:
- Old business: Follow-up to the prior Committee meeting;
- Report from the Ad Hoc Subcommittee on Gasohol;
- Update on gasoline rationing plan;
- Retail gasoline prices;
- Report on title III of the Dealer Day Act;
- New business: Items for discussion at the next meeting;
- Remarks from the floor (10-minute rule).

The meetings are open to the public. The Chairman of the Committee or subcommittee is empowered to conduct the meetings in a fashion that will, in his judgment, facilities the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee or subcommittee will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements pertaining to agenda items should inform Georgia Hildreth, Director, Advisory Committee Management Office, 202-252-5935, at least 5 days prior to the meeting and reasonable provision will be made to include their presentation on the agenda.

Transcripts of the meeting will be availabe for public review at the Freedom of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcripts from the reporter.

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

WILLIAM P. DAVIS,
Deputy Director of Administration.

[FR Doc. 78-31521 Filed 11-7-78; 8:45 am]

[6740-02-M]

Federal Energy Regulatory Commission

[Docket No. CP79-6]

NORTHERN NATURAL GAS CO.

Application

OCTOBER 30, 1978.

Take notice that on October 4, 1978, Northern Natural Gas Co. (Northern), 2223 Dodge Street, Omaha, Nebr. 68102, filed in docket No. CP79-6, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Northern to construct and operate certain minor sales measuring station facilities and to sell and deliver natural gas in the States of Montana, Oklahoma and Texas to certain pipeline right-of-way grantors, all as more fully set forth in the application which is on file with the Commission and open to public inspection and the appendix hereto.

It is stated that Northern presently has in operation certain minor sales measuring stations in the State of Oklahoma through which the sale and delivery of natural gas is made to Southern Union Gas Co. (So. Union) pursuant to rate schedule X-46 of Northern's FERC Gas Tariff, Original Volume No. 2. It is further stated that such gas is resold by So. Union to Northern's right-of-way grantors and others for use as irrigation engine fuel, residential and other high priority uses.

It is said that seven of Northern's pipeline right-of-way grantors located in So. Union's service areas in Oklahoma have requested natural gas service from its pipeline. It is further stated that granting of authority requested herein would result in an increase in annual sales to So. Union under rate schedule X-46 of 19,660 Mcf, requiring an increase in the authorized annual sales form 726,509 Mcf to 746,169 Mcf.

Also, it is said, Northern has in operation certain sales measuring stations in the state of Texas through which the sale and delivery of natural gas is made to West Texas Gas, Inc. (WTN). It is further said that pursuant to rate Schedule X-40 of Northern's FERC Gas Tariff, Original Volume No. 2, the gas is resold to Northern's right-of-way grantors and others for use as irrigation engine fuel, residential and other high priority uses.

It is stated that one of Northern's pipeline right-of-way grantors located in the State of Texas has requested natural gas service from applicant's pipeline through WTN. It is further said that this gas is for residential heating with an estimated additional annual sales of 188 Mcf, resulting in total annual authorized sales of 2,294,219 Mcf of WTN.

It is said that Northern presently operates certain pipeline facilities in the State of Montana for the purpose of gathering and transporting natural gas volumes purchased from the Tiger Ridge and Sherard areas. It is further said that Northern has received requests from three individuals located in rural areas of Blaine County, Mont., who, being right-of-way easement grantors, desire natural gas service from applicant's pipeline.

Therefore, Northern requests authority to install and operate the required delivery stations for direct sale and delivery of natural gas volumes to the new Montana customers. It is said that such service would be rendered pursuant to terms of a farm tap service contract between Northern and the new customer.

It is said that the above-described small volume industrial, commercial and residential service would provide necessary natural gas volumes for individual rural dwellings for heating, cooking, water heating and clothes drying appliances and seasonal use by forms as irrigation engine fuel.

It is said that each of the 11 proposed measuring stations would be installed at individual locations. It is further said that the facilities would be used to provide service to those right-of-way grantors, who, pursuant to the terms of their easement agreements, have requested natural gas service as partial consideration for the right-of-way granted to Northern.

It is stated that the total cost of the proposed facilities is estimated to be $10,210, and that the costs will be borne by the new top customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 20, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the 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 Northern to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

APPENDIX.—*Market Data*

Utility	Estimated sales (1) in Mcf			
Number and right-of-way grantor	Peak day	Peak month	Annual	Primary end-use
Northern Natural Gas (direct):				
N-1—Burns, T. F. and E. G	*3.2	*60	295	Residential heat.
N-2—Erskine, M. and R. E	*3.2	*60	295	Do.
N-3—Young, J. W. and H. A	*3.2	*60	295	Do.
Total NNG (direct)	9.6	180	885	
Southern Union Gas Co.:				
S-1—Anderson, Richard	*1.0	*20	150	Do.
S-2—Chaloupek, Ron	*1.0	*20	150	Do.
S-3—Clawson, K. B	*54.0	*1,600	13,110	Irrigation.
S-4—Devore, R. A	*1.0	*20	150	Residential heat.
S-5—Hale, J. and O	*1.0	*20	150	Do.
S-6—Hamilton, R. D	*1.0	*20	150	Do.
S-7—Woodson, R. S	*24.0	*700	5,800	Irrigation.
Total Southern Union	83.0	2,400	19,660	
West Texas Gas, Inc.:				
W-1—Doty, K. S	*1.5	*35	188	Residential heat.
Total all projects	94.1	2,615	20,733	

NOTE.—(1) W=Winter; S=Summer.

[FR Doc. 78-31391 Filed 11-7-78; 8:45 am]

[6740-02-M]

[Docket Nos. CI75-729, et al.]

UNION TEXAS PETROLEUM, A DIVISION OF ALLIED CHEMICAL CORP.

Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates[1]

OCTOBER 31, 1978.

Take notice that each of the applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 29, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions 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

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI75-729, C, Oct. 23, 1978	Union Texas Petroleum, a division of Allied Chemical Corp., P.O. Box 2120, Houston, Tex. 77001.	El Paso Natural Gas Co., certain acreage in Eddy County, N. Mex.	(1)	14.73
CI77-443, C, Oct. 24, 1978	General American Oil Co. of Texas, Meadows Bldg., Dallas, Tex. 75206.	Transwestern Pipeline Co., Loco Hills Federal unit well No. 1, Eddy County, N. Mex..	(1)	14.73
CI78-1195, A, Sept. 12, 1978	Mobil Oil Corp., 9 Greenway Plaza, Suite 2700, Houston, Tex. 77046.	Transcontinental Gas Pipe Line Corp., certain acreage in the West Cameron, south addition, block 494 field, Federal offshore Louisiana.	(1)	14.73
CI78-1220 (CI64-1278), B, Sept. 11, 1978.	Sohio Natural Resources Co, 50 Penn Place, Suite 1100, Oklahoma City, Okla. 73118.	Northern Natural Gas Co., Follet field, Lipscomb County, Tex.	Ceased production, plugged, and abandoned June 21, 1975, and lease terminated.	
CI78-1221, A, Sept. 11, 1978	Texas Gas Exploration Corp., P.O. Box 52310, Houston, Tex. 77052.	Northwest Pipeline Corp., South Canyon and Bridle fields, Garfield County, Colo.	(1)	14.73
CI78-1222 (G-3894) (G-8668), B, Sept. 15, 1978.	Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	Texas Eastern Transmission Corp., Jennie Bell field, Dewitt County, Tex.	(2)	
CI78-1223, A, Sept. 15, 1978	American Natural Gas Production Co., 5075 Westheimer, Suite 1100, Galleria Towers West, Houston, Tex. 77056.	Michigan Wisconsin Pipe Line Co., certain acreage in Canadian County, Okla.	(12)	14.65
CI78-1224, A, Sept. 15, 1978	American Natural Gas Production Co	Michigan Wisconsin Pipe Line Co., certain acreage in Major County, Okla.	(12)	14.65
CI78-1225 (G-3894) (G-8880), B, Sept. 18, 1978.	Atlantic Richfield Co	Texas Eastern Transmission Corp., Jennie Bell field, Dewitt County, Tex.	(2)	
CI78-1226, A, Sept. 18, 1978	The Louisiana Land & Exploration Co., 225 Baronne St., P.O. Box 60350, New Orleans, La. 70160.	Alabama-Tennessee Natural Gas Co., certain acreage located in Tatums Camp field, Lamar County, Miss.	(1)	14.73
CI78-1227, A, Sept. 18, 1978	Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	Northern Natural Gas Co., certain acreage in Beaver County, Okla., limited to Morrow Formation.	(1)	14.73
CI78-1228, A, Sept. 18, 1978	Atlantic Richfield Co	Pioneer Gas Products Co., certain acreage in the Oil Creek field area, Bryan County, Okla., limited to Creek Formation.	(1)	14.73
CI78-1229, A, Sept. 18, 1978	Continental Oil Co., P.O. Box 2197, Houston, Tex. 77001.	Phillips Petroleum Co., Dane field, Major County, Okla., limited to Mississippi Formation only.	(4)	14.73
CI78-1230, A, Sept. 20, 1978	Cabot Corp., 1 Houston Center, Suite 1000, Houston, Tex. 77002.	Phillips Petroleum Co., certain acreage in Hansford County, Tex., and Texas County, Okla.	(1)	14.73
CI78-1231, A, Sept. 20, 1978	Continental Oil Co	El Paso Natural Gas Co., certain acreage located in the Eumont and Jalmat fields, Lea County, N. Mex.	(5)	14.73
CI78-1232, A, Sept. 21, 1978	Gulf Oil Co., P.O. Box 2100, Houston, Tex. 77001.	Texas Gas Transmission Corp., certain acreage located in the Simon Pass field, St. Martin, St. Mary, and assumption Parishes, La.	(1)	14.73
CI78-1234, (G-13373), B, Sept. 15, 1978.	Marathon Oil Co., (operator) et al., 539 South Main St., Findlay, Ohio 45840.	United Gas Pipe Line Co., Phoenix Lake field, Calcasieu Parish, La.	(6)	
CI78-1235, A, Sept. 14, 1978	Northwest Exploration Co., P.O. Box 1526, Salt Lake City, Utah 84110.	Northwest Pipeline Corp., Twin Arrows Farm-Out (undesignated field), Rio Blanco County, Colo.	(1)	14.73
CI78-1236, A, Sept. 14, 1978	Northwest Exploration Co	Northwest Pipeline Corp., Lower Horse Draw (undesignated field), Rio Blanco County, Colo.	(1)	14.73
CI78-1237, E, Sept. 21, 1978	Gulf Oil Corp., (successor in interest to Kewanee Oil Co.).	Michigan Wisconsin Pipe Line Co., certain acreage located in the Eugene Island SA block 306 field, offshore Louisiana.	(7)	15.025
CI78-1238, E, Sept. 21, 1978	Do	Michigan Wisconsin Pipe Line Co., certain acreage located in the West Cameron block 171 field, offshore Louisana.	(8)	15.025
CI78-1239, A, Sept. 21, 1978	Helmerich & Payne, Inc., 1579 East 21st St., Tulsa, Okla. 74114.	Michigan Wisconsin Pipe Line Co., Cheyenne field, Roger Mills County, Okla..	(1)	14.73
CI78-1240, A, Sept. 25, 1978	Harper Oil Co., 904 Hightower Bldg., 105 North Hudson, Oklahoma City, Okla. 73102.	Northern Natural Gas Co., Smith Estate No. 1, sec. 21-23N-21W, Woodward County, Okla..	(1)	14.65
CI78-1241 (G-10286), B, Sept. 11, 1978.	Monsanto Co., 1300 Post Oak Tower, 5051 Westheimer, Houston, Tex. 77056.	Arkansas Louisiana Gas Co., J. P. Graham No. 2 well, Lincoln Parish, La..	Lease expired, depleted and plugged and abandoned Feb. 19, 1966.	
CI78-1242 (G-6949), B, Sept. 20, 1978.	Continental Oil Co., P.O. Box 2197, Houston, Tex. 77001.	United Gas Pipe Line Co., Johnson Bayou field, Cameron Parish, La..	(9)	
CI78-1243 (CI77-132), B, Sept. 20, 1978.	Continental Oil Co.,	United Gas Pipe Line Co., Shongaloo area, Webster Parish, La..	(10)	
CI78-1244, B, Sept. 25, 1978	Arlen Spradley et al., P.O. Box 2433, Pampa, Tex. 79065.	Warren Petroleum Co., East Panhandle field, Gray County, Tex..	Wells 5 and 6 were plugged and abandoned May 3, 1975.	
CI78-1245, A, Sept. 25, 1978	Phillips Petroleum Co., 5 C4 Phillips Bldg., Bartlesville, Okla. 74004.	El Paso Natural Gas Co., HNG-Woods "9" Com. No. 2, Malaga field, sec. 9-T24S-R28E, Eddy County, N. Mex..	(1)	14.73
CI78-1246, A, Sept. 25, 1978	The Louisiana Land & Exploration Co., 225 Baronne St., P.O. Box 60350, New Orleans, La. 70160.	United Gas Pipe Line Co., certain acreage located in Ridge field, Lafayette Parish, La..	(1)	15.025
CI78-1247, A, Sept. 25, 1978	Florida Gas Exploration Co., P.O. Box 44, Winter Park, Fla. 32790.	Florida Gas Transmission Co., South Marsh Island blocks 149 and 150, offshore Louisiana.	(1)	15.025

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI78-1248, E, Sept. 25, 1978 ..	Gulf Oil Corp. (Successor in interest to Kewanee Oil Co.), P.O. Box 2100, Houston, Tex. 77001.	Consolidated Gas Supply Corp., certain acreage located in the Sycamore Millstone field, Calhoun County, W. Va..	(11)	14.65
CI78-1249 (G-11224), B, Sept. 25, 1978.	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Texas Eastern Transmission Corp., Bethany Longstreet field, DeSoto Parish, La..	Depleted, plugged, and abandoned, lease has terminated and contract has been canceled.	
CI78-1250, A, Sept. 25, 1978 ..	Chevron U.S.A., Inc., P.O. Box 7643, San Francisco, Calif. 94120.	Transportation Gas Pipeline Corp., South Timbalier blocks 148 and 149, offshore Louisiana.	(1)	14.73
CI78-1251, A, Sept. 28, 1978 ..	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Columbia Gas Transmission Corp., Lake Raccourci field, LaFourche Parish, La.	(1)	15.025
CI78-1252, E, Sept. 28, 1978 ..	Gulf Oil Corp. (successor in interest to Kewanee Oil Co), P.O. Box 2100, Houston, Tex. 77001.	Consolidated Gas Supply Corp., certain acreage located in the Henrietta DeKalk field, Calhoun County, W. Va.	(12)	14.65
CI78-1253, E, Sept. 22, 1978 ..	Gulf Oil Corp. (successor in interest to Kewanee Oil Co.).	Michigan Wisconsin Pipe Line Co., certain acreage located in the Ship Shoal blocks 204, 205, 207, and 216 fields, offshore Louisiana.	(13)	15.025
CI78-1254, A, Sept. 11, 1978 ..	Mobil Oil Corp., Nine Greenway Plaza, Suite 2700, Houston, Tex. 77046.	United Gas Pipe Line Co., certain acreage in the Eugene Island area, block 261 and 262 field, Federal offshore Lousiana.	(1)	14.73
CI78-1255 (CI65-398), B, Sept. 21, 1978.	Phillips Petroleum Co., 5 C4 Phillips Bldg., Bartlesville, Okla. 74004.	Horner & Smith (successor to Tensas Gas Gathering Corp.), Locust Ridge field, Tensas Parish, La.	(14)	
CI78-1256, A, Sept. 22, 1978 ..	Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001.	Trunkline Gas Co., High Island area (east addition—south extension), blocks A-327 and A-332, offshore Texas.	(1)	14.73
CI78-1257 (G-12900), B, Sept. 27, 1978.	Sun Oil Co., P.O. Box 20, Dallas, Tex. 75221.	El Paso Natural Gas Co., Mescalero field, Lea County, N. Mex.	Nonproductive.	
CI78-1258, A, Sept. 28, 1978 ..	Canadian Superior Oil (U.S.) Ltd., P.O. Box 1521, Houston, Tex. 77001.	Sea Robin Pipeline Co., blocks 235 and 244, South Marsh Island area, offshore Louisiana.	(1)	15.025
CI78-1259, A, Sept. 28, 1978 ..	Alminex U.S.A., Inc., P.O. Box 1521, Houston, Tex. 77001.	.....do.....	(1)	15.025
CI78-1260, A, Sept. 25, 1978 ..	Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 57221.	El Paso Natural Gas Co., certain acreage in Rio Arriba County, N. Mex.	(3)	14.65
CI78-1261, E, Sept. 28, 1978 ..	Gulf Oil Corp. (successor in interest to Kewanee Oil Co.), P.O. Box 2100, Houston, Tex. 77001.	Consolidated Gas Supply Corp., certain acreage located in the Burnt House Lucern field, Ritchie County, W. Va.	(15)	14.65
CI78-1262, A, Sept. 28, 1978 ..	Mesa Petroleum Co., P.O. Box 2009, Amarillo, Tex. 79189.	Transcontinental Gas Pipe Line Corp., Brazos area, block 409, offshore Texas, Gulf of Mexico.	(1)	14.73
CI78-1264, A, Sept. 29, 1978 ..	Pan Eastern Exploration Co., P.O. Box 1642, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., High Island area, east addition, south extension, blocks A-327 and A-332, offshore Texas.	(1)	14.65
CI78-1265, A, Sept. 29, 1978 ..	The Superior Oil Co., P.O. Box 1521, Houston, Tex. 77001.	El Paso Natural Gas Co., North Horseshoe Bend field, Eddy County, N. Mex.	(1)	14.73
CI78-1266, E, Sept. 27, 1978 ..	Gulf Oil Corp. (successor in interest to Kewanee Oil Co.).	Consolidated Gas Supply Corp., certain acreage located in the Vadis field, Gilmer and Lewis Counties, W. Va.	(16)	14.65
CI78-1267 E, Sept. 27, 1978 ...	.....do.....	Consolidated Gas Supply Corp., certain acreage located in the Elk Creek field, Barbour County, W. Va.	(17)	14.65
CI78-1268, A, Sept. 27, 1978 ..	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Transwestern Pipeline Co., Rio Pecos field, Eddy County, N. Mex.	(1)	14.73
CI78-1269, E, Sept. 25, 1978 ..	Gulf Oil Corp. (successor in interest to Kewanee Oil Co.).	Consolidated Gas Supply Corp., certain acreage located in the Burnt House Lucern field, Gilmer County, W. Va.	(18)	14.65
CI78-1270, E, Sept. 25, 1978 ..	.....do.....	Consolidated Gas Supply Corp., certain acreage located in the Vandalia field, Lewis County, W. Va.	(19)	14.65
CI78-1271, A, Sept. 26, 1978 ..	Columbia Gas Development Corp., P.O. Box 1350, Houston, Tex. 77001.	Columbia Gas Transmission Corp., certain acreage in Eddy County, N. Mex.	(13)	14.65
CI78-1272, A, Sept. 28, 1978 ..	Exxon Corp.....	El Paso Natural Gas Co., Scarborough field, Lea County, N. Mex.	(1)	14.65
CI78-1273, E, Sept. 27, 1978 ..	Gulf Oil Corp. (successor in interest to Kewanee Oil Co.).	Consolidated Gas Supply Corp., certain acreage located in the Glenville West field, Gilmer County, W. Va.	(20)	14.65
CI78-1274, E, Sept. 27, 1978 ..	Gulf Oil Corp. (successor in interest to Kewanee Oil Co.), P.O. Box 2100, Houston, Tex. 77001.	Consolidated Gas Supply Corp., certain acreage located in the Sycamore Millstone field, Calhoun County, W.Va.	(21)	14.65
CI78-1275, A, Sept. 29, 1978 ..	The Rosewood Corp., 2500 First National Bank Bldg., Dallas, Tex. 75202.	Northern Natural Gas Co., Southeast Arnett field, sec. 10, 11, and 15-T19N-R23W, Ellis County, Okla, limited to Morrow Formation.	(22)	14.65
CI78-1276, A, Sept. 29, 1978 ..	Texaco, Inc., P.O. Box 6052, New Orleans, La. 70160.	Tennessee Gas Pipeline Co., Raphael Pass field, Plaquemines Parish, La.	(1)	14.73
CI78-1277 A, Sept. 29, 1978 ...	Caroline Hunt Trust Estate, 2500 First National Bank Bldg., Dallas, Tex. 75202.	Northern Natural Gas Co., sec. 14-T19N-R23W, Ellis County, Okla., limited to Morrow formation.	(22)	14.65

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI78-1278, A, Sept. 29, 1978	Amoco Production Co., Security Life Bldg., Denver, Colo. 80202.	Panhandle Eastern Pipe Line Co., South Forgan field, Beaver County, Okla.	(1)	14.65
CI78-1279, A, Sept. 29, 1978	Aminoil, U.S.A. Inc., Golden Center 1, 2800 North Loop West, P.O. Box 94193, Houston, Tex. 77018.	Texas Eastern Transmission Corp., certain acreage located in block 606, West Cameron area, offshore Louisiana.	(1)	15.025
CI78-1280 (G-8603), F, Feb. 24, 1978.	American Petrofina Co. of Texas (successor to Continental Oil Co., P.O. Box 2159, Dallas, Tex. 75221.	Texas Eastern Transmission Corp., Helen Gohlke field, Victoria County, Tex.	(22)	14.73

[1] Applicant is willing to accept the applicable national rate pursuant to opinion No. 770, as amended.
[2] Atlantic Richfield Co. no longer has any interest in the properties (leases) covered by the sales contract, certificate, and rate schedule. All wells were depleted and subsequently plugged and abandoned.
[3] Applicant and purchaser are affiliated.
[4] Applicant is filing under gas purchase and sales agreement dated July 18, 1978.
[5] Applicant is filing under gas purchase and sales agreement dated May 8, 1978.
[6] The basic contract was superseded by gas purchase contract dated Oct. 1, 1977, which combined the sale with that authorized by certificate in docket No. G-11819 under Marathon gas rate schedule No. 14. The superseding contract consolidating the sale under rate schedule No. 14 was accepted for filing by the Secretary's letter order issued July 22, 1978.
[7] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Sept. 20, 1972, as amended.
[8] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Oct. 10, 1971.
[9] The only leasehold commitment to the subject contract and rate schedule was sold and assigned to Allegheny American Corp. (⅘) and Royce A. Scott (⅕), effective Aug. 1, 1977.
[10] Continental has assigned, as aforesaid, all of its properties which contribute to the production of gas from the Mitchell A-1, well, Roseberry Formation, Continental's gas from such well and formation being its commitment under rate schedule 432.
[11] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Feb. 13, 1968, as amended.
[12] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Aug. 27, 1952, as amended.
[13] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Jan. 2, 1968.
[14] The last remaining property covered under rate schedule No. 407 was assigned to W. E. Risher effective July 6, 1967. All other leases under this sales agreement had previously expired.
[15] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated May 4, 1955, as amended.
[16] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated July 25, 1961, as amended.
[17] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Apr. 9, 1946, as amended.
[18] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Sept. 24, 1962, as amended.
[19] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated July 27, 1964, as amended.
[20] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Sept. 25, 1969, as amended.
[21] Effective as of July 1, 1978, applicant acquired all of Kewanee's interest in properties covered by contract dated Apr. 22, 1964, as amended.
[22] Applicant is filing under gas purchase contract dated Sept. 22, 1978.
[23] That by assignment dated Nov. 29, 1977 (effective Aug. 1, 1977), Conoco assigned to Petrofina all of Conoco's right, title, and interest in and to the oil and gas leasehold estate and are requesting to continue service of predecessor.

Filing code: A—Initial service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total succession. F—Partial succession.

[FR Doc. 78-31392 Filed 11-7-78; 8:45 am]

[3128-01-M]

Office of Hearings and Appeals

CASES FILED

Week of October 6, 1978, Through October 13, 1978.

Notice is hereby given that during the week of October 6, 1978 through October 13, 1978 the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in such cases may file with the DOE written comments on the application within ten days of service of notice, as prescibed in the procedural regulations. For purposes of those regulations, 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. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 29461.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

OCTOBER 30, 1978.

List of Cases Received by the Office of Hearings and Appeals

[Week of Oct. 6 through 13, 1978]

Date	Name and location of applicant	Case No.	Type of submission
Oct. 6, 1978	City of Long Beach, Long Beach, Calif	DEE-1951	Price exception (sec. 212.73). If granted: The city of Long Beach would be permitted to sell a portion of the crude oil produced from the Upper Terminal VI Reservoir, Long Beach Unit at upper tier ceiling prices.
Do	New England Power Co., Washington, D.C.	DPI-0021	Exception from base fee requirements. If granted: New England Power Co. would be permitted to import residual fuel oil on a fee-exempt basis during the current allocation period, May 1, 1978 through Apr. 30, 1979.
Oct. 10, 1978	Bob Adams (St. Louis Post), Washington D.C.	DFA-0229	Appeal of an information request denial. If granted: The DOE's Aug. 23, 1978, information request denial would be rescinded and Mr. Adams would receive access to EEO-1 forms and other data on hiring practices.
Do	Basin Petroleum, Inc., Long Beach, Calif	DEE-1948	Exception from the entitlements program. If granted: Basin Petroleum, Inc., would be granted an exception from the "reverse entitlements" penalty which would enable Basin to transport residual fuel oil to the east coast market.
Do	Cleary, Gottlieb, Steen, & Hamilton, Washington, D.C.	DFA-0230	Appeal of an information request denial. If granted: The DOE's Sept. 5, 1978, information request denial would be rescinded and Cleary, Gottlieb, Steen, & Hamilton would be granted access to certain DOE memoranda.
Do	Continental Oil Co., Houston, Tex	DEE-1947 and DST-1947.	Allocation exception (sec. 211.10) request for temporary stay. If granted: Continental Oil Co. would receive an exception from the provisions of 10 CFR 211.10(b) with respect to its single allocation requirement. The firm would be granted a temporary stay of the single allocation fraction requirements and would be permitted to implement an emergency allocation program.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Oct. 6 through 13, 1978]

Date	Name and location of applicant	Case No.	Type of submission
Do	Gulf Oil Corp., Houston, Tex	DEE-1952	Price exception (sec. 212.83). If granted: Gulf Oil Corp. would be permitted to adjust its May 1973 marketing cost base, calculated pursuant to 10 CFR 212.83, to reflect the reduction in marketing costs occurring from changes in marketing operations.
Do	Herlocker Fuel Co., Albemarle, N.C	DEE-1950	Exception to change suppliers. If granted: Herlocker Fuel Co. would be the distributor for Shell Products in the Stanly County area, replacing the present supplier, Mainliner Oil Co.
Do	Northland Oil & Refining Co., Tulsa, Okla.	DES-0109	Request for stay. If granted: Northland Oil & Refining Co. would be granted a stay of the provisions of 10 CFR 211.67 with respect to its entitlement purchase obligations pending a final determination on its application for exception.
Do	W. H. Price, Granbury, Tex	DEE-1949	Price exception (sec. 212.54). If granted: W. H. Price would be permitted to retroactively classify the crude oil produced from W. D. Hawthorne lease, located in Jones County, Tex., as stripper well oil for the period of Sept. 1, 1976 to Apr. 1, 1978.
Do	Schultz Gas Service, Inc., Washington, D.C	DSG-0035 and DES-0110.	Request for special redress and stay request. If granted: The Office of Hearings and Appeals would review the Economic Regulatory Administration's modified special report order and compliance with the order would be stayed pending a determination on the firm's petition for special redress.
Do	Taunton Municipal Lighting Plant, Washington, D.C.	DED-0007	Request for discovery. If granted: Discovery would be granted to Taunton Municipal Lighting Plant with respect to certain documents in the possession of Quincy Oil, Inc.
Oct. 11, 1978	Little America Refining Co., Washington, D.C.	DEX-0116	Supplemental order. If granted: The DOE would review the entitlements exception relief granted to Little America Refining Co. during the 1978 fiscal year in order to determine whether the level of relief accorded the firm was appropriate.
Oct. 12, 1978	Chevron, U.S.A. (Tognazzini), Washington, D.C.	DEE-1953	Price exception (sec. 212.73). If granted: Chevron, U.S.A., would be permitted to sell the crude oil from the Tognazzini lease located in Santa Barbara County, Calif. at upper tier ceiling prices.
Do	Damson Oil Corp., Houston, Tex	DEE-1954	Price exception (sec. 212.73). If granted: Damson Oil Corp. would be permitted to sell the crude oil produced from the Venice Beach Unit located in Los Angeles, Calif., at upper tier ceiling prices.
Do	James A. Leonard, Austin, Tex	DRA-0231	Appeal of supplemental remedial order. If granted: The supplemental remedial order would be rescinded and James A. Leonard would not be required to refund overcharges made on sales of crude oil sold to the Permian Corp.
Do	....do	DEE-1958	Price exception (sec. 212.73). If granted: James A. Leonard's Coffield leases located in Milam and Burleson Counties, Tex., would be treated as separate properties.
Do	M. L. Mayfield, Houston, Tex	DEE-1957	Price exception (sec. 212.73). If granted: M. L. Mayfield would be permitted to sell the crude oil produced from the Pine Prairie located in Louisiana at stripper well prices.
Do	Oswego Oil Service Corp., Hempstead, N.Y.	DEE-1956	Exception to reporting requirements. If granted: Oswego Oil Service Corp. would not be required to submit various DOE forms.
Do	Shell Oil Co., Houston, Tex	DEE-1955	Price exception (sec. 212.73). If granted: Shell Oil Co. would be permitted to sell the crude oil produced from the Gas City Red River Waterflood Unit located in Dawson County, Mont., at upper tier ceiling prices.
Oct. 13, 1978	Mid-America Refining Co., Inc., Washington, D.C.	DEE-1959 and DES-1959.	Exception to the entitlements program: Stay request. If granted: Mid-America Refining Co., Inc., would receive an exception to the provisions of 10 CFR 211.67 which would relieve the firm of any obligations to purchase entitlements during the months of July 1978 through December 1978 for its crude oil receipts and runs to still from May 1978 through October 1978. Mid-America Refining Co. would also be granted a stay of its entitlements purchase obligations pending a final determination on its application for exception.
Do	Selby Williams, Piketon, Ohio	DRW-0001	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of Feb. 17, 1978 by DOE region V would be issued as a remedial order by the Department of Energy.

Remedial Orders—Notices of Objection Received

Date	Name and location of applicant	Case No.
Oct. 10, 1978	Marcum Oil Co., Jefferson City, Mo	DRO-0214
Do	Pierremont Petroleum Corp., Dallas, Tex	DEE-1429
Do	Newhall Refining Co., Inc., Dallas, Tex	DXE-1322
Do	Appalachian Flying Service, Washington, D.C	DEO-0125
Oct. 12, 1978	Olympia Exploration Co., Oklahoma City, Okla	DRO-0128
Do	Atlantic Oil Co., Los Angeles, Calif	DRO-0127
Do	Chester F. Dolley, Los Angeles, Calif	DRO-0126

[FR Doc. 78-31495 Filed 11-7-78; 8:45 am]

[3128-01-M]

CASES FILED

Week of October 13, 1978, Through October 20, 1978.

Notice is hereby given that during the week of October 13, 1978 through October 20, 1978 the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in such cases may file with DOE written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, 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. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 29461.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

OCTOBER 30, 1978.

List of Cases Received by the Offiee of Hearings and Appeals

[Week of October 13 through 20, 1978]

Date	Name and locations of applicant	Case No.	Type of submission
Oct. 13, 1978	Amerada Hess Corp., Washington, D.C	DRH-0096 and DRD-0096.	Request for evidentiary hearing and discovery. If granted: Amerada Hess Corp. would be granted discovery of certain DOE materials and would receive an evidentiary hearing with regard to certain issues of fact raised by the proposed remedial order.
Do	Eastern Oil Co, Tallahassee, Fla	DFA-0232	Appeal of an information request denial. If granted: The Sept. 19, 1978, information request denial would be rescinded and Eastern Oil Co. would receive access to certain DOE materials relating to Eastern's August 1974 notice of probable violation.
Do	Exxon Co., U.S.A., Washington, D.C	DFA-0233	Appeal of information request denial. If granted: The Aug. 30, 1978, information request denial would be rescinded and Exxon Co., U.S.A., would be granted access to DOE materials relating to stripper well crude oil.
Oct. 16, 1978	Ashland Oil, Inc., Washington, D.C	DRH-0084	Motion for an evidentiary hearing. If granted: An evidentiary hearing would be convened in connection with Ashland Oil, Inc.'s, statement of objections regarding the proposed remedial order issued to the firm.
Do	Ashland Oil, Inc., Washington, D.C	DRD-0010	Motion for discovery. If granted: Discovery would be granted to Ashland Oil, Inc., with respect to objections to a proposed remedial order, case No. DRO-0084.
Do	Pierson, Semmes, Crolius & Finley, Washington, D.C.	DFA-0234	Appeal of information request denials. If granted: The DOE's Aug. 15, 1978, and Sept. 15, 1978, information request denials would be rescinded and Pierson, Semmes, Crolius & Finley would receive access to DOE materials relating to System Fuels, Inc., and Varibus Corp.
Do	Southland Royalty Co., Fort Worth, Tex	DEE-1964 and DEE-1965.	Price exception (sec. 212.73). If granted: Southland Royalty Co. would be permitted to sell the crude oil produced at its Joss and House Creek Federal leases located in Niobrara County and Campbell County, Wyo., at upper tier ceiling prices.
Oct. 17, 1978	John T. Ackerman, Jr. (Sisseton Bottle Gas Co.), Sisseton, S. Dak.	DRW-0002	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of Apr. 10, 1978, by region VIII would be issued as a remedial order by the Department of Energy.
Do	Robert L. Adams, Corpus Christi, Tex	DRW-0003	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of June 23, 1978, by region VI would be issued as a remedial order by the Department of Energy.
Do	Bassett Oil & Equipment Co., Inc., Alexandria, Va.	DRS-0112	Request for stay. If granted: Bassett Oil & Equipment Co., Inc., would be granted a stay of the requirement that the firm appeal a revised remedial order pending judicial action in a different case.
Do	Butler Fuel Co., Oxford, Mass	DRW-0004	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of Mar. 6, 1978, by region I would be issued as a remedial order by the Department of Energy.
Do	Del's Oil Co., Belton, Mo	DEE-1961	Request to change supplier. If granted: Del's Oil Co. would be assigned a new supplier of motor gasoline to replace its base period supplier, Vickers Petroleum Co.
Do	Greene Oil, Inc., Latcher, S. Dak	DRW-0005	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of Apr. 28, 1978, by region VIII to Greene Oil, Inc., would be issued as a remedial order by the Department of Energy.
Do	Halter Gas Co., Oran, Mo	DEE-1966	Exception to change supplier. If granted: Halter Gas Co. would be assigned a new base period supplier of propane to replace Atlantic Richfield Co.
Do	JEDCO, Inc., Mobile, Ala	DRW-0006	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of June 23, 1978, by region IV would be issued as a remedial order by the Department of Energy.
Do	R. W. Jones and E. Haag, Freer, Tex	DRW-0007	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of June 8, 1978, by region VI would be issued as a remedial order by the Department of Energy.
Do	Mecca Oil Co., Olney, Ill	DRW-0008	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of May 10, 1978, by region V would be issued as a remedial order by the Department of Energy.
Do	Mitchell Energy Corp., Houston, Tex	DRD-0093 and DRH-0093.	Request for evidentiary hearing motion for discovery. If granted: An evidentiary hearing would be convened in connection with Mitchell Energy Corp.'s statement of objections to the July 29, 1978, proposed remedial order issued to the firm. Discovery would also be granted to Mitchell Energy Corp. with respect to certain DOE documents.
Do	O-Kans Fluid Service, Inc., Liberal, Kan	DRW-0009	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of July 12, 1978, by region VII would be issued as a remedial order by the Department of Energy.
Do	Peterson Gas Co., Harlan, Iowa	DRW-0010	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of July 18, 1978, by region VII would be issued as a remedial order by the Department of Energy.
Do	J. L. Pulsipher and W. L. Pulsipher, Salt Lake City, Utah.	DRW-0011	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of May 9, 1978, by region VIII would be issued as a remedial order by the Department of Energy.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of October 13 through 20, 1978]

Date	Name and locations of applicant	Case No.	Type of submission
Do	Raymond Oil Co., Huron, S. Dak	DEE-1960	Price exception (sec. 212.93). If granted: Raymond Oil Co. would be granted a retroactive exception permitting it to increase its prices for No. 2 fuel oil.
Do	South Texas Oil & Gas Producing Co., Inc., Corpus Christi, Tex.	DRW-0012	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of June 9, 1978, by region VI would be issued as a remedial order by the Department of Energy.
Do	Texaco, Inc., White Plains, N.Y	DSG-0036	Request for special redress. If granted: The Office of Hearings and Appeals would order the Economic Regulatory Administration to conclude its rulemaking concerning amendments to the refiner price regulations allowing the allocation of increased costs to gasoline prices.
Do	Thomas Petroleum, Liberal, Kans	DRW-0013	Proposed remedial order for which no objections have been filed. If granted: The proposed remedial order of May 30, 1978, by region VII would be issued as a remedial order by the Department of Energy.
Oct. 19, 1978	Florida Power & Light Co., Miami, Fla	DPI-0022	Exception from base fee requirements. If granted: Florida Power & Light Co. would be permitted to import residual fuel oil on a fee-exempt basis during the period May 1, 1978, to Apr. 30, 1979.
Do	Husky Oil Co. of Delaware, Washington, D.C.	DEZ-0112	Interlocutory order. If granted: The exception proceeding initiated by the Husky Oil Co. of Delaware (case No. FEE-3231) would be reopened for reconsideration.
Do	Mobil Oil Corp., Washington, D.C	DEA-0235	Appeal of the Canadian crude oil allocation notice. If granted: The DOE's Canadian crude oil allocation notice would be modified and the Economic Regulatory Administration would be directed to change the priority designations of certain refineries.
Do	Mobile Bay Refining Co., Washington, D.C	DPI-0023	Exception from base fee requirement. If granted: Mobil Bay Refining Co. would be permitted to offset future oil import license fee payments with tariff duties incurred and paid during the period October 1977 through April 1978.
Do	Olympian Oil Co., San Francisco, Calif	DMR-0033	Request for modification. If granted: The order issued to Olympian Oil Co. by the Fuels Regulation Division of region IX of the Department of Energy would be rescinded, and Pacific Refining Co. would not replace Gulf Oil Corp. as the base period supplier of Olympian Oil Co.
Oct. 18, 1978	Pawnee Petroleum Co, Seminole, Okla	DRX-0117	Supplemental order. If granted: The ordering par. (3) of DOE Aug. 9, 1978, decision and order would be rescinded and a new ordering paragraph relating to the firm's appeal rights would be substituted in its place.
Oct. 19, 1978	Phillips Petroleum Co., Bartlesville, Okla	DEE-1967	Price exception (sec. 212.73). If granted: Phillips Petroleum Co. would be permitted to sell the crude oil produced from the Arntson lease, located in Divide County, N. Dak, at upper tier ceiling prices.
Do	Texas Pacific Oil Co., Inc., Dallas, Tex	DXE-1970	Extension of relief granted in *Texas Pacific Oil Company*, case No. DEE-0910 (decided July 6, 1978) (unreported decision). If granted: Texas Pacific Oil Co., Inc., would be permitted to increase its prices to reflect nonproduct cost increases incurred in producing natural gas liquids and natural gas liquid products at the Enville Gas Plant.
Do	True Oil Co., Casper, Wyo	DEE-1969	Price exception (sec. 212.73). If granted: True Oil Co. would be allowed to sell crude oil produced at its Laubach properties located in McCone County, Mont., at upper tier ceiling prices.

Notices of Objection Received

Date	Name and locations of applicant	Case No.
Oct. 19, 1978	McCulloch Gas Processing Corp., Washington, D.C	DXE-1617 and DXE-1618
Do	Sentry Refining, Inc., Washington, D.C	DEE-1459

Proposed Remedial Order—Notices of Objection Received

Oct. 18, 1978	J-W Operating Co., et al., Dallas, Tex	DRO-0130
Oct. 19, 1978	Callon Petroleum Co., Natchez, Miss	DRO-0131
Oct. 16, 1978	J. R. Parten, Houston, Tex	DRO-0129
Oct. 19, 1978	J-W Operating Co., Dallas, Tex	DRO-0133
Do	do	DRO-0132
Do	do	DRO-0134
Do	Memphis Aero Corp., Washington, D.C	DRO-0135

[FR Doc. 78-31494 Filed 11-7-78; 8:45 am]

[3120-01-M]

Office of Intergovernmental and Institutional Relations

NATIONAL ENERGY EXTENSION SERVICE ADVISORY BOARD

Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that a special subcommittee of the National Energy Extension Service Advisory Board will meet Tuesday, November 28, 1978, from 1 p.m. to approximately 5 p.m. and Wednesday, November 29, 1978, from 9 a.m. to approximately 12 noon, at the Green Center, Colorado School of Mines, Golden, Colo.

The purpose of the Board is to carry out a continuing review of the operation of the comprehensive Energy Extension Service program and the State Energy Extension Service plans to evaluate their effectiveness in achieving the objectives of the Nation-

al Energy Extension Service Act (Pub. L. 95-39, title V) and determining how their operation might be improved in order to further these objectives.

The purpose of the special subcommittee of the Board is to identify and recommend to the Board the specific concerns and issues which the Board should address and the methods and procedures, including a budget, for dealing with those concerns and issues.

The sole agenda item for this meeting of the subcommittee is to fulfill the purpose as stated above.

The meeting is open to the public. The Chairman of the subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda should inform Georgia Hildreth, Director, Advisory Committee Management, 202-252-5935, at least 5 days prior to the meeting, and reasonable provision will be made for their presentation.

The transcript of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

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

WILLIAM P. DAVIS,
Deputy Director of Administration.

[FR Doc. 78-31520 Filed 11-7-78; 8:45 am]

[3128-01-M]

Office of Conservation and Solar Applications

FOOD INDUSTRY ADVISORY COMMITTEE; SUBCOMMITTEE ON TRANSPORTATION AND DISTRIBUTION

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the Subcommittee on Transportation and Distribution of the Food Industry Advisory Committee will meet on Wednesday, November 29, 1978, from 9 a.m., until 12 noon, in Room 7E-083, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C.

The parent Committee was established to provide the Secretary of Energy with recommendations and advice with respect to the development and implementation of policies and programs affecting the food industry.

The subcommittee will make recommendations to the parent Committee concerning energy efficiency for transportation and distribution in the food system. The tentative agenda is as follows:

9 to 11 a.m.—Presentation by officers from the Department of Transportation, U.S. Department of Agriculture, Interstate Commerce Commission, Federal Trade Commission, and Department of Energy regarding energy efficiency for transportation and distribution in the food system.

11 to 11:30 a.m.—Discussion.

11:30 a.m.—Public comment.

The meeting is open to the public. The Chairman of the subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should inform Georgia Hildreth, Director, Advisory Committee Management Office, 202-252-5935, at least 5 days prior to the meeting and reasonable provision will be made to include their presentation on the agenda.

The transcript of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

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

WILLIAM P. DAVIS,
Deputy Director
of Administration.

[FR Doc. 78-31522 Filed 11-7-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[FCC 78-765, CC Docket No. 78-356; File No. 324-CSG-P-78]

COMMUNICATIONS SATELLITE CORP.

For Authority To Construct a Temporary Communications Satellite Earth Station in Lake Placid, N.Y., Operation With Atlantic Primary Path Satellite for Television Transmission of the Events of the 1980 Winter Olympic Games; Memorandum Opinion and Order

Adopted: October 25, 1978.

Released: November 6, 1978.

By the Commission:

1. Presently before the Commission is the application of Communications Satellite Corporation (Comsat) for authority pursuant to sections 214, 308, 309, 319 of the Communications Act of 1934, as amended, and sections 201(c)(6) and 201(c)(7) of the Communications Satellite Act of 1962 for authority to:

(1) Construct an 11-meter Earth station facility; and

(2)To provide special television transmission service to the European Broadcasting Union (EBU), as an authorized user, for the provision of service at the 1980 Olympic Games to be held in Lake Placid, N.Y.

2. This application was filed by Comsat on July 27, 1978 and was placed on public notice of "International and Satellite Radio Applications Accepted for Filing" on July 31, 1978. Copies of the application together with notices extending the opportunity to file comments were mailed to all interested parties, including those required by statute to be served.

3. Petitions to deny this application were filed by ITT World Communications Inc. (ITT Worldcom), RCA Global Communications, Inc. (RCA Globcom), and Western Union International, Inc. (WUI). These are entities which currently provide international television transmission service.

4. Comments in support of Comsat's application were filed by the EBU. Comsat represents the EBU to be a nongovenmental Swiss association of broadcasting organizations.

5. Comsat proposes to erect an 11-meter, standard B, Earth station to operate directly with an Intelsat satellite in the Atlantic Ocean region. The service to be provided will permit the transmission of two television wideo channels with appropriate program audio channels for each video channel.

6. Comsat represents that the period of service to be provided by this earth station will extend from February 6 through February 25, 1980. To provide this service Comsat will purchase an appropriate standard B Earth station and staff it with its personnel and make the necessary arrangements for the provision of this service. Comsat has included a signed contract with the EBU binding itself to provide service at the agreed upon rate. Section 8(b) of this agreement provided that the failure to receive FCC authorizations by September 27, 1978, will terminate the agreement. Comsat has since informed the Commission that the period for Commission approval has been extended to October 4, 1978. Later Comsat informed the Commission that the period had been further extended to October 5, 1978.[1]

7. Comsat states that locating an Earth station in Lake Placid will be technically and operationally superior to accessing the existing Andover and Etam Earth stations via landlines. It further notes that the EBU specifically has asked Comsat to construct the special Earth station to service its needs.

8. Comsat estimates the cost of constructing the proposed Earth station equipped to transmit two half-transponders television channels and two audio channels to be $589,000. Comsat states that the operating cost to provide television services to EBU from the Lake Placid Earth station will be about $289,000. According to Comsat the EBU will pay a total of $365,000 for a minimum service period of 125 hours. Comsat claims this figure will fully cover operating costs and contribute $76,000 to capital costs. Any service requirements in excess of 125 hours will be charged to the EBU at the prevailing Comsat television rates.

9. All the international record carriers (IRC's) participating in this proceeding have petitioned the Commission to deny this application. Their objections go to the manner by which Comsat will provide service to the EBU, the cost of providing the service, and Comsat's claim that an immediate decision is needed from the Commission on the subject application.

10. WUI argues that Comsat's application demonstrates that the proposed Earth station is economically unsound. Comsat, it is stated, has failed to provide sufficient ecomonic information to the Commission. Further, Comsat allegedly has failed to provide any information to the Commission that establishes possible future uses which would permit Comsat to amortize the large capital cost involved in the acquisition of an Earth station of this size. WUI further argues that Comsat's application fails to comply with § 214 and § 63.01 of the Commission's rules.[2]

12. After reviewing Comsat's application and the comments filed against it, we question whether the proposal is economically viable and whether it could result in the American ratepayers subsidizing this proposal.[3] Examining Comsat's application, we find the contribution to capital cost to be at best $76,000. Indeed WUI alleges that Comsat will not even recover its operation costs from the EBU. When faced with these allegations and arguments, Comsat argues that it should not be required to recover the total capital costs from the EBU, but fails to identify specific future uses which can be used to cover the capital costs of the Lake Placid facility. The Commission questions whether Comsat's proposal would unduly burden its other customers and the end users of its service. Given this concern, we believe that under section 309 of Communications Act of 1934, we must designate the subject application for hearing.

13. We also note that Comsat's cost and revenue information does not meet the requirement contained in section 63.01(m) of the rules that the applicant provide the Commission with the "economic justification for the proposed project including, where the application involves an extension into new territory at present not directly served by the applicant, estimated added revenue and costs therefor."

14. Moreover, the IRC's also have raised the issue of anit-competitive pricing. They claim Comsat's rates for this special service appear to be noncompensatory for the service provided to the EBU. While the IRC's have not proven their contentions, we must conclude that Comsat's information is not sufficient to make a determination on this issue. The anti-competitives aspects of Comsat's proposal for the EBU are clearly at issue.

15. Finally we find that Comsat's application has failed to comply in major areas with the information requirement of section 214 of the Communi-

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[1] While we do not have any evidence that Comsat and the EBU have extended the contract again, they have indicated an intention to re-execute the contract if the Commission acts favorably on the subject application during the week of October 23, 1978.

[2] Section 63.01 of the Commission's rules sets forth the information required to be submitted in a 214 application necessary to permit the Commission to make its public interest determination.

[3] Comsat is the designated U.S. entity for participation in Intelsat. As such it supplies as a de jure monopolist international satellite service to U.S. carriers who then serve the end user. See Communications Satellite Act 47 U.S.C. 701-744.

cation's Act and Part 63 of the Commission's rules. While Comsat notes in its opposition that its application contains all the essential information required of a 214 application, we find that not to be the case. The applicant has failed to give detailed cost information as required in § 63.01(k)(1), and it has failed to provide the information required by § 63.01(a)-(e), and § 63.01(p) of our rules.

16. In view of these deficiencies we do not find it necessary to further consider the section 214 aspects of Comsat's application at this time. Since the Olympic games and the need for the Earth station are more than a year away Comsat will have ample time to file an appropriate application under section 214 during the pendency of proceedings on this application should EBU continue to want to order service from Comsat at Lake Placid.

17. We, however, are designating the title III aspects of Comsat's application for hearing for the reasons explained in paragraphs 12 and 14 above. We do not believe that this action will jeopordize delivery of television coverage of the 1980 Olympic games to Europe since Comsat never alleges that other than immediate favorable action on its application would result in EBU not obtaining coverage of the 1980 Olympic games. Indeed, our review of the terrestrial network in the Lake Placid area indicated that terrestrial microwave service could easily be available in advance of the 1980 Olympic games.

18. Accordingly, *It is ordered,* That authority requested by Communications Satellite Corp. pursuant to section 214 of the Communications Act is hereby denied for failure to comply with § 63.01 of the Commission's rules.

19. *It is further ordered,* That a hearing in this proceeding at the Commission's offices in Washington, D.C. at a time to be specified and that an administrative law judge be designated to preside at the proceeding. Should Comsat not wish to prosecute this application, it should seek dismissal of the application.

20. *It is further ordered,* That, without limiting the scope of the proceeding, it shall include consideration of the following:

(a) Whether Comsat will fully recover the capital and operating costs associated with the Lake Placid application from EBU?

(b) Whether if Comsat will not fully recover the cost associated with providing service from Lake Placid to the EBU, how much the shortfall will be and how will the shortfall be recovered?

(c) Whether granting Comsat's Lake Placid application will be anticompetitive in effect?

(d) Whether in light of the evidence adduced in these matters the grant of application file No. 324-CSGH-P-78 would be in the public interest?

21. *It is further ordered,* That the Communications Satellite Corporation, ITT World Communications, Inc., RCA Global Communications, Inc. and Western Union International Inc., are made parties respondent hereto, and that any other carrier and interested person shall have leave to intervene herein upon the filing of notice of intention to appear and participate within 20 days of the release date of this order in the FEDERAL REGISTER.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-31573 Filed 11-7-78; 8:45 am]

[6712-01-M]

[FCC 78-772]

FCC ESTABLISHES MINORITY BUYERS LISTING

NOVEMBER 2, 1978.

As a means of fostering minority ownership of broadcast properties, the Federal Communications Commission will maintain a list of minority persons who are interested in purchasing broadcast facilities. The list, which will be public information, will be kept on file at the FCC in the Consumer Assistance Office (CAO) and the Industry EEO Office (IEEO). Copies will be made available upon request to the CAO or the IEEO Office.

The list will consist of minority persons who are interested in purchasing a broadcast facility and who wish to make their interests known to sellers, brokers, and other persons who are looking for station buyers. A copy of the current listing will be made available and sent out when requests are received.

The Commission noted, however, that neither inclusion nor exclusion from the list is indicative of qualification for licenseeship. Nor does inclusion on the list have any bearing on actions the Commission might take involving license applications by parties on the list; each licensing action must, by law, be decided on the merits of the individual application.

Minority persons who wish to be on the list should use the reverse side of this notice to supply the information they would like to have on file. It is necessary to read the instructions carefully before filling out the information. Sign the form and submit it to the FCC.

Completed forms, questions, additional forms and requests for copies of the list should be sent directly to the Federal Communications Commission, in care of the following offices:

Consumer Assistance Office, 1919 M Street NW., Room 258, Washington, D.C. 20554, 202-632-7000; or

Industry EEO Office, 1919 M Street NW., Room 646, Washington, D.C. 20554, 202-254-6530.

Upon submitting this form, you will be added to the FCC's Minority Buyers Listing. The listing will be public information, on file at the FCC, and will be made available upon request. Using the guidelines and space below, supply the information you would like to have on file. Please sign the form and return it to one of the offices listed on the reverse side.

Name _____
Address _____

_____

Phone: (optional) _____
Type of facility (AM, FM, TV) _____
Price range: (optional) _____
Daytime/fulltime operation: _____
Desired location: (optional) _____

_____

Additional information: (optional) _____

_____

(The information contained herein is available for public inspection.)
Signature) _____

Action by the Commission October 31, 1978. Commissioners Ferris (chairman), Lee, Quello, Washburn, Fogarty, White and Brown.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-31572 Filed 11-7-78; 8:45 am]

[6712-01-M]

[FCC 78-718; BC Docket No. 78-332, File No. BRH-965]

PATRICK HENRY

For Renewal of License of Station KJAZ(FM) Alameda, Calif.; Order Designating Application for Hearing on Stated Issues

Adopted: October 5, 1978.

Released: November 3, 1978.

By the Commission: Commissioner Brown concurring in part and dissenting in part and issuing a statement.

1. The Commission has before it: (1) The license renewal applications for station KJAZ(FM), Alameda, Calif., filed August 1, 1974 and August 1, 1977, by its licensee, Patrick Henry; (2) a petition to deny the former application, filed November 1, 1974, by the Committee for Open Media, San Francisco Chapter (COM), and related pleadings; (3) a petition for reconsideration of the Commission's action on the application and the petition to deny, filed August 2, 1976, by COM, and related pleadings; and (4) a "petition for emergency relief," filed April 13, 1978, by COM, and related pleadings.

BACKGROUND

2. By memorandum opinion and order, 59 FCC 2d 1204, released July 2, 1976, the Commission granted the above-captioned renewal application without hearing and denied COM's petition to deny; and subsequently denied COM's petition for reconsideration of that decision, 62 FCC 2d 293, released January 6, 1977. On February 1, 1977, COM appealed the Commission's action to the U.S. Court of Appeals for the District of Columbia Circuit *sub nom. Committee for Open Media* v. *FCC*, D.C. Cir. No. 77-1135. In preparing to oppose the appeal, the Commission realized that certain facts relating to the station's public affairs programing set forth infra were subject to conflicting interpretations. On July 15, 1977, it filed a motion for remand of the case, and a later supplement thereto, in order to consider fully these matters in an evidentiary hearing. That motion was granted by the Court per curiam on November 21, 1977.

3. At its April 5, 1978 open meeting, while considering a proposed order dealing with KJAZ(FM)'s renewal, the Commission expressed concern over information that COM and its individual members might have engaged in extortion of the license. Accordingly, the Commission deferred action on the order until these charges could be explored. The charges were investigated and, as set forth at paragraphs 8-11, infra, there apear to be serious questions remaining concerning petitioner's conduct which must be fully explored in hearing. Finally, on April 13, 1978, petitioner filed a "petition for emergency relief," requesting that the Commission stay its investigation of petitioner; stay licensee from prosecuting a civil suit which it filed against petitioner, and to intervene in that proceeding; and specify a character issue against licensee for harassing and intimidating petitioner by filing that suit. For the reasons set forth at pragraphs 12-18, infra, we are denying petitioner's request, in part, but are specifying an issue to explore the facts and circumstances surrounding the filing of licensee's civil suit. Accordingly, this order designates KJAZ(FM)'s supplemented 1974 renewal application for evidentiary hearing on approprate programing issues, pursuant to the Commission's representation in its motion to the court of appeals, as well as issues relating to petitioner's conduct and licensee's qualifications to remain a Commission licensee.

PAST PROGRAMING

4. On appeal, COM challenged the Commission's renewal of Henry's license on the basis of arguments of, inter alia, an inadequate level of public affairs programing and failure to perform as promised in that area of programing. In formulating its initial memorandum opinion and order, supra, it appeared to the Commission that Henry's only public affairs program, response, was broadcast fron one-half hour to 1 hour per week on a regular basis during the 1971-1974 license term, and thus it found it unnecessary to inquire further into the amount of his past public affairs programing. 59 FCC 2d at 1212-13. As to the question of promise versus performance, the Commission found that during that term there had been a reduction in Henry's public affairs programing, as compared with his 1971 proposal, of 75 percent for the composite week and 25 percent for an additional month (February 1974) selected by Henry. The Commission admonished Henry for this reduction, but concluded that the matter was not serious enough to warrant a hearing. ID. at 1214. However, it stated it carefully would scrutinize the station's 1977 renewal application to insure complance with Henry's 1974 program proposals and presentation of sufficient nonentertainment programing to warrant a grant of that application. Id. at 1215.[1]

5. In its comments on the Commission's supplement to its motion for remand, Henry argued, in essence, that the various programming exhibits and 1976 amendment to its application, and the relevant portions of his opposition to the petition to deny, support the grant of the application, and thus the Commission's claimed inconsistencies in the record are unsubstantiated "prejudicial gleanings" from that record. We disagree. Exhibit 6 to Henry's application ("supplemental statement as to past programming") states that Response "usually" was broadcast twice weekly, presumably during the entire 1971-1974 license term. However, exhibit 7 (typical and illustrative past programming which has served public needs and interests) states that Response was carried once a week with a 30-minute duration. Further, exhibit 4 (typical and illustrative proposed programming to meet community needs and interests) states that Response "[is] broadcast at least once a week" for 30 minutes. Moreover, although in his November 29, 1974 opposition, Henry says he had "increased the number of Response programs by 50 percent (an extra one every other week)", in an attachment to that pleading he listed the Response programs broadcast from July 21 to November 24, 1974, which listing never included more than one program per week. Indeed, there were 4 weeks during that 19-week period in which no program was listed. Finally, on February 13, 1976, at the request of the Commission's Broadcast Bureau, Henry filed an amendment to his renewal application listing the topics and subjects discussed on Response during the year prior to the filings of the application. That amendment listed a total of 30 topics and subjects. Licensee did not supply the dates when these topics were broadcast, nor is there any assertion that the same topics were covered on different programs during different weeks. Thus, it appears that conceivably licensee failed to broadcast Response for up to 22 weeks during that period.

6. Thus, in light of the inconsistencies in the record set forth above—and particularly in view of the information contained in Henry's attachment to his opposition and the 1976 amendment to his application—we cannot ascertain the frequency of broadcast of the program Response during the entire term in question. That uncertainty becomes a matter of critical focus in the instant proceeding because, although ordinarily we would not inquire in such depth into the precise frequency of the broadcast of any particular program, see *Columbus Broadcasting Coalition* v. *FCC*, 505 F. 2d 320, 327, (D.C. Cir. 1974), here the station broadcast no news and Response was its only actual public affairs program. Clearly, there was a substantial reduction in Henry's public affairs programming in the composite week and in the additional selected month, as compared with his proposal (see para. 3, supra). However, the facts outlined supra demonstrate a priori that, on the record before us, we cannot estimate accurately the degree to which Henry's public affairs programming fell short of the levels promised during the entire license term. In this regard, we carefully have scrutinized Henry's arguments to the court in his comments on the Commission's supplement to its motion for remand that the interrelated exhibits to his renewal application show that the one-half hour of Response promised was regularly scheduled and the commitment exceeded; and that neither the information in the attachment to his opposition nor that in his 1976 amendment was represented as being all-inclusive concerning the broadcast of that program. To the contrary, as set forth supra, we find that overall record unsupportive of the former assertion; and the opposition attachment and 1976 amendment, even construed most favorably to Henry, plainly are devoid of the subse-

[1] The Commission also found unrebutted evidence of mislogging of entertainment, educational, and public service announcement programing as public affairs. Although no forfeiture was imposed for these violations, it stated it would scrutinize closely the 1977 application with particular regard to Henry's logging practices. 59 FCC 2d at 1207.

quently-advanced latter contention. Therefore, substantial and material questions are presented as to the adequacy and responsiveness of Henry's public affairs programming to meet the needs and interests of his community during the 1971-1974 license term, as well as to the amount of such programming actually broadcast during that term compared with that proposed. Accordingly, appropriate issues will be specified infra.

EXTORTION, INTIMIDATION AND HARASSEMENT ALLEGATIONS

7. As noted supra, various charges and counter-charges have been made by licensee and petitioner alleging improper activities and conduct by the other party. The record now contains numerous additional pleadings, including replies to replies and supplements to supplements. The Commission is well aware of the climate of this proceeding from its beginning in 1974 to the present. There has been a great deal of public support for KJAZ (FM) and its jazz format, as evidenced by numerous commendatory newspaper and magazine articles and the volume of mail received by the Commission in support of the station.[2] We also are aware of the amount of criticism of petitioner and ill-will expressed against it for exercising its legal rights to petition to deny a broadcast license renewal. Further, as noted infra, licensee has filed suit against COM, which action resulted in its filing of the instant petition for emergency relief containing charges of intimidation and harassment of COM by licensee. Indeed, this proceeding, involving a small FM station in Alameda, Calif., has turned into a virtual battleground where the programming issues confronting licensee have been deemphasized and issues other than the licensee's programming have come to the fore. Within this troublesome context, the Commission has attempted to make an objective review of the facts to determine whether issues should be specified exploring the charges of misconduct on the part of both parties. The Commission having reached a determination on these matters below, we anticipate the parties now will proceed promptly to hearing on the specified issues so that the KJAZ(FM) renewal matter finally may be resolved. To assure a prompt resolution of the issues herein, the Chief Administrative Law Judge is instructed to expedite this proceeding. (See paragraph 22, infra). We turn first to the allegations against COM.

8. *Extortion charges against COM.* Various allegations were brought to the Commission's attention that Phillip Jacklin, president of COM had made an offer to purchase station KJAZ(FM) in return for withdrawing COM's petition to deny. The Commission, on its own motion, decided to explore these charges. Accordingly, Commission staff members interviewed several interested parties in and around San Francisco, Calif. from April 12-15, 1978. Specifically, the following persons were interviewed: Patrick Henry, licensee of KJAZ(FM); Lester Spillane, communications counsel for the station; Andrew A. Stern, a lecturer at U. C. Berkeley; David Braun, general manager of the station; John Wasserman, music critic for the San Francisco Chronicle; and Phillip Jacklin, president of COM.

9. The investigation disclosed the following. A meeting between Jacklin and representatives of KJAZ(FM) was arranged at the request of David Braun and was held on August 29, 1977, in Lester Spillane's office. At that meeting, Jacklin presented a proposal whereby KJAZ(FM) would be sold by Henry to a nonprofit corporation; the purchase price would be $1,000,000 with no money down and no security arrangements; the corporation would be governed by a nine-member board of directors, five black and four nonblack; Henry would appoint four members and COM would appoint four members with the final member being appointed by a local black group; and Henry and his wife would be permitted to draw a salary from the corporation. According to Jacklin, he was concerned about obtaining a long-term commitment from Henry because he was afraid Henry would sell the station and thereby the station's format might be changed. Henry also stated that he had indicated that he might be interested in selling the station due to the prolonged FCC litigation over his license renewal. Jacklin himself said he regarded the proposal as a bargaining point and not as an ultimatum. However, several persons stated that in conversations with Jacklin in late 1977, he indicated that he considered the sale to a nonprofit corporation as the only basis for withdrawing his petition to deny.[3]

10. After reviewing the material gathered in connection with the field investigation and the various related pleadings and filings in this proceeding, we believe that substantial and material questions remain as to petitioner's conduct in filing and prosecuting its petition to deny against KJAZ(FM). On the one hand, it appears that Jacklin may have advanced the proposal in good faith believing that such a proposal would save the jazz format of the station and provide a broadcast outlet for the black community. It also appears that Jacklin may have viewed the proposal as a negotiating point and not as an ultimatum. On the other hand, Andrew Stern's statement suggests that Jacklin may have had another motive in proposing the nonprofit corporation and, indeed, in prosecuting the petition against KJAZ(FM)—e.g., using the petition to deny to acquire a broadcast station for COM. The timing of Jacklin's proposal may also be significant in that the proposal was made on August 29, 1977, shortly after the Commission indicated to the court of appeals that it was seeking a remand of the case to designate the station's renewal application for hearing. This situation could have afforded Jacklin an opportune moment to present his purchase proposal. Additionally, Jacklin's insistence that Henry turn the station into a nonprofit corporation, together with the actual terms of the proposal—e.g., that there was to be no security, no down payment, and COM would appoint four of the nine board members—add further support to the inference that petitioner may have abused the Commission's process.

11. We are aware of the sensitive and unusual nature of these charges and we wish to make clear that we in no way wish to cast a chilling effect on those parties who seek to negotiate to resolve differences by entering into broadcaster-citizens agreements or who desire to exercise their right to file petitions to deny against broadcasters. However, we equally are concerned that those who use our processes do not abuse those processes or utilize them in such a manner as to improperly influence broadcast licensees. We are faced here with conflicting facts or uncontested facts which lend themselves to conflicting interpretations as to the motives underlying the filing and prosecution of the petition to deny filed against KJAZ(FM). Since we are unable to resolve this serious

[2] Since the court remand of this case, we have received approximately 1,000 letters in support of the station and its past and proposed programing.

[3] Specifically, Andrew A. Stern, lecturer in Journalism at U. C. Berkeley, stated that during the course of an interview with Jacklin in December 1977:

Jacklin told me: "We would like to have our own station, but do not have the money to buy a license." Jacklin indicated that forcing Henry to sell would be one way of obtaining one (a license). Jacklin indicated that his continued involvement in the KJAZ proceeding was not only to "enforce the law" but also get control of the station. We then discussed COM's offer to KJAZ and how the station would be run.

John A. Wasserman, critic of the San Francisco Chronicle, stated that he contacted Jacklin on or about November 27, 1977 regarding KJAZ(FM); he asked Jacklin what it would take on the part of KJAZ(FM) management for Jacklin to withdraw his petition to deny against the station; and Jacklin replied that the station would have to "guarantee that KJAZ remain a jazz station by transferring the license to a nonprofit corporation."

matter on the facts before us, we believe that the matter should be fully explored in hearing.[4] Therefore, an apporporate issue will be specified infra.

12. *Intimidation and harassment charges against licensee.* As noted supra, the record herein has been expanded by numerous additional pleadings—viz., a total of 14 documents. The primary pleadings are a petition for emergency relief, filed April 13, 1978, by COM, and supplements thereto; and licensee's motion to strike that petition, dated April 27, 1978. The essential relief requested by COM is that the Commission: (a) Issue an order staying Henry from further prosecution of its civil suit filed against COM; (b) order the termination of its investigation (see paragraphs 8-10, supra); (c) intervene in Henry's civil proceeding to preserve our "primary jurisdiction" in that matter; and (d) designate a character issue against Henry because of its "actions, in threatening * * * [COM and its members] with suit, as well as with injury to both person and property, and in actually filing the threatened suit * * *." Because, as set forth infra, we are granting, in part, COM's petition for relief, and because we think the remaining portions of COM's requested relief require discussion, we shall deny Henry's motion to strike (see para. 21, infra).

13. Regarding COM's first request, we are constrained to point out that we manifestly lack any authority to issue an order purporting to restrain any individual or entity from the exercise of its legal rights concerning matter over which we have no jurisdiction. Accordingly, we decline to do so. (But see paras. 14-18, infra). Next, although COM's request that we terminate our investigation is in practical effect mooted by the fact that that inquiry was conducted and completed several months ago, we note that section 403 of the Communications Act of 1934, as amended, 47 U.S.C. 403, specifically gives us authority to conduct such investigations.[5] Furthermore, even without regard to section 403, we believe we have the authority to inquire into allegations and charges against those who seek to use our processes, particularly where they are potential parties to a Commission hearing proceeding. Thus, we likewise decline to issue that order. As for our requested intervention in Henry's civil suit, we think such action by us would be unwarranted at this time. Henry's complaint alleges "abuse of process" and coercion of licensee by COM under section 506 of the Communications Act, 47 U.S.C. 506, as well as interference with business profits under a California State statute, and seeks relief in the form of, inter alia, actual and punitive monetary damages. In this regard, we note that licensee initially filed suit in a California State court on March 24, 1978. Subsequently, COM petitioned the United States District Court for the Northern District of California for removal of the case to that Court, which petition was granted. Henry then moved the District Court for an order remanding the case to the California State court, which motion was set to be heard on July 14, 1978. The Commission traditionally has declined to intervene in matters of local law which best are settled by local forums having jurisdiction over such proceedings, and we decline to do so here.

14. Finally, we turn to COM's request that we designate a character issue against Henry because of its alleged threatening of COM and its members with civil action, as well as its actually filing that suit. COM alleges that such action constitutes "harassment and attempted intimidation * * * [which] is patently offensive to Commission policy," citing *Chronicle Broadcasting Co.*, 19 FCC 2d 240 (Rev. Bd. 1969), and *Fort Collins Broadcasting Co., Inc.*, 38 FCC 2d 707 (1972). It is undisputed that, several months after the negotiations described supra, Henry's personal attorney, Allan Lipney, telephonically advised Jacklin, Larry Bensky (a former member of COM) and COM's counsel that Henry intended to file suit against COM; and that Lipney wrote two letters to COM's counsel to that effect. COM avers that Lipney's conversations and letters were "threatening" to Jacklin and his attorney because Lipney allegedly stated that unless COM's petition to deny were withdrawn, Henry would bring suit against COM and its members.[6] COM also alleges that, in a telephone conversation, David Braun, KJAZ(FM)'s station manager, threatened Jacklin and his family with violance and with the burden of defending the litigation. On the other hand, Henry, Lipney and Braun deny any such threats. Henry contends that Lipney merely informed COM and its attorneys of the contemplated lawsuit; and Braun's version of the telephone conversation with Jacklin likewise differs from COM's version. Finally, as noted supra, Henry filed the suit in question on March 24, 1978.

15. Initially, we note in *Fort Collins*, licensee threatened to file suit against the petitioner to deny for defamation if it did not withdraw its petition, but withheld such action on advice of counsel pending Commission action on the petitions. There, the Commission stated: "* * * licensees, as do all individuals, have the right to pursue any legal remedies they may have at their disposal * * *. But we do stress that * * * licensees should exercise great care and caution in any statements or threats to petitioners that if they file or maintain their filing, they may be subject to suit * * *. In our view, the most appropriate course is therefore generally to refrain from any threat of suit by a broadcast licensee in these circumstances at least until the matter is concluded by the Commission." 38 FCC 2d at 711-12.

16. In our view, the quoted *Fort Collins* language clearly expresses the Commission's strong concern regarding the potentially chilling effect of lawsuits filed against petitioners to deny by petitioned-against licensees. However, the Commission did not reach the question of whether designation of a character issue against the licensee under that circumstance would be warranted, for there the licensee did not actually file suit, and it was a case of first impression. In the instant proceeding, however, licensee not only allegedly threatened to file suit, but in fact did so. Thus, we need not reach the question here of whether threats alone in this situation would warrant specification of an issue. Rather, we now are confronted with the necessity to decide whether, on the basis of the facts before us, this licensee's actions in allegedly threatening petitioner and its members with suit, and in actually filing that suit, raise a substantial and material ques-

[4] Petitioner herein is not a licensee of this Commission and, thus, the sanctions available to us, should the issue be resolved against petitioner, are limited. One procedure would be to try the issue against petitioner first, and, if the issue were resolved against it, then to exclude petitioner from further participation in the hearing. However, given the intricate nature of this case where the issues against both licensee and petitioner are intertwined and interrelated, we do not believe that such a sanction is appropriate. Also, because of the long delay in disposing of this case, we do not believe that a two-part proceeding, looking first to petitioner's right to participate and then to the remaining issues, would serve the public interest. Accordingly, we believe petitioner should be permitted to participate in the entire proceeding, and, should the issue against petitioner be resolved against it, the administrative law judge may invoke whatever sanction he may deem appropriate—i.e., a reprimand, a censure or other similar action.

[5] 47 U.S.C. 403 provides, in pertinent part: "The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act * * *."

[6] In this regard, COM states that Lipney's letters to COM's counsel, "although * * * [subtly] phrased, clearly threaten a lawsuit * * *." (Reply to reply to opposition to motion to strike, p. 14.) Jacklin states that Lipney's conversation with him "was initiated with the threat of retaliatory litigation." (Id., attachment A.)

tion of fact regarding its character qualifications to remain a Commission licensee.

17. Initially, we observe that if Lipney did state that he would file suit unless COM's petition were withdrawn, such a relation arguably could have been intended as a mere statement of fact—that is, unless the source of Henry's problems were eliminated, he (Lipney) would be forced to invoke legal rights to make his client whole. The statement also could be viewed merely as a bargaining point between Henry's attorney and COM concerning the potential exercise of Henry's right to seek legal redress for alleged damages suffered.[7] On the other hand, that statement equally could be construed as a threat against COM to deter it from exercising its legal right to maintain the prosecution of its petition to deny Henry's license renewal. In this regard, we note that Lipney's statements were made only after the Commission had filed its motion for remand so that KJAZ(FM)'s application could be designated for hearing on programming issues. Further, in the Braun-Jacklin conversation, COM alleges Braun stated: "Phil, if you win [the petition to deny] I would hate to live where you live"; and, in response to Jacklin's query whether Brown was threatening physical violence, Braun allegedly stated: "Hopefully, not literally, but there are a lot of other things coming up that are going to make your life difficult. Given what I know, I would just hate to be in your shoes." (Petition for emergency relief, Jacklin affidavit.) Braun, on the other hand, denies threatening Jacklin in any manner (reply to opp., Braun affidavit). Here again, such statements, if they were made, equally could be construed as containing some sympathy toward Jacklin, as Braun alleges, or as containing at least an inferred threat to Jacklin as COM contends.

18. After reviewing the record set forth supra, as with petitioner, we believe that substantial and material questions of fact remain as to the motivation underlying Braun's and Lipney's oral and written statements prior to the filing of the lawsuit, as well as to licensee's actual filing of that suit. Here again, we are aware of the sensitive nature of petitioner's charges, and we stress that we in no way wish to cast a chilling effect on those—licensees or others—who seek to exercise their right to obtain legal redress for alleged damages incurred. However, we equally are concerned that licensees do not abuse our processes by attempting to coerce petitioners to deny by the threat, or actual filing, of retaliatory civil actions against petitioner. As with licensee's allegations against COM, we again are faced with conflicting facts or uncontested facts which lend themselves to conflicting interpretations as to the motives underlying the filing of the civil damage suit against petitioners. Because we are unable to resolve this matter on the record before us, we believe that it also must be fully explored in hearing. Thus, an appropriate issue will be specified infra.

CONCLUSION

19. Accordingly, it is ordered, that paragraphs 22, 24 and 31 of the Commission's memorandum opinion and order, FCC No. 76-577, released July 2, 1976, 59 FCC 2d 1204, and paragraphs 4, 5 and 7 of the Commission's memorandum opinion and order, FCC No. 76-1160, released January 6, 1977, 62 FCC 2d 293, hereby are withdrawn; and the orders of those dates, to include the grant of the 1974 license renewal application of station KJAZ(FM), hereby are vacated.[8]

20. It is further ordered, that the petition to deny Henry's 1974 renewal application for station KJAZ(FM), and the petition for reconsideration of the Commission's denial of the petition to deny, both filed by the Committee for Open Media, San Francisco Chapter, are granted to the limited extent indicated herein and are otherwise denied; and that the Committee for Open Media is made a party to the hearing ordered herein.

21. It is further ordered:

(a) That the petition for emergency relief, as supplemented, filed April 13, 1978, by the Committee for Open Media, San Franciso Chapter, is granted to the limited extent indicated herein and is otherwise denied; and

(b) That the motion to strike petition for emergency relief, dated April 27, 1978, filed by Patrick Henry, is denied.

22. It is further ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), the above-captioned application and 1977 supplement thereto are designated for expedited hearing at a time and place to be specified in a subsequent order, upon the following issues:

(1) To determine whether Patrick Henry made reasonable and good faith efforts to carry out its nonentertainment programming proposal during the 1971-1974 license term as set forth in its 1971 application for renewal of license for station KJAZ(FM);

(2) To determine whether the nonentertainment programming broadcast by station KJAZ(FM) during the 1971-1974 license term was reasonably responsive to the ascertained problems, needs and interests of its community;

(3) To determine the facts and circumstances relating to the motivation of Patrick Henry in allegedly threatening to file and in filing the civil damage suit against the Committee for Open Media, et al.; and what effect, if any, the foregoing facts and circumstances have upon the qualifications of Patrick Henry to be a Commission licensee;

(4) To determine, in light of the evidence adduced under the above issues, whether a grant of the captioned application would serve the public interest, convenience and necessity.

(5) To determine the facts and circumstances relating to the alleged connection between petitioner's proposal to acquire station KJAZ and petitioner's motivation in filing and continued prosecution of the petition to deny; and whether such conduct constituted an abuse of the Commission's processes: and

(6) To determine, in the event issue (5) above should be resolved against

[7] In this regard, we note that Lipney's letter to COM's counsel dated February 8, 1978, reads, in pertinent part: "Hopefully, we can resolve this matter without the need for litigation * * *. If I have received no response * * * [by February 20, 1978], I will take whatever steps I deem necessary." (Petition for emergency relief, Jacklin affidavit, exhibit K1). Lipney's second letter to COM's counsel, dated Febraury 26, 1978, states, inter alia: "In our recent phone conversations, we discussed the possibility of resolving the present dispute between the * * * parties in the hope that * * * [COM] would drop its protest against the reissuance of the KJAZ license * * *. I will take no further action until I hear from you in the immediate future." (Id., Exh. K2.)

[8] Henry's current renewal application has not been challenged. Since we are setting aside our grant of Henry's 1974 application, we view the 1977 renewal application as a supplement to that application. We have examined the supplement in the respects mentioned at para. 4 and n. 1, supra. In that regard, Henry's 1974 amended proposed nonentertainment programming was 6.1 percent. Because of discrepancies between his 1977 renewal composite week program logs and exhibit 15 of his supplement (description of nonentertainment programs in the composite week) and because none of the days in that year's composite week reflected KJAZ(FM)'s operation subsequent to the release of the Commission's initial order which admonished Henry for, inter alia, program mislogging (see n. 1, *supra*), the Broadcast Bureau requested Henry to submit the program logs and appropriate descriptive exhibits for the special week of August 14-20, 1977. Those submissions reveal no mislogging of public affairs programs. Further, the original composite week indicates 6.3 percent nonentertainment programming and the amended composite week indicates 8.06 percent nonentertainment programming, both of which exceed its 6.1 percent prior proposal; and Henry now proposes 6.3 percent nonentertainment programming for the 1977-80 license term. Moreover, our examination of the supplement reveals it is in compliance with our rules in all other respects. Accordingly, no programming or other questions are presented regarding the supplemental application.

the petitioner, what sanction would be appropriate.

23. It is further ordered, that, in accordance with section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence and the burden of proof as to issues (1) and (2) shall be on Patrick Henry; with respect to issue (3), the burden of proceeding with the introduction of evidence shall be on the Committee for Open Media and the burden of proof shall be on Patrick Henry; the burden of proof as to issue (4) shall be on Patrick Henry; and, with respect to issue (5), the burden of proceeding with the introduction of evidence shall be on the Commission's Broadcast Bureau and the burden of proof shall be on the Committee for Open Media.

24. It is further ordered, that, to avail themselves of the opportunity to be heard, the parties respondent, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within twenty (20) days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and present evidence on the issues specified in this order.

25. It is further order, that Patrick Henry shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rules, and shall advise the Commission of the publication of such notice as required by section 1.594(g) of the rules.

26. It is further ordered, that the Secretary of the Commission shall send a copy of this order, by certified mail—return receipt requested, to each of the parties to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,*
WILLIAM J. TRICARICO,
Secretary.

STATEMENT OF COMMISSIONER TYRONE BROWN CONCURRING IN PART AND DISSENTING IN PART

Re: Application of PATRICK HENRY for Renewal of License of Station KJAZ(FM), Alameda, Calif. (File No. BRH-965).

I concur in the Commission's decision to designate the renewal application for station KJAZ(FM) for a hearing concerning its nonentertainment programming during the license term. However, I dissent from that portion of the order which designates for hearing issues dealing with the "motivations" of both the licensee and the Committee for an Open Media (COM) which petitioned to deny the KJAZ(FM) license renewal.

Allegations have been raised that the petitioner filed its petition to deny as part of a plan to force the transfer of the KJAZ(FM) license from Patrick Henry to itself. Indeed, the licensee has filed suit against COM in state (California) court based on these charges. The Commission today orders a hearing on the facts and circumstances surrounding the motivations of both parties to that lawsuit.

I understand the dangers to the process if a licensee is permitted to intimidate a petitioner to deny by the threat, or actual institution, of a lawsuit against the petitioner. I also recognize that we have designated similar issues in the past. In this case, however, I am convinced that a hearing on the licensee's "motivation" in instituting suit against COM will unnecessarily burden the hearing process, result in substantial delay and contribute nothing to the central issue raised against the licensee—whether it has performed in the public interest during the license period under review.

While the designation vel non of an issue against the licensee is admittedly a close question, I have no such trouble with rejecting the suggestion that we designate an issue against the petitioner—a nonlicensee. This unprecedent action will require the Commission to determine answer to difficult questions concerning the motivation of COM's filing of its petition—questions which are unrelated to the merits of the matters raised in that petition. In my opinion, this is an unwarranted burdening of the hearing process. To the extent COM's actions constitute actionable misconduct, the licensee has a right to a civil remedy, which it as in fact chosen to exercise by filing suit. I am not persuaded that it is wise or appropriate for the FCC to make itself available as an additional forum for the thrashing out of these issues.

My fellow Commissioners contend that we have the authority and perhaps the obligation to guard against abuse of the Commission's process, pointing to our strike petition policy directed against licensees who, for purposes of delay, submit nonmeritorious petitions to deny applications of competitors or potential competitors. Putting aside the question of whether in the present case a "strike petition" issue is being designated against COM to balance the "motivation" issue designated against the licensee, it should be noted that in discussing the criteria comprising our recently clarified strike petition policy we emphasized that a key factor we would consider in determining whether a petition constitutes an abuse of process would be the "absence of any reasonable basis for the adverse allegations in the petition." We concluded, "(s)hould it appear that the allegations in the petition are specious, with little or no factual or legal basis, such evidence would tend to raise the question whether petitioner was acting in good faith." [1]

In this case, however, the Commission itself found at least some of COM's allegations meritorious enough to designate them for a hearing. We certainly could not find that there was no "reasonable basis for the adverse allegations in the petition." And, if the Commission concludes that KJAZ(FM) must lose its license on the basis of the substantive issues which have been designated, the petitioner's motivations, good or bad, cannot change that result.

Moreover, should the most serious allegations made by the licensee in this case be valid, i.e., that COM has used the petition to deny process to force a transfer of control of KJAZ(FM) to COM, the Commission can consider such charges in acting on any application for transfer of control which must come before us for decision. This is precisely the position the Commission took not just 6 months ago when we renewed the license of WGOW, Chattanooga, Tenn. against allegations that the licensee had attempted to force the sale of another station (WSWB-TV) to himself. We concluded, "we do not preclude the possibility of exploring this entire matter in hearing should (the licensee) file an assignment application for WSWB-TV." [2] If we postponed consideration of those charges until presented to us in a transfer application even though the allegations concerned a licensee whose renewal application was then before us, our action in dealing with a nonlicensee—against whom our sanctions are limited if not nonexistent—should be no less restrained.

Finally, the choice made today to institute inquiry into the motivations of a nonlicensee seems to me inconsistent with our policy of encouraging community dialogue with broadcasters. It is quite clear by now that the Commission will summarily dismiss petitions to deny which do not raise very serious issues against our licensees. The action we take today—designating a "motivation" issue against a nonlicensee—will only discourage public groups from challenging a licensee even when the issues are substantial. I seriously question whether our licensees need this additional protection from the people from the people they are supposed to serve.

In designating "motivation" issues against both the licensee and the petitioner, the Commissioner is abusing its own processes. We have many more important things to do than provide an additional forum for relitigation of issues already being tried in the courts.

[FR Doc. 78-31574 Filed 11-7-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 1673]

DRAKE MARINE DIVISION, A DIVISION OF DRAKE MOTOR LINES, INC.

Order of Revocation

The bond issued in favor of Drake Marine Division, a division of Drake Motor Lines, Inc., 20 Olney Avenue, Cherry Hill, N.J. 08022, FMC No. 1673, was cancelled effective October 12, 1978.

By letter dated September 12, 1978, Drake Marine Division, a division of Drake Motor Lines, Inc., was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1673 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission.

Section 44(c), Shipping Act, 1916, provides that no independent ocean

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* See attached statement of Commissioner Tyrone Brown concurring in part and dissenting in part.

[1] *Radio Carrollton*, 43 Pike & Fischer, R.R.2d 29, 43 (1978).

[2] *Turner Communications Corp. (WGOW)*, 42 Pike & Fischer, R.R.2d 1315, 1322 (1978).

freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will automatically be revoked or suspended for failure of a licensee to maintain a valid bond on file.

Drake Marine Division, a division of Drake Motor Lines, Inc., has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised) § 5.01(d) dated August 8, 1977;

It is ordered, That Independent Ocean Freight Forwarder License No. 1673 be and is hereby revoked effective October 12, 1978.

It is further ordered, That Independent Ocean Freight Forwarder License No. 1673 issued to Drake Marine Division, a division of Drake Motor Lines, Inc., be returned to the Commission for cancellation.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served upon Drake Marine Division, a division of Drake Motor Lines, Inc.

ROBERT G. DREW,
Director, Bureau of Certification and Licensing.

[FR Doc. 78-31527 Filed 11-7-78; 8:45 am]

[6730-01-M]

[Independent Ocean Freight Forwarder License No. 1200]

LAKESHEAD FORWARDING CORP.

Order of Revocation

The bond issued in favor of Lakeshead Forwarding Corp., 600 Board of Trade Building, Duluth, Minn. 55802 (FMC 1200), was cancelled effective October 13, 1978.

By letter dated August 17, 1978, Lakeshead Forwarding Corp. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1200 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid surety bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

Lakeshead Forwarding Corp. has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised) section 5.01(d) dated August 8, 1977;

It is ordered, That Independent Ocean Freight Forwarder License No. 1200 be and is hereby revoked effective October 13, 1978.

It is further ordered, That Independent Ocean Freight Forwarder License No. 1200 issued to Lakeshead Forwarding Corp. be returned to the Commission for cancellation.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served upon Lakeshead Forwarding Corp.

ROBERT G. DREW,
Director, Bureau of Certification and Licensing.

[FR Doc. 78-31526 Filed 11-7-78; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

PROPOSED ACQUISITION OF DELTA & PINE LAND CO. OF MISSISSIPPI

Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: Southwide, Inc., is granted early termination of the 30-day waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of Delta & Pine Land Co. of Mississippi. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to requests for early termination submitted by Southwide, Inc., and Delta & Pine Land Co. of Mississippi. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: October 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Malcolm R. Pfunder, Associate Director for Premerger Notification, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, 202-523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the FEDERAL REGISTER.

By direction of the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-31582 Filed 11-7-78; 8:45 am]

[6750-01-M]

TRANSMITTAL RULES

Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: Metromedia, Inc. is granted early termination of the 30-day waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of W. R. Grace & Co.'s Figi's Inc. and Figi's Data Center, Inc. assets. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to requests for early termination submitted by Metromedia, Inc. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: October 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Malcolm R. Pfunder, Associate Director for Premerger Notification, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, 202-523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the FEDERAL REGISTER.

By direction of the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-31583 Filed 11-7-78; 8:45 am]

[6115-02-M]

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

CLOSING DATE FOR NOMINATIONS

Notice is hereby given that, pursuant to the authority contained in the Harry S. Truman Memorial Scholarship Act, Pub. L. 93-642 (20 U.S.C. 2001), nominations are being accepted from eligible institutions of higher education for Truman Scholarships. Procedures are prescribed at 45 CFR 1801, and were published (in the FEDERAL REGISTER on June 19, 1978 (43 FR 26366)).

In order to be assured of consideration, all documentation in support of nominations must be received by the Truman Scholarship Review Committee, Box 2838, Princeton, N.J. postmarked no later than Thursday, December 8, 1978.

MALCOLM C. MCCORMACK,
Executive Secretary.

NOVEMBER 3, 1978.

[FR Doc. 78-31569 Filed 11-7-78; 8:45 am]

[4110-88-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

ADVISORY COMMITTEES

Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisory bodies scheduled to assemble during the month of December 1978:

SOCIAL SICENCES TRAINING REVIEW COMMITTEE

December 11: 9 a.m. Conference Room C, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857. OPEN—December 11: 9-10 a.m. CLOSED—Otherwise. Contact: Hope Williams, Room 9C-09, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3857.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to social sciences training activities and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9-10 a.m., December 11, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

PSYCHOLOGICAL SCIENCES FELLOWSHIP REVIEW COMMITTEE

December 17-19; 9 a.m. Conference Room Shenandoah C, Ramada Inn, 1900 North Fort Myer Drive, Arlington, Va. 22209. OPEN—December 18; 9-11 a.m. CLOSED—Otherwise. Contact: Mary Cope, Room 9C-15, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3856.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to psychological sciences fellowships and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9-11 a.m., December 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

BIOLOGICAL SCIENCES TRAINING REVIEW COMMITTEE

December 18-20; 9 a.m. Conference Room C, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857. OPEN—December 18; 9-10 a.m. CLOSED—Otherwise. Contact: Donna Spain, Room 9C-09, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3855.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to biological sciences research training and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9-10 a.m., December 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Substantive program information may be obtained from the contact persons listed above. The NIMH Information Officer who will furnish upon request summaries of the meetings and rosters of the committee members is Dr. Jacquelyn Hall, Acting Chief, Public Information Branch, Division of Scientific and Public Information, NIMH, Room 15C-17, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4573.

Dated: November 2, 1978.

ELIZABETH A. CONNOLLY,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 78-31506 Filed 11-7-78; 8:45 am]

[4110-85-M]

Office of the Assistant Secretary for Health

ADVISORY COMMITTEE

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1978:

Name: Technical Consultant Panel on Mental Health Statistics of the United States National Committee on Vital and Health Statistics.

Date and Time: November 27-28, 1978, 9 a.m.

Place: Hubert H. Humphrey Building, Room 305-A, 200 Independence Avenue, SW., Washington, D.C. 20201.

Open—9-5 p.m.

Purpose: The Technical Consultant Panel on Mental Health Statistics makes recommendations to the United States National Committee on Vital and Health Statistics about a mental health aspect of Federal health surveys and statistics reporting systems. Specifically, examines the National, State and local needs for mental health data; assesses which of these needs can now be met through existing data systems and which needs require new programs or modifications to existing ones; examines the feasibility of establishing a mental health component or subcomponent within the Cooperative Health Statistics System; examines relationships of current mental health uniform data sets to other data sets; examines current practices at the State level of integrating the mental health and health data systems; and makes recommendations as appropriate.

Agenda: The Technical Consultant Panel (TCP) will discuss the following agenda items: 1) review background, history and purpose of the TCP; 2) review and discuss the National Institute of Mental Health's statistics program; 3) review of the Cooperative Health Statistics system; and 4) review of the National Center for Health Statistics' National Surveys.

The meeting is open to the public for observation and participation. Anyone wishing to participate, obtain a roster of members, or other relevant information, should contact Mr. James A. Smith, National Center for Health Statistics, Room 2-12, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, telephone 301-436-7122.

Agenda items are subject to change as priorities dictate.

Dated: November 3, 1978.

WAYNE RICKEY, Jr.,
Associate Director for Management, Office of Health Policy Research and Statistics.

[FR Doc. 78-31570 Filed 11-7-78; 8:45 am]

[4110-85-M]

ADVISORY COMMITTEE

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1978:

Name: United States National Committee on Vital and Health Statistics.
Date and Time: November 29-30, 1978, 9 a.m.
Place: Room 727-A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.
Open for entire meeting.

Purpose: The Secretary and by delegation the Assistant Secretary for Health and the Director, National Center for Health Statistics (NCHS), are charged under section 306 of the Public Health Service Act, as amended, 42 USC 242k, with the responsibility to collect, analyze, and disseminate national health statistics on vital events and health activities, including the physical, mental, and physiological characteristics of the population, illness, injury, impairment, the supply and utilization of health facilities and manpower, the operation of the health services system, health economic expeditures, and changes in the health status of people; administer the Cooperative Health Statistics System; stimulate and conduct basic and applied research in health data systems and statistical methodology; coordinate the overall health statistical activities of the programs and agencies of the Health Resources Administration and provide technical assistance in the management of statistical information; maintain operational liaison with statistical gathering and processing services of other health agencies, public and private, and provide technical assistance within the limitations of staff resources, research, consultation and training programs in international statistical activities; and participate in the development of national health policy with Federal agencies.

AGENDA

(1) Report of events, since May 3-4, 1978, meeting.
(2) International Social, Demographic, and Health Statistics:
  a. Problems of Health Statistics.
  b. Review of National Health Information Systems.
  c. National Center for Health Statistic's International Program and Activities.
  d. Comparative Birth-Number Study.
(3) Telephone Survey Activities.
(4) Environmental Health Statistics.
(5) Technical Consultant Panel Reports:
  a. Long-Term Care.
  b. Ambulatory Care.
  c. Manpower and Facilities.
  d. National Health Insurance.
  e. Health Interview Survey.
  f. Cooperative Health Statistics.
  g. Mental Health Statistics.

The meeting is open to the public for observation and participation. Anyone wishing to participate, obtain a roster of members, or other relevant information, should contact Mr. James A. Smith, National Center for Health Statistics, Room 2-12, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, telephone 301-436-7122.

Agenda items are subject to change as priorities dictate.

Dated: November 3, 1978.

WAYNE RICHEY, Jr.,
Associate Director for Management, Office of Health Policy Research and Statistics.

[FR Doc. 78-31571 Filed 11-7-78; 8:45 am]

[4110-12-M]

Office of the Secretary

OFFICE OF PUBLIC AFFAIRS

Statement of Mission, Organization, and Functions

Section AP.00. *Mission.* The mission of the Office of Public Affairs is to serve as the Secretary's principal public affairs policy advisor; to provide centralized professional leadership and continuous monitoring and evaluation of Departmentwide policies, procedures and operating practices regarding public affairs activities; and to administer the Freedom of Information Act.

Section AP.10. *Organization.* The Office of Public Affairs, headed by the Assistant Secretary for Public Affairs, who reports to the Secretary, consists of the following organizations:

The Office of the Assistant Secretary for Public Affairs
  Planning and Evaulation Public Affairs Staff
  Inspector General Public Affairs Staff
News Division
  Information Services Staff
Freedom of Information Division
Regional and Outreach Division
Audiovisual Division
Editorial and Publications Management Division

Section AP.20. *Functions.*

A. *The Office of the Assistant Secretary for Public Affairs:*

Provides executive leadership, policy direction, and management strategy for the Department's public affairs programs and activities. Counsels and acts for the Secretary and the department in carrying out responsibilities under statutes, Presidential directives, and Secretarial orders for informing the general public, specialized audiences, HEW employees, and other Federal employees about the programs, policies, and services of the Department. Establishes and enforces policies and practices which produce an accurate, clear, efficient, and consistent flow of information to the general public and other audiences about Departmental programs and activities.

Maintains channels and procedures for transmitting to Departmental policy officials information on how the Department's programs and proposals are viewed by both the general and specialized publics. Consults on the selection of key public affairs personnel in the Principal Operating Components (POC's) and the Regions.

Establishes guidelines and standards (with the Office of Personnel Administration) for development, training, promotions, details, and related matters for the public affairs personnel in the Department. Concurs in all public affairs plans and budgets for the POC's and regional offices and otherwise exercises functional supervision over their public affairs activities.

Insures coordination among public affairs components. Manages public affairs issues and special activities that cut across POC lines.

Reviews and approves all publications and audiovisual materials produced with Departmental funds. Reviews and approves contracts for public affairs services.

Provides administrative and budgetary services for the Office of Public Affairs.

A.1. *Office of Planning and Evaluation Public Affairs Staff:*

Provides advice and assistance on all public affairs matters to the Office of Planning and Evaluation, Office of the Secretary, in consultation with the Assistant Secretary for Public Affairs.

Assists in the preparation of press releases, articles, speeches and related materials. Provides information to news gathering and reporting media on planning and evaluation issues.

Arranges interviews and other direct contacts with media representatives.

Coordinates with other elements of OASPA the public affairs activities of P & E.

A.2. *Inspector General Public Affairs Staff:*

Provides advice and assistance on all public affairs matters to the Office of Inspector General (OIG), Office of the Secretary, in consultation with the Assistant Secretary for Public Affairs.

Assists in the preparation of press releases, articles, speeches, and related materials. Provides information to news gathering and reporting media on issues relating to the OIG. Arranges interviews and other direct contacts with media representatives.

Coordinates with other elements of OASPA the public affairs activities of OIG.

B. *News Division:*

Plans, directs and coordinates the issuance of public information from HEW to the press and broadcast media.

Prepares news releases and other news material for the Secretary and other top Department officials. Reviews and clears all news releases and other news materials prepared by HEW components.

Coordinates and arranges news conferences, briefings, interviews and appearances by the Secretary and other key HEW officials with the press and broadcast media.

B.1. *Information Services Staff:*

Directs the preparation of the *Green Sheet*, a daily compilation of news concerning HEW programs and activities.

Manages the Public Affairs Resource Center containing information on HEW programs and activities.

Prepares analyses of current issues and programs.

C. *Freedom of Information Division:*

Administers the Freedom of Information Act (FOIA) and the HEW regulations implementing that law. Develops policy guidelines and training programs for all HEW components regarding the FOIA and related legislation, i.e., the Privacy Act, Federal Advisory Committee Act, and the Government in the Sunshine Act; and, together with staff of the Office of General Counsel, assists in development of HEW regulations implementing these statutes.

Provides responses to requests made under the Freedom of Information Act and determines the availability of records and information under the law and HEW regulations.

Coordinates with the Office of Fair Information Practices in resolving questions which overlap the FOIA and the Privacy Act regarding release of records.

Directs operation of the HEW Public Reading Room, visitors information and telephone locator service. Provides policy guidance on and maintains the index of materials required by FOIA.

D. *Regional and Outreach Division:*

Serves as liaison between the regional staff and headquarters agencies.

Coordinates public affairs activities among regions.

Provides technical assistance, and general information to public affairs staff in the region.

Advises the ASPA on all regional public affairs issues and procedures.

Provides briefing materials for Presidential and Secretarial travel to the regions.

Coordinates, assists and maintains liaison with all elements of the Department, including the regions, in outreach activities.

Initiates, designs and effects outreach programs involving national and community organizations, minority and women's groups, organizations for the handicapped, student and public interest groups, and individuals concerned with the broad range of policies, programs, and issues of the Department.

Reviews, and approves or disapproves, all proposals for outreach plans by all elements of the Department. Acts as the central resource within HEW for information on outreach techniques and procedures.

Conducts seminars and conferences to achieve productive citizen interaction with HEW issues, programs and policies.

Conducts the HEW Speakers Bureau. Screens requests for the Secretary's speaking engagements and coordinates the scheduling of speaking engagements of other policy-level officials of the Department.

E. *Audiovisual Division:*

Under the direction of the Assistant Secretary for Public Affairs, exercises management oversight of all audiovisual activities in and for the Department.

Establishes Departmental policy and procedures for the procurement, design, production, distribution and quality control of audiovisual products, and exhibits.

Reviews and clears all audiovisual products and exhibits.

Reviews audiovisual aspects of HEW public affairs components plans to insure they are supportive of HEW policy.

Provides technical assistance on the development of audiovisual products.

F. *Editorial and Publications Management Division:*

Reviews and clears all HEW publications.

Establishes Department Policy and procedures for the design, production, distribution and quality control of publications.

Serves as the principal resource within the Department for preparing, reviewing, and editing written materials reflecting HEW policy.

Prepares speeches, statements, articles, and related material for the Secretary and other top Departmental officials.

Drafts other materials for non-Departmental publications.

Edits Congressional testimony of Departmental officials.

Directs the preparation of publications with Departmentwide implications such as *HEW Now*.

Reviews publication aspects of HEW public affairs components' plans to insure they are supportive of Departmental priorities and standards.

Provides technical assistance on development of publications products.

LEONARD D. SCHAEFFER,
Assistant Secretary for Management and Budget.

OCTOBER 31, 1978.

[FR Doc. 78-31588 Filed 11-7-78; 8:45 am]

[1505-01-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

WASHINGTON

Filing of Corrective Dependent Resurvey Plat

Correction

In FR Doc. 78-18462 appearing on page 29035 in the issue of Wednesday, July 5, 1978, the land description in the 4th line should read, "[T.32,] N., R. 41 E., W.M., restoring the quar[ter. . .]".

[4310-84-M]

[2880 U-41385 (U-942)]

UTAH

Application

OCTOBER 30, 1978.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corp. has applied for a 4½ inch natural gas pipeline right-of-way across the following lands:

SALT LAKE MERIDIAN, UTAH

T. 20 S., R. 22 E.,
Sec. 30.

The needed right-of-way is a portion of applicant's gas gathering system located in Grand County, Utah.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analyses necessary for determining whether the application should be approved, and if so, under what terms and conditions.

Interested persons should express their interest and views to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532.

DELL T. WADDOUPS,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-31503 Filed 11-7-78; 8:45 am]

[4310-84-M]

[2880; U-41383; U-41384 (U-942)]

UTAH

Application

OCTOBER 30, 1978.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corp. has applied for two 4½ inch natural gas pipeline rights-of-way across the following lands:

SALT LAKE MERIDIAN, UTAH

T. 17 S., R. 26 E.,
Sec. 30.

The needed rights-of-way are a portion of applicant's gas gathering system located in Grand County, Utah.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analyses necessary for determining whether the applications should be approved, and if so, under what terms and conditions.

Interested persons should express their interest and views to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532.

DELL T. WADDOUPS,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-31504 Filed 11-7-78; 8:45 am]

[4310-84-M]

[2880; U-41386; U-41387; (U-942)]

UTAH

Application

OCTOBER 30, 1978.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corp. has applied for two 4½ inch natural gas pipeline rights-of-way across the following lands:

SALT LAKE MERIDIAN, UTAH

T. 20 S., R. 21 E.,
Secs. 11, 24, and 25.

The needed rights-of-way are a portion of applicant's gas gathering system located in Grand County, Utah.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analyses necessary for determining whether the applications should be approved, and if so, under what terms and conditions.

Interested persons should express their interest and views to the Moab District Manager, Bureau of land Management, P.O. Box 970, Moab, Utah 84532.

DELL T. WADDOUPS,
Chief, Branch of Lands Minerals Operations.

[FR Doc. 78-31505 Filed 11-7-78; 8:45 am]

[4310-84-M]

ELY DISTRICT GRAZING ADVISORY BOARD

Meeting

OCTOBER 30, 1978.

Notice is hereby given, in accordance with Pub. L. 94-579, that a meeting of the Ely District Grazing Advisory Board will be held on Friday, December 15, 1978.

The meeting will begin at 9 a.m. (PST) in the White Pine County Library Conference Room in the Courthouse Plaza, Ely, Nev.

The agenda for the meeting will include: (1) a discussion of the functions of the board; (2) election of officers; (3) explanation of laws and regulations which apply to the distribution and use of range betterment funds; (4) use of advisory board funds for range improvements; (5) review of the schedule for the district's range environmental statements; (6) review of district's allotment management plans and proposed range improvements projects; (7) the arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the board during the public comment period, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, U.S. Highway 93, Star Route 5 Box 1, Ely, Nev. 89301 by December 12, 1978. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and will be available for public inspection and reproduction, during regular business hours, within 30 days following the meeting.

Dated: October 30, 1978.

GEORGE W. CROPPER,
Acting District Manager.

[FR Doc. 78-31502 Filed 11-7-78; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-52]

CERTAIN APPARATUS FOR THE CONTINUOUS PRODUCTION OF COPPER ROD

Notice Denying Motion 52-31 and Extending the Deadline for Completion of the Hearing Before the Presiding Officer From December 22, 1978, to January 22, 1979

BACKGROUND

On July 28, 1978, complainant, Southwire Co., filed a motion (Motion Docket No. 52-31) to have the above-captioned investigation designated "more complicated," pursuant to 19 U.S.C. 1337(b)(1) and to 19 CFR 210.15. By designating an investigation as "more complicated," the period within which the investigation must be completed is extended from 12 months to 18 months. On August 8, 1978, respondents Fried Krupp GmbH, Krupp GmbH, and Krupp International filed an opposition to complainant's motion. On August 9, 1978, respondents American Telephone and Telegraph Co., Nassau Recycle Corporation, and Western Electric Company filed their opposition to complainant's motion. On August 30, 1978, the presiding officer, acting in conformity with 19 CFR 210.15 and 19 CFR 210.41(e)(1), recommended to the Commission that Motion 52-31 be denied and that the deadline for completion of the hearing before the presiding officer be extended for a period of 1 month, from December 22, 1978 to January 22, 1979.

COMMISSION ORDER AND DENIAL OF MOTION 52-31

Having considered the motion by the complainant to designate Investigation No. 337-TA-52 "more complicated," the respondents' opposition to the motion, and the presiding officer's recommendation that the hearing deadline be extended 1 month, the Commission DENIES Motion 52-31. The Commission ORDERS that the time limit for the hearing under 19 CFR 210.41(e)(1) be extended 1 additional month, from December 22, 1978 to January 22, 1979.

OPINION

In denying the motion and ordering the extension, the Commission adopts the recommendation of the presiding officer, Judge Janet D. Saxon. Under Rule 210.41(e)(1) (19 CFR 210.41(e)(1)), the hearing must be completed within a 7-month period after the date of publication of the notice of institution, unless otherwise ordered by the Commission. Upon consideration of all of the facts, the Com-

mission believes that a 1-month extension of the 7-month deadline for completion of the hearing before the Presiding Officer will provide adequate time for preparation by the participants. This belief is based on statements made by the complainant that 1 extra month of discovery would probably be sufficient to complete discovery and thus to complete the investigation within the normal 12-month period. The presiding officer stated that there is a reasonable prospect at this time that the investigation can be completed within 12 months if the extension is granted. In keeping with the policy expressed by the Congress that investigations under section 337 of the Tariff Act of 1930 should be completed "at the earliest practicable time" (19 U.S.C. 1337(b)(1)), the Commission believes that an extension of the hearing deadline will accomplish the goal of an expedited hearing process and will ameliorate the time problems raised by complainant in Motion Docket No. 52-31. The Commission therefore grants an extension of the deadline for completion of the hearing and denies Motion 52-31.

Issued: November 3, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-31593 Filed 11-7-78; 8:45 am]

[4510-23-M]

NATIONAL ADVISORY COMMITTEE FOR WOMEN

MEETING

Pursuant to the Provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of a meeting of the National Advisory Committee for Women.

Date and Time: November 20 and 21, 1978; 10 a.m. to 5 p.m. each day.

Place: Conference Room N4437, Nov. 20; Conference Room S4215, Nov. 21; Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Purpose: This is a regular meeting of the Advisory Committee.

The Committee will meet with the President of the United States to discuss the Committee's response to the Carter administration's status report on International Women's Year resolution prior to the meeting of the Committee. The agenda for the meeting will focus on the projected activities of the Committee's Action Work groups.

The reason for not publishing this notice within the 15-day period prior to the meeting, as required by OMB Circular A63, Revised, is due to the difficulty coordinating the date requested for a meeting with the President.

Dated: November 6, 1978.

ELLEN MCGOVERN,
Executive Director.

[FR Doc. 78-31701 Filed 11-7-78 8:45 am]

[7510-01-M]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 78-55]

LUNAR SAMPLE ANAYLSIS ADVISORY COMMITTEE

Meeting

The Lunar Sample Analysis Advisory Committee will meet on November 11 and 12, 1978, in the Vintage Room, Hilton Hotel, San Francisco Airport, San Francisco, Calif. 94128. The meeting will be open to the public up to the seating capacity of the room (approximately 25 including Committee members and other participants). Visitors will be required to sign a visitor's register.

The NASA Lunar Sample Analysis Advisory Committee was established as an interdisciplinary guide to advise NASA management as to future funding mechanisms for Lunar Sample Analysis projects within NASA and other Government agencies. The Committee members provide a wide range of scientific and administrative expertise in space and other science. The chairperson of the Committee is Professor Richard H. Jahns. There are currently seven members on the Committee. The meeting of the Committee is being held at this time because of the urgent need for the Committee to provide recommendations in time to be used in developing program funding plans for fiscal year 1979 and for consideration of fiscal year 1980 budgets. For further information, contact the Executive Secretary, Dr. Bevan M. French, 202-755-3760 NASA Headquarters, Code SL-4, Washington, D.C. 20546.

ARNOLD W. FRUTKIN,
Acting Associate Administrator for External Relations.

NOVEMBER 2, 1978.

[FR Doc. 78-31507 Filed 11-7-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-295 and 50-304]

COMMONWEALTH EDISON CO. (ZION STATION, UNITS 1 AND 2)

Order for Special Prehearing Conference

The October 24, 1978 joint motion of the Petitioner, Applicant, and Regulatory Staff for a special prehearing conference in this proceeding is hereby granted. The conference will begin at 9:30 a.m., on Monday, November 20, 1978 at the Lake County Board Room (10th floor), Lake County Building, 18 North County Street, Waukegan, Ill. If necessary, the conference will continue on November 21 and, for a part of the day, on November 22.

The Licensing Board will hear the oral argument of the parties and Petitioner on any motions which may have been presented at the time. Additionally, the Board will consider the setting of a schedule for further actions in this proceeding.

Interested members of the public are expressly invited to attend this special prehearing conference. Members of the public who wish to do so will be permitted to give oral or written statements by way of limited appearance at the special prehearing conference.

So ordered.

Dated at Bethesda, Md. this 2d day of November 1978.

For the Atomic Safety and Licensing Board.

EDWARD LUTON,
Chairman.

[FR Doc. 78-31557 Filed 11-7-78; 8:45 am]

[7590-01-M]

[Docket No. 50-213]

CONNECTICUT YANKEE ATOMIC POWER CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 29 to Facility Operating License No. DPR-61, issued to Connecticut Yankee Atomic Power Co. (the licensee) which amended the license and its appended Technical Specifications for operation of the Haddam Neck Plant (the facility) located in Middlesex County, Conn. The amendment is effective as of its date of issuance.

The amendment deletes License Condition C.(3) issued in Amendment No. 26, dated May 26, 1978, which prohibited operation beyond 300 effective full power days in cycle 8 until a main steam line break reanalysis could be performed to support operation with-

out automatic boron injection from the charging pumps in the event of loss of offsite power. The amendment also revises the Appendix A Technical Specifications to incorporate the appropriate assumptions used as input conditions for the main steam line break reanalysis.

The license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated September 29, 1978, and the supporting analyses submitted by letters dated September 22 and October 20, 1978, (2) Amendment No. 29 to License No. DPR-61, and (3) the Commission's related safety evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Russell Library, 119 Broad Street, Middletown, Conn. 06457. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 24th day of October 1978.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-31558 Filed 11-7-78; 8:45 am]

[7590-01-M]

[Docket No. 50-155]

CONSUMERS POWER CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 21 to Facility Operating License No. DPR-6, issued to Consumers Power Co. (the licensee), which revised Technical Specifications for operation of the Big Rock Point Plant (the facility) located in Charlevoix County, Mich. The amendment is effective as of its date of issuance.

This amendment changes the Technical specifications by incorporating the requirements of Appendix J to 10 CFR Part 50 for the periodic test schedule and the formula for reduced pressure leak rate tests.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated May 17, 1978, (2) Amendment No. 21 to License No. DPR-6, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Charlevoix Public Library, 107 Clinton Street, Charlevoix, Mich. 49720.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 20th day of October 1978.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-31559 Filed 11-7-78; 8:45 am]

[7590-01-M]

[Docket No. 50-318]

BALTIMORE GAS & ELECTRIC CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 18 to Facility Operating License No. DPR-69, issued to Baltimore Gas & Electric Co. (the licensee), which revised the technical specifications for operation of the Calvert Cliffs Nuclear Power Plant Unit No. 1 (the facility) located in Calvert County, Md. The amendment is effective as of its date of issuance.

The amendment authorizes operation with modified (sleeved and reduced flow) guide tubes for the Control Element Assemblies (CEA's) and revises the Appendix A Technical Specifications by: (1) Incorporating changes resulting from the analyses of Cycle 2 reload fuel, and (2) authorizing the removal of all part length CEA's.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission had made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 50.5(d)(4) an environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated July 26, 1978, as supplemented July 31, August 14, September 7, and October 6, 16, and 17, 1978, (2) Amendment No. 18 to License No. DPR-69, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Calvert County Library, Prince Frederick, Md. 20678. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 21st day of October 1978.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 78-31556 Filed 11-7-78; 8:45 am]

[7590-01-M]

[Dockets Nos. 50-269, 50-270 and 50-287]

DUKE POWER CO.

Issuance of Amendments To Facility Operating Licenses and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 65, 65, and 62 to Facility Operating Licenses Nos. DPR-38, DPR-47, and DPR-55, respectively, issued to Duke Power Co., which revised technical specifications for operation of the Oconee Nuclear Station, Units Nos. 1, 2, and 3, located in Oconee County, S.C. The amendments are effective as of the date of issuance.

The amendments (1) revise the station's common technical specifications to support the operation of Oconee Unit No. 1 at full rated power during Cycle 5 after core reload, to add high pressure injection pump operability requirements, to add procedures for remote operation of the high pressure injection system, and to remove the orifice rod assemblies from the core, and (2) permit the use of five previously burned fuel assemblies which will be irradiated for a fourth cycle as part of a fuel demonstration program.

The applications for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has prepared an environmental impact appraisal for the fuel demonstration program (Item 2, above) and has concluded that an environmental impact statement for this particular action is not warranted because there will be no appreciable environmental impact attributable to this action.

The Commission has determined that the issuance of Item 1, above, will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the applications for amendment dated April 20 and June 26, 1978, as supplemented April 27, August 21, 28, September 6, 22, and 26, 1978, (2) Amendments Nos. 65, 65, and 62, to Licenses Nos. DPR-38, DPR-47, and DPR-55, respectively, and (3) the Commission's related Safety Evaluation and Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Oconee County Library, 201 South Spring Street, Walhalla, S.C. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 23rd day of October 1978.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 78-31560 Filed 11-7-78; 8:45 am]

[7590-01-M]

[Docket No. 50-269]

DUKE POWER CO. OCONEE NUCLEAR STATION UNIT NO. 1

Exemption

I.

Duke Power Co. (the licensee) is the holder of Facility Operating License No. DPR-38, which authorizes the operation of the nuclear power reactor known as Oconee Nuclear Station, Unit No. 1 (the facility), at steady reactor power levels not in excess of 2,568 megawatts thermal (rated power). The facility consists of a Babcock & Wilcox (B&W) designed pressurized water reactor (PWR) located at the licensee's site in Oconee County, S.C.

II.

In accordance with the requirements of the Commission's Emergency Core Cooling System (ECCS) Acceptance Criteria, 10 CFR 50.46, the licensee submitted on July 9, 1975, an ECCS evaluation for the facility. The ECCS performance submitted by the licensee was based upon an ECCS Evaluation Model developed by B&W, the designer of the Nuclear Steam Supply System for this facility. The B&W ECCS Evaluation Model had been previously found to conform to the requirements of the Commission's ECCS Acceptance Criteria, 10 CFR 50.46, and Appendix K. The evaluation indicated that with the limits set forth in the facility's technical specifications, the ECCS cooling performance for the facility would conform with the criteria contained in 10 CFR 50.46(b) which govern calculated peak clad temperature, maximum cladding oxidation, maximum hydrogen generation, coolable geometry, and long-term cooling.

On April 12, 1978, B&W informed the NRC that it had determined that in the event of a small break Loss of Coolant Accident (LOCA) on the discharge side of a reactor coolant pump, high pressure injection (HPI) flow to the core could be reduced somewhat. Subsequent calculations indicated that in such a case the calculated peak clad temperature might exceed 2,200° F.

Previous small break analyses for B&W 177 fuel assembly (FA) lowered loop plants had identified the limiting small break to be in the suction line of the reactor coolant pump. Recent analyses have shown that the discharge line break is more limiting than the suction line break.

The Oconee Nuclear Station Unit No. 1 has an ECCS configuration which consists of two HPI trains which are supplied by three HPI pumps. Each train injects into two of the four reactor coolant system (RCS) cold legs on the discharge side of the RCS pump. The two parallel HPI trains are connected but are kept isolated by manual values (known as the crossover valves) that are normally closed.

Duke Power has proposed by letter dated April 21, 1978, to maintain all three pumps in an operable status. The Oconee emergency power system is designed with sufficient capacity for this mode of operation. Upon receiving a safety injection signal the HPI pumps are started and valves in the injection lines are opened. Assuming loss of offsite power and the worst single failure (the HPI pump C or the HPI valve HP26), two HPI pumps would still be available and only one of the two injection valves would fail to open.

If a small break is postulated to occur in the RCS piping between the RCS pump discharge and the reactor vessel, the high pressure injection flow injected into this line (about 50 percent of the output of two high pressure pumps) could flow out the break. Therefore, for the worst combination of break location and single failure, 50 percent of the flow rate of two high pressure ECCS pumps would contribute to maintaining the coolant inventory in the reactor vessel. This situation had not been previously analyzed and B&W had indicated that the limits specified in 10 CFR 50.46 may be exceeded.

B&W has stated that they have analyzed a spectrum of small breaks in

the pump discharge line and have determined that to meet the limits of 10 CFR 50.46(b), operator action is required to open the two manual operated crossover valves and to manually align the motor driven isolation valve which had failed to open. This would allow the flow from the two HPI pumps to feed all four reactor coolant legs. B&W has assumed that 30 percent of the flow would be lost through the break and 70 percent would enter the core. The licensee has committed to provide for the necessary operator actions within the required time frame. That is, in the event of a small break and a limiting single failure, manual action will be taken to begin opening these valves within 5 minutes and have them fully opened and an adequate flow split obtained within the following 10 minutes. The analyses performed by B&W assumed that the flow split was established at 650 seconds by operator action. We conclude that the analyses are a reasonable approximation of the operator action that actually will be taken, provided specific procedures are prepared and followed to assure such action.

B&W has prepared a summary entitled "Analysis of Small Breaks in the Reactor Coolant Pump Discharge Piping for the B&W Lowered Loop 177 FA Plants," April 24, 1978 (the B&W Summary), which describes the methods used and the results obtained in the above analysis. The analysis models operator action by assuming a step increase in flow to the reactor vessel (with balanced flow in the three intact loops) 10 minutes after the LOCA reactor protection system trip signal occurs.

On April 26, 1978, the Commission issued an Order for Modification of License which amended the license for Oconee Unit No. 1 requiring (1) submission of a reevaluation of the emergency core cooling system calculated in accordance with the B&W Evaluation Model for operation with operating procedures described in the licensee's letter of April 21, 1978, and (2) operation in accordance with the procedures described in the licensee's letter of April 21, 1978.

By letter dated May 16, 1978, the licensee submitted a copy of the B&W Summary for our review. In their submittal the licensee stated that the analysis indicates that the ECCS Cooling performance calculated in accordance with the B&W Evaluation Model for operation of Oconee units at the rated core thermal power of 2568 Mwt with operating procedures described in their letter of April 21, 1978, is wholly in conformance with the provisions of 10 CFR 50.46. We have reviewed the B&W Summary and find that the methods of analysis meet the requirements of 10 CFR 50.46.

By letter dated April 20, 1978 and as supplemented on Aptil 27, 1978, the licensee submitted proposed Technical Specifications to implement the operating procedures and maintenance of all three HPI pumps in an operable status as described in the licensee's April 21, 1978 letter. We are issuing these Technical Specifications in the license amendment accompanying this Exemption.

On August 21, 1978, the licensee requested an exemption from the provisions of § 50.46.

In the licensee's submittal of June 8, 1978, it was stated that to meet the limits of 10 CFR 50.46, operator action at the valve locations is required to open High Pressure Injection (HPI) Pump B-C discharge header cross over valves (HP-116 and HP-117) and the HPI injection line A engineering safeguards valve (HP-26) within 10 minutes.

Reliance on local operation of valves this soon after the onset of a loss-of-coolant accident is not desirable on a permanent basis. The licensee has requested an exemption from the requirements of 10 CFR 50.46 for operation at Oconee 1 during Cycle 5 until such time as a permanent solution to this problem can be implemented.

The original concern derived from an unexpected but nevertheless inadequate assessment of a spectrum of breaks. This deviation from 10 CFR 50.46 has been ameliorated on a temporary basis by the actions discussed herein. However, combined reliance on prompt operator action to perform the required steps to assure plant safety over a period of years into the future is undesirable and should be replaced as promptly as possible by returning the system to automatic or control room actuation. To this extent, the original defect still remains until the modifications, are made to eliminate the reliance on prompt operator actions.

We have reviewed the effects of changes made to the facility during the current refueling outage and have concluded that operation of Oconee Unit 1 at power levels of up to 2568 Mwt and in accordance with the Technical Specifications will assure that the ECCS system will conform to the performance criteria of 10 CFR 50.46. Accordingly, until modifications are completed to achieve full compliance with 10 CFR 50.46, operation of the facility at power levels up to 2568 Mwt with appropriate operating procedures will not endanger life or property or the common defense and security.

While Oconee Unit No. 1 does not comply with our requirements for ECCS, appropriate actions, as previously described, have been taken to mitigate the consequences of any accidents at this plant. The Technical Specifications will provide protection against the subject small break LOCA and will bring plant operation wholly in conformance with 10 CFR 50.46. These Technical Specifications will be in force only for the brief interval of time until the proposed modifications of the ECCS are completed. The public interest is served in that by issuing this exemption for Unit No. 1 a significant power reduction with no concomitant increase in safety is avoided. Such a power reduction could affect system reliability, cause unemployment and increase consumer power costs in the area.

III.

Copies of the following documents are available for inspection at the Commission's Public Document Room at 1717 H Street, Washington, D.C. 20555, and are being placed in the Commission's local public document room at the Oconee County Library, 201 South Spring, Walhalla, S.C.

(1) The application for exemption dated August 21, 1978, and

(2) This Exemption in the matter of Duke Power Co., Oconee Nuclear Station, Unit No. 1.

IV.

Wherefore, in accordance with the Commission's regulations as set forth in 10 CFR 50.12, the licensee is hereby granted an exemption from the provisions of 10 CFR Part 50, Paragraph 50.46(a). With respect to Oconee Unit 1 this exemption supersedes the conditions of the Commission's Order for Modification of License dated April 26, 1978, and is conditioned as follows:

(1) The licensee has submitted the plans and schedules to modify the facility to eliminate reliance on prompt operator action described herein. Additional guidance in these areas has been provided by the NRC letter of September 26, 1978 to Duke Power Co.

(2) Upon approval by the staff the licensee shall undertake such modifications in accordance with the approved schedule.

(3) This exemption shall be terminated upon completion of the modifications in accordance with this exemption or upon shutdown for the next scheduled refueling outage, whichever occurs first.

Dated at Bethesda, Md., this 23d day of October 1978.

For the Nuclear Regulatory Commission.

VICTOR STELLO, Jr.,
Director, Division of Operating Reactors, Office of Nuclear Reactor Regulation.

[FR Doc. 78-31561 Filed 11-7-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-250 and 50-251]

FLORIDA POWER & LIGHT CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 40 and 32 to Facility Operating License Nos. DPR-31 and DPR-41, respectively, issued to Florida Power & Light Co. which revised Technial Specifications for operation of the Turkey Point Nuclear Generating Units Nos. 3 and 4, located in Dade County, Fla. The amendents are effective as of the date of the issuance.

These amendments change the Technical Specifications to reduce the pressurizer heatup rate from 200°F per hour to 100°F per hour which is necessitated by a discrepancy discovered in the Westinghouse analysis of the pressurizer heat-up rate.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act or 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated December 15, 1977; (2) Amendments Nos. 40 and 32 to License Nos. DPR-31 and DPR-41 and; (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Environmental and Urban Affairs Library, Florida International University, Miami, Fla. 33199. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 25th day of October 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-31562 Filed 11-7-78; 8:45 am]

[7590-01-M]

[Docket Nos. STN 50-498 OL and STN 50-499 OL]

HOUSTON LIGHTING & POWER CO., ET AL. (SOUTH TEXAS PROJECT, UNITS 1 AND 2)

Order Scheduling Special Prehearing Conference

The special prehearing conference provided for in the Licensing Board's Memorandum and Order of October 23, 1978, will commence at 9:30 a.m., local time, on December 12, 1978, in the Jury Assembly Room, 10th Floor, U.S. District Court, Federal Building and U.S. Courthouse, 515 Rusk Street, Houston, Tex.

In accordance with the provisions of 10 CFR 2.751a, and to the extent consistent with the nature of an operating license proceeding (see 10 CFR 2.760a), the conference will be held to:

(1) Consider all intervention petitions to allow the Board to make such preliminary or final determinations as to the parties to the proceeding, as maybe appropriate;

(2) Permit identification of the key issues in the proceeding;

(3) Take any steps necessary for further identification of the issues; and

(4) Establish a schedule for further actions in the proceeding.

As further provided in the October 23, 1978 Memorandum and Order, those who have filed petitions for leave to intervene may amend or supplement their petitions by no later than November 27, 1978.

As permitted by 10 CFR 2.715(a), and to the extent that time is available on December 12, 1978 beyond that necessary to complete the formal business of the conference, the Board will hear oral limited appearance statements. It is our present intention to hear any such statements after these formal matters have been concluded.

It is so ordered.

Dated at Bethesda Md., this 1st day of November 1978.

For the Atomic Safety and Licensing Board, designated to rule on petitions for leave to intervene.

CHARLES BECHHOEFER,
Chairman.

[FR Doc. 78-31563 Filed 11-7-78; 8:45 am]

[7590-01-M]

REGULATORY GUIDE

Expiration of Initial Comment Period

On August 8, 1978, the Nuclear Regulatory Commission announced in the FEDERAL REGISTER (43 FR 35136) the issuance of a proposed revision to Chapters 4 and 18 of Regulatory Guide 5.52, Revision 1, "Standard Format and Content for the Physical Protection Section of a License Application (for Facilities Other Than Nuclear Power Plants)." These chapters were revised to provide guidance to licensees for preparing the training and qualification plan they will be required to provide under amendments to paragraphs 73.30(d), 73.30(e), 73.50(a)(4), and 73.50(h) of 10 CFR Part 73 and the new Appendix B to Part 73 entitled "General Criteria for Security Personnel" which became Criteria for Security Personnel." which became effective on October 23, 1978. The August 8, 1978, notice stated that these revised chapters would be published in final form after consideration of public comment. During the public comment period, which ended on September 8, 1978, few comments were received; none were judged sufficiently substantive to necessitate further revision of the chapters. The entire Regulatory Guide 5.52 is currently undergoing revision in connection with the recently proposed upgraded physical protection requirements for fuel cycle facilities and transportation published in the FEDERAL REGISTER on August 9, 1978 (43 FR 35321). The revised chapters 4 and 18 will be incorporated in the revised document when it is published for comment.

One commenter suggested that "* * * substantive guidance on the specific intent of some of the revised requirements is really what is necessary." The intent of the regulation in general and of specific provisions in the regulation was discussed in the statement of considerations of both the proposed and the final regulation. If commenters will identify specific areas where the intent is not clear, these will be addressed further.

Another commenter stated that the information requested in §§ 4.3 and 18.3 of the regulatory guide duplicates the information required in Appendix B to Part 73 and the licensee should be permitted to submit his plan in accordance with Part 73 in lieu of completing §§ 4.3 and 18.3. The regulatory guide is intended to identify the format and content of the plan to be submitted in compliance with Part 73, Appendix B. Sections 4.3 and 18.3 are not requirements for submittal but rather guidance on what to submit pursuant to the Part 73 requirement.

Other commenters questioned the items in the revised chapters that called for criteria to be used to ensure an armed person's maturity and reliability if younger than 21 in view of the fact that the regulation requires an armed person to be at least 21 years of age. The purpose of this requirement is to ensure maturity in armed personnel. It is based on the experience of many organizations that persons aged 21 or over generally are sufficiently mature and reliable to serve in an armed capacity. If there are other criteria to provide this assurance, it is conceivable that an exemption to the 21-year age requirement could be made. Commenters also noted that the 21-year age requirement also might be in conflict with some State laws. The NRC staff is studying this situation further.

At the time the revised chapters to Regulatory Guide 5.52 were issued, two additional guidance documents were published for public comment. These were NUREG-0464 (Draft), "Site Security Personnel Training Manual," and NUREG-0465 (Draft), "Transportation Security Personnel Training Manual." Extensive comments were received on these documents, and they are being revised before being published in final form. When published, the final documents may be purchased at current rates from the National Technical Information Service, Springfield, Va. 22161. Copies will be provided to those on the original distribution list.

Single copies of the revised chapters to Regulatory Guide 5.52 and the drafts of the two training manuals may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Bernadine Scharf, Distribution Services Branch.

(5 U.S.C. 552(a))

Dated at Rockville, Md. this 1st day of November 1978.

For the Nuclear Regulatory Commission.

RAY G. SMITH,
Acting Director, Office of Standards Development.

[FR Doc. 78-31564 Filed 11-7-78 8:45 am]

[7590-01-M]

TOPICAL REPORT

Issuance and Availability

The Nuclear Regulatory Commission staff has released a topical report on potential radiation doses from wristwatches containing tritium gas. The report was prepared by the Oak Ridge National Laboratory under a contract to NRC.

The report, NUREG/CR-0215, "Estimates of Potential Radiation Doses from Wristwatches Containing Tritium Gas," presents estimates of potential radiation doses to members of the general public, both individually and collectively, from exposure to wristwatches containing tritium gas in sealed glass tubes. The study considered exposures that could occur during the distribution, use, repair, and disposal of such wristwatches, as well as under certain postulated accident conditions involving the wristwatches.

NUREG/CR-0215 is available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. Copies may be purchased at current rates from the National Technical Information Service, Springfield, Va. 22161. (Paper copy: $4.50; Microfiche: $3.00).

(5 U.S.C. 552(a))

Dated at Rockville, Md., this 31st day of October 1978.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc. 78-31565 Filed 11-7-78 8:45 am]

[7590-01-M]

[Docket Nos. 50-338A, 50-339A, 50-404A and 50-405A]

VIRGINIA ELECTRIC & POWER CO. ET AL.

Receipt of Additional Antitrust Information: Time for Submission of Views on Antitrust Matters

Virginia Electric & Power Co., pursuant to section 103 of the Atomic Energy Act of 1954, as amended, filed on September 1, 1978, information requested by the Attorney General for Antitrust Review as required by 10 CFR Part 50, Appendix L. The information concerns two additional ownership participants, Old Dominion Electric Cooperative and North Carolina Electric Membership Corp. for the North Anna Power Station, Units 1, 2, 3 and 4 located on the south shore of Lake Anna in Louisa County, Va.

The information was filed in connection with the Virginia Electric & Power Co.'s applications for construction permits and operating licenses for the North Anna Power Station, Units 1, 2, 3 and 4. Unit 1 of the station is operating and Units 2, 3 and 4 are under construction. The information submitted by Virginia Electric & Power Co. is the first part of the application for Amendments to the North Anna Power Station, Unit 1 operating license and construction permits for Units 2, 3 and 4.

The original "Notice of Application for Construction Permit and Operating License," for the North Anna Power Station, Units 1 and 2 included the antitrust aspects of the application and was published in the FEDERAL REGISTER on December 30, 1970 (35 FR 19805). The original antitrust portion of the application for Units 3 and 4, "Notice of Receipt of Application for Construction Permit and Facility License; Time for Submission of Views on Antitrust Matters," was published in the FEDERAL REGISTER on October 28, 1971 (36 FR 20709).

A copy of the Virginia Electric & Power Co. letter, dated September 1, 1978 and above stated documents are available for public examination and copying for a fee at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Va. 22901 and Office of the Board of Supervisors, Louisa County Courthouse, Main Street (P.O. Box 27), Louisa, Va. 23093.

Information in connection with the antitrust review of this application can be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C., attention: Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation.

Any person who wishes to have his views on the antitrust matters with respect to Old Dominion Electric Cooperative and North Carolina Electric Membership Corp. presented to the Attorney General for Consideration should submit such views to the U.S. Nuclear Regulatory Commission: Washington, D.C. 20555, attention: Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation on or before January 2, 1979.

Dated at Bethesda, Md., this 23d day of October, 1978.

For the Nuclear Regulatory Commission.

OLAN D. PARR,
Chief, Light Water Reactors Branch No. 3, Division of Project Management.

[FR Doc. 78-30679 Filed 11-7-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

REGIONAL STATE LIAISON OFFICERS

Meeting

On November 30 and December 1, 1978, the Nuclear Regulatory Commission will sponsor a meeting with State Liaison Officers in Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Mississippi, Alabama, Geor-

gia, Florida and Puerto Rico to discuss mutual regulatory interests. Forty-nine Governors have appointed liaison officers to NRC and this will be the first meeting of officers from the States in NRC region II (Atlanta, Ga). The meeting, which will be open to the public, will be held on November 30 from 11 a.m. to 5:30 p.m. and on December 1 from 8:30 a.m. to 12:15 p.m. at the region II office, 101 Marietta Street NW., Suite 3100, Atlanta, Ga.

Questions regarding this meeting should be directed to Sue Weissberg, Office of State Programs at 301-492-7794.

Dated at Bethesda, Md., this 2d day of November, 1978.

For the Nuclear Regulatory Commission.

ROBERT T. JASKE,
Acting Director,
Office of State Programs.

[FR Doc. 78-31553 Filed 11-7-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

ADVISORY COMMITTEE FOR THE PRESIDENT'S STATISTICAL SYSTEM REORGANIZATION PROJECT

Meeting

Pursuant to Pub. L. 92-463, notice is given of the convening of the Advisory Committee for the President's Statistical System Reorganization project from 1:30 to 9 p.m. on November 20, 1978 and from 8:30 a.m. to 3:30 p.m. on November 21, 1978. The meeting will be held in room 10103, New Executive Office Building, 726 Jackson Place NW., Washington, D.C.

The Committee will review project development and activities to date. The meeting is open to the public.

Issued in Washington, D.C. on November 2, 1978.

VELMA N. BALDWIN,
Assistant to the Director
for Administration.

[FR Doc. 78-31523 Filed 11-7-78; 8:45 am]

[3110-01-M]

PRIVACY ACT

New Systems

The purpose of this notice is to give members of the public an opportunity to comment on Federal agency proposals to establish or alter personal data systems subject to the Privacy Act of 1974.

The act states that "each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals * * *".

OMB policies implementing this provision require agencies to submit reports on proposed new or altered systems to Congress and OMB 60 days prior to the issuance of any data collection forms or instructions, or 60 days prior to the issuance of any requests for proposals for computer and communications systems or services to support such systems—whichever is earlier.

The following reports on new or altered systems were received by OMB between October 16, 1978 and October 27, 1978. Inquiries or comments on the proposed new systems or changes to existing systems should be directed to the designated agency point-of-contact and a copy of any written comments provided to OMB. The 60 day advance notice period begins on the report date indicated.

DEPARTMENT OF THE INTERIOR

System Name: Personnel Correspondence Files.

Report Date: October 17, 1978.

Point-of-Contact: Mr. Warren Dahlstrom, Department of the Interior, Washington, D.C. 20240.

Summary: In this report, the Secretary of the Interior proposes to separate the Personnel Correspondence Files from a larger, existing system, Secretarial Subject Files, to reflect an internal reorganization.

DEPARTMENT OF DEFENSE

System Name: Individual Credentialing Services Program.

Report Date: October 3, 1978.

Point-of-Contact: Mr. William Cavaney, Defense Privacy Board, 1000 Independence Avenue SW., Washington, D.C. 20314.

Summary: This new system of records is proposed by the Federal Acquisition Institute. It is intended to provide academic accreditation services to Federal employees who are involved in procurement/acquisition and Federal Assistance efforts, and thus improve those individuals' quality, efficiency, and performance. Information will be obtained from individuals and with their consent, from college and university registrars, held by FAI and provided to the individuals' employing agencies.

System Name: Family Housing Mock Utility Billing System.

Report Date: October 18, 1978.

Point-of-Contact: Mr. William Cavaney, Defense Privacy Board, 1000 Independence Avenue SW., Washington, D.C. 20314.

Summary: This is a new system of records, proposed by the Department of the Navy under the Military Construction Authorization Act of 1978 (P.L. 95-82), which requires the Secretary of Defense to "conduct a test program to determine the feasibility of assessing occupants of military family housing charges for excess energy consumption." The system will include utility bill and fuel usage information for a random cross section of about 10,000 military family units.

FEDERAL TRADE COMMISSION

System Name: Consumer and Industry Correspondence Files.

Report Date: October 19, 1978.

Point-of-Contact: Karen C. Gabbert, Office of General Counsel, Federal Trade Commission, Washington, D.C. 20580.

Summary: This is a proposed change to an existing system of records. FTC's Division of Credit Practices, Bureau of Consumer and Industry maintains the Correspondence Files for law enforcement or other FTC action under the Truth in Lending, Fair Credit Reporting, Equal Credit Opportunity, Fair Credit Billing, and Fair Debt Collection Practices Acts. The system is also used to prepare reports to Congress on the nature and number of consumer complaints received. The modification is the entry of the information into a computer, to allow "faster, more complete and accurate retrieval of the necesary information."

Waiver Requests: OMB procedures permit a waiver of the advance notice requirement when the agency can show that the delay caused by the 60 day advance notice would not be in the public interest. It should be noted that a waiver of the 60 day advance notice period does not releive an agency of the obligation to publish notice describing the system and to allow 30 days for public comment on the proposed routine uses of the personal information to be collected. A waiver of the 60 day advance notice provision was requested by agencies for the following reports received between October 16, 1978 and October 27 1978. Public inquiries or comments on the proposed new or altered systems should be directed to the designated agency point-of-contact and a copy of any written comments provided to OMB. Comments on the operation of the waiver procedure should be directed to OMB.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

System Name: SSI/CSC Temporary Matching File.

Report Date: October 13, 1978.

Point-of-Contact: Mr. John M. Allen, Privacy Coordinator, Office of Inspector General, Department of Health, Education, and Welfare, Washington, D.C. 20201.

Summary: This new system of records is proposed by HEW's Office of Inspector General to support a program which will involve a computerized "match" of the Federal civilian pay roll and the files of the Supplemental Security Income (SSI) program. The match, intended to identify and remove from the SSI rolls Federal employees who may be receiving benefits illegally, is being conducted in accordance with OMB's proposed guidelines on matching programs, issued August 2, 1978 (43 FR 34724, August 4, 1978).

Waiver Status: Granted, October 30, 1978. HEW has also been asked to provide information on the costs and benefits of the match, upon completion of the program.

DEPARTMENT OF TRANSPORTATION

System Name: Employee Health Record System.

Report Date: October 20, 1978.

Point-of-Contact: Mr. John J. Windsor, Privacy Act Coordinator, Department of Transportation, Washington, D.C. 20590.

Summary: This is a proposed modification to an existing system of records. As part of a health and fitness program for DOT employees, the agency plans to expand the

system to include records of physical examinations and stress testing on employees who volunteer for the fitness program.

Waiver Status: No action as of October 31, 1978.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc. 78-31575 Filed 11-7-78; 8:45 am]

[3110-01-M]

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 November 11, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; 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 through 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 AGRICULTURE

Science and Education Administration, competitive research grants.
On occasion.
Research organizations; 1,000 responses; 16,000 hours.
Ellett, C. A., 395-6132.

Forest Service.
Nationwide river recreation study.
Annually.
Recreation users of selected rivers; 1,920 responses; 634 hours.
Ellett, C. A., 395-6132.

Science and Education Administration, agricultural research facilities questionnaire.
SEA 615.
Single-time.
Agricultural research facilities; 200 responses; 1,600 hours.
Ellett, C. A., 395-6132.

Forest Service interagency study of recreation and related issues.
In Alaska.
Single-time.
Alaska residents and cruiseship passengers; 6,100 responses; 4,170 hours.
Ellett, C. A., 395-6132.

DEPARTMENT OF DEFENSE

Departmental and other questionnaire petroleum product suppliers.
Single-time.
Petroleum suppliers; 900 responses; 900 hours.
Marsha Traynham, 395-3773.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse and Mental Health Administration, use of volunteers in drug abuse treatment programs: A preliminary analysis.
Single-time.
Paid counselors, volunteers, and administration of drug program; 250 responses; 188 hours.
Richard Eisinger, 395-3214.

DEPARTMENT OF LABOR

Employment and Training Administration, total family support services.
MT-298.
Single-time.
WIN participants in the Salt Lake, Utah; 2,200 responses; 1,100 hours.
Strasser, A., 395-6132.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Report on NASA subcontracts.
NASA 667
On occasion.
Prime contractors issuing subcontracts; 3,600 responses; 900 hours.
Caywood, D. P., 395-3443.

DEPARTMENT OF LABOR

Mine Safety and Health Administration, records of training.
MSHA 5000-1 and 5000-23.
On Occasion.
Mines—metal nonmetal and coal; 300,000 responses; 45,000 hours.
Strasser, A., 395-6132.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-31584 Filed 11-7-78; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 20756; 70-6039]

APPALACHIAN POWER CO.

Proposed Extension of Short-Term Borrowing Authorization

NOVEMBER 1, 1978.

Notice is hereby given that Appalachian Power Co. ("Appalachian"), an electric utility subsidiary company of America Electric Power Co., Inc. a registered holding company, has filed with this Commission a post-effective amendment to its application previously filed and amended in this matter pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating section 6(b) of the Act and Rules 50(a)(2) and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transactions.

By order dated September 30, 1977 (HCAR No. 20191), Appalachian was authorized to issue and sell short-term notes and commercial paper through December 31, 1978, in an aggregate amount not to exceed $175,000,000 outstanding at any one time, such indebtedness to mature not later than June 30, 1979. By order dated September 8, 1978 (HCAR No. 20702), the borrowing authorization was increased to $200,000,000 outstanding at any one time.

By post-effective amendment Appalachian requests that its borrowing authorization, pursuant to the credit arrangements described below, of $200,000,000 be extended from December 31, 1978, to December 31, 1979, all such indebtedness issued thereunder to mature not later than June 30, 1980.

Concerning the credit arrangements, it is stated that Appalachian has lines of credit with 78 banks which total $319,000,000. For purposes of borrowing, these banks are of three classes. Each note to be issued to a Class I bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayable at any time without premium or penalty. Appalachian's credit arrangements with these banks require it to maintain compensating balances equal to a percentage of the line of credit made available by the bank plus a percentage of any amount actually borrowed (generally not in excess of 10 percent of the line of credit and 10 percent of the amount borrowed). In most cases Appalachian maintains deposit balances for its operational and

financial needs in amounts sufficient to satisfy any compensating balances required with respect to borrowings from such banks. Borrowings from a Class I bank would generally bear interest at an annual rate not greater than the bank's prime commercial rate in effect from time to time.

Each note to be issued to a Class II bank will nature not more than 90 days after the date of issuance or renewal thereof, and will be prepayable at any time without premium or penalty. Appalachian's credit arrangements with these banks require it to maintain compensating balances of 5 percent of the line of credit and to pay a fee equal to 4 percent of the bank's prime commercial rate then in effect on the size of the line. The combination of 5 percent compensating balances and a fee is generally equivalent to compensating balances not in excess of 10 percent of the line of credit made available. In addition, Appalachian must pay interest at the rate of 108.5 percent of the bank's prime commercial rate then in effect on the borrowings. It is stated that if the balances maintained and the fees paid by Appalachian with and to the Class I and II banks were maintained and paid solely to fulfill requirements for borrowings by Appalachian, the effective annual interest cost under either such arrangement, assuming full use of the line of credit, would not exceed 125 percent of the prime commercial rate in effect from time to time, or not more than 12.5 percent on the basis of a prime commercial rate of 10 percent.

With respect to the Class III banks, Appalachian has a money market facility at each of two named banks in an aggregate amount of $25,000,000. These money market facilities do not represent a formal commitment or engagement by these banks to Appalachian, but represent merely the ability of Appalachian to request unsecured borrowings, in the form of promissory notes, on a case-by-case basis. These money market facilities are available for unsecured borrowings in domestic dollars and/or in Eurodollars for periods of up to 180 days after the date of issuance, and any such borrowings will be prepayable at any time without premium or penalty. No compensating balances are required. The interest rate, which is presently to be negotiated on a case-by-case basis (using a 360-day year), is pegged to either the London Interbank Offering Rate plus a designated percent, if the borrowings are made in Eurodollars, or to a designated percent of the bank's prime rate, if the borrowings are made in domestic dollars. It is stated that interest rates on these notes will be lower than the effective interest rates for borrowings made from Class I and II banks, including the effect of any compensating balances and fees paid.

Appalachian also proposes to issue commercial paper in the form of promissory notes in denominations of not less than $50,000 nor more than $5,000,000, which will be of varying maturities, with no maturity more than 270 days after the date of issue and none will be prepayable prior to maturity. The commercial paper notes will be sold directly by Appalachian to Lehman Commercial Paper, Inc. (the "Dealer") at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. No commercial paper notes will be issued having a naturity of more than 90 days if such commercial paper notes would have an effective interest cost which exceeds the effective interest cost at which Appalachian could borrow from banks. The Dealer will reoffer the commercial paper notes to not more than 200 of the Dealer's customers identified and designated in a nonpublic list prepared by the Dealer in advance, at a discount rate of one-eighth of 1 percent per annum less than the discount rate to Appalachian. It is expected that such customers of the Dealer will hold the commercial paper prior to maturity, but, if any such customer wishes to resell such commercial paper prior to maturity, the Dealer, pursuant to a verbal repurchase agreement, will repurchase such commercial paper sold by it and reoffer it to other customers on its nonpublic list.

The proceeds from the issue and sale of the notes will be used by Appalachian to reimburse its treasury for past expenditures made in connection with its construction program and to pay part of the cost of its future construction program. Such construction expenditures for the years 1978 and 1979 are estimated at approximately $314,000,000 and $371,000,000, respectively.

Appalachian claims exception from the competitive bidding requirements of Rule 50 for the proposed issuance of notes to banks pursuant to paragraph (a)(2) thereof. Additionally, Appalachian requests exception from the competitive bidding requirements of Rule 50 for the proposed issue and sale of its commercial paper pursuant to paragraph (a)(5) thereof.

The fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment. It is stated that the State Corporation Commission of Virginia has jurisdiction over the proposed transactions and that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than November 28, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended, or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31538 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Administrative Proceeding File No. 3-5536; File No. 81-391]

BROWNING

Application and Opportunity for Hearing

OCTOBER 31, 1978.

Notice is hereby given that Browning ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), seeking an exemption from the requirement to file reports pursuant to sections 13 and 15(d) of the 1934 Act.

The Applicant states, in part:

1. The Applicant was a publicly-held company with a class of securities registered pursuant to section 12(g) of the 1934 Act, and was thus subject to the reporting provisions of section 13 of the 1934 Act.

2. On June 30, 1978, the Applicant was merged with a wholly owned subsidiary of Fabrique National, S.A. Herstal, of Leige, Belgium ("FN").

3. As a result of the merger, all the issued and outstanding shares of common stock of the Applicant are now owned by FN.

In the absence of an exemption, Applicant will be required to file certain periodic reports with the Commission for periods ending in 1978.

The Applicant contends that no useful purpose would be served in filing the periodic reports because FN now owns all of the Applicant's common stock, and its common stock is no longer publicly traded.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the Office of the Commission at 500 North Capitol Street NW., Washington, D.C. 20549.

Notice is further given that any interested person not later than November 27, 1978, may submit to the Commission in writing his views on any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31539 Filed 11-7-78; 8:45 am]

[8010-01-M]

[File No. 81-387]

CALIFORNIA WINDSOR CO.

Application and Opportunity for Hearing

OCTOBER 31, 1978.

Notice is hereby given that California Windsor Co. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Echange Act of 1934, as amended (the "1934 Act"), seeking an exemption from the requirements to file reports pursuant to sections 12(g), 13, and 15(d) of the Exchange Act.

The Applicant states, in part:

1. On February 21, 1978, pursuant to a Plan of Reorganization and Agreement, E. F. Hutton California Co., a wholly-owned subsidiary of E. F. Hutton Group, Inc. ("Hutton") acquired the business and substantially all of the assets of California Windsor Co., and delivered 961,667 shares of Hutton common stock to Applicant. Upon transfer of its assets Applicant ceased doing business and commenced liquidation in accordance with California law. In the liquidation the interest of a former shareholder was 0.88 share of Hutton common stock for each share of Applicant's common stock held. Applicant was formally dissolved in August 1978.

2. In the absence of an exemption, Applicant would be required to file pursuant to sections 12(g), 13, and 15(d) of the 1934 Act and the rules and regulations thereunder a Form 10-K for the year ending December 31, 1977, and the required periodic reports for the 1978 fiscal year. Applicant believes that its request for an order exempting it from the provisions of sections 12(g), 13, and 15(d) of the 1934 Act is appropriate in view of the fact that the time, effort, and expense involved in preparation of additional periodic reports would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to said application which may be examined at the Commission's Public Reference Section, 1100 L Street NW., Washington, D.C. 20549.

Notice is further given that any interested person not later than November 27, 1978, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed to Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31540 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Release No. 104670; 811-1564]

COMBINED SECURITIES FUND, INC.

Application

OCTOBER , 1978.

Pursuant to section 8(f) of the Act for an order declaring that applicant has ceased to be an investment company notice is hereby given that Combined Securities Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on September 22, 1978, pursuant to section 8(f) of the Act, for an order declaring that Applicant has ceased to be an investment company defined by 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 registered under the Act on November 22, 1967 and when its registration statement for the public offer and sale of its common stock was declared effective on March 5, 1968, Applicant commenced a public offering of such stock.

Applicant states that its Board of Directors approved an Agreement and Plan of Reorganization ("Plan") between Applicant and Security Investment Fund, Inc. ("Fund"), a registered, open-end, management investment company, whereby substantially all of Applicant's assets were to be exchanged for shares of Fund and Applicant was to be liquidated. According to the application, Applicant's shareholders approved the Plan at a special meeting held on July 28, 1978, by a vote in excess of two-thirds of its outstanding shares. The application states that the exchange was made on the basis of the net asset values of Fund and Applicant computed as of the close of business on the New York Stock Exchange on July 28, 1978. On that same date, Applicant asserts, the shares of Fund received in exchange for Applicant's assets were distributed to Applicant's shareholders pro rata according to their interests in Applicant.

Applicant further asserts that all of its shareholders received distributions in complete liquidation of their interests, and that it has no assets, debts, or other outstanding liabilities, is not a party to any litigation or administra-

tive proceeding, and does not propose to engage in any business activity other than that necessary for the winding up of its affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than November 24, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who requests 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. 78-31541 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Admin. Proceeding File No. 3-5548; File No. 81-369]

ESL, INC.

Application and Opportunity for Hearing

OCTOBER 31, 1978.

Notice is hereby given that ESL Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") seeking an exemption from the requirements to file reports pursuant to sections 13 and 15(d) of the Exchange Act.

The Applicant states, in part:

1. The Applicant is a California corporation subject to the reporting provisions of sections 13 and 15(d) of the 1934 Act.

2. On June 9, 1978, TRW Inc. ("TRW") became the sole shareholder of the Applicant when it acquired 100 percent of Applicant's outstanding equity securities as a result of a merger of a wholly owned subsidiary of TRW with and into the Applicant.

3. The merger was voted upon and approved by the Applicant's shareholders at a meeting held on June 8, 1978.

4. Upon the terms of the merger, the shares of the Applicant's common stock outstanding prior to the merger were each converted into $47 cash.

5. The holders of such shares do not have any continuing interest in, or rights as shareholders of the Applicant, TRW, or TRW's subsidiary.

In the absence of an exemption, Applicant is required to file pursuant to sections 13 and 15(d) of the 1934 Act and the rules and regulations thereunder, an annual report on Form 10-K for its fiscal year ending December 31, 1978, and its quarterly reports on Form 10-Q for the periods ending June 30, 1978 and September 30, 1978. Applicant believes that its request for an order exempting it from the provisions of sections 13 and 15(d) of the 1934 Act is appropriate in view of the fact that Applicant believes that the time, effort and expense, involved in preparation of additional periodic reports would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street NW., Washington, D.C.

Notice is further given that any interested person not later than November 27, 1978, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. 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) any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31542 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Rel. No. 645; 803-10]

HIGHLAND INVESTMENT CORP.

Application

OCTOBER 31, 1978.

Pursuant to section 206A of the Act for order granting exemption from all provisions of the Act except the examination provisions of section 204, certain recordkeeping requirements of Rule 204-2, and section 206, notice is hereby given that Highland Investment Corp. ("Applicant"), a Delaware corporation, has filed an application on January 25, 1978, and amendments thereto on June 12 and August 30, 1978, pursuant to section 206A of the Investment Advisers Act of 1940 ("Act"), for an order of the Commission exempting Applicant from all provisions of the Act except the examination provisions of section 204, certain recordkeeping requirements of the Rule 204-2 under section 204, and the anti-fraud provisions of section 206. Applicant contends that the purposes and policies of the Act do not require that it comply fully with the Act's provisions since it is a family controlled corporation which provides investment advice solely for the benefit of family related clients and not to the general public. 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 was incorporated on September 8, 1976, by Mr. Abe Plough of Memphis, Tenn. Applicant claims that it was organized for the purpose of providing advice and recommendations to its clients with respect to investments and reinvestments of securities in order to achieve and maintain balanced investment portfolios and in order to implement certain tax planning programs. Applicant states that its clients are and will be expressly limited to Union Planters National Bank of Memphis and National Bank of Commerce, the two corporate trustees of certain trusts created for the benefit of members of the family of Mr. Plough (but solely in respect of the corporate trustees administration of the assets of such trusts), The Memphis-Plough Charitable Trust ("MPCT"), a private Plough family charitable trust, and Plough Invest-

ment Corp. ("PIC"), a family controlled personal holding company. The Applicant further states that no investment advice will be offered or provided to the general public.

The two corporate trustees act as trustees of 22 family trusts, all but 1 of which are irrevocable, for the benefit of no more than 31 family members—the furthest relation from Mr. Plough being great nieces and nephews and step-grandchildren. Applicant states that if the interest of any beneficiary of the family trusts is divested by death, such interest shall pass to that beneficiary's issue, or if no issue is then surviving, then to other members of the Plough family or to MPCT. The Applicant also asserts that Mr. Plough is the sole donor of MPCT's assets and that a majority of MPCT's board of trustees is comprised of Plough family members. The Applicant further asserts that all of the outstanding shares of PIC's preferred and common stock is held by MPCT and the two corporate trustees for the benefit of various Plough family members. The Applicant represents that each adult beneficiary of the family trusts will consent in writing to the investment advisory contracts proposed to be entered into between the Applicant and the two corporate trusts.

The Applicant states that Mr. Plough owns all of the outstanding capital stock of the Applicant and that all of the members of the board of directors of the Applicant and all officers of the Applicant, with the exception of the Secretary and Treasurer, are members of the Plough family. Applicant indicates that Jocelyn Plough Rudner, Mr. Plough's daughter, is President of Applicant, and that it is anticipated that Mrs. Rudner will succeed to Mr. Plough's entire stock ownership interest in Applicant. Applicant represents that it employs or will employ approximately two persons who are not members of the Plough family to provide technical research and analysis to the board of directors of Applicant. In addition, Applicant states that these persons will perform administrative functions on behalf of Applicant. Applicant claims, however, that Applicant's board of directors will make all final decisions as to investment advice and recommendations offered to Applicant's clients.

According to the application, technical research and analysis by such professional persons would include the review of current industrial, governmental, financial and monetary trends and the recommendation from time to time to buy, sell or hold specific securities. These persons will also provide statistical information to the board of directors of Applicant as to the composition of the assets of the various trusts and the personal holding company (such as current values, amounts of income and principal, etc.), and they will verify the actions of the corporate trustees in effectuating purchases and sales of securities. They will also act as a liaison between members of the Plough family and the corporate trustees.

Applicant represents that the employment of these persons was solicited by representatives of Applicant and they did not in any way initiate contact with Applicant, or offer their services to Applicant. Applicant also asserts that it is understood between such persons and Applicant that they will not provide services or information of the type provided to applicant to any person outside the Plough family group, so long as they are employed by Applicant.

The Applicant states that it will receive as compensation for its services out of the income of the trusts only a reimbursement of expenses actually incurred by it in connection with the rendering of investment advisory services to its clients, that in no event will the Applicant receive any compensation which will result in a profit to the Applicant, and that neither Mr. Plough nor Mrs. Rudner will receive any compensation from the Applicant. Further, Applicant claims that no bonuses or additional compensation will be paid to any of Applicant's employees based upon the performance of the securities of Applicant's clients.

The Applicant states that it has received an order from the Commissioner of Insurance of the State of Tennessee dated September 29, 1977, declaring Applicant not to be an investment adviser under the Tennessee securities laws based upon essentially the same facts as are described in the application on file with the Commission.

Applicant agrees to comply only with the examination provisions of section 204, the recordkeeping requirements contained in subparagraphs (1) through (6) and subparagraphs (9), (10), and (12) of Rule 204-2(a) under section 204 of the Act, and with the other provisions of Rule 204-2 to the extent they relate to the requirements of subparagraphs (1) through (6) and subparagraphs (9), (10), and (12) of Rule 204-2(a), and with the anti-fraud provisions of section 206, to the extent they may be applicable. In addition, however, Applicant states that, anything in Rule 204-2(a) to the contrary notwithstanding, the term "advisory representative" shall not, for Applicant's purposes, mean any officer or director of Applicant who is a member of the Plough family, except Mr. Plough or any person who succeeds to his stock ownership interest in Applicant, unless such officer or director, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations, in which event, that officer or director shall be deemed to be an "advisory representative" under Rule 204-2(a). Applicant contends that compliance by Applicant only with these provisions is appropriate in the public interest and consistent with the protection of investors because compliance with the remaining provisions of the Act by Applicant, a family controlled adviser providing investment advisory services to the same family and not to the general public, is unnecessary and would be unduly burdensome under the circumstances.

Section 206A provides in part that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than November 27, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31543 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Rel. No. 10457; 812-4381]

MASSACHUSETTS MUTUAL LIFE INSURANCE CO. AND MASSMUTUAL CORPORATE INVESTORS, INC.

Application

OCTOBER 30, 1978.

Pursuant to section 17(d) of the Act and rule 17d-1 thereunder, notice is hereby given that Massachusetts Mutual Life Insurance Co. ("Insurance Company"), a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts, and MassMutual Corporate Investors, Inc. ("Fund"), a nondiversified, closed-end management investment company registered under the Investment Company Act of 1940 ("Act") (hereinafter collectively referred to as the "Applicants"), filed an application on October 26, 1978, purusant to section 17(d) of the Act and Rule 17d-1 thereunder, for an order of the Commission permitting Applicants to convert their 6½ percent Convertible Subordinated Notes ("Convertible Notes") of Flowers Industries, Inc. ("Flowers") into Flowers common stock. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that pursuant to an order of the Commission issued on August 19, 1971 (Investment Company Act Release No. 6690, referred to herein as the "Order"), the Insurance Company, which acts as investment adviser to the Fund, is permitted to invest concurrently for its general account in each issue of securities purchased by the Fund at direct placement, and to exercise warrants, conversion privileges and other rights at the same time as the Fund. Applicants state that among the conditions of the Order, paragraph (4) thereof provides that once the Insurance Company and the Fund have acquired interests in an issuer, neither the Insurance Company nor the Fund, unless otherwise permitted by order of the Commission, may acquire any further interest in such issuer other than interests in all respects identical.

The application states that the Insurance Company and the Fund now each hold $3,750,000 in principal amount of the Convertible Notes due December 8, 1992, of Flowers, and that the Convertible Notes, which were purchased by the Insurance Company and the Fund in December of 1972, are convertible into Flowers common stock at a ratio of one share of common stock for each $10.00 in outstanding principal amount of Convertible Notes converted.

Applicants state that in addition to the Convertible Notes, the Insurance Company also holds $5,000,000 in principal amount of Flowers' 9½ percent Promissory Notes due August 1, 1996 ("Promissory Notes"), purchased in November and December of 1976. Applicants explain that since the Promissory Notes contain no equity feature, they would not have been an appropriate investment for the Fund in light of the Fund's investment policies.

The application states that on October 10, 1978, Applicants received formal notice from Flowers that it intends to repay the Convertible Notes on December 8, 1978, pursuant to the note agreement dated December 8, 1972, between Flowers and the Insurance Company and the Fund, respectively, relating to the Convertible Notes ("Note Agreements"). The application further states that pursuant to the Note Agreements, Applicants have the option to convert their Convertible Notes into Flowers common stock in lieu of accepting prepayment thereof. Applicants propose to exercise this option.

According to the application, neither the Insurance Company nor the Fund wishes to hold Flowers common stock for an extended period of time. Applicants propose to sell such common stock as promptly after conversion as is reasonably feasible without depressing the market price of such common stock. Applicants submit that if they have an opportunity to sell all or part of their Flowers common stock in a registered public offering, they might choose to do so, but that if they do not have such an opportunity they would sell such stock in accordance with Rule 144 under the Securities Act of 1933 ("Rule 144"). Applicants further state that even if they have an opportunity to sell their Flowers common stock in a registered public offering, they might choose to sell such common stock in accordance with Rule 144 either before or after such public offering in order to avoid increasing the number of shares of Flowers common stock sold in such public offering to a point where the price received by Applicants for such common stock might be significantly depressed. Applicants propose to make all their conversions of Convertible Notes concurrently in equal principal amounts and to sell equal amounts of Flowers common stock concurrently and on the same terms, as required by the Order.

Section 17(d) of the Act and Rule 17d-1 thereunder, taken together, provide, in part, that it is unlawful for an affiliated person of a registered investment company, acting as principal, to effect any transaction in which such investment company is a joint participant, without the permission of the Commission. Rule 17d-1 provides, in part, that in passing upon applications for orders granting such permission, the Commission will consider (1) whether the participation of the investment company in such transaction on the basis proposed is consistent with the provisions, policies, and purposes of the Act, and (2) the extent to which such participation is on a basis different from or less advantageous than that of other participants.

Applicants state that unless the requested relief is granted, paragraph (4) of the Order would prevent Applicants from exercising their conversion privileges in respect of the Convertible Notes as long as the Insurance Company holds the Promissory Notes. Applicants state that the Order was granted pursuant to section 17(d) of the Act and Rule 17d-1 thereunder, and the requested relief would be an order granting an exemption from one of the conditions specified in the Order. Therefore, Applicants assert that the standards for consideration of the present application should be the standards specified in Rule 17d-1. Such standards, Applicants assert, require that the Commission consider (1) whether conversion of the Convertible Notes in the manner proposed by Applicants would be on a basis consistent with the provisions, policies and purposes of the Act, and (2) the extent to which such conversion by the Fund would be on a basis different from or less advantageous than that of the Insurance Company.

Applicants submit that the proposed transaction is consistent with the policies of the Fund, and with the provisions, policies and purposes of the Act, and will be on a basis not less advantageous to the Fund than to the Insurance Company. According to the application, the Fund's investment policy specifies that the principal investments of the Fund will be long-term obligations and, occasionally, preferred stock purchased directly from the issuers, if such obligations or preferred stocks have equity features such as accompanying shares of common stock, securities convertible into such shares, or conversion rights or warrants to purchase such shares. Applicants submit that in order to realize the maximum capital profits on convertible securities, the Fund must convert those securities and sell the common stock received in respect of the conversion, and that, therefore, in seeking to convert the Convertible Notes and sell the Flowers common stock received in respect of such con-

version, the Fund is seeking to achieve its investment objective by realizing the entire capital profit available in respect of the excess of the current value of Flowers common stock over the amount it would receive upon prepayment of its Convertible Notes pursuant to the Note Agreements. Applicants state that the Note Agreements provide that any prepayment on December 8, 1978, would have to be made at a premium of 6.5 percent of the principal amount of the Convertible Notes prepaid, and that, therefore, upon prepayment of the Convertible Notes held by Applicants, they would each receive $3,993,750, plus accured interest on their Convertible Notes. Applicants further submit that if they were to convert their Convertible Notes into Flowers common stock at the conversion price of $10 per share, they would each receive 375,000 shares of such common stock, plus accrued interest on the Convertible Notes. Applicants also submit that on the basis of September stock prices, the Flowers commonstock which Applicants would receive upon conversion of their Convertible notes would be worth approximately $5,910,938. Applicants therefore estimate that if they can convert their Convertible Notes and sell the Flowers common stock received upon such conversion at prices comparable to the September stock prices, they will realize approximately $1,917,188 more by converting their Convertible Notes and selling Flowers common stock than they would receive by accepting prepayment of their Convertible Notes.

The application states that, in converting the Convertible Notes, the intention of the Applicants would be ultimately to dispose of the interest in Flowers represented by the Convertible Notes.

Applicants assert that since the Convertible Notes were purchased in a private placement under section 4(2) of the Securities Act of 1933, they are restricted securities. Applicants state that they have now satisfied the holding-period requirement of Rule 144 with respect to the Convertible Notes and with respect to any Flowers common stock received by them in respect of any conversion of Convertible Notes. Applicants further state that since Flowers is a reporting company under section 13 of the Securities Exchange Act of 1934 and Flowers common stock is traded on the American Stock Exchange, the Insurance Company believes that Applicants would be able to sell Flowers common stock on the American Stock Exchange in compliance with Rule 144. Applicants argue that, on the other hand, there is no public market for the Convertible Notes, and that, moreover, if the Convertible Notes were sold in a private placement, they would be restricted securities in the hands of the purchaser. Thus, Applicants argue, if such purchaser converted the Convertible Notes and received Flowers common stock, he would not be free to sell such common stock under Rule 144 until he had held the Convertible Notes or such common stock for 2 years. Applicants believe, therefore, that they would get a higher price by converting their Convertible Notes and selling Flowers common stock than by selling their Convertible Notes.

Applicants assert that the interests of the Insurance Company and the Fund in Flowers are identical in all respects except that the Insurance Company holds the Promissory Notes and the Fund does not, and that no benefit which might accrue to the Insurance Company as a holder of the Promissory Notes has been a material factor in the decision of Applicants that they will convert their Convertible Notes under the circumstances contemplated by the application. Applicants further state that the conversion of the Convertible Notes will reduce the amount of Flowers outstanding indebtedness by $7,500,000, and that, in the absence of conversion, Flowers indebtedness would be reduced by this amount by Flowers prepayment of the Convertible Notes.

Accordingly, Applicants request that an order be issued, pursuant to the provisions of section 17(d) of the Act and of Rule 17d-1 thereunder, permitting them to convert their Convertible Notes, notwithstanding Paragraph (4) of the Order and ownership by the Insurance Company of the Promissory Notes, on the following conditions:

(1) That the conversion of Convertible Notes by the Insurance Company and the Fund, and each disposition of Flowers common stock received in respect of such conversion, shall be effected in compliance with all terms of the Order other than Paragraph (4) thereof;

(2) That Convertible Notes shall be converted by the Insurance Company and the Fund only with the intention of disposing of the Flowers common stock received in respect of such conversion; and

(3) That at the time of the conversion of Convertible Notes by the insurance Company and the Fund the value of the Flowers common stock to be received upon such conversion (as measured by the closing price of such comon stock on the American Stock Exchange on the day immediately preceding such conversion) shall exceed 106.5 percent of the principal amount of the Convertible Notes converted.

Notice is further given that any interested person may, not later than November 24, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Managment, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31544 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Rel. No. 5989; 18-22]

MILBANK, TWEED, HADLEY & McCLOY PARTNERS' RETIREMENT PLAN

Application

OCTOBER 31, 1978.

Pursuant to section 3(a)(2) of the Securities Act of 1933 for an order exempting from the provisions of section 5 of the Act interests or participations in the Milbank, Tweed, Hadley & McCloy Partners' Retirement Plan, notice is hereby given that Milbank, Tweed, Hadley & McCloy (hereinafter referred to as the "Applicant" or the "Firm"), a law firm organized as a partnership under the laws of the State of New York, on October 4, 1978, filed an application for exemption from the registration requirements of the Securities Act of 1933 (the "Act") for participations or interests issued in connection with the Milbank, Tweed, Hadley & McCloy Partners' Retirement Plan (the "Plan"). All interested persons are referred to that document, which is on file with the Commission, for the facts and representations contained therein, which are summarized below.

The Plan covers the Applicant's partners, of whom 51 were eligible to participate, and of whom 38 were active participants, as of December 31, 1977. At December 31, 1977, the aggregate market value of the assets of the Plan was $1,602,464. All partners are eligible to participate in the Plan if they are at least 25 years of age and have completed one year of service with the Firm.

Applicant states that the Plan is of the type commonly referred to as a "Keogh" plan, which covers persons (in this case, Applicant's partners) who are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954, as amended (the "Code"), and therefore, is excepted from the exemption provided by section 3(a)(2) of the Act for interests or participations in employee benefit plans of corporate employers. Section 3(a)(2) of the Act provides, however, that the Commission may exempt from the provisions of section 5 of the Act any interest or participation issued in connection with a pension of profit-sharing plan which covers employees, some or all of whom are employees within the meaning of section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant states that the Plan, originally adoptd effective as of January 1, 1968, was amended from time to time and was amended and restated in its entirety, effective as of January 1, 1976, in order to comply with the Employee Retirement Income Security Act of 1974 ("ERISA"). The Internal Revenue Service ("IRS") has issued a ruling dated October 3, 1977, to the effect that the Plan, as so amended and restated, is a qualified plan under section 401(a) of the Code. Applicant makes annual contributions to the Plan on behalf of participants based on a percentage of the participant's share of Firm net income not to exceed $7,500. The Firm proposes to further amend the Plan to provide that active participants may make voluntary contributions to the Plan of not more than 10 percent of such participant's share of Firm net income for all year during which the person has been a participant, subject to certain limitations. Such proposed amendment will be effective as of January 1, 1978, subject to issuance by the IRS of a determination as to the continued qualification of the Plan, as so amended.

Applicant states that because the Plan covers persons, all of whom are employees within the meaning of section 401(c)(1) of the Code, the Plan is not an "employee pension benefit plan" under Title I of ERISA. However, as a qualified Plan under section 401(a) of the Code, the Plan is subject to Title II of ERISA and IRS regulations thereunder. In addition, even though the Plan is not subject to the reporting and disclosure requirements of Title I, the tax provisions of Title II of EIRSA require the filing with the IRS of an annual report with respect to the Plan similar to the annual report required under Title I of ERISA.

Applicant submits that the primary reason for denying a blanket exemption to pension and profit-sharing plans covering self-employed persons was concern on the part of Congress that such plans constitute complex investment vehicles, interests in which could be sold by sponsoring financial institutions to self-employed persons who might not be sophisticed in field or who might be be unable to protect adequately their interests and those of their participating employees. Applicant states that the Plan does not present the risks associated with the sale of interests or participations in multiemployer plans by spronsoring financial institutions with which Congress appeared to be concerned. Applicant further submits that the registration requirement exists at all only because of the Firm does business as a partnership. If it were incorporated, its partners would not be self-employed persons and there would be no question as to availability to question as to the available of the exemption.

Applicant states that the Plan is not a uniform prototype or master plan designed to be marketed by a sponsoring financial institution or promoter to numerous unrelated self-employed persons. The Plan was prepared by attorneys in the Firm and covers only partners of the Firm.

Applicant states that it has employed independent experts to provide investment services with respect to the Plan. The Chase Manhattan Bank, N.A. is trustee (the "Trustee") for the Plan under an agreement of trust dated as of January 1, 1968, as amended (the "Trust Agreement"). Under the Trust Agreement the Trustee has the power in its sole discretion to invest and reinvest Plan assets in any permitted investments as provided therein. Although the Plan and the Trust Agreement permit the assets of the Plan to be invested in any collective trust established and invested by the Trustee for the collective investment of funds of plans qualified under section 401(a) of the Code, the assets of the Plan have not been commingled in collective investment media with the assets of the plans of other employers and Applicant represents that the Trustee has expressed that it has no intention of commingling Trust assets and Applicant has no intention of requesting the Trustee to do so.

Applicant states that it maintains substantial administrative control over the Plan. The Plan provides for the appointment of a Committee consisting of at least three persons each of whom must be a partner in the Firm. The Committee has overall responsibility and authority for administration of the Plan, including construction of the Plan, determinations of questions of fact and law arising under the Plan and authorization of distributions from the trust fund established by the Trustee pursuant to the Plan. The Committee may employ such investment advisers, experts and other persons as it deems appropriate in connection with the administration of the Plan. The Committee has no authority with respect to the acquisition or disposition of Plan assets, such authority being the exclusive responsibility of the Trustee.

Applicant represents that it has not distributed and does not intend to distribute any type of promotional material relating to the Plan and has not madé and does not intend to make any solicitation of voluntary contributions under the Plan. The Firm makes available to Plan participants, upon request and without charge, copies of the Plan, the Trust Agreement and monthly summaries of the Trust's investments and furnishes each participant with other descriptive materials relating to various features of the Plan, including annual financial statements of the Plan and monthly statements setting forth the amount of contributions to and the value of each participant's account.

Applicant states that it is engaged in furnishing legal services of a type which necessarily involve financially sophisticated and complex matters and, for that reason as well as the extensive administrative control over the Plan maintained by the Firm, is able to represent adequately the interests of its partners who are participants in the Plan. Applicant further states that in light of the limited number as well as the high degree of sophistication of the participants, the nature of the Plan's interests, and the partners' access of information regarding the interests, participants are able to represent themselves adequately with respect thereto.

Applicant concludes that for the foregoing reasons, granting the requested exemptive orders would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than

November 24, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his or her interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he or she may request to 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 the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following November 24, 1978, 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. 78-31545 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Rel. No. 20755; 70-6049]

OHIO POWER CO.

Proposed Extension of Short-Term Borrowing Authorization

NOVEMBER 1, 1978.

Notice is herby given that Ohio Power Co. ("Ohio Power"), an electric utility subsidiary of American Electric Power Co., Inc., a registered holding company, has filed with this Commission a post-effective amendment to its application previously filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating section 6(b) of the Act and rules 50(a)(2) and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transactions.

By orders dated October 11, 1977, and August 21, 1978 (HCAR Nos. 20206 and 20674), Ohio Power was authorized to issue short-term notes to banks and dealers in commercial paper and demand notes to bank trust departments through December 31, 1978, in the maximum principal amount of $137,000,000 outstanding at any one time, all such indebtedness to mature not later than June 30, 1979.

By post-effective amendment Ohio Power requests that its borrowing authorization of $137,000,000, pursuant to credit arrangements described below, be extended until December 31, 1979, any such indebtedness issued pursuant to such extension to mature not later than June 30, 1980.

Concerning the credit arrangements, it is stated that Ohio Power has lines of credit with 67 banks in an aggregate amount of $305,565,000 with banks of three classes. Each note to be issued a class I bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayable at any time without premium or penalty. Ohio Power's credit arrangements with these banks require it to maintain compensating balances equal to a percentage of the line of credit made available by the bank plus a percentage of any amount actually borrowed (generally not in excess of 10% of the line of credit and 10% of the amount borrowed). In most cases Ohio Power maintains deposit balances for its operational and financial needs in amounts sufficient to satisfy any compensating balances required with respect to borrowings from such banks. Borrowings from a class I bank would generally bear interest at an annual rate not greater than the bank's prime commercial rate in effect from time to time.

Each note to be issued a class II bank will mature not more than 90 days after the date of issuance or renewal thereof, and will be prepayable at any time without premium or penalty. Ohio Power's credit arrangements with these banks require it to maintain compensating balances of 5 percent of the line of credit and to pay a fee equal to 4 percent of the bank's prime commercial rate then in effect on the size of the line. The combination of 5 percent compensating balances and a fee is generally equivalent to compensating balances not in excess of 10 percent of the line of credit made available. In addition, Ohio Power must pay interest at the rate of 108.5 percent of the bank's prime commercial rate then in effect on the borrowings. It is stated that if the balances maintained and the fees paid by Ohio Power with and to the class I and II banks were maintained and paid solely to fulfill requirements for borrowings by Ohio Power, the effective annual interest cost under either such arrangement, assuming full use of the line of credit, would not exceed, 125 percent of the prime commercial rate in effect from time to time, or not more than 12.50 percent on the basis of a prime commercial rate of 10 percent.

With respect to the class III banks, Ohio Power has a money market facility at each of two named banks in an aggregate amount of $25,000,000. These money market facilities do not represent a formal commitment or engagement by these banks to Ohio Power, but represent merely the ability of Ohio Power to request unsecured borrowings, in the form of promissory notes, on a case-by-case basis. These money market facilitiies are available for unsecured borrowings in domestic dollars and/or in Eurodollars for periods of up to 180 days after the date of issuance, and any such borrowings will be prepayable at any time without premium or penalty. No compensating balances are required. The interest rate, which is presently to be negotiated on a case-by-case basis (using a 360 day year), is pegged to either the London Interbank Offering Rate plus a designated percent, if the borrowings are made in Eurodollars, or to a designated percent of the bank's prime rate, if the borrowings are made in domestic dollars. It is stated that interest rates on these notes will be lower than the effective interest rates for borrowings made from class I and II banks, including the effect of any compensating balances and fees paid.

Ohio Power also has arrangements to issue commercial paper notes in denominations of not less than $50,000 nor more than $5,000,000. Such notes will be of varying maturities with no maturity more than 270 days after the date of issue, and will not be prepayable prior to maturity. The commercial paper notes will be sold directly by Ohio Power to Lehman Commercial Paper Inc. (the "Dealer"), at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. No commercial paper notes will be issued having a maturity of more than 90 days at an effective interest cost which exceeds the effective interest cost at which Ohio Power could borrow from banks. The Dealer will reoffer the commercial paper notes to not more than 200 of the Dealer's customers identified and designated in a nonpublic list prepared by the Dealer in advance. It is expected that such customers of the Dealer will hold the commercial paper notes to maturity, but, if any such customer wishes to resell such commercial paper prior to maturity, the Dealer, pursuant to a verbal repurchase agreement, will repurchase such commercial paper sold by it and reoffer it to other customers on its nonpublic list.

Ohio Power also has arrangements to issue demand notes to the trust departments of the Cleveland Trust Co.,

Cleveland, Ohio, and the Fidelity Bank, Philadelphia, Pa., in the maximum amounts of $10,000,000 and $20,000,000, respectively. It is stated that the bank trust departments have a flow of funds, as fiduciary for various accounts, which would be available for investment in such demand notes. These demand notes will be in denominations of not less than $1,000 and will bear interest at a rate equivalent to not more than the sum of ¼ percent and the highest rate paid daily by General Motors Acceptance Corp. on its commercial paper with a maturity of less than 180 days. Notes issued from January 1 to June 30 will mature July 1 of the same year and those issued from July 1 to December 31 will mature on January 1 of the following year. The bank trust departments will have the right to demand payment at any time, and Ohio Power will have the right to repay, without penalty, all or any part of the principal amount of such demand notes outstanding.

The proceeds from the issue and sale of the notes will be used by Ohio Power to reimburse its treasury for past expenditures made in connection with its construction program and to pay part of the cost of its future construction program. Such construction expenditures for the years 1978 and 1979 are estimated at approximately $197,000,000 and $239,000,000, respectively, exclusive of the cost of the construction program of its subsidiary, Ohio Electric Co. Estimates of this subsidiary's construction expenditures for the years 1978 and 1979 are approximately $8,000,000 and $2,000,000, respectively.

Ohio Power claims exception from the competitive bidding requirements of rule 50 for the proposed issuance of notes to banks and demand notes to bank trust departments pursuant to paragraph (a)(2) thereof. Applicant also requests exception from the competitive bidding requirements of rule 50 for the proposed issue and sale of its commercial paper pursuant to paragraph (a)(5) thereof.

The fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than November 28, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended by said post-effective amendment, or as it may be further amended, may be granted as provided in rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31546 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Admin. Proceeding File No. 3-5569; File No. 81-401]

STP CORP.

Application and Opportunity for Hearing

OCTOBER 31, 1978.

Notice is hereby given that STP Corp. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934 (the "1934 Act") for an order granting Applicant an exemption from filing periodic reports required by the provisions of sections 13 and 15(d) of the 1934 Act.

The Applicant states, in part:

1. On May 11, 1978, Applicant was merged with New STP Corp., and thereby became a wholly-owned subsidiary of Esmark, Inc. Applicant's common stock was delisted from the American Stock Exchange, and its registration under section 12(b) of the 1934 Act was terminated effective May 25, 1978.

Applicant argues that the granting of the exemption would not be inconsistent with the public interest or the protection of investors, in view of the fact that its securities are no longer publicly held.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C. 20549.

Notice is further given that any interested person not later than Nov. 27, 1978 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person for the request, and the issues of fact and law raised by the application which such person desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31549 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Rel. No. 10459; 811-2406]

ST. PAUL LIFE FUND, INC.

Application

OCTOBER 31, 1978.

Pursuant to section 8(f) of the Act for order declaring that company has ceased to be an investment company, notice is hereby given that St. Paul Life Fund ("Applicant"), an open-end diversified management company registered under the Investment Company Act of 1940 (the "Act"), filed an application on October 23, 1978, for an order of the Commission declaring that Applicant, which sold all its assets to St. Paul Capital Fund, Inc. ("Capital") on September 25, 1978, 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, a Minnesota corporation, was organized and registered under the Act as an open-end diversified management investment company in 1973. Its registration statement under the Securities Act of 1933 became effective in May, 1974, and at that time it commenced sales of its shares to the public.

According to Applicant, the sale of its assets to Capital was approved by the Board of Directors of both at a meeting on June 14, 1978, and by stockholders of Applicant at a meeting on September 20, 1978.

On September 13, 1978, the Commission issued an order (Investment Company Release No. 10404) pursuant to section 17(b) of the Act exempting the sale from the provisions of section 17(a) of the Act. On September 25, 1978, pursuant to an Agreement and Plan of Reorganization, the sale of assets took place; the then stockholders of Applicant received, in exchange for their shares of applicant, shares of Capital having an equivalent aggregate net asset value; and Applicant thereupon ended its existence as a separate corporation.

Applicant states that it has therefore ceased in any operating sense to be an investment company; that it no longer has any assets or liabilities; and that any expenses incurred in connection with the winding-up of its affairs will be borne by its adviser, St. Paul Advisers, Inc.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the taking effect of such order, the registration of such company shall cease to be in effect.

Accordingly, Applicant has requested the Commission to issue an order pursuant to section 8(f) of the Act declaring that it has ceased to be an investment company.

Notice is further given that any interested person may, not later than November 27, 1978, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should 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 Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following November 27, 1978, 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. 78-31547 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Admin. Proceeding File No. 3-5549; File No. 81-384]

THE SEVEN-UP CO.

Application and opportunity for hearing

OCTOBER 31, 1978.

Notice is hereby given that the Seven-Up Co. ("7 Up") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting it from the periodic reporting requirements under section 15(d) of the 1934 Act.

7 Up's application discloses in part:

(1) On June 19, 1973, 7 Up was merged into a wholly-owned subsidiary of Philip Morris, Incorporated ("PM").

(2) At that time, PM through its subsidiary owned approximately 97 percent of 7 Up's outstanding shares of common stock, which were acquired in May and June of 1978 in a tender offer for 7 Up shares.

(3) The public shareholders of 7 Up remaining at the merger received cash for their 7 Up shares or exercised their appraisal rights.

(4) PM and 7 Up have made the appropriate filings concerning the tender offer and the merger required under the 1934 Act.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of Commission at 500 North Capitol Street NW., Washington, D.C. 20549.

Notice is further given that any interest person no later than Nov. 27, 1978 may submit to the Commission in writing his views of any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communications or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capital Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application of may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A FITZSIMMONS,
Secretary.

[FR Doc. 78-31548 Filed 11-7-78; 8:45 am]

[8010-01-M]

[Administrative Proceeding File No. 3-5567]

UNION TANK CAR CO.

Application and Opportunity for Hearing

OCTOBER 31, 1978.

Notice is hereby given that Union Tank Car Co. (the "Applicant") has filed an application pursuant to section 310(b)(1)(ii) of the Trust Indenture Act of 1939, as amended (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of the Northern Trust Co. under an existing indenture, and the proposed trusteeship of the Northern Trust Co. under a proposed indenture, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Northern Trust Co. from acting as trustee under such indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire a conflicting interest (as defined in such section) it shall within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same obligor are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the same obligor are outstanding, if the obligor shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

1. The Applicant desires to appoint the Northern Trust Co. to act as Trustee under the proposed Series 16 Equipment Trust Agreement.

2. The Northern Trust Co. is presently acting as Trustee under the Applicant's Series 4 Equipment Trust Agreement, which is one of the Applicant's 15 presently outstanding issues of Equipment Trust Certificates. The aggregate principal amount of Equipment Trust Certificates outstanding under the Series 4 Equipment Trust as of August 31, 1978, was $13,979,000.

3. The Series 4 Equipment Trust Certificates issued under the present trusteeship of the Northern Trust Co. and the Proposed Series 16 Equipment Trust Certificates for which it is proposed shall act as Trustee, are secured by a separate lot of identified railroad tank cars, so that, should the Trustee have occasion to proceed against the security under either one of the Equipment Trusts, such action would not affect the security, or the use of any security, under the other Equipment Trust. Thus, the existence of the other trusteeship should in no way inhibit or discourage the Trustee's actions.

4. The Applicant is not in default under any of its Equipment Trust obligations.

The Applicant has waived notice of hearing, hearing, and any and all rights to specify procedures under the Rules of Practice of the Commission with respect to the application.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at 500 North Capitol Street NW., Washington, D.C. 20549.

Notice is further given that any interested person may not later than *November 25, 1978,* request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to contravert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secrectary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31550 Filed 11-7-78; 8:45 am]

[8010-01-N]

[Admin. Proceeding File No. 3-5564; File No. 81-398]

WELLS, RICH, GREENE, INC.

Application and Opportunity for Hearing

OCTOBER 31, 1978.

Notice is hereby given that Wells, Rich, Greene, Inc. ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for exemption from the filing requirements of sections 13 and 15(d) of the 1934 Act.

The Application states in part:

(1) The Applicant is a New York corporation subject to the reporting provisions of sections 13 and 15(d) of the 1934 Act;

(2) As a result of a merger in November 1977, Applicant currently has 28 common stockholders, all of whom are directors, officers or members of their immediate families; and

(3) There is no public market for Applicant's securities.

In the absence of an exemption, Applicant is required to file certain reports with the Commission pursuant to Sections 13 and 15(d) of the 1934 Act, including an annual report on Form 10-K for the fiscal year ended October 31, 1978. Applicant argues that no useful purpose would be served in filing the required periodic reports.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the office of the Commission at 500 North Capitol Street, Washington, D.C. 20549.

Notice is further given that any interested person not later than November 27, 1978 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and order issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31551 Filed 11-7-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1543]

CALIFORNIA

Declaration of Disaster Loan Area

Los Angeles County and adjacent counties within the State of California constitute a disaster area because of damage resulting from a fire beginning on October 23, 1978. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on January 2, 1979, and for economic injury until the close of business on August 1, 1979, at:

Small Business Administration,
District Office,
350 South Figueroa Street—6th Floor,
Los Angeles, Calif.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 1, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-31586 Filed 11-7-78; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1539]

LOUISIANA

Declaration of Disaster Loan Area

The following three parishes and adjacent parishes within the State of Louisiana constitute a disaster area as a result of natural disasters as indicated:

Parish	Natural disaster(s)	Date(s)
Franklin	drought	June 1, 1978–August 28, 1978
Madison	drought	June 1, 1978–September 30, 1978
Richland	drought	June 1, 1978–September 13, 1978

Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on May 1, 1979, and for economic injury until the close of business on August 1, 1979, at:

Small Business Administration,
District Office,
Plaza Tower,

1001 Tower—17th Floor,
New Orleans, La. 70113

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 1, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-31587 Filed 11-7-78; 8:45 am]

[4710-02-M]

DEPARTMENT OF STATE

Agency for International Development

[Delegation of Authority 27]

DIRECTOR: OFFICE OF PERSONNEL AND TRAINING

Delegation of Authority

Pursuant to the authority delegated to me by Delegation of Authority No. 104, as amended, from the Secretary of State dated November 13, 1961 (26 FR 10608), I hereby direct that Delegation of Authority No. 27 be, and it is hereby further amended, as follows:

Section I. The Director, Office of Personnel and Training, is hereby authorized to exercise the following authorities with respect to all personnel of the Agency whether assigned to the United States or abroad:

1. To employ, appoint, detail, or assign personnel to carry out functions under the Foreign Assistance Act of 1961, pursuant to sections 625(a), 625(d), 626(a), 626(c), 627, and 628 of that Act, and section 536 of the Mutual Security Act of 1954; to classify Foreign Service positions in the appropriate class, and to authorize the renewal of the employment of persons as experts and consultants pursuant to section 626(a) of the Foreign Assistance Act of 1961;

2. In accordance with section 625(d)(2) of the the Foreign Assistance Act of 1961 to utilize such authority contained in the Foreign Service Act of 1946, including authority to appoint and assign personnel for the duration of operations under the Foreign Assistance Act, as is delegated to the Administrator by Delegation of Authority No. 104 from the Secretary of State, and to exercise the authority contained in the third proviso thereof to initially assign personnel for duty within the United States, and to make the requisite determination that such assignment is important for the purposes of the Act;

3. In accordance with section 625(e) of the Act, the following:

(a) to prescribe by regulation standards or other criteria for maintaining adequate performance levels for personnel appointed or assigned pursuant to section 527(c)(2) of the Mutual Security Act of 1954 or section 625(d)(2) of the Foreign Assistance Act, and with respect to persons to be compensated at rates in excess of those provided for GS-15 to sign and issue the formal notification (Standard Form 50) covering the approved personnel action of such persons;

4. In accordance with section 625(b) of the Foreign Assistance Act of 1961, to appoint, compensate or remove without regard to the provisions of any law such personnel as are authorized to be employed and compensated at rates not in excess of those provided for grade 15 of the general schedule established by the Classification Act of 1949, as amended; and with respect to any of the persons authorized to be employed and compensated at rates higher than those provided for grade 15 of the General Schedule established by section 5332 of Title 5 of the United States Code the authority (1) to appoint those personnel transferring from appointment under sections 631 (b) and (c) of the Act, and (2) to remove those persons in cases of death, resignation, or retirement, except trial retirement;

5. To authorize or establish rates of compensation for personnel employed pursuant to section 625(d) and section 626(a) of the Foreign Assistance Act of 1961, as amended;

6. To place positions in the appropriate class and grade in accordance with the Classification Act of 1949, as amended, for positions so subject, and to promote and grant step increases, including quality increases, for personnel serving in such positions in accordance with the regulations prescribed by the Civil Service Commission;

7. To detail or transfer personnel in accordance with the Federal Employees International Organization Service Act of 1958 (Pub. L. 85-795), and implementing regulations of the Civil Service Commission;

8. To enter into training agreements with departments and agencies of the Government and to authorize training of employees in accordance with authority contained in the Government Employees Training Act (Pub. L. 85-507), Executive Order 10800, and implementing regulations of the Civil Service Commission, and to approve, in connection with said Act and regulations, and in accordance with section 636(e) of the Foreign Assistance Act of 1961, the acceptance of awards, contributions, and payments in connection with authorized training;

9. To authorize and approve leave as provided for in the Annual and Sick Leave Act of 1951, as amended, and in implementing regulations of the Civil Service Commission, including authority to approve leave without pay, and to approve leaves of absences for Chiefs of Mission class 2, class 3, and class 4;

10. To authorize and approve travel, transportation, and storage of effects, including motor vehicles, and related expenses, for Foreign Service employees, including Chiefs of Mission class 3 and 4, and their dependents;

11. To authorize, as appropriate, and to approve travel and transportation of effects, including related expenses for eligible domestic employees, in accordance with regulations including those of other agencies, where appropriate;

12. To administer oaths of office;

13. To authorize preemployment invitational travel for non-U.S. Government personnel;

14. In accordance with the Standardized Regulations (Government Civilians, Foreign Areas), to grant post differential; quarters, cost-of-living and representation allowances to eligible overseas personnel; to authorize payments, including advance payments, during evacuation, and special allowances, as appropriate, in connection therewith; to authorize payment of, or reimbursement for, official residence expenses to eligible Foreign Service personnel; and to exercise the authority vested in "head of agency," under any provision of such regulations;

15. To exercise the authority relating to personnel delegated to the Administrator of AID by the Secretary of State under the following sections of the Delegation of Authority No. 104 of November 3, 1961:

(a) Section 2(a)(7) relating to functions conferred upon the Secretary of State under any provision of law pertaining specifically or generally applicable to Foreign Service Reserve Officers, Foreign Service Staff Officers, and employees, and alien clerks and employees;

(b) Section 2(b)(4) authority to prescribe or issue in pursuance of the Foreign Service Act of 1946 and the Act, such regulations, orders, and instructions, as may be incidental to, or necessary for, or desirable in connection with, the carrying out of the provisions of section 625(d)(2) of the Act or provisions of Delegation of Authority No. 104;

(c) Section 2(d) relating to the exercise by the Administrator of the functions delegated pursuant to section 625(d)(1) of the Foreign Assistance Act of 1961, as amended, as consists of authorization of rates of compensation for employees of agencies of the U.S. Government including AID; and

(d) Section 6(d) to make the designations and standards provided for by section 625(g) of the Foreign Assistance Act of 1961, as amended, for Foreign Service personnel carrying out

functions under the Foreign Assistance Act;

16. To convert, and authorize the conversion of, Foreign Service employees with "Limited" appointments to appointments without limitations;

17. To exercise custody over, and to provide for the control and maintenance of official personnel folders of all employees in according with the Civil Service regulations;

18. To discipline, to terminate, to separate, or to reduce in force any employee in accordance with applicable law and implementing regulations prescribed by Executive order or the Civil Service Commission;

19. To sign and issue the formal notification (Standard Form 50) covering the approved personnel action of persons to be employed or continued in employment pursuant to section 631 of the Foreign Assistance Act of 1961, as amended, and to approve the grant of step increases for such personnel;

20. To authorize the employment or assignment of officers or employees by agencies of the U.S. Government pursuant to section 625(d)(1) of the Foreign Assistance Act of 1961, as amended, and when agreed to by AID and another U.S. Government agency, to authorize and approve for personnel of such agency and their dependents travel, transportation, and storage of effects, including motor vehicles, and related expenses;

21. In accordance with sections 631 (b) and (c) of the Act, the authority to approve removals for the purpose of appointment under section 625(b), and to remove in the case of death, resignation, or retirement, except trial retirement, persons employed as Chief of Mission, Deputy Chief of Mission, AID Representative, and the Chairman of the Development Assistance Committee of the Organization for Economic Cooperation and Development;

22. To perform so much of the functions under Title VIII of the Foreign Service Act of 1946, as amended, as relate to establishing and maintaining retirement records for personnel participating in the Foreign Service retirement and disability system under section 625(k) of the Foreign Assistance Act of 1961, as amended, and for transferring such records to the Department of State upon the separation, retirement or death of such personnel;

23. To approve, in acordance with section 636 of the Foreign Service Act of 1946, as amended and 3 FAM 670 et seq., the voluntary retirement of personnel participating in the Foreign Service retirement and disability system, subject to the reservations set forth in section III;

24. To extend the service, pursuant to section 625(k)(6) of the Foreign Assistance Act of 1961, as amended and 3 FAM 670 et seq., of personnel participating in the Foreign Service retirement and disability system for a period of time not to exceed 5 years beyond mandatory retirement age, subject to the reservations set forth in section III.

Section II. The Administrator for Near East, the Assistant Administrator for Africa, the Assistant Administrator for Asia, the Assistant Administrator for Latin America, and the Auditor General, each for the countries or areas within their responsibility, are hereby authorized to exercise the following authorities:

1. To approve consultation in AID/W for Foreign Service personnel, including Mission Directors, Deputy Mission Directors, and AID Representatives;

2. To approve leaves of absence for Mission Directors, including Chiefs of Mission class 3 and class 4, and AID Representatives;

3. To authorize salary step increases for persons serving pursuant to section 631 of the Foreign Assistance Act of 1961, as amended.

Section III. The following functions are specifically reserved to the Administrator:

1. In accordance with section 624(b) of the Foreign Assistance Act of 1961, the authority to fix the rate of compensation, to fix the order of succession, and to designate the title of, any officer authorized to be appointed by and with the advice and consent of the Senate pursuant to section 624(a) of the Foreign Assistance Act of 1961;

2. In accordance with section 625(b) of the Act, the authority to appoint, compensate, and remove any of the persons authorized to be employed and compensated at rates higher than those provided for grade 15 of the General Schedule established by section 5332 of Title 5 of the United States Code. Notwithstanding this reservation, the Director, Office of Personnel and Training, may exercise those authorities set forth in subsections 4 and 21 of section I of this Delegation of Authority;

3. In accordance with sections 631 (b) and (c) of the Act, the authority to approve the appointment, promotion, extension of tours beyond 3 months, transfer, and removal of persons employed as Chief of Mission, Deputy Chief of Mission, AID Representative, and the Chairman of the Development Assistance Committee of the Organization for Economic Cooperation and Development, including the authority to set or approve the compensation and allowances to be paid such personnel. Notwithstanding this reservation, the Director, Office of Personnel and Training, may exercise those authorities set forth in subsections 4 and 21 of this Delegation of Authority;

4. To approve, in accordance with section 636 of the Foreign Service Act of 1946, as amended, and 3 FAM 670 et seq., the voluntary retirement of persons serving under the Executive Schedule (5 U.S.C. 5311 et seq.) and persons employed as Chief of Mission, Deputy Chief of Mission, AID Representative and the Chairman of the Development Assistance Committee of the Organization for Economic Cooperation and Development;

5. To extend the service, pursuant to section 625(k)(6) of the Foreign Assistance Act of 1961, as amended, and 3 FAM 670 et seq., of persons serving under the Executive Schedule (5 U.S.C. 5311 et seq.) and persons employed as Chief of Mission, Deputy Chief of Mission, AID Representative and the Chairman of the Development Assistance Committee of the Organization for Economic Cooperation and Development;

6. To extend U.S. rotation assignments of Foreign Service personnel beyond 8 years.

Section IV. General Provisions:

1. The authorities delegated in sections I and II shall be exercised in accordance with applicable law, AID Regulations, directives, or instructions, and regulations or instructions of other agencies, where applicable;

2. To the extent permitted by law or by regulation of the competent authority, there is hereby delegated to the Director, Office of Personnel and Training, the authority vested in the Administrator as "head of agency" by statute or regulation, including those of other agencies, relating to any aspect of personnel authority or administration, including authority to prescribe regulations and to establish policy and procedures relating thereto;

3. The officers to whom authority has been delegated by this Delegation may, to the extent consistent with law, delegate or assign any of the functions delegated or assigned by this Delegation of Authority, and may authorize the subordinates to whom functions are delegated or assigned successively to redelegate or reassign any of such functions;

4. Notwithstanding any provision of this Delegation of Authority, the Administrator may at any time exercise any function delegated by this Delegation of Authority;

5. Reference to statutes, directives, orders, Delegations of Authority, and regulations shall be deemed to be references to such statutes, Executive Orders, Delegations of Authority regulations, and directives as amended from time to time;

6. There is hereby rescinded:

(a) Redelegation of Authority 114-1 to the Director, Office of Personnel

and Manpower, dated March 7, 1974 from the Assistant Administrator for Program and Management.

7. This Delegation of Authority shall be effective immediately and shall continue in effect until such time as it is modified or revoked by me.

Dated: October 25, 1978.

JOHN J. GILLIGAN,
Administrator.

NOTE.—Delegation of Authority No. 27 was originally issued effective April 15, 1963;
Revision No. 1 was effective November 5, 1963;
Revision No. 2 was effective May 18, 1964;
Revision No. 3 was effective December 8, 1964;
Revision No. 4 was effective October 7, 1966;
Revision No. 5 was effective February 19, 1968 (33 FR 3441);
Revision No. 6 was effective September 12, 1968 (33 FR 14179);
Revision No. 8 was effective March 6, 1974 (39 FR 10165); and
Revision No. 9 was effective October 12, 1975 (40 FR 48955).
Delegations of Authority Nos. 112 and 113, each effective October 12, 1975 (40 FR 48955 and 49582, respectively), substituted "Assistant Administrator for Near East" for "Assistant Administrator for Near East and South Asia" and "Assistant Administrator for Asia" for "Assistant Administrator for East Asia."

This delegation embraces all textual changes made by the above revisions.

[FR Doc. 78-31579 Filed 11-7-78; 8:45 am]

[1505-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 66 (Rev. 8), Chief Counsel's Order No. 1031.2B]

REGIONAL COMMISSIONER

Delegation of Authority

Correction

In FR Doc. 78-28578 appearing on page 46916 in the issue of Wednesday, October 11, 1978, in the heading, in small print, the delegation order number should read as it appears above.

[4830-01-M]

EMPLOYEE BENEFIT PLANS

Proposed Exemption Relating to a Transaction Involving the Henry E. Storino, M.D., Self-Employed Retirement Plan (Application No. S-1021)

AGENCY: Department of the Treasury/Internal Revenue Service.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Internal Revenue Service (the Service) of a proposed exemption from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of certain real estate from the Henry E. Storino, M.D., Self-Employed Retirement Plan's trust (the Plan) to Dr. Henry E. Storino. The proposed exemption, if granted, would affect the participant and beneficiaries of the Plan and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Internal Revenue Service on or before December 8, 1978.

ADDRESS: All written comments and requests for a hearing (at least six copies) should be sent to: the Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, attention: E:EP:PT:1, Application No. S-1021. The application for exemption and the comments received will be available for public inspection at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Pete Knox of the Internal Revenue Service, 202-566-6761. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Service of a proposed exemption from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by Dr. Storino pursuant to section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722.

SUMMARY OF FACTS AND REPRESENTATIONS

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Service for the complete representations of the applicant.

1. Dr. Henry E. Storino is a self-employed physician in Portland, Oregon. He has had no common law employees since November 1, 1977, and since then has been the sole participant in the Plan. Prior to November 1, 1977, the Plan had two participants, Dr. Storino and Mrs. Phillis Jones. Mrs. Jones was terminated from her job on November 1, 1977, and was cashed out of the Plan on February 7, 1978 for $4,414.59. The participants' respective interests in the Plan were maintained in separate accounts.

2. The Plan is a part of the First State Bank of Oregon Master Self-Employed Retirement Plan and Trust, a profit sharing Keogh plan. The First State Bank of Oregon is the trustee, although Dr. Storino makes all investment decisions for the Plan. As of December 30, 1977, the Plan had net assets of $45,101.61. The Plan's investments other than real estate, primarily stocks, bonds and bank accounts, have yielded a return of from 4.5 percent to 9.67 percent.

3. Only July 8, 1977, Dr. Storino caused a special sub-account of his separate Plan account to purchase Lot No. 469 in Salisham Hills I, Lincoln County, Oreg. (Lot No. 469) for $18,500. The Plan paid twenty percent down and took a 10 year, 9 percent mortgage on the remainder. The Plan has incurred the following expenses, as of June 19, 1978, with regard to this lot: closing costs of $34.27, appraisal fee of $150.00, interest of $519.83, property taxes of $238.01 and yearly maintenance fee of $174.60. No funds from Mrs. Jones' account were involved with Lot No. 469.

4. The Plan purchased the property both as an investment and to hold in order that Dr. Storino might build a residence on it in the future. Lot No. 469 is a vacant, unimproved site in a residential development overlooking the Oregon coast. At the time of purchase the lot comprised about 46 percent of total Plan assets.

5. Dr. Storino has submitted one appraisal, one reappraisal and one opinion of value of Lot No. 469. One appraisal by G. W. Biddle, a real estate appraiser from Lincoln City, Oreg., estimated that the lot's fair market value was $18,250 as of May 15, 1978. This appraisal gave no indication of the method used to arrive at this dollar valuation. On June 24, 1978, G. W. Biddle, at the request of Dr. Storino, reappraised Lot No. 469 and re-estimated its May 15, 1978, fair market value to be $19,500. However, this appraisal also did not indicate the method used to arrive at the dollar valuation. Dr. Storino also submitted a letter of opinion, dated January 28, 1978, from Gary A. Hilbert, of Salishan Hills, Inc., in which he opined that Lot No. 469 could be expected to sell within a reasonably short time for a price of $23,500. Salishan Hills, Inc., has sold 130 lots in Salishan Hills I, and has resold 3 lots as an agent for individuals, within the 19 months preceding January 28, 1978. Mr. Hilbert based his opinions on this marketing experience of Salishan Hills, Inc. The

Plan has made no attempts to sell Lot No. 469 to any unrelated parties.

6. Dr. Storino has represented that his offer to pay $23,500 in cash is at least equal to or greater than the fair market value of Lot No. 469. In addition, Dr. Storino will have Mr. Gary A. Hilbert reappraise the lot within 30 days prior to that proposed sale and Dr. Storino will pay the greater of $23,500 or the then current appraised value.

7. The proposed sale would be beneficial to the Plan since it would remove a non-income producing asset from the Plan at a gain to the Plan of approximately 26 percent on its initial investment and of almost 20 percent on its initial investment plus carrying costs. The cash generated would also improve plan liquidity and provide funds for investing in more diversified, income producing investments.

NOTICE TO INTERESTED PERSONS

Written notice shall be given to all interested persons. The interested persons include the participant in the Plan and the beneficiaries of the trust. The notice shall be hand delivered to the interested persons within 10 days after the notice of the proposed exemption is published in the FEDERAL REGISTER. The notice shall contain a copy of the notice of proposed exemption as published in the FEDERAL REGISTER and it shall inform the interested persons of their right to comment and their right to request a hearing within the period set forth in the notice of proposed exemption.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a disqualified person from certain other provisions of the Code, including any prohibited transactions provisions to which the exemption does not apply, nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The proposed exemption, if granted, will not extend to transaction prohibited under section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code, the Service must find that the exemption is administratively feasible, in the interests of the Plan and of its participants and beneficiaries, and protective of the rights of the participants and beneficiaries of the Plan;

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (43 FR 22319).

WRITTEN COMMENTS AND HEARING REQUESTS

All interested persons are invited to submit written comments on requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

PROPOSED EXEMPTION

Based on the facts and representation set forth in the application, the Service is considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26. If the exemption is granted, the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale of Lot No. 469, Salishan Hills I, Lincoln County, Oreg., from the Plan to Dr. Henry E. Storino for $23,500, in cash, provided, however, that the sale price is not less than the fair market value of the property. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 31st day of October, 1978.

FRED J. OCHS,
Director, Employee Plans Divison, Internal Revenue Service.

[FR Doc. 78-31552 Filed 11-7-78; 8:45 am]

[4810-22-M]

Office of the Secretary

LIGHT BULBS FROM HUNGARY

Termination of Investigation Based on No Likelihood of Injury

AGENCY: U.S. Treasury Department.

ACTION: Termination of antidumping investigation.

SUMMARY: This notice is to advise the public that an antidumping investigation involving light bulbs from Hungary is being terminated. The investigation is being terminated as the result of a finding by the U.S. International Trade Commission that there is "no reasonable indication of injury or likelihood of injury" to the domestic industry caused by imports of the subject merchandise from Hungary.

EFFECTIVE DATE: November 8, 1978.

FOR FURTHER INFORMATION CONTACT:

David P. Mueller, U.S. Customs Service, Office of Operations, Duty Assessment Division, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: On August 7, 1978, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER with respect to light bulbs from Hungary (43 FR 32293).

The notice stated that Treasury had concluded that there was substantial doubt of injury to, or likelihood of injury to, an industry in the United States by reason of imports of light bulbs from Hungary. Accordingly, the U.S. International Trade Commission was advised of such doubt pursuant to section 201(c)(2) of the Antidumping Act of 1921, as amended (19 U.S.C. 160(c)(2)) (hereinafter referred to as the "Act").

The U.S. International Trade Commission has determined, and on September 5, 1978, it advised the Secretary of the Treasury pursuant to section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)), that there is no reasonable indication that an industry in the United States is being, or is likely to be, injured, or is prevented from being established, by reason of the importation of light bulbs, alleged to be sold at less than fair value, from Hungary into the United States. This determination was published in the FEDERAL REGISTER of September 13, 1978 (43 FR 40937).

Accordingly, the antidumping investigation with respect to light bulbs from Hungary is hereby terminated.

as provided for in section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)).

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

OCTOBER 30, 1978.

[FR Doc. 78-31517 Filed 11-7-78; 8:45 am]

[4810-25-M]

TREATIES AND NEGOTIATIONS WITH FOREIGN COUNTRIES

Announcement of Status

The Treasury Department today announced the countries with which it is engaged in tax treaty negotiations, and invited comments.

The Treasury Department has a general policy of announcing initial income tax treaty negotiations with particular countries, and giving an opportunity for comment. However, negotiations are sometimes scheduled on short notice, making such an announcement impractical, and often negotiations extend over a period of several years, so that earlier comments no longer reflect current problems. In order to give better guidance and in order to obtain comments from interested persons, the Treasury Department today announced the status of treaties and negotiations with the folowing countries:

I. INCOME TAX TREATIES

Sent to Senate for advice and consent to ratification; date transmitted

Morocco—May 1978.
The Philippines—December 1976.
South Korea—September 1976.[1]

Negotiations completed but text not yet signed; date signature expected

France (Protocol)—1978.
Hungary—1978.
Republic of China—Early 1979.

Ongoing negotiations; date of next meeting (or last discussions)

Argentina—February 1979.
Bangladesh—December 1978.
Brazil—Late 1978 or early 1979.
Canada—(September 1978).
Cyprus—(June 1978).
Denmark—(September 1978).
Egypt—November 1978.
Germany—November 1978.
Indonesia—(Correspondence, October 1978).
Israel—November 1978.
Italy—(May 1978).
Jamaica—(May 1978).
Malta—Spring 1979.
Nigeria—Not Available.[2]

[1] Approved by Senate Foreign Relations Committee in March 1978 but not voted on by full Senate, so must be reconsidered by Foreign Relations Committee in next Congress.

[2] Nigeria terminated the existing treaty by diplomatic notice given in June 1978. The termination will be effective for assessment years beginning on or after April 1, 1979.

United Kingdom—(October 1978).

Negotiations initiated but currently inactive; date of last meeting

Australia—July 1977.
Botswana—August 1974.
India—December 1977.
Iran—April 1975.
Kenya—January 1977.
The Netherlands—December 1972.
Singapore—April 1977.
Spain—March 1977.
Sri Lanka—June 1977.
Tunisia—September 1975.
Yugoslavia—February 1976.
Zambia—May 1974.

II. ESTATE TAX TREATIES

Denmark—Negotiations held in September 1978.
France—Signature expected 1978.
Germany—Negotiations in advanced state but currently inactive.
Luxembourg—Negotiations in advanced state but currently inactive.
United Kingdom—Signed October 19, 1978.

The Treasury Department would welcome amendments to previous comments, or new or supplemental comments concerning negotiations with those countries. Comments should be sent in writing to H. David Rosenbloom, International Tax Counsel, U.S. Treasury Department, Room 3064, Washington, D.C. 20220. In addition, the Treasury Department always welcomes comments with respect to the advisability of entering into or revising tax treaties with any country.

Dated: November 3, 1978.

DONALD C. LUBICK,
Assistant Secretary for Tax Policy.

[FR Doc. 78-31516 Filed 11-7-78; 8:45 am]

[4810-40-M]

[Supplement to Department Circular, Public Debt Series—No. 26-78]

TREASURY NOTES

Series B—1988

NOVEMBER 3, 1978.

The Secretary of the Treasury announced on November 2, 1978, that the interest rate on the notes designated Series B-1988, described in Department Circular, Public Debt Series, No. 26-78, dated October 26, 1978, will be 8¾ percent. Interest on the notes will be payable at the rate of 8¾ 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 regulations.

[FR Doc. 78-31537 Filed 11-7-78; 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 Monday, December 4, 1978, at 1 p.m., the Des Moines Regional Office Station Committee on Educational Allowances shall at Room 1025, Federal Building, 210 Walnut Street, Des Moines, Iowa 50309, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Des Moines Flying Service, Des Moines Municipal Airport, Des Moines, Iowa 50321, 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: November 1, 1978.

ROBERT L. WINTERS,
Director.

[FR Doc. 78-31580 Filed 11-7-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

AGRICULTURAL COOPERATIVE

Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

NOVEMBER 3, 1978.

The following Notices were filed in accordance with section 208(b)(5) of the Interstate Commerce Act provided for under 49 CFR 1047.23. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOp 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change. The name and address of the agricultural cooperative, the location of the records, and the name and address of the person to whom inquiries and correspondence should be addressed, are published here for interested persons. Submis-

sion of information that could have bearing upon the propriety of a filing should be directed to the Commission's Bureau of Investigations and Enforcement, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

Sutherland Farmers Cooperative Co., Box 100, Sutherland, Iowa 51058, Gary Masters, Box 100, Sutherland, Iowa 51058.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31592 Filed 11-7-78; 8:45 am]

[1505-01-M]

[Notice No. 182]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-28150 appearing at page 46411 in the issue for Friday, October 6, 1978, in the middle column of page 46415, in the eleventh line of MC 145183TA, the abbreviation "MI" should have read "MS".

[1505-01-M]

[Notice No. 183]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-28151 appearing at page 46408 in the issue for Friday, October 6, 1978, in the middle column of page 46410 "MC 14405 (Sub-49TA)" should have read "MC 134405 (Sub-49TA)".

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

CIVIL AERONAUTICS BOARD.

[M-175 Amdt 4; Nov. 2, 1978]

Notice of Addition of Item to the November 2, 1978 Meeting Agenda

TIME AND DATE: 10 a.m., November 2, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 2a. Amendment of rules applicable to unused authority proceedings (memo No. 8247-A, OGC, BPDA, BAS).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: The unused authority provisions of the Airline Deregulation Act of 1978 requires the Board to issue certificates to certain applicants next week. These certificates cannot be issued until the Board has obtained clearance from the General Accounting Office of the application requirements included in Subpart R of Part 302 of the Board's Rules of Practice. (Subpart R was adopted in PR-180, Oct. 18, 1978.) The GAO will not approve those requirements unless they have been amended as set forth in this item. Accordingly, the following Members voted that agency business require the addition of 2a to the November 2, 1978, meeting and that no earlier announcement of this addition was possible:

Chairman Marvin S. Cohen.
Member Richard J. O'Melia.
Member Elizabeth E. Bailey.
Member Gloria Schaffer.

[S-2253-78 Filed 11-6-78; 10:34 am]

[6320-01-M]

2

CIVIL AERONAUTICS BOARD.

[M-176; Nov. 2, 1978]

TIME AND DATE: 10 a.m., November 9, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.
2. Docket 21670, *Frontier Airlines Subsidy Mail Rates* (Instructions to Staff).
3. Docket 20051, Proposed waiver of *ex parte* rule to allow staff discussions with FAA and DOT on the application of Airline Scheduling Committees (Memo No. 8268, OGC).
4. Proposed waiver of *ex parte* rule to allow staff discussions with FAA and DOT on the Board's prospective scheduling of route cases (Memo No. 8269, OGC).
5. Docket 33635, Western's and Southern's requests to designate the hyphenated points in Miami and Fort Lauderdale as coterminals. (BPDA).
6. Docket 31977, Application of International Developers, Inc. (Japan) d.b.a. Toyo World Enterprises of California, Inc. for indirect foreign air carrier permit (BIA).
7. Final rules amending Part 384 *Statement of Organization Delegation of Authority and Availability of Records and Information* and Part 385 *Delegations and Review of Action Under Delegation; Nonhearing Matters.* (Memo No. 8266, OGC, BAS, BCP, OMD).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, 202-673-5068.

[S-2254-78 Filed 11-6-78; 10:34 am]

[6570-06-M]

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

TIME AND DATE: 1:30 p.m. (eastern time), Thursday, November 9, 1978.

PLACE: Commission Conference Room, No. 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED: Open to the public:

1. Proposed procedures for the Office of Interagency Coordination.
2. Proposed designation of the Tennessee Commission for Human Development as a 706 Agency.
3. Freedom of Information Act Appeal No. 78-8-FOIA-209, concerning a request by the respondent in a Commissioner's charge for information which served as the basis for, or is otherwise related to, that charge.
4. Report on Commission Operations by the Executive Director.

Closed to the public:

Litigation Authorization; General Counsel Recommendations: Matters closed to the public under the Commission's regulations at 29 CFR 1612.13.

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required that this meeting be held and that no earlier announcement was possible.

In favor of change: Eleanor Holmes Norton, Chairman, Daniel E. Leach, Vice Chairman, J. Clay Smith, Jr. Commissioner.

NOTE.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6748.

This notice is issued November 3, 1978.

[S-2257-78 Filed 11-6-78; 10:34 am]

[6712-01-M]

4

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, November 2, 1978.

PLACE: Room 856, 1919 M Street, NW., Washington, D.C.

STATUS: Open Commission meeting.

CHANGES IN THE MEETING: Additional item considered.

Agenda, Item No., and Subject

Complaints and Compliance—3—Application for review of Bureau decision regarding Section 315 complaint by John J. Marino against WCVB-TV, Boston, Massachusetts.

The prompt and orderly conduct of Commission business did not permit announcement prior to the meeting.

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone 202-632-7260.

Issued: November 3, 1978.

[S-2258-78 Filed 11-6-78; 10:34 am]

[6712-01-M]

5

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, November 9, 1978.

PLACE: Room 856, 1919 M Street, NW., Washington, D.C.

STATUS: Special open Commission meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

Renewal—1—Petitions to deny by the New Jersey Coalition for Fair Broadcasting, the Congress of Afrikan People, the Legislature of the State of New Jersey, and an informal objection by John Cervase against the application for renewal of license for television station WNET, Newark, N.J.

2—Petitions to deny by the New Jersey Coalition for Fair Broadcasting, the Legislature of the State of New Jersey, The Office of the Public Advocate of the State of New Jersey, and the Governor of the State of New Jersey against the applications for renewal of license of television stations WABC-TV, WCBS-TV, WNBC-TV, WNEW-TV, WOR-TV, WPIX-TV (all licensed to New York, N.Y.) and WCAU-TV, WPHL-TV and KYW-TV (all Philadelphia, Pa.).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone 202-632-7260.

Issued: November 2, 1978.

[S-2259-78 Filed 11-6-78; 10:34 am]

[6712-01-M]

6

FEDERAL COMMUNICATION COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, November 9, 1978.

PLACE: Room 856, 1919 M Street, NW., Washington, D.C.

STATUS: Special open Commission meeting.

CHANGES IN THE MEETING: Additional item to be considered.

Agenda, Item No., and Subject

Television—1—Application of WNJU-TV Broadcasting Corporation for authority to operate subscription television on station WNJU-TV, Channel 47, Linden, N.J.

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone 202-632-7260.

Issued: November 3, 1978.

[S-2260-78 Filed 11-6-78; 10:34 am]

[6210-01-M]

7

BOARD OF GOVERNORS

FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Monday, November 13, 1978. The closed portion of the meeting will commence at the conclusion of the open discussion.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Part of the meeting will be open; part will be closed.

MATTERS TO BE CONSIDERED: Open portion:

1. Information on pricing of Federal Reserve services to be submitted to the Congress for consideration in connection with pending legislation dealing with fair competition among financial institutions and soundness of the commercial banking system. (This item was previously announced for the closed meeting on Monday, November 6, 1978.)

2. Any agenda items carried forward from a previously announced meeting.

NOTE: This meeting will be recorded for the benefit of those unable to attend. Cassetts will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling 202-452-3684 or by writing to:

Freedom of Information Office Board of Governors of the Federal Reserve System Washington, D.C. 20551.

Closed portion:

1. Federal Reserve Bank and Branch director appointments.

2. Personnel actions (appointment, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: November 3, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-2255 Filed 11-6-78; 10:34 am]

[6210-01-M]

8

FEDERAL RESERVE SYSTEM.

BOARD OF GOVERNORS

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 50799, October 31, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11 a.m., Monday, November 6, 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:

Federal Reserve Bank and Branch director appointments. (This matter was originally announced for the meeting of October 27, 1978).

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: November 6, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[S-2265-78 Filed 11-6-78; 3:51 pm]

[6750-01-M]

9

FEDERAL TRADE COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR, October 27, 1978, page No. 50283.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2 p.m., Tuesday, November 7, 1978.

CHANGES IN THE AGENDA: The Federal Trade Commission has added an item to its previously announced open meeting of November 7, 1978:

2. Consideration of Interim Amendments to Fuel Economy Guide, 16 CFR Part 259.

[S-2262-78 Filed 11-6-78; 10:58 am]

[4910-58-M]

10

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9 a.m., Thursday, November 9, 1978 [NM-78-38].

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED: A majority of the Board has determined by recorded vote that the business of the Board requires that the following items be discussed on this date and that no earlier announcement was possible:

1. *Railroad Accident Report*—Derailment of Atlantic & St. Andrews Bay Railway Co. freight train, Youngstown, Fla., February 26, 1978.
2. *Aircraft Accident Report*—National Airlines, Inc., Boeing 727, N4744, Pensacola, Fla., May 8, 1978.
3. *Highway Accident Report*—Osterkamp Trucking, Inc., truck/full trailer and Dodge Van collision, Scipio, Utah, August 26, 1978.
4. *Discussion* of party status of Aviation Consumer Action project in the hearing into the Pacific Southwest Airlines Boeing 727/Cessna 172 midair collision over San Diego, Calif., September 25, 1978.

CONTACT PERSON FOR MORE INFORMATION:

Sharon Flemming, 202-472-6022.

[S-2264-78 Filed 11-6-78; 2:50 pm]

[7590-01-M]

11

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of November 6, 1978 (Revised).

PLACE: Commissioners' Conference Room, 1717 H St. NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Monday, November 6, 1:30 p.m.

1. Discussion of Licensing Bill (approximately 1 hour) (public meeting) (time changed).
2. Discussion of EDO Testimony of July and August 1977 (approximately 1 hour) (closed—exemption 6) (additional item).

Discussion of Personnel Matter (approximately 1 hour) (closed—exemption 6) (additional item).

Tuesday, November 7, 9:30 a.m.

Discussion and Vote on Classification of Sensitive Safeguards Information (approximately ½ hour) (closed—exemption 1) (additional item).

2. Briefing on Report of the Interagency Review Group on Waste Management (approximately 1½ hours) (public meeting) (time changed).

Wednesday, November 8, 9 a.m.

1. Discussion of Proposed NRC Statement in Response to the Risk Assessment Review Group Report (approximately 1 hour) (public meeting) (rescheduled from November 6—tentative).

OR

2. Discussion of Reducing Procedural Cost Burdens (approximately 1 hour) (public meeting) (rescheduled from November 6—tentative).

10 a.m. (approximately)

3. Discussion of Export-Import Licensing Review Procedures/General Administrative Meeting (approximately 1 hour) (public meeting) (as announced).

ADDITIONAL INFORMATION:

By a vote of 4-0 (Commissioner Gilinsky not participating) on November 2, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and § 9.107(a) of the Commission's Rules that Commission Business requires that the above items "EDO Testimony", "Personnel Matter" and "Classification of Sensitive Safeguards Information" be held on less than 1 week's notice to the public. The Commission also voted on November 1 to add to the Affirmative Session scheduled on November 1, an item "Approval of Employment of J. Cummings", with less than 1 week's notice. Prompt scheduling of these matters is required.

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

NOVEMBER 2, 1978.

WALTER MAGEE,
Office of the Secretary.

[S-2263-78 Filed 11-6-78; 10:34 am]

[8010-01-M]

12

SECURITIES AND EXCHANGE COMMISSION.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 50540, October 30, 1978.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, November 1, 1978.

CHANGES IN THE MEETING: Additional item to be considered.

The following additional item will be considered at the closed meeting on Wednesday, November 1, 1978:

Access to investigative files by Federal, State or Self-Regulatory Authorities.

Chairman Williams and Commissioners Evans, Pollack and Karmel determined that Commission business required the above change and that no earlier notice thereof was possible.

OCTOBER 31, 1978.

[S-2256-78 Filed 11-6-78; 10:34 am]

[7910-01-M]

13

THE RENEGOTIATION BOARD.

AGENCY HOLDING THE MEETING: The Renegotiation Board.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 51751, November 6, 1978.

PREVIOUSLY ANNOUNCED DATE AND TIME OF MEETING: Tuesday, November 7, 1978; 10:00 a.m.

CHANGE IN MEETING: Matter 10 is added to the previously announced agenda.

MATTER TO BE CONSIDERED:

10. Recommended Clearances Without Assignment (List No. 1925)
A. U.S. Oil and Refining Co., fiscal years ended December 31, 1974 and 1975.
A-1 Time Oil Co., fiscal years ended December 31, 1974 and 1975.

STATUS: Matter 10 is open to public observation.

CONTACT PERSON FOR MORE INFORMATION:

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

Dated: November 3, 1978.

GOODWIN CHASE,
Chairman.

[S-2261-78 Filed 11-6-78; 10:34 am]

federal register

WEDNESDAY, NOVEMBER 8, 1978
PART II

DEPARTMENT OF ENERGY

Economic Regulatory Administration

■

PRICE-CONTROLLED CRUDE OIL

Amendments to Include Nonrefining Uses Within the Entitlements Program

[3128-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Part 211]

[Docket No. ERA-R-78-13]

AMENDMENTS TO INCLUDE NONREFINING USE OF PRICE-CONTROLLED CRUDE OIL WITHIN THE ENTITLEMENTS PROGRAM

Proposed Rulemaking; Public Hearing

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is proposing to expand the coverage of its domestic crude oil allocation (or entitlements) program to provide for entitlement obligations or payments for the nonrefining uses of price-controlled domestic crude oil. The entitlements program as currently structured requires only refiners to account for the competitive advantages deriving from access to price-controlled crude oil. Under this proposal, a reseller of crude oil (including refiners that resell crude oil rather than process it) would incur an entitlement obligation with respect to the volumes of lower tier and upper tier crude oil sold as a boiler fuel, a bunker fuel, or for other nonrefining uses, on the same basis as would a refiner that processed that crude oil. The proposal would not apply to crude oil used for production purposes. By including the nonrefining uses of price-controlled crude oil within the entitlements program, this proposal is intended to insure that firms using price-controlled crude oil as fuel, or for any other end use, do not receive a disproportionate share of the benefits of the domestic crude oil price control program.

DATES: Comments by January 5, 1979, 4:30 p.m. Requests to speak by November 29, 1978, 4:30 p.m. Hearing date, New Orleans hearing: December 14, 1978, 9:30 a.m.

ADDRESSES: All comments to: Public Hearing Management, ERA docket No. ERA-R-78-13, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461. Requests to speak: Department of Energy, attention: Gary Andrews, 2626 West Mockingbird Lane, P.O. Box 35228, Dallas, Tex. 75235.

Hearing location: 5th Circuit, Court of Appeals, Room 105, 600 Camp Street, New Orleans, La. 70130.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Office of Public Hearing Management), Economic Regulatory Administration, 2000 M Street NW., Room 2214B, Washington, D.C. 20461, 202-254-5201.

William L. Webb (Office of Public Information), Room B110, 2000 M Street NW., Washington, D.C. 20461, 202-634-2170.

Douglas McIver (Entitlements Program Office), Economic Regulatory Administration, 2000 M Street NW., Room 6128I, Washington, D.C. 20461, 202-254-8660.

Robert J. Kane (Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street NW., Room 2304, Washington, D.C. 20461, 202-245-7200.

Fred A. Wolgel (Office of General Counsel), Department of Energy, 12th and Pennsylvania Avenue NW., Room 7134, Washington, D.C. 20461, 202-566-2454.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of comments.
III. Proposed amendments.
IV. Additional comments requested.
V. Relationship to other rulemakings.
VI. Comment procedures.

I. Background

On April 17, 1978, we issued an advance notice of proposed rulemaking and notice of inquiry (43 FR 16987; Apr. 21, 1978), requesting public comment on our tentative conclusion that the nonrefining uses of lower tier crude oil should be brought within the coverage of the entitlements program. Our stated premise was that the purpose of the entitlements program is to spread equitably the benefits of price-controlled domestic crude oil among all sectors of the petroleum industry and among all users, as called for by section 4(b)(1)(F) of the Emergency Petroleum Allocation Act of 1973, as amended, Pub. L. 93-159 (EPAA). The April 17 notice stated:

> To the extent that any firm obtains and consumes price-controlled lower tier crude oil without incurring an entitlement obligation, it is obtaining crude oil at a price far below the average price that refiners must pay, and consequently far below the average prices that other consumers must pay for petroleum products (43 FR 16987).

Accordingly, we tentatively concluded that the nonrefining uses of lower tier crude oil should be included in the entitlements program. In that way, firms which consume lower tier crude oil would obtain such crude oil on the same basis as if they had used a petroleum product refined from crude oil processed by a domestic refiner in its refinery.

The April 17 notice set forth tentative views as to how this objective might be accomplished, and specifically requested comments both on the general proposition and on the specific manner in which the entitlements program would be made applicable to various nonrefining uses. The April 17 notice tentatively proposed that all nonrefining uses of lower tier crude oil by producers be included in the entitlements program, but solicited comments on whether we should exempt crude oil used by crude oil producers for the purpose of increasing production, such as by burning crude oil to generate steam for a steam flood enhanced recovery project.

II. Discussion of Comments

In response to our April 17 notice, we received 55 written comments. public hearings were held in San Francisco, Calif. on May 15, 1978, at which 16 persons testified, and in Washington, D.C. on May 17, 1978, at which 8 persons testified. The commenters included major, large independent, and small refiners, independent producers, crude oil resellers, electric utilities, State and local governments, and trade and industry associations.

The majority of the comments that addressed our principal proposal agreed that the nonrefining uses of lower tier crude oil should be included in the entitlements program. The overwhelming majority of refiners commenting endorsed our proposal. Several refiners stated that the sale of lower tier crude oil in direct competition with refined residual fuel oil was influential in the deterioration of the west coast residual fuel oil market. Other comments claimed that the direct burning of crude oil, except for the very heavy crude oils, results in the loss of the lighter component products that would be extracted in the refining process.

Most of the comments that opposed the proposal emphasized their opposition to the inclusion of lease fuel in the proposal. A few comments suggested exempting crude oil sold to utilities as boiler fuel, and several commenters opposed DOE's proposal on the grounds that it would further burden and complicate the entitlements program.

The overwhelmingly majority of all comments received on the issue opposed the inclusion of crude oil consumed as lease fuel within the entitlements program. Substantial evidence was presented, notably by California producers, that such a proposal would threaten the economic viability of many steam injection or tertiary recovery projects, and would cause much of such crude oil production to be shut in. Additionally, several commenters disclaimed knowledge of a producing field market for residual fuel oil, and contended that producers historically have consumed crude oil as a fuel in their enhanced recovery projects.

We have carefully considered the written comments received and the testimony given at the public hearings. On July 14, 1978, we issued a notice of intent to issue a proposed rulemaking (43 FR 31157, July 20, 1978) in which we stated our intention to go forward with a proposal to amend the regulations to include nonrefining uses of lower tier and upper tier crude oil within the entitlements program. In the July 14 notice we further stated our tentative determination to exempt the use of crude oil consumed on a lease for production purposes. The regulations that we propose today adopt this approach, with the clarification that all crude oil consumed on a property for production purposes will be exempt, regardless where that crude oil is produced.

The majority of the comments addressing the issue stated that the nonrefining uses of upper tier crude oil, as well as lower tier crude oil, should also be included in any final rule that is adopted. Currently the average acquisition cost of upper tier crude oil is coincidentally nearly equal to the post-entitlements average acquisition cost of crude oil to domestic refiners. Thus, there currently would appear to be little or no economic incentive to consume upper tier crude oil in preference to a refined petroleum product. However, several commenters pointed out that it is conceivable that the price of upper tier crude oil may vary substantially in the future from the weighted average acquisition cost of crude oil for domestic refiners, and thus a consistent approach would require its inclusion in the entitlements program. In light of the comments received and our analysis of the issue, the July 14 notice stated our tentative determination to include the nonrefining uses of upper tier crude oil in the proposed regulations. It is our belief that the inclusion in the entitlements program of the nonrefining uses of all price-controlled domestic crude oil is appropriate to achieve the equitable distribution of the economic benefits of price-controlled domestic crude oil.

III. Proposed Amendments

We are proposing in this notice several amendments designed to include the nonrefining uses of price-controlled domestic crude oil in the entitlements program, so that the cost of crude oil used for nonrefining purposes would be equalized in the same manner as is currently done for domestic refiners. We specifically request comments on whether the regulations proposed would accomplish this objective.

Our April 17 notice proposed generally that the seller of crude oil for a nonrefining use should incur the entitlement obligation, rather than the end-user. The majority of commenters on this issue disagreed with this approach, asserting that the seller often does not know the ultimate disposition of the crude oil which is sold. Notwithstanding these comments, information available to us indicates that in many instances crude oil has been sold as residual fuel oil to utilities and other firms, either in a blend with residual fuel oil, or in undiluted form. Because some heavy crude oil is indistinguishable from residual fuel oil, where the seller fails to properly certify the crude oil as required by 10 CFR § 212.131(b) (1) and (3), the purchaser may not know whether it has purchased crude oil. Accordingly, we have tentatively concluded that the best method of including the nonrefining uses of price-controlled domestic crude oil in the entitlements program would be for the seller of such crude oil to incur the entitlements burden and receive the corresponding entitlement issuances. This method would eliminate the problem of end users not realizing that they are purchasing unrefined crude oil, and would also likely result in having to add fewer new firms to the list of those participating in the entitlements program.

To facilitate the operation of these proposed amendments, we propose to prepare a list of qualified crude oil buyers. Firms appearing on the "Crude Oil Buyers List" would initially be refiners or domestic oil first purchasers (that is, those firms filing form P-124, the first purchaser report[1]). Any firm that sold price-controlled domestic crude oil to a firm on the crude oil buyers list would not incur an entitlements obligation, since such a sale would be presumed to be for eventual refinery use. If a firm on the crude oil buyers list purchased price-controlled crude oil and subsequently sold it or consumed it for a nonrefining use, such firm would be required to report it as a crude oil receipt, and would incur the related entitlement purchase obligation. If a firm sold price-controlled crude oil to a firm that was not on the crude oil buyers list, it would be presumed to be a sale for a nonrefining use, and the seller would incur the corresponding entitlement obligation. In the event that a firm that was not on the crude oil buyers list purchased price-controlled crude oil for resale to a refinery, such firm could furnish the seller with a letter or other written document certifying that the crude oil is for refinery use, and the seller would therefore not have to report the oil as a crude oil receipt under § 211.62.[2] If the purchaser who furnished the certification letter subsequently decided to sell the crude oil for a nonrefining use (or, alternatively, to sell it to a reseller who is not on the crude oil buyers list), the purchaser would have to report the oil as a crude oil receipt for purposes of the entitlements program. We request comments on this approach, and solicit specific comments on improving these procedures, or alternative proposals for accomplishing our regulatory objective.

Where a firm on the crude oil buyers list or a firm that is a refiner itself consumes the crude oil in a nonrefining use, it would be required under the proposed rule to report the oil as a crude oil receipt. For purposes of the proposed rule, nonrefining uses will include the blending of crude oil with other oil so that the crude oil loses its identity. In this case, the crude oil so blended would be reported by the blender as a crude oil receipt, even if the blended oil is subsequently sold to a firm on the crude oil buyers list.

As noted above, crude oil consumed by producers for production purposes is excepted from the operation of the proposed rule. Thus, the sale of crude oil to a producer for production purposes would not subject the seller to an entitlements obligation. However, since many producers would not be on the crude oil buyers list, a firm that sells crude oil to a producer for production purposes would have to obtain and maintain in its files a written certification to the effect that the oil will be used for production purposes in order to avoid the presumption that the sale was for a nonexempted nonrefining use.

In some cases a producer of crude oil may sell directly to a firm that consumes it in a nonrefining use. In this case, the entitlements burden will be imposed on the end-user, rather than the producer. The producer will, however, have the obligation to certify the crude oil to the user pursuant to 10 CFR § 212.131(b) (1) and (3).

The following table illustrates the effect of the proposed regulations on buyers and sellers of price-controlled domestic crude oil, as to which party, if any, is deemed to have crude oil receipts for the volumes sold:

Seller	Purchaser	Crude oil receipt
Reseller A	Reseller B	None.*
Do	Refiner	Refiner.
Do	Producer	None.**
Do	End-user	Reseller A.
Refiner A	Refiner B	Refiner B.
Do	Reseller	None.***
Do	Producer	None.**

[1] Attached to this notice as an appendix is a list of all refiners and first purchasers of comestic crude oil, obtained from DOE form P-124. We request specific comments on the appropriateness of utilizing the form P-124 to establish a qualified crude oil buyers list.

[2] In a subsequent audit, the seller would have to present the written certification by the purchaser in order to overcome the presumption that the sale to a firm not on the crude oil buyers list was for a nonrefining purpose.

Seller	Purchaser	Crude oil receipt
Do	End-user	Refiner A.
Producer A	Reseller	None.***
Do	Refiner	Refiner.
Do	Producer B	None.**
Do	End-user	End-user.

*Assuming both firms are qualified crude oil buyers, and unless reseller A blends the crude oil with another product, in which case reseller A would incur a crude oil receipt for the volume of crude oil blended and sold.

**Assuming that the producer certifies that the crude oil will be used for production purposes.

***Assuming that the reseller is on the crude oil buyers list, or certifies to the seller that the purchase is for refinery use.

On June 15, 1978, we issued a final rule that substantially reduced the entitlement obligations for all California lower tier and upper tier crude oil included in a refiner's crude oil receipts (43 FR 26540, June 20, 1978). The purpose of the June 15 rulemaking was to shore up a depressed crude oil market and to prevent such crude oil production from becoming uneconomical. Accordingly, the regulations proposed today would amend § 211.67(a)(4) to provide that the same reductions in entitlement obligations applicable to a refiner's crude oil receipts with respect to California lower tier and upper crude oil receipts would also be applicable to firms which incur such crude oil receipts as a result of the rules which we have proposed today.

A. Effect of Proposal on Resellers

The proposed regulations would amend the definition of "crude oil receipts" found in § 211.62 to provide that any firm other than a refiner would be deemed to have a crude oil receipt (and a corresponding requirement to make an entitlement payment) for the volumes of lower tier and upper tier crude oil sold to a firm for a use other than refining. For example, if a reseller were to sell lower tier crude oil for industrial boiler fuel use, that reseller would incur an entitlement obligation for those volumes sold. Sales of price-controlled crude oil by a reseller to a refiner which consumed it for refinery fuel would not be deemed a crude oil receipt by the firm selling the crude oil, since such crude oil would be included in that refiner's crude oil receipts.

In order to provide that firms which consume price-controlled domestic crude oil for nonrefining uses obtain such crude oil subject to the cost-equalizing effect of the entitlements program, proposed § 211.67(m)(2)(ii) would permit crude oil resellers to pass through the cost of entitlements to such users, pursuant to an adjustment in the sale price in a month subsequent to a sale of crude oil. For example, assume reseller A sold 100 barrels of lower tier crude oil to firm B for a nonrefining use in February at $5.70 a barrel. In April, reseller A would incur an entitlement purchase obligation for the 100 barrels sold. Following the purchase of the entitlements, reseller A could adjust the price charged to firm B in February by the amount paid for the entitlements.

The proposed amendments to § 211.62 would specifically include in a firms's crude oil receipts the volumes of lower tier and upper tier crude oil blended and sold by that firm. For example, if a firm blended 30 barrels of lower tier crude oil with 70 barrels of residual fuel oil and sold the blend as bunker fuel, the firm selling the blend would be deemed to have crude oil receipts of 30 barrels of lower tier crude oil (and the resulting applicable entitlement obligation) for purposes of the entitlements program. Similarly, a firm selling very light crude oil or condensate for blending into gasoline or middle distillates in a terminal or blending plant would be deemed to have crude oil receipts equal to such crude volumes blended.

B. Effect of Proposal on Refiners

The proposed amendments to § 211.62 would require a refiner to include in its crude oil receipts the volumes of lower tier and upper tier crude oil (1) consumed by that refiner, or (2) sold to a firm other than a refiner, for a use other than refining, even if such volumes have not been added to the selling refiner's refinery feedstock inventory. Where one refiner sells to another refiner for a nonrefining use, the second refiner (the user) would include the crude in its receipts. Thus, if an integrated oil company sold or otherwise transferred price-controlled domestic crude oil from its production department to its transportation department for use as bunker, industrial, or utility fuel, it would be required to include such volumes in its crude oil receipts, even though under its historical accounting practices these volumes might have been booked into its refinery feedstock inventories. But, if the sale were made to another party that is also a refiner, and that second refiner consumes or resells it for a nonrefining use, that crude oil would be reported as a receipt by the second refiner.

Proposed § 211.67(m)(1)(i)(D) would prohibit a refiner from applying the entitlement costs incurred from sales to nonrefining uses to its product prices under the "A"formula found in § 212.83(c)(2) of the refiner price regulations. Instead, proposed § 211.67(m)(1)(i)(D) would require that the cost of such entitlements shall be applied only to the prices for crude oil sold to firms for nonrefining uses.

C. Effect of Proposal on Producers

The proposed amendments to § 211.62 do not include the nonrefining uses of domestic crude oil by producers for purposes of crude oil production. Sales of lower tier or upper tier crude oil to crude oil producers for purposes of crude oil production are also exempted by proposed § 211.62 from the entitlement purchases that would be required if such sales were deemed to have crude oil receipts, provided that the producer certifies to the seller that the crude oil will be used for production purposes. Proposed § 211.62 also requires that the volumes of crude oil associated with such sales by physically transferred.

Because the first sale of lower tire and upper tire crude oil is subject to mandatory ceiling prices, we propose in those instances where a producer sells lower tier or upper tire crude oil to a firm for a nonrefining use, that the purchaser (the user) of that crude oil shall incur the related crude oil receipt (in § 211. 62 rather than the producer that sells the crude oil.

D. Compensating Entitlement Issuances to Refiners and Other Firms

Since refiners would incur entitlement obligations under the proposed amendments to § 211.62 for their use of crude oil other than as a refinery feedstock, the entitlement purchase obligation for those volumes would raise the cost of those volumes to approximately the weighted average cost of uncontrolled crude oil. Proposed subparagraph § 211.67(d) (9) provides that a refiner's crude oil runs to stills would be deemed (except for purposes of computing the small refiner bias) to include those volumes of lower tier and upper tier crude oil consumed by that refiner to a firm for a nonrefining use.

A new subparagraph § 211.67(b) (1) (ii) would be added to require the purchase of entitlements by firms which incur crude oil receipts with respect to lower tier and upper tier crude oil sold or consumed for nonrefining uses. A new subparagraph § 211.67(d) (10) would provide for entitlement issuances to resellers and other firms on the same basis as a refiner with respect to those volumes of lower tier and upper tier crude oil that constitute crude oil receipts. Thus, a firm with a nonrefining use entitlement obligation would be deemed to have crude oil runs to stills (and thus receive entitlement issuances) for the volume of price-controlled crude oil so sold or consumed. The effect of this further entitlement adjustment would be to render the after-entitlement cost for price-controlled crude oil equivalent to the weighted average cost of crude oil for domestic refiners.

E. REPORTING REQUIREMENTS

In order to implement these proposed regulations, amendments to the reporting requirements contained in § 211.66 are proposed. Proposed. § 211.66 (1) would require firms other than producers or refiners to report sales of lower tier and upper tier crude oil for nonrefining uses, as well as the identity of such purchasers. For those firms which consume lower tier and upper tier crude oil for a nonrefining use, and directly purchase such crude oil from a producer, proposed § 211.66(m) would require such purchasers to report the volumes and composition of the crude oil so prchased. Section § 211.66 (i) is proposed to be amended to require any firm which is required to buy or sell entitlements to file the monthly entitlement transaction report. Currently, only refiners and eligible firms are required to file this form. We are interested in receiving specific comments on the reporting requirements as proposed, whether any further modifications to the reporting requirements should be made, or whether the reporting of any additional information should be required.

F. EFFECTIVE DATE OF THE PROPOSED AMENDMENTS

The majority of the comments expressed opposition to the proposed effective date of the proposal (the date of publication in the FEDERAL REGISTER was proposed as the effective date), citing the disruptive effect on existing contractual arrangements. We have tentatively concluded, however, that it is appropriate and necessary to adopt these amendments effective at the earliest practicable date. Although the April 17, notice suggested the date of publication (April 21, 1978) as the effective date of the final rule, we are proposing here that May 1, 1978 (the first day of the first full month following publication of the April 17 notice) be the effective date in order to ease any accounting burden which might result from the proposal's application to a partial month.

IV. ADDITIONAL COMMENTS REQUESTED

We request additional comments on the following:

(1) Concern has been expressed that, by including nonrefining used of crude oil in the entitlements program, we may be prohibiting some producers from realizing ceiling prices for their crude oil and may in fact cause some production to be shut in for lack of a market at an economic price. Information presented to us as a result of the April 17 notice suggests that this may particularly be true with regard to certain heavy crude oils produced in California and Florida which, at least until publication of the April 17, notice, were being consumed by electric utilities as boiler fuel.

As part of our June 15 rulemaking in which we reduced the entitlement obligations for California lower tier and upper tier crude oil, we announced that expedited procedures would be established to allow refiners outside the State of California to apply for a further exception from entitlement purchase obligations associated with California crude oil to offset the cost of transporting such oil to their refineries for processing. The purpose of such exceptions relief is to provide an expanded market for California heavy crude oil and thus to expand its production potential.

If the amendments proposed here are adopted, resellers and nonrefining users, as well as refiners, would be eligible for entitlements exceptions relief to cover the cost of transporting California heavy crude oil outside the State for use elsewhere. The same procedures could be applied as readily to nonrefining uses of crude oil produces in States other than California if it could be shown that such exceptions relief is necessary to maintain the production in question. However, the question is raised as to whether, instead of making nonrefining uses of distressed domestic crude oil production subject by regulation to entitlements obligations and then exempting through the exceptions process, it might be simpler and impose less of an administrative burden if boiler fuel uses of certain types of crude oil were under certain circumstances simply exempted from the operation of this rule. We specifically request comments on whether we should adopt this approach and, if so, the criteria that should be applied (relating, for example, to the gravity and sulphur content of the crude oil involved, comparative transportation logistics to refining and nonrefining users, etc.) to determine the types of crude oils and end uses that should be exempted. We also request comments on whether an application to the Office of Hearings and Appeals for exceptions relier from the entitlement obligations for nonrefining uses of distressed domestic crude oil production would be a more appropriate mechanism to assure that it would not be shut in.

(2) One utility proposed that the nonrefining uses of imported crude oil should be included in the entitlements program. We take no position on this proposal at this time, but invite specific comments as to whether this proposal should be included in the final rule that is adopted. Similarly, we request comments on whether stripper well and other types of domestic crude oil that are exempt from price controls should also be included in the final rule.

V. RELATIONSHIP TO OTHER RULEMAKINGS

On April 5, 1978, we issued a notice of inquiry (42 FR 15158 (April 11, 1978) which indicated we have under consideration a proposed rulemaking that would simplify crude oil pricing regulations by, among other things, basing them upon entitlements-driven price controls. One aspect of the proposal presented there was the concept of shifting the payment of entitlements obligations to the first purchasers of crude oil off the lease, regardless of whether they are also refiners. Such a change in the entitlements program would automatically result in including all nonrefining uses of domestic crude oil in the entitlements program (unless a specific exception were made), since the entitlements obligation would attach at the point of first sale regardless of the ultimate use of the oil.

We may soon propose for public comment a rule that would implement such an amendment to the entitlements program. If such a rule is proposed while the present rulemaking is pending, this proceeding will be consolidated into the later one, and the issues raised here will be considered in the context of a broader rule placing the entitlements purchase obligations on a first purchaser basis.

VI. PUBLIC HEARING AND COMMENT PROCEDURES

A. WRITTEN COMMENTS

You are invited to participate in this proceeding by submitting data, views or arguments with respect to the proposals set forth in this advance notice of proposed rulemaking. Comments should be submitted by 4:30 p.m., e.s.t., December 28, 1978 to the address indicated in the "Addresses" section of this notice and should be identified on the outside envelope and on the document with the designation: "Inclusion of Nonrefining Uses of Price-Controlled Crude Oil Within the Entitlements Program." Fifteen copies should be submitted.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of such information or data and to treat it according to our determination.

B. PUBLIC HEARINGS

1. *Procedure for request to make oral presentation.* The times and places for the hearings are indicated in the "Dates" and "Addresses" sections of this preamble. If necessary to present

all testimony, a hearing will be continued to 9:30 a.m. of the next business day following the first day of the hearing.

If you have any interest in the proposals in this notice, or represent a group or class of persons that has an interest, you may make a written request for an opportunity to make oral presentation by 4:30 p.m., November 29, 1978. You should be prepared to describe the interest concerned; if appropriate, to state why you are a proper representative of a group or class of persons that has such an interest; and to give a concise summary of the proposed oral presentation. You should also provide a phone number where you may be contacted through the day before the hearing.

If you are selected to be heard, you will be so notified before 4:30 p.m., e.s.t., December 4, 1978 and will be required to submit one hundred copies of your statement to the appropriate address indicated in the "Addresses" section of this preamble by 9:30 a.m. of the date of the hearing.

2. *Conduct of the hearings.* We reserve the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing. It will not be a judicial or evidentiary-type hearing. Questions may be asked only those conducting the hearing, and there will be no cross-examination of persons presenting statements. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at the hearing to the address indicated above for requests to speak before 4:30 p.m., December 4, 1978. If you wish to ask a question at the hearing, you may submit the question, in writing, to the presiding officer. The ERA or, if the question is submitted at the hearing, the presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the ERA and made available for inspection at the ERA's Office of Public Information, Room B110, 2000 M Street NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript of the hearing from the reporter.

As required by section 7(a)(1) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments.

Executive Order 12044 (43 FR 12661, Mar. 24, 1978) requires that a regulatory analysis be prepared for all regulations which will result in "an annual effect on the economy of $100 million or more" or will result in "a major increase in costs or prices for individual industries, levels of government or geographic regions." We have determined that neither of these threshold criteria for the preparation of a regulatory analysis is met by the proposed rule, and therefore a regulatory analysis is not required.

Pursuant to the requirements of section 404(a) of the Department of Energy Organization Act (Pub. L. 95-91), this proposed rule has been referred, concurrently with the issuance hereof, to the Federal Energy Regulatory Commission for a determination whether the proposed rule would significantly affect any function within the Commission's jurisdiction.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, part 211 of chapter II, title 10 of the Code of Federal Regulations, is proposed to be amended as set forth below.

Issued in Washington, D.C., November 1, 1978.

DAVID J. BARDIN,
Administrator, Economic Regulatory Administration.

1. Section 211.62 is amended by adding a definition of "Crude Oil Buyers List", and by revising the definition of "crude oil receipts" by deleting the next to the last sentence and adding eight sentences in its place to read as follows:

§ 211.62 Definitions.

* * * * *

"Crude oil buyers list" means a listing maintained by the DOE of firms which are deemed by the DOE to engage in the refining of crude oil or the resale of crude oil for eventual refinery use.

* * * * *

"Crude oil receipts" means * * * The volumes of lower tier or upper tier crude oil which are consumed by a refiner or sold by that refiner to any firm other than a refiner for consumption by that firm for purposes other than use as a refinery feedstock shall be included in that refiner's crude oil receipts, whether or not such volumes have been added to its refinery inventory. Any firm other than a refiner or producer that sells lower tier or upper tier crude oil to any firm other than a refiner for consumption by that firm for purposes other than refining shall be deemed to have crude oil receipts with respect to those volumes sold. A seller of crude oil may presume that a sale of lower tier or upper tier crude oil to any firm which certifies to the seller that the crude oil is for eventual refinery use, or a sale to any firm listed on the most recent crude oil buyers list, is a sale for eventual refinery use. Any firm listed on the crude oil buyers list (or any firm which certifies to the seller that the crude oil is for eventual refinery use) which purchases lower tier or upper tier crude oil and consumes such crude oil for a purpose other than refining, or sells such crude oil to any firm other than a refiner for consumption other than refining, shall be deemed to have crude oil receipts with respect to those volumes consumed or sold. Any firm that purchases lower tier or upper tier crude oil from a producer for consumption by that firm for purposes other than refining shall be deemed to have crude oil receipts with respect to those volumes purchased. The preceding provisions shall not apply to sales of lower tier or upper tier crude oil to crude oil producers for purposes of crude oil production, provided that the producer certifies to the seller that the crude oil will be used for production purposes, and provided further that the volumes of crude oil associated with such sales are physically transferred. The volumes of lower tier or upper tier crude oil blended with a refined petroleum product or residual fuel oil and sold shall be included by the seller in its crude oil receipts. Crude oil which has been added by a refiner to its inventory and which is thereafter sold or otherwise disposed of without processing for the account of that refiner shall be deducted from

its crude oil receipts (unless such crude oil is consumed by that refiner prior to refining or sold by that refiner to any firm other than a refiner for consumption by that firm for purposes other than refining) at the time when the related cost is deducted from refinery inventory in accordance with accounting procedures generally accepted and consistently and historically applied by the refiner concerned.

* * * * *

2. Section 211.66 is revised in paragraph (i), and by adding new paragraphs (l) and (m) to read as follows:

§ 211.66 Reporting requirements.

* * * * *

(i) *Monthly transaction report.* On or prior to the tenth day of each month, commencing with the month of February 1975, each refiner, eligible firm, or other firm that was required to purchase or sell entitlements for the third month prior to the month in which the report is filed shall file with the ERA a report certifying its purchases or sales of entitlements for that prior month.

* * * * *

(l) *Report for sales to nonrefining uses.* On or prior to the fifth day of each month, commencing with the month of May 1978, each firm other than a producer or refiner that has sold lower tier or upper tier crude oil in the second month preceding that month to any firm for consumption by that firm for a purpose other than refining, shall file with the ERA a report certifying the following information:

(i) The volume of lower tier crude oil included in the crude oil receipts of that firm by reason of their sale to a nonrefining use;

(ii) The volume of upper tier crude oil included in the crude oil receipts of that firm by reason of their sale to a nonrefining use;

(iii) The identity of the purchasers and the volumes of lower tier and upper tier crude oil, respectively, for each sale of lower tier or upper tier crude oil to a nonrefining use;

(iv) The volume of California lower tier crude oil included in the crude oil receipts of that firm, and the weighted average gravity (calculated as a single figure for the entire month) of such California lower tier crude oil included in such crude oil receipts;

(v) The volume of California upper tier crude oil included in the crude oil receipts of that firm, and the weighted average gravity (calculated as a single figure for the entire month) of such California upper tier crude oil included in such crude oil receipts; and

(vi) Such additional information as the ERA may require.

(m) *Special report for direct purchases from producers.* On or prior to the fifth day of each month, commencing with the month of May 1978, each firm that purchases lower tier or upper tier crude oil from a producer for consumption by that firm for purposes other than refining shall file with the ERA a report certifying the following information:

(i) The volume of lower tier crude oil included in the crude oil receipts of that firm by reason of its purchase from a producer for consumption by that firm for purposes other than refining;

(ii) The volume of upper tier crude oil included in the crude oil receipts of that firm by reason of its purchase from a producer for consumption by that firm for purposes other than refining; and

(iii) The volume of California lower tier crude oil included in the crude oil receipts of that firm, and the weighted average gravity (calculated as a single figure for the entire month) of such California lower tier crude oil included in such crude oil receipts;

(iv) The volume of California upper tier crude oil included in the crude oil receipts of that firm, and the weighted average gravity (calculated as a single figure for the entire month) of such California lower tier crude oil included in such crude oil receipts; and

(v) Such additional information as the ERA may require.

* * * * *

3. Section 211.67 is amended by revising subparagraph (a)(4), by revising paragraph (b), by adding new subparagraphs (9) and (10) to paragraph (d), by adding a new subparagraph (6) to paragraph (g), by adding a new subparagraph (D) to subparagraph (m)(1)(i), and by revising subparagraph (2) to paragraph (m) to read as follows:

§ 221.67 Allocation of domestic crude oil.

(a) *Issuance of entitlements.*

* * * * *

(4) For each month, commencing with the month of June 1978, the number of entitlements issued under paragraph (a)(1) of this section to each refiner and the number of entitlements issued under paragraph (d)(10) of this section to firms other than refiners shall be increased by: (i) The number of barrels of California lower tier crude oil included in its adjusted crude oil receipts in that month multiplied by a fraction, the numerator of which is $2.38 plus or minus $0.09 for each degree API gravity (or fraction thereof) by which the weighted average gravity of all California lower tier crude oil included in that refiner's or other firm's adjusted crude oil receipts in that month either falls below or exceeds, respectively, 18 degrees API, and the denominator of which is the entitlement price for that month; and (ii) the number of barrels of California upper tier crude oil included in its adjusted crude oil receipts in that month multiplied by a fraction, the numerator of which is $1.45 plus or minus $0.09 for each degree API gravity (or fraction thereof) by which the weighted average gravity of all California upper tier crude oil included in that refiner's or other firm's adjusted crude oil receipts in that month either falls below or exceeds, respectively, 18 degrees API, and the denominator of which is the entitlement price for that month; *provided that* the dollar value of additional entitlements issued under this subparagraph (4) shall not exceed the dollar value of the obligation (as calculated under paragraph (b) of this section) for the crude oil with respect to which such additional entitlements are issued. The refiner or other firm shall calculate and report the weighted average gravity of California lower tier crude oil and California upper tier crude oil separately, and in calculating such weighted average gravities shall (A) determine the gravity of such crude oil for each receipt of such crude oil in that month on the basis of the gravity of such crude oil at the time it becomes a receipt, and (B) determine a single monthly weighted average gravity for such crude oil by weight averaging (on a volumetric basis) all of such individual receipts in that month.

* * * * *

(b) *Required purchase of entitlements by refiners or other firms.* (1)(i) For each month, commencing with the month of February 1976, each refiner that has been issued fewer entitlements for that month than the number of barrels of deemed old oil (as calculated under paragraph (b)(2) of this section) included in its adjusted crude oil receipts shall purchase a number of entitlements effective for that month equal to the difference between the number of barrels of deemed old oil (as so calculated) included in that refiner's adjusted crude oil receipts for that month and the number of entitlements issued to and retained by that refiner.

(ii) For each month, commencing with the month of May 1978, any firm othe than a refiner that has been issued fewer entitlements for that month than the number of barrels of deemed old oil (as calculated under paragraph (b)(2) of this section) included in its adjusted crude oil re-

ceipts shall purchase a number of entitlements effective for that month equal to the difference between the number of barrels of deemed old oil (as so calculated) included in that firm's crude oil receipts for that month and the number of entitlements issued to and retained by that firm.

(iii) Entitlement purchases required under this paragraph (b) with respect to a particular month shall be effected by the close of the second month following that month.

(2) To calculate the number of barrels of deemed old oil included in a refiner's or other firm's adjusted crude oil receipts for purposes of the definition of national domestic crude oil supply ratio in § 211.62 of this subpart paragraph (b)(1) of this section and paragraph (c) of this section, each barrel of old oil shall be equal to one barrel of deemed old oil and each barrel of upper tier crude oil shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of ANS crude oil, imported crude oil, stripper well crude oil (as defined in part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78, and other domestic crude oils the first sale of which is exempt from the provisions of part 212 of this chapter for that month, less the sum of 21 cents and such weighted average cost per barrel to refiners of upper tier crude oil, and the denominator of which is the entitlement price for that month.

* * * * *

(d) *Adjustments to volume of crude oil runs to stills.*

* * * * *

(9) Commencing with the month of May 1978, the volume of a refiner's crude oil runs to stills in a particular month for purposes of the calculations in paragraph (a)(1) of this section and the calculations for the national domestic crude oil supply ratio (without giving effect to the provisions of paragraph (e) of § 211.67) shall include the number of barrels of lower tier or upper tier crude oil consumed (other than as a refinery feedstock) by that refiner or blended with a refined petroleum product or residual fuel oil by that refiner and sold to any firm other than a refiner for consumption by that firm for purposes other than refining.

(10) Notwithstanding any other provisions of this section, any firm other than a refiner shall be eligible for entitlement issuances on the same basis as a refiner under subparagraph (9) above with respect to those volumes of lower tier or upper tier crude oil which constitute crude oil receipts for that firm by reason of (1) their sale to any firm other than a refiner for consumption by that firm for purposes other than refining, or (2) their purchase from a producer for consumption by that firm for purposes other than refining, or (3) having been blended by that firm with a refined petroleum product or residual fuel oil and sold.

* * * * *

(m) *Adjustments to crude oil and product costs.*

* * * * *

(1) *Refiners.*

* * * * *

(i) *Entitlements purchased.*

* * * * *

(D) The cost of entitlements purchased in a particular month pursuant to the inclusion in a refiner's crude oil receipts of the volumes of lower tier and upper tier crude oil sold by a refiner for a nonrefining use, and the corresponding adjustments to a refiner's crude oil runs to stills under paragraph (d)(9) of this section shall not be applied to product prices pursuant to the "A" factor of the general formulae of § 212.83(c)(2) of this chapter. The cost of these entitlements may be applied only to the prices of such crude oil or blends of crude oil and refined products or blends of crude oil and residual fuel oils that are sold to a firm for consumption by that firm for a purpose other than refining.

* * * * *

(2) *Resellers and retailers.* (i) The sales revenues from entitlements sold pursuant to this section by resellers or retailers shall be subtracted from the cost of the product in inventory for which the entitlements were issued, so as to reduce the weighted average unit cost of that product in inventory computed pursuant to § 212.92 of this chapter.

(ii) If in a month subsequent to a sale of crude oil, a reseller is required to purchase entitlements with respect to that crude oil, the reseller may adjust the price charged the purchaser of that crude oil to include the cost of the entitlements purchased. The amount of such adjustment shall be disregarded in the determination of the reseller's average markup and acquisition cost (as defined in § 212.182 of this chapter) for the month in which the crude oil was sold and for the month in which the adjustment is made.

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NAME AMNEX OIL CO INC
ADDRESS 1 311 ODEN BLDG
ADDRESS 2
CITY SHREVEPORT
STATE LA ZIP CODE 71101
NOTE

NAME ALLIED MATERIALS CORP
ADDRESS 1 9101 NORTH PENNSYLVANIA
ADDRESS 2 P O BOX 12360
CITY OKLAHOMA CITY
STATE OK ZIP CODE 73112
NOTE

NAME AMERADA HESS CORP
ADDRESS 1 1185 AVE OF THE AMERICAS
ADDRESS 2
CITY NEW YORK
STATE NY ZIP CODE 10036
NOTE

NAME AMERICAN PACIFIC INTERNATIONAL
ADDRESS 1 700 S. FLOWER STREET
ADDRESS 2 SUITE 1000
CITY LOS ANGELES
STATE CA ZIP CODE 90017
NOTE NEW RESPONDENT 7/78

NAME AMERICAN PETROFINA INC
ADDRESS 1 PO BOX 2159
ADDRESS 2
CITY DALLAS
STATE TX ZIP CODE 75221
NOTE AMERICAN PETROFINA CO OF

NAME AMINOIL USA
ADDRESS 1 2400 NORTH LOOP WEST
ADDRESS 2 PO BOX 90193
CITY HOUSTON
STATE TX ZIP CODE 77018
NOTE

NAME AMOCO PRODUCTION CO
ADDRESS 1 P O BOX 591
ADDRESS 2 200 EAST RANDOLPH DRIVE
CITY TULSA
STATE OK ZIP CODE 74103
NOTE STANDARD OIL CO INDIANA

ANADARKO TRANSPORTATION CO
3814 NORTH SANTA FE

OKLAHOMA CITY
OK ZIP CODE 73118

APCO OIL CORP
PO BOX 1881

OKLAHOMA CITY
OK ZIP CODE 73101

ARIZONA FUELS CORP
150 EAST 3900 SOUTH
P O BOX 7507
SALT LAKE CITY
UT ZIP CODE 84107

ASARENA OIL U S A INC
PO BOX 118

DENVER
CO ZIP CODE 80201

ASHLAND OIL INC
P.O. BOX 391
1009 WINCHESTER AVE
ASHLAND
KY ZIP CODE 41101

ATLANTIC RICHFIELD CO
515 SOUTH FLOWER ST

LOS ANGELES
CA ZIP CODE 90071

B & H GATHERING INC
211 NORTH ERWAY BLDG
SUITE 1320
DALLAS
TX ZIP CODE 75201

BALL MARKETING INC
P O BOX JJ

LAFAYETTE
LA ZIP CODE 70502

BASIN INC
511 WEST OHIO ST
PO BOX 2297
MIDLAND
TX ZIP CODE 79701

BASS PECAN CO
P.O. BOX 62

LUMMERTON
MS ZIP CODE 39455

BAYOU STATE OIL CORP
P O BOX 2147

SHREVEPORT
LA ZIP CODE 71166

BEACON OIL CO
P O BOX 400
525 N 3RD ST
RANFORD
CA ZIP CODE 93230

BI-PETRO INC
P O BOX 3245

SPRINGFIELD
IL ZIP CODE 62708

BIG-TEX CRUDE OIL CO
P O BOX 5722

ABILENE
TX ZIP CODE 79605

BIGHEART PIPE LINE CORP
P.O. BOX 376

TULSA
OK ZIP CODE 74101

BRUIN CORP
SUITE 1505 CAPITAL NATL BANK B
1330 MAIN ST
HOUSTON
TX ZIP CODE 77002

C O P INC
P O BOX 2515

MIDLAND
TX ZIP CODE 79702

CALUMET INDUSTRIES INC
13921 MACKINAW AVE

CHICAGO
IL ZIP CODE 60633

CAPROCK SERVICE CO
3102 S CLACK

ABILENE
TX ZIP CODE 79605

CARIBOU FOUR CORNERS IN
P.O. BOX 857

AFTON
WY ZIP CODE 83110

CENTRAL CRUDE CORP
920 FOURTH FINANCIAL CENTER

WICHITA
KS ZIP CODE 67217

NAME CHAMPLIN PETROLEUM CO
ADDRESS 1 301 WEST MAINE PO BOX 552
ADDRESS 2 5301 CAMP BOWIE BLVD
CITY ENID
STATE OK ZIP CODE 73701
NOTE

NAME CHANTER OIL CO
ADDRESS 1 P O BOX 5008
ADDRESS 2
CITY HOUSTON
STATE TX ZIP CODE 77012
NOTE CHANTER INT'L OIL CO

NAME CHEVRON USA INC
ADDRESS 1 P O BOX 7643
ADDRESS 2
CITY SAN FRANCISCO
STATE CA ZIP CODE 94120
NOTE STANDARD OIL CO OF CALIF

NAME CITIES SERVICE CO
ADDRESS 1 BOX 300
ADDRESS 2
CITY TULSA
STATE OK ZIP CODE 74102
NOTE

NAME CITRONELLE-MOBILE GATHERING
ADDRESS 1 717 FIRST FEDERAL TOWER
ADDRESS 2 BOX 16705
CITY MOBILE
STATE AL ZIP CODE 36616
NOTE

NAME CLAIBORNE GASOLINE CO
ADDRESS 1 8500 1ST NATL BANK BLDG
ADDRESS 2
CITY DALLAS
STATE TX ZIP CODE 75202
NOTE

NAME CLARK OIL & REFINING CORP
ADDRESS 1 8530 W. NATIONAL AVE.
ADDRESS 2 P O BOX 1448
CITY MILWAUKEE
STATE WI ZIP CODE 53201
NOTE

COASTAL STATES GAS CORP
9 GREENWAY PLAZA EAST

HOUSTON
TX ZIP CODE 77046

COFFIELD PIPE LINE CO
PO BOX 866

ROCKDALE
TX ZIP CODE 76567

CONSTRUCTION MOULDING CO INC
PO DRAWER 3159

TUSCALOOSA
AL ZIP CODE 35401

CONSUMERS POWER CO
212 W MICHIGAN AVE

JACKSON
MI ZIP CODE 49201

CONTINENTAL OIL CO
P O BOX 2197

HOUSTON
TX ZIP CODE 77001

COWBOY OIL CO
2700 SOUTH 5TH
PO DRAWER L
POCATELLO
ID ZIP CODE 83201

CROWN CENTRAL PETROLEUM
ONE NORTH CHARLES

BALTIMORE
MD ZIP CODE 21203

CRUDE CO THE
P.O. BOX 1968

CASPER
WY ZIP CODE 82602

CRUDE OIL PURCHASING
PO BOX 22000

JACKSON
MS ZIP CODE 39205

CRYSTAL OIL CO
P O BOX 21101

SHREVEPORT
LA ZIP CODE 71120

DEUTSCHE FINANCIAL SERVICES
1201 PETROLEUM CLUB BLDG

TULSA
OK ZIP CODE 74119

DIAMOND SHAMROCK CORP
P.O. BOX 631

AMARILLO
TX ZIP CODE 79173

DOMA CORP
3102 S CLACK ST

ABILENE
TX ZIP CODE 79606

DORCHESTER GAS CORP
1509 MAIN ST.
SUITE 900
DALLAS
TX ZIP CODE 75201

DOW CHEMICAL CO
SOUTH MADISON ST.

LUDINGTON
MI ZIP CODE 49431

ECHO DRILLING INC
526 SHINNICK STREET

ZANESVILLE
OH ZIP CODE 43701

EDDY REFINING CO
P.O. BOX 185

HOUSTON
TX ZIP CODE 77001

ENGINGTON OIL CO
2400 E ARTESIA BLVD

LONG BEACH
CA ZIP CODE 90805

ENERGY EXCHANGE CO INC
PO BOX 881

BAKERSFIELD
CA ZIP CODE 93302

ERGON INC
PO DRAWER 1639

JACKSON
MS ZIP CODE 39205

EXXON CORP
P.O. BOX 2180

HOUSTON
TX ZIP CODE 77001

NAME FARMERS UNION CENTRAL EXCHANGE
ADDRESS 1 PO BOX 126
ADDRESS 2
CITY LAUREL
STATE MT ZIP CODE 59044
NOTE

NAME FARMLAND IND-CRA INC
ADDRESS 1 P O BOX 7305
ADDRESS 2
CITY KANSAS CITY
STATE MO ZIP CODE 64116
NOTE CRA INC

NAME FLETCHER OIL & REFINING
ADDRESS 1 BOX 548
ADDRESS 2
CITY WILMINGTON
STATE CA ZIP CODE 90748
NOTE

NAME FOHLEN J E PETROLEUM PRODUCTS
ADDRESS 1 P O BOX 148
ADDRESS 2 OIL & GAS BLDG
CITY SHREVEPORT
STATE LA ZIP CODE 71161
NOTE

NAME GEEK TANK TRUCKS INC
ADDRESS 1 DRAWER J
ADDRESS 2
CITY JACKSBORO
STATE TX ZIP CODE 76056
NOTE

NAME GENERAL CRUDE OIL HYDROCARBON
ADDRESS 1 PO BOX 2252
ADDRESS 2
CITY HOUSTON
STATE TX ZIP CODE 77001
NOTE

NAME GENERAL ENERGY CO INC
ADDRESS 1 SUITE A30
ADDRESS 2 2835 EAST SKELLY DR
CITY TULSA
STATE OK ZIP CODE 74105
NOTE

NAME GETTY OIL CO
ADDRESS 1 3810 WILSHIRE BLVD.
ADDRESS 2
CITY LOS ANGELES
STATE CA ZIP CODE 90010
NOTE

NAME GIANT INDUSTRIES INC
ADDRESS 1 5107 N 7TH ST.
ADDRESS 2
CITY PHOENIX
STATE AZ ZIP CODE 85014
NOTE

NAME GLACIER PARK CO
ADDRESS 1 FIRST NORTHWESTERN BANK CENTER
ADDRESS 2 175 NORTH 27TH ST RM 908
CITY BILLINGS
STATE MT ZIP CODE 59101
NOTE

NAME GLADIEUX REFINERY INC
ADDRESS 1 4133 NEW HAVEN AVE.
ADDRESS 2
CITY FORT WAYNE
STATE IN ZIP CODE 46803
NOTE

NAME GULF OIL CORP
ADDRESS 1 PO BOX 2001
ADDRESS 2
CITY HOUSTON
STATE TX ZIP CODE 77001
NOTE

NAME HERNDON OIL & GAS CO
ADDRESS 1 P O BOX 889
ADDRESS 2
CITY TULSA
STATE OK ZIP CODE 74105
NOTE

NAME HOLLAND JACK & SON INC
ADDRESS 1 700 FLETCHER LANE
ADDRESS 2
CITY HAYWARD
STATE CA ZIP CODE 94544
NOTE

NAME HOUSTON OIL & MINERALS TRADING
ADDRESS 1 202 THE MAIN BUILDING
ADDRESS 2 1212 MAIN STREET
CITY HOUSTON
STATE TX ZIP CODE 77002
NOTE

NAME HOWELL CORP
ADDRESS 1 1200 TRAVIS
ADDRESS 2 SUITE 800
CITY HOUSTON
STATE TX ZIP CODE 77002
NOTE

NAME HUNT H L ESTATE OF
ADDRESS 1 2000 FIRST NATL BANK BLDG
ADDRESS 2
CITY DALLAS
STATE TX ZIP CODE 75202
NOTE

NAME HUNT OIL CO
ADDRESS 1 2000 FIRST NATL BANK BLDG
ADDRESS 2
CITY DALLAS
STATE TX ZIP CODE 75202
NOTE

NAME HURRICANE TRADING COMPANY INC
ADDRESS 1 P O BOX 35267
ADDRESS 2
CITY TULSA
STATE OK ZIP CODE 74135
NOTE

NAME HUSKY OIL CO
ADDRESS 1 PO BOX 380
ADDRESS 2
CITY CODY
STATE WY ZIP CODE 82414
NOTE

NAME INDEPENDENT OIL PRODUCERS AGEN
ADDRESS 1 4647 LONG BEACH BLVD DR
ADDRESS 2 RM 837
CITY LONG BEACH
STATE CA ZIP CODE 90805
NOTE

NAME INDIANA FARM BUREAU COOP ASSN
ADDRESS 1 120 E MARKET ST
ADDRESS 2
CITY INDIANAPOLIS
STATE IN ZIP CODE 46204
NOTE

NAME INTERCOASTAL OIL CO
ADDRESS 1 P O BOX 5913
ADDRESS 2 1317 E ANAHEIM RD
CITY LONG BEACH
STATE CA ZIP CODE 90807
NOTE

NAME INTERNATIONAL PETROLEUM TRADIN
ADDRESS 1 1660 BROADWAY
ADDRESS 2 SUITE 2000
CITY DENVER
STATE CO ZIP CODE 80202
NOTE

NAME J & W REFINING INC
ADDRESS 1 P O BOX 828
ADDRESS 2
CITY PALESTINE
STATE TX ZIP CODE 75801
NOTE

NAME KENTUCKY OIL & REFINING INC
ADDRESS 1 ROUTE 1
ADDRESS 2 BOX 63
CITY BETSY LAYNE
STATE KY ZIP CODE 41605
NOTE

NAME KERN COUNTY REFINERY INC
ADDRESS 1 ROUTE 6 BOX 330
ADDRESS 2
CITY BAKERSFIELD
STATE CA ZIP CODE 93307
NOTE

NAME KERR-MCGEE CORP
ADDRESS 1 KERR-MCGEE TOWER
ADDRESS 2 123 ROBERT S KERR AV.
CITY OKLAHOMA CITY
STATE OK ZIP CODE 73102
NOTE

NAME KOCH INDUSTRIES INC
ADDRESS 1 4111 EAST 37TH STREET NORTH
ADDRESS 2
CITY WICHITA
STATE KS ZIP CODE 67201
NOTE

NAME LA GLORIA OIL AND GAS CO
ADDRESS 1 P O BOX 2521
ADDRESS 2
CITY HOUSTON
STATE TX ZIP CODE 77001
NOTE

NAME LAKETON ASPHALT REFINING INC
ADDRESS 1 BOX 3525
ADDRESS 2
CITY EVANSVILLE
STATE IN ZIP CODE 47734
NOTE

NAME LITTLE AMERICA REFINING CO
ADDRESS 1 BOX 1077
ADDRESS 2
CITY ENGLEWOOD
STATE CO ZIP CODE 80150
NOTE

NAME LOUISIANA LAND & EXPLORATION
ADDRESS 1 SUITE 1200-225 BARONNE ST
ADDRESS 2 PO BOX 60350
CITY NEW ORLEANS
STATE LA ZIP CODE 70160
NOTE

NAME LUNDAY-THAGARD OIL CO
ADDRESS 1 P O BOX 1519
ADDRESS 2
CITY SOUTH GATE
STATE CA ZIP CODE 90280
NOTE

NAME MACLABRY VACUUM TRANSPORT
ADDRESS 1 111 WEST 3RD ST
ADDRESS 2 BOX 20
CITY EUREKA
STATE KS ZIP CODE 67045
NOTE

NAME MACMILLAN RING-FREE OIL CO INC
ADDRESS 1 90 PARK AVE
ADDRESS 2
CITY NEW YORK
STATE NY ZIP CODE 10016
NOTE

NAME MADISONVILLE TERMINAL CORP
ADDRESS 1 PO BOX 2551
ADDRESS 2
CITY BATON ROUGE
STATE LA ZIP CODE 70821
NOTE

NAME MAIN STAR OIL CO
ADDRESS 1 PO BOX 176
ADDRESS 2
CITY NEWPORT
STATE OH ZIP CODE 45768
NOTE

NAME MARATHON OIL CO
ADDRESS 1 539 S. MAIN STREET
ADDRESS 2
CITY FINDLAY
STATE OH ZIP CODE 45840
NOTE

NAME MARION CORP
ADDRESS 1 510 BEL AIR BOULEVARD
ADDRESS 2 P O BOX 16006
CITY MOBILE
STATE AL ZIP CODE 36606
NOTE

NAME MARTIN GAS SALES
ADDRESS 1 PO DRAWER 191
ADDRESS 2
CITY KILGORE
STATE TX ZIP CODE 75662
NOTE

NAME MELROSE OIL CO
ADDRESS 1 601 JEFFERSON
ADDRESS 2
CITY HOUSTON
STATE TX ZIP CODE 77002
NOTE NEW ADDRESS 9/78

NAME MESA PIPE LINE CO
ADDRESS 1 1100 MILAM BUILDING
ADDRESS 2 SUITE 3040
CITY HOUSTON
STATE TX ZIP CODE 77002
NOTE

NAME MITCHELL ENERGY AND DEV CORP
ADDRESS 1 3960 ONE SHELL PLAZA
ADDRESS 2
CITY HOUSTON
STATE TX ZIP CODE 77002
NOTE

NAME MOBIL OIL CORP
ADDRESS 1 150 E. 42ND ST.
ADDRESS 2
CITY NEW YORK
STATE NY ZIP CODE 10017
NOTE

NAME MOBLEY TRANSPORTS INC
ADDRESS 1 P O BOX 590
ADDRESS 2
CITY JACKSBORO
STATE TX ZIP CODE 76050
NOTE FORMERLY TEAGUE TANKS

NAME MONSANTO CO
ADDRESS 1 800 N LINDBERGH BLVD
ADDRESS 2
CITY ST LOUIS
STATE MO ZIP CODE 63166
NOTE

NAME MURPHY OIL CORP
ADDRESS 1 200 JEFFERSON AVE.
ADDRESS 2
CITY EL DORADO
STATE AR ZIP CODE 71730
NOTE

NAME MUSTANG GAS PRODUCTS CO
ADDRESS 1 FIRST NAT'L CENTER SUITE 1166E
ADDRESS 2
CITY OKLAHOMA CITY
STATE OK ZIP CODE 73102
NOTE

NAME MUTUAL PETROLEUM MARKETING INC
ADDRESS 1 362 FIFTH AVE
ADDRESS 2
CITY NEW YORK
STATE NY ZIP CODE 10001
NOTE

NAME NATL COOPERATIVE REFINERY ASSN
ADDRESS 1 P O BOX 1167
ADDRESS 2
CITY MCPHERSON
STATE KS ZIP CODE 67460
NOTE NCRA

NAME NAVAJO CRUDE OIL PURCHASING CO
ADDRESS 1 P O DRAWER 175
ADDRESS 2
CITY ARTESIA
STATE NM ZIP CODE 88210
NOTE

NAME NAVAJO REFINING CO
ADDRESS 1 PO DRAWER 159
ADDRESS 2 501 EAST MAIN ST
CITY ARTESIA
STATE NM ZIP CODE 88210
NOTE

NAME NEWHALL REFINING CO INC
ADDRESS 1 P.O. BOX 938
ADDRESS 2 22674 N CLAMPITT ROAD
CITY NEWHALL
STATE CA ZIP CODE 91322
NOTE

NAME NORTH AMERICAN PETROLEUM
ADDRESS 1 SUITE 200
ADDRESS 2 BANK OF COMMERCE BUILDING
CITY ABILENE
STATE TX ZIP CODE 79605
NOTE

NAME NORTHERN MONTANA OIL SERVICES
ADDRESS 1 1100 E RAILROAD ST
ADDRESS 2
CITY CUT BANK
STATE MT ZIP CODE 59427
NOTE

NAME NORTHERN NATURAL GAS CO
ADDRESS 1 2223 DODGE ST
ADDRESS 2
CITY OMAHA
STATE NE ZIP CODE 68102
NOTE

NAME NORTHWEST CRUDE INC
ADDRESS 1 P O BOX 2U211
ADDRESS 2
CITY BILLINGS
STATE MT ZIP CODE 59104
NOTE

NAME O R C CORP
ADDRESS 1 PO BOX 34190
ADDRESS 2 4835 LBJ FREEWAY
CITY DALLAS
STATE TX ZIP CODE 75234
NOTE

NAME OASIS PETRO ENERGY CORP
ADDRESS 1 10880 WILSHIRE BOULEVARD
ADDRESS 2 5995 SOUTH SEPULVEDA BOULEVARD
CITY CULVER CITY
STATE CA ZIP CODE 90230
NOTE

NAME OIL TRANSPORT CO
ADDRESS 1 PO BOX 698
ADDRESS 2
CITY WILMINGTON
STATE CA ZIP CODE 90748
NOTE

NAME OSAGE OIL & TRANSPORTATION INC
ADDRESS 1 PO BOX 29
ADDRESS 2
CITY CLEVELAND
STATE OK ZIP CODE 74020
NOTE

NAME OXNARD REFINERY
ADDRESS 1 P.O. BOX 25R
ADDRESS 2
CITY OXNARD
STATE CA ZIP CODE 93032
NOTE

NAME P & O FALCO INC
ADDRESS 1 P.O. BOX 108
ADDRESS 2
CITY SHREVEPORT
STATE LA ZIP CODE 71161
NOTE

NAME P G LAKE PIPE LINE CO
ADDRESS 1 BOX 179
ADDRESS 2
CITY TYLER
STATE TX ZIP CODE 75710
NOTE

NAME PENNZOIL CO
ADDRESS 1 PENNZOIL PLACE
ADDRESS 2 PO BOX 2967
CITY HOUSTON
STATE TX ZIP CODE 77001
NOTE

NAME PERMIAN CORP THE
ADDRESS 1 PO BOX 1183
ADDRESS 2 2000 SOUTH POST OAK ROAD
CITY HOUSTON
STATE TX ZIP CODE 77061
NOTE OCCIDENTAL PETROLEUM CORP

NAME PETRO BANDS INC
ADDRESS 1 P O BOX 409
ADDRESS 2
CITY ENID
STATE OK ZIP CODE 73701
NOTE

NAME PETRIL PRODUCTS INC
ADDRESS 1 2805 EAST SKELLY DRIVE
ADDRESS 2 SUITE 807
CITY TULSA
STATE OK ZIP CODE 74105
NOTE

NAME PETROLEUM TREATING CO
ADDRESS 1 3010 GILMORE AVE
ADDRESS 2
CITY BAKERSFIELD
STATE CA ZIP CODE 93308
NOTE

NAME PHILLIPS PETROLEUM CO
ADDRESS 1 6TH & KEELER STREET
ADDRESS 2 1250 ADAMS BUILDING
CITY BARTLESVILLE
STATE OK ZIP CODE 74004
NOTE

NAME PLACID OIL CO
ADDRESS 1 1600 FIRST NATIONAL BANK BLDG
ADDRESS 2
CITY DALLAS
STATE TX ZIP CODE 75202
NOTE

NAME PLATEAU INC
ADDRESS 1 P O BOX 108
ADDRESS 2
CITY FARMINGTON
STATE NM ZIP CODE 87401
NOTE

NAME POWERINE OIL CO
ADDRESS 1 12350 LAKELAND ROAD
ADDRESS 2
CITY SANTA FE SPRINGS
STATE CA ZIP CODE 90670
NOTE

NAME PRIDE REFINING CO
ADDRESS 1 P.O. BOX 3237
ADDRESS 2
CITY ABILENE
STATE TX ZIP CODE 79604
NOTE

NAME PRODUCERS CRUDE INC
ADDRESS 1 PO DRAWER 2757
ADDRESS 2
CITY ABILENE
STATE TX ZIP CODE 79604
NOTE

NAME QUAKER STATE OIL REFINING CORP
ADDRESS 1 BOX 989
ADDRESS 2 BOX 940
CITY OIL CITY
STATE PA ZIP CODE 16301
NOTE

NAME QUASAR ENERGY INC
ADDRESS 1 2500 FORT WORTH NAT BANK BLDG
ADDRESS 2
CITY FORT WORTH
STATE TX ZIP CODE 76102
NOTE

NAME QUINTANA HOWELL JT VENT
ADDRESS 1 5450 UPRIVER RD
ADDRESS 2
CITY CORPUS CHRISTI
STATE TX ZIP CODE 77408
NOTE

NAME QUINTANA REFINERY CO
ADDRESS 1 801 JEFFERSON
ADDRESS 2
CITY HOUSTON
STATE TX ZIP CODE 77002
NOTE NEW RESPONDENT 9/78

NAME RESERVE OIL & GAS CO
ADDRESS 1 1776 LINCOLN ST
ADDRESS 2 SUITE 1208
CITY DENVER
STATE CO ZIP CODE 80203
NOTE

NAME RIADWAY EXPRESS INC
ADDRESS 1 P O BOX 471
ADDRESS 2 1077 GORGE BLVD
CITY AKRON
STATE OH ZIP CODE 44309
NOTE

NAME ROCK ISLAND REFINING CORP
ADDRESS 1 P.O. BOX 68007
ADDRESS 2
CITY INDIANAPOLIS
STATE IN ZIP CODE 46268
NOTE

NAME SARNE REFINING INC
ADDRESS 1 P O BOX 2005
ADDRESS 2 3121 STANDARD STREET
CITY BAKERSFIELD
STATE CA ZIP CODE 93303
NOTE

NAME SAN JOAQUIN REFINING CO
ADDRESS 1 PO BOX 5576
ADDRESS 2 STANDARD AND SHELL STS
CITY BAKERSFIELD
STATE CA ZIP CODE 93308
NOTE

NAME SCURLOCK OIL CO
ADDRESS 1 1501 HOUSTON CLUB BLDG
ADDRESS 2
CITY HOUSTON
STATE TX ZIP CODE 77002
NOTE

NAME SHELL OIL CO
ADDRESS 1 ONE SHELL PLAZA
ADDRESS 2 P O BOX 2463
CITY HOUSTON
STATE TX ZIP CODE 77001
NOTE

NAME SIGMOR REFINING CO
ADDRESS 1 P O BOX 20267
ADDRESS 2
CITY SAN ANTONIO
STATE TX ZIP CODE 78220
NOTE

NAME SOUTH KENTUCKY PURCHASING CO.
ADDRESS 1 526 MONTICELLO ST
ADDRESS 2
CITY SOMERSET
STATE KY ZIP CODE 42501
NOTE

NAME SOUTHERN UNION REFINING CO
ADDRESS 1 P O BOX 986
ADDRESS 2
CITY HOBBS
STATE NM ZIP CODE 88240
NOTE

NAME STANDARD OIL CO (OHIO) THE
ADDRESS 1 1635 MIDLAND BLDG
ADDRESS 2 PM 1918
CITY CLEVELAND
STATE OH ZIP CODE 44115
NOTE

SUN CO INC
1608 WALNUT STREET

PHILADELPHIA
PA ZIP CODE 19103

SUNLAND REFINING CORP
P O BOX 1365

BAKERSFIELD
CA ZIP CODE 93302

TENNECO OIL CO
P.O. BOX 2511

HOUSTON
TX ZIP CODE 77001

TESORO PETROLEUM CORP
8700 TESORO DRIVE

SAN ANTONIO
TX ZIP CODE 78286

TEXACO INC
2000 WESTCHESTER AVE

WHITE PLAINS
NY ZIP CODE 10650

TEXAS CITY REFINING INC
PO BOX 1271

TEXAS CITY
TX ZIP CODE 77590

TEXPATA PIPE LINE CO
P O BOX 809
1020 SALINAS
LAREDO
TX ZIP CODE 78040

THRIFTWAY CO
PO BOX 1367

FARMINGTON
NM ZIP CODE 87401

THUNDERBIRD PETROLEUMS INC
500 E.CENTRAL AVE.
P.O. BOX 1700
MINOT
ND ZIP CODE 58701

TIPPANA REFINING CO
6001 N PENNSYLVANIA
SUITE 402
OKLAHOMA CITY
OK ZIP CODE 73116

TOSCO CORP
10100 SANTA MONICA BLVD

LOS ANGELES
CA ZIP CODE 90067

TOTAL PETROLEUM INC
PO BOX 231
E. SUPERIOR ST.
ALMA
MI ZIP CODE 48801

TOWN OIL CO
RFD #4

PAOLA
KS ZIP CODE 66071

TRUE OIL PURCHASING CO
108 RIVER CROSS ROAD
P O BOX 2360
CASPER
WY ZIP CODE 82601
INCLUDES TRUE OIL CO

UNI OIL INC
6339 GULFTON SUITE 300

HOUSTON
TX ZIP CODE 77081

UNION OIL OF CALIF
1650 EAST GOLF ROAD

SCHAUMBURG
IL ZIP CODE 60196

UNITED GAS PIPELINE CO
PO BOX 1478
700 MILAM
HOUSTON
TX ZIP CODE 77001

US OIL & REFG CO
PO BOX 2255
3001 MARSHALL AVE PO BOX 225
TACOMA
WA ZIP CODE 98421

USA PETROLEUM CORP
PO BOX 1839

SANTA MONICA
CA ZIP CODE 90406
NEW RESPONDENT 7/76

V G S CORP
PO BOX 10608

JACKSON
MS ZIP CODE 39206

VICKERS PETROLEUM CORP
VICKERS-WACO & F BUILDING
BOX 2260
WICHITA
KS ZIP CODE 67201

NAME MAGUIRE W I ESTATE P/L
ADDRESS 1 PO BOX 2130
ADDRESS 2
CITY VERNON
STATE TX ZIP CODE 76384
NOTE

NAME MANDA PETROLEUM CO
ADDRESS 1 P O BOX 53120
ADDRESS 2
CITY HOUSTON
STATE TX ZIP CODE 77052
NOTE

NAME MARRION ASPHALT CO OF ALABAMA
ADDRESS 1 PO DRAWER 3159
ADDRESS 2
CITY TUSCALOOSA
STATE AL ZIP CODE 35401
NOTE

NAME MARRIOR OIL CO INC
ADDRESS 1 P O DRAWER 3159
ADDRESS 2
CITY TUSCALOOSA
STATE AL ZIP CODE 35401
NOTE

NAME WEST COAST OIL CO
ADDRESS 1 PO BOX 5075
ADDRESS 2
CITY GILDALE
STATE CA ZIP CODE 93502
NOTE

NAME WESTERN PETRO CHEMICAL
ADDRESS 1 PO BOX 558
ADDRESS 2
CITY CHANUTE
STATE KS ZIP CODE 66720
NOTE

NAME WESTLAND OIL DEVELOPMENT CORP
ADDRESS 1 P O BOX 53369
ADDRESS 2
CITY HOUSTON
STATE TX ZIP CODE 77052
NOTE

NAME WILLIAMS ENERGY CO
ADDRESS 1 ONE WILLIAMS CENTER
ADDRESS 2 P O BOX 3478
CITY TULSA
STATE OK ZIP CODE 74101
NOTE

NAME WINN CORP
ADDRESS 1 SUITE 5400
ADDRESS 2 1100 MILAM BUILDING
CITY HOUSTON
STATE TX ZIP CODE 77002
NOTE

NAME WITCO CHEMICAL CORP
ADDRESS 1 277 PARK AVENUE
ADDRESS 2
CITY NEW YORK
STATE NY ZIP CODE 10017
NOTE GOLDEN BEAR DIVISION

NAME WOODS CHARLES J PETROLEUM INC
ADDRESS 1 332 S MICHIGAN AVE
ADDRESS 2 P O BOX 105
CITY CHICAGO
STATE IL ZIP CODE 60604
NOTE

NAME YOUNG REFINING CORP
ADDRESS 1 P. O. BOX 775
ADDRESS 2
CITY DOUGLASVILLE
STATE GA ZIP CODE 30133
NOTE

ARNEY OIL CO INC
ALLIED MATERIALS CORP
AMERADA HESS CORP
AMERICAN PACIFIC INTERNATIONAL
AMERICAN PETROFINA INC
AMINOIL USA
AMOCO PRODUCTION CO
ANDSUN TRANSPORTATION CO
APCO OIL CORP
ARIZONA FUELS CORP
ASAMERA OIL U S INC
ASHLAND OIL INC
ATLANTIC RICHFIELD CO
B & H GATHERING INC
BALL MARKETING INC
BASIN INC
BASS PECAN CO
BAYOU STATE OIL CORP
BEACON OIL CO
BI-PETRO INC
BIG-TEX CRUDE OIL CO
BIGHEART PIPE LINE CORP
BRAIN CORP
C O P INC
CALUMET INDUSTRIES INC
CARRUCK SERVICE CO
CARINOU FOUR CORNERS INC
CENTRAL CRUDE CORP
CHAMPLIN PETROLEUM CO
CHANTEN OIL CO
CHEVRON USA INC
CITIES SERVICE CO
CITRONELLE-MOBILE GATHERING
CLAIBORNE GASOLINE CO
CLARK OIL & REFINING CORP
COASTAL STATES GAS CORP
COFFIELD PIPE LINE CO
CONSTRUCTION MOULDING CO INC
CONSUMERS POWER CO
CONTINENTAL OIL CO
CORBUT OIL CO
CROWN CENTRAL PETROLEUM
CRUDE CO INC
CRUDE OIL PURCHASING
CRYSTAL OIL CO
DEUTSCHE FINANCIAL SERVICES
DIAMOND SHAMROCK CORP
DIMA CORP
DORCHESTER GAS CORP
DOW CHEMICAL CO
ECHO DRILLING INC
EDDY REFINING CO
EDDINGTON OIL CO
ENERGY EXCHANGE CO INC
EXXON INC
EXXON CORP
FARMERS UNION CENTRAL EXCHANGE
FARMLAND INDUSTRIES INC
FLETCHER OIL & REFINING
FOREMAN J E PETROLEUM PRODUCTS
GEER TANK TRUCKS INC
GENERAL CRUDE OIL HYDROCARBON
GENERAL ENERGY CO INC
GETTY OIL CO
GIANT INDUSTRIES INC
GLACIER PARK CO
GLADIEUX REFINERY INC
GULF OIL CORP
HERNDON OIL & GAS CO
HILLAND JACK & SON INC
HOUSTON OIL & MINERALS TRADING
HOWELL CORP
HUNT H L ESTATE OF
HUNT OIL CO
HURRICANE TRADING COMPANY INC
HUSKY OIL CO
INDEPENDENT OIL PRODUCERS AGEN
INDIANA FARM BUREAU COOP ASSN
INTERCOASTAL OIL CO
INTERNATIONAL PETROLEUM TRADIN
J & W REFINING INC
KENTUCKY OIL & REFINING INC
KERN COUNTY REFINERY INC
KERR-MCGEE CORP
KOCH INDUSTRIES INC
LA GLORIA OIL AND GAS CO
LAKETON ASPHALT REFINING INC
LITTLE AMERICA REFINING CO
LOUISIANA LAND & EXPLORATION
LUNDAY-THAGARD OIL CO
MACLASKEY VACUUM TRANSPORT
MACMILLAN RING-FREE OIL CO INC
MADISONVILLE TERMINAL CORP
MAIN STAR OIL CO
MARATHON OIL CO
MARION CORP
MARTIN GAS SALES
MEYHOSE OIL CO
MESA PIPE LINE CO
MITCHELL ENERGY AND DEV CORP
MOBIL OIL CORP
MOBLEY TRANSPORTS INC
MONSANTO CO
MURPHY OIL CORP
MUSTANG GAS PRODUCTS CO
MUTUAL PETROLEUM MARKETING INC
NATL COOPERATIVE REFINERY ASSN
NAVAJO CRUDE OIL PURCHASING CO
NAVAJO REFINING CO
NEWHALL REFINING CO INC
NINTH AMERICAN PETROLEUM
NORTHERN MONTANA OIL SERVICES
NORTHERN NATURAL GAS CO
NORTHWEST CRUDE INC
O K C CORP
OASIS PETRO ENERGY CORP
OIL TRANSPORT CO
OSAGE OIL & TRANSPORTATION INC
OXNARD REFINERY
P & O FALCO INC
P G LANE PIPE LINE CO
PENNZOIL CO
PENRIAN CORP INC
PERSIA SANDS INC
PETRIL PRODUCTS INC
PETROLEUM TREATING CO
PHILLIPS PETROLEUM CO
PLACID OIL CO
PLATEAU INC
POWERINE OIL CO
PRIDE REFINING CO
PRODUCERS CRUDE INC
QUAKER STATE OIL REFINING CORP
QUASAR ENERGY INC
QUINTANA HOWELL JT VENT
QUINTANA REFINERY CO
RESERVE OIL & GAS CO
RILEYRAY EXPRESS INC
ROCK ISLAND REFINING CORP
SAHLE REFINING INC
SAN JUAQUIN REFINING CO
SCURLOCK OIL CO
SHELL OIL CO
SIGMON REFINING CO
SOUTH KENTUCKY PURCHASING CO,
SOUTHERN UNION REFINING CO
STANDARD OIL CO (OHIO) THE
SUN CO INC
SUNLAND REFINING CORP
TENNECO OIL CO
TESORO PETROLEUM CORP
TESORO INC
TEXAS CITY REFINING INC
TEXPATA PIPE LINE CO
THRIFTWAY CO
THUNDERBIRD PETROLEUMS INC
TIGRANA REFINING CO
TOSCO CORP
TOTAL PETROLEUM INC
TOWN OIL CO
TRUE OIL PURCHASING CO
UNI OIL INC
UNION OIL OF CALIF
UNITED GAS PIPELINE CO
US OIL & REFG CO
USA PETROLEUM CORP
V G S CORP
VICKERS PETROLEUM CORP
WAGGONER W T ESTATE P/L
WANDA PETROLEUM CO
WARRIOR ASPHALT CO OF ALABAMA
WARRIOR OIL CO INC
WEST COAST OIL CO
WESTERN PETRO CHEMICAL
WESTLAND OIL DEVELOPMENT CORP
WILLIAMS ENERGY CO
WING CORP
WITCO CHEMICAL CORP
WOODS CHARLES J PETROLEUM INC
YOUNG REFINING CORP

federal register

WEDNESDAY, NOVEMBER 8, 1978
PART III

DEPARTMENT OF THE TREASURY

Office of the Secretary

■

IMPROVING GOVERNMENT REGULATIONS

Final Report for Implementation of EO 12044

[4810-25-M]

DEPARTMENT OF THE TREASURY

Office of the Secretary

EXECUTIVE ORDER 12044 ON IMPROVING GOVERNMENT REGULATIONS

Final Report for Implementation

AGENCY: Department of the Treasury.

ACTION: Revised implementation report required by Executive Order 12044.

SUMMARY: This revised report, as required by section 5(b) of Executive Order 12044, provides a final Treasury Directive designed to implement the Executive order. The Directive contains revisions as a result of public comment on the draft implementation report published May 24, 1978.

EFFECTIVE DATE: May 22, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Anthony V. DiSilvestre, Regulatory Improvement Implementation Project (RIIP) Coordinator, 202-566-2966.

SUPPLEMENTARY INFORMATION: On May 24, 1978, the Department of the Treasury published for public comment in the FEDERAL REGISTER (43 FR 22319), a draft report for implementation of Executive Order 12044. The provisions contained in the draft Treasury Directive published at Part Two of the draft report have been in effect since May 22, 1978, pending revision as a result of comments submitted. This revised report has been approved by the Office of Management and Budget prior to publication.

During the comment period, the Department received comments from several associations, an industry member, another Government agency, and several offices within Treasury. We wish to express our appreciation to those who provided their views.

COMMENTS RECEIVED AND TREASURY RESPONSES

The comments received have been grouped by the paragraphs of the Directive to which they refer. The Department's responses to substantive public comments received appear below. In addition, some editorial changes and modifications in response to comments not adopted in total were made.

PARAGRAPH 6, EFFECTIVE DATE

The Treasury Directive is effective May 22, 1978. In response to publication of the draft Treasury Directive on May 24, 1978, comment was received stressing the importance of early publication of many pending Treasury regulations and citing the large number of such pending regulations as a result of recent extensive legislation. Delay in publication of these much needed regulations would result if work plans or regulatory analyses were prepared on regulations which were in the process of preparation before May 22, 1978. In order to avoid this delay, it was decided that any regulation in the process of active preparation (that is, any regulation on which at least initial developmental steps have been taken) before that date will not require a work plan or a regulatory analysis unless otherwise directed by higher authority. Processing of regulations initiated before May 22, 1978, however, shall take into account the intent of the Directive, and shall be subject to Secretarial approval prior to publication in final form.

PARAGRAPH 7, POLICY

Several comments were received concerning policy issues covered in the proposed Directive. The respondents suggested that additional areas should be specified and the Department's policy should include:

(1) placing a particular emphasis on early consultation with State and local governments;

(2) consideration of the impact of education-related regulations on private schools; and

(3) elimination of substantive and terminological sex discrimination from the regulations.

Treasury believes that the first two comments listed are already covered by paragraphs 7.c. and 10. (formerly 9.f.) of the Directive which call for early participation and comment in developing regulations. The Department is of the opinion that the use of sex neutral language in the regulations, as requested by the President in a memorandum of August 26, 1977, should be expressed as a policy of the Department and has, therefore, amended paragraph 7. of the Directive accordingly.

PARAGRAPH 8, CRITERIA FOR SIGNIFICANT REGULATIONS

Several comments received suggested changes to the criteria listed in paragraph 8. of the Directive. One respondent indicated that since various reporting forms used by State and local governments may be revised without consultation, and that since their revisions may be made without publication in the FEDERAL REGISTER, the forms should be considered significant regulations. This respondent also indicated that State and local governments should be notified of pending action when a regulation concerning them is determined nonsignificant. The Department believes, in both instances, that the Directive adequately provides for participation by State and local governments in the regulatory process, and further, that since the information requested in the forms is generally authorized in the regulations, that State and local governments will have ample input. In addition, any regulation addressed to State and local governments is normally considered significant.

Another respondent suggested including language to the effect that regulations not have a disparate impact on the basis of sex. Since the policy statement was amended to include this issue, this suggestion was not adopted.

The final comment concerned the classification of a certain portion of regulations as nonsignificant unless the regulations are legislative rather than interpretative as to substantive matter, or if they reverse long-standing Treasury policy. This respondent cited as cause a backlog of regulations to be issued, and that the Directive, as proposed, might further delay issuance of the regulations. The Department, by modifying the effective date requirements to prevent delay in issuing regulations already in process, has already treated this issue and believes that exempting certain classes of regulations from the requirements is not in line with the spirit of the Executive order. This respondent also suggested that, rather than amending the Directive, the Executive order be amended to accomplish the same goals. This part of the suggestion is beyond the scope of this document and was referred to the Office of Management and Budget for their consideration.

PARAGRAPH 9, DEVELOPMENT OR REVIEW OF REGULATIONS

Some comments were received concerning the work plan concept contained in paragraph 9. The comments are summarized as follows:

(1) A work plan should not be required for nonsignificant regulations since it may cause undue delay, and, to further expedite the process, authority to approve work plans should be given to bureau heads.

(2) The work plan should include a reference to the applicable statutory language justifying the regulation and a brief discussion of the alternative approaches rejected for exploration.

(3) Add a requirement that Treasury consult with State and local governments before a regulation is proposed, and then include in the work plan a procedure for obtaining comments by State and local governments in completion of the consultative process.

(4) The entire work plan should be made available on request since the information contained in it may be important to an understanding of the proposal.

(5) The work plan should contain a procedure for coordination of review of regulatory proposals by affected bureaus within the Department.

The Department has considered these suggestions and has decided to adopt number (4) and (5). Information in the work plan will be available to the public upon request in accordance with the Freedom of Information Act. As a respondent noted, this is in line with Executive Order 12044 as it provides openness and a cooperative spirit in the development of the regulations. The implementation of comment number (5) was modified to now require that bureau and office heads and Assistant Secretaries be responsible for alerting the Secretary or Deputy Secretary to "proposed regulation projects involving particularly far reaching or sensitive issues requiring particular review." Accordingly, revisions were made to paragraphs 9. and 15. of the Directive.

The Department decided not to adopt the other suggestions for several reasons. First, it was not felt that the use of work plans for nonsignificant regulations would cause undue delay. Second, the Office of Management and Budget agrees with Treasury's determination that the Secretary is properly the approving official for all work plans in order to exercise effective oversight of the regulation process. Third, the work plan already contains a discussion of potential alternative approaches to explore which should cover the applicable ones. Fourth, the statutory basis justifying the regulation provides sufficient information. Finally, paragraph 10. (formerly paragraph 9.f.) provides, in particular, for State and local governments to have an early opportunity to participate. Paragraph 10. also references bureaus and offices taking into account, in terms of public participation, the provisions of the Federal Advisory Committee Act. (NOTES.—Old Subparagraph 9.f. of the draft Directive has been redesignated as paragraph 10., and old paragraphs 10. through 17. are now paragraphs 11. through 18.).

PARAGRAPH 11, SEMIANNUAL AGENDA

An internal suggestion was made to clarify whether a negative semiannual agenda is needed when a bureau or office has no regulation projects under review or consideration. Semiannual agendas are necessary under these circumstances and each bureau of office will be required to publish one; this is now expressed in paragraph 11. of the Directive. Another revision to paragraph 11. states that, "The publication of supplemental semiannual agendas shall be publicized in accordance with the applicable provisions of paragraph 10."

PARAGRAPH 12, REVIEW OF EXISTING REGULATIONS

One respondent suggested adding another criterion to those determining which existing regulations are to be reviewed. The respondent suggested including any regulation which is the subject of a request for review by State and local government officials. Paragraph 12.a.(2) of the Directive already provides that regulations which are the subject of meaningful criticism directed to the agency shall be reviewed. The Department decided to clarify this further by adding a reference to "requests for review" as well as meaningful criticism, and by "businesses and State and local governments, or their representatives" as well as the general public.

PARAGRAPH 13, REGULATORY ANALYSIS

Several comments were received regarding paragraph 13. It was suggested that such analyses should:

(1) Specify State and local governments in terms of "levels of government;"

(2) Describe the alternative approaches rejected for analysis;

(3) Include an analysis of the costs of preparing reports and the costs of delay in operations resulting from compliance;

(4) Eliminate the $40 million increase in annual costs (contained in paragraph 13.b.(2)) as a criterion since it is too difficult to identify with any certainty; and

(5) Require that no essential data already available to the government shall be sought from State and local government in addition to the public, and that, if the data is not available, the least burdensome manner of obtaining it shall also be chosen for State and local governments.

The Department considered these suggestions and decided to adopt numbers (3) and (5). Paragraph 13.e.(3) reflects the third suggestion in that it now closes with the phrase "including consideration of costs of compliance." It was also the intention that no available data would be sought from State and local governments, but if, nonetheless, essential data had to be sought, the least burdensome manner would be chosen, and paragraph 13.e. now so states.

It was decided that it was not necessary to adopt the other suggestions in that: State and local governments are the levels of government referred to (but this is now clarified in paragraph 13.a.); the examination of alternative approaches is already specified in paragraph 13.e.(3); and the $40 million criterion does provide a threshold amount that can be used to determine the impact of the regulation.

PARAGRAPH 15, RESPONSIBILITIES

As discussed earlier, this paragraph was revised to make it the responsibility of bureau and office heads and Assistant secretaries to alert the Secretary or Deputy Secretary to particularly far reaching or sensitive regulation projects issues requiring their particular review.

LIST OF EXISTING REGULATIONS SELECTED FOR INITIAL REVIEW

One comment was received concerning Part Three of the draft report. The respondent suggested revisions to the list of regulations selected for initial review contained in Part Three. The suggestion was not adopted since the particular bureau believes the regulations already listed are more in need of review. Since no revisions will be made, the list of existing regulations for review is not repeated in this report, but is hereby adopted as proposed in Part Three of the draft report which appeared in the FEDERAL REGISTER of May 24, 1978 (43 FR 22319).

Final directive. The text of the Treasury Directive is as follows:

SUBJECT: CRITERIA AND PROCEDURES FOR THE PREPARATION, REVIEW, AND APPROVAL OF REGULATIONS

1. PURPOSE

This Directive establishes policies, criteria, and procedures for the issuance of new regulations, the review of existing regulations, and the preparation of regulatory analyses, and makes assignments of related responsibilities. The Directive is intended to improve the quality of Treasury regulatory practices. It is not intended to create delay in the process.

2. SCOPE

This Directive applies to the Office of the Secretary and all bureaus.

3. AUTHORITY AND REFERENCES

a. Executive Order 12044, "Improving Government Regulations," dated March 23, 1978, (43 FR 12661).

b. Federal Register Document Drafting Handbook, dated January 1975.

c. 1 CFR 18.12, Preparation of Preambles for Federal Register Documents.

d. TD 50-04.A, "Filing Documents for Publication with the FEDERAL REGISTER," dated September 22, 1975.

4. CANCELLATION

a. TD 50-04.D, "Inflation Impact Statements for Proposed Legislation, Regulations or Rules," dated October 8, 1976.

b. TD 50-04.E, "Procedures for Preparing Documents Which Impact the Public," dated September 26, 1977.

5. APPLICABILITY

a. *In general.*

The Department, through its bureaus and offices, issues regulations

which, for the purposes of this Directive, are divided into three categories. The first category consists of internal directives, generally published in Treasury directives systems. The second consists of regulations which impact the public and which are published in the FEDERAL REGISTER and codified in the Code of Federal Regulations. The third consists of notices and other essentially nonpermanent matters published in the FEDERAL REGISTER, but not codified in the Code of Federal Regulations. The policies set forth in paragraph 7. and the responsibilities assigned by paragraph 15. of this Directive govern all three categories. The principal purpose of this Directive is to implement Executive Order 12044. In recognition of this, the criteria and procedures described in paragraphs 8. through 14. relate principally to the second category of regulations.

b. *Specific nonapplicability.* Specifically, the criteria and procedures set forth in paragraphs 8. through 14. do not apply to:

(1) internal management documents issued in the Department of the Treasury Directives Manual, the Treasury Personnel Manual, the Treasury Fiscal Requirements Manual, the Treasury Procurement Regulations, and similar or related constituent unit directives systems;

(2) regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557); and

(3) regulations issued with respect to a military or foreign affairs function of the United States.

c. *Notice section material.* Materials which are published in the Notice section of the FEDERAL REGISTER are also not subject to the criteria and procedures set forth in paragraphs 8. through 14. The FEDERAL REGISTER publication of these materials shall include an express statement to the effect that the published material does not meet the Department's criteria for significant regulations. However, in the discretion of the office or person proposing issuance, or when directed by higher authority, material to be published in the Notice section may be made subject to these criteria and procedures to the extent possible.

(d) *Waiver.* The provisions of paragraphs 8. through 14. may be waived with respect to regulations otherwise subject to those provisions, when the regulations are issued in response to an emergency, or are governed by short-term deadlines imposed by a statute or judicial decision. However, when such waiver is necessary, the FEDERAL REGISTER publication of the regulation shall include a statement of the reasons why it is impractical or contrary to the public interest to follow the procedures of this Directive, together with the name and title of the policy official responsible for the determination.

6. EFFECTIVE DATE

The provisions of this Directive are effective as of May 22, 1978. Any regulation in the process of active preparation (that is, any regulation on which at least initial developmental steps have been taken) before that date will not require a work plan (paragraph 9.b.), or a regulatory analysis (paragraph 13.), unless otherwise directed by higher authority. The implementation of this effective date is designed so that the issuance of any regulation which was in the process of preparation before that date will not be delayed. Processing of regulations initiated before May 22, 1978, however, shall take into account the intent of this Directive and shall be subject to Secretarial approval prior to publication in final form.

7. POLICY

It is the policy of the Department of the Treasury that the spirit as well as the letter of Executive Order 12044 be followed in the development of regulations. To achieve this objective, regulations shall be developed through a process which insures that:

a. the need for, and the purposes of, the regulation are clearly established;

b. the Secretary and other policy officials are able to exercise effective oversight;

c. opportunity exists, as otherwise required (e.g., the President's memorandum of March 23, 1978, on the subject of State and local government participation in the regulatory process), for early participation and comment by other Federal agencies, State and local governments, businesses, organizations, and individual members of the public;

d. meaningful alternatives are considered and analyzed before the regulation is issued;

e. compliance costs, paperwork and other burdens on the public are minimized; and

f. it is also the policy of the Department that regulations will be neutral as to gender, both in substance and terminology, unless the context clearly justifies gender specificity.

8. CRITERIA FOR SIGNIFICANT REGULATIONS

Each regulation or amendment to an existing regulation which is to be (or has been) issued by the Department of the Treasury or a component thereof, published in the FEDERAL REGISTER, and codified in the Code of Federal Regulations is considered to be a significant regulation. Any document which is not published in the FEDERAL REGISTER, or published there, but not codified in the Code of Federal Regulation, is not significant and may not be a regulation. A regulation which would otherwise be eligible for consideration as a significant regulation may, nonetheless, with Secretarial approval, be determined not to be a significant regulation. Such determination shall be expressly justified. Examples of qualifying justifications are the following. The regulation or amendment:

a. Is required to implement a statute, an international agreement, a court decision, or a regulatory action of another agency, bureau, or office, and no sustantial element of discretion is afforded the rulemaker;

b. Is nonsubstantive;

c. Is essentially procedural;

d. Does not materially change existing, or establish new, policy;

e. Does not impose substantial additional requirements or costs on, or substantially alter the legal rights or obligations of, those affected thereby; or

f. Is addressed to, and primarily impacts, Federal officials or employees, and not the general public, business entities or State and local governments.

9. DEVELOPMENT OR REVIEW OF REGULATIONS

a. *Approval to develop or review regulations.* No action, other than preliminary studies, on any regulation which is to be, or has been, published in the FEDERAL REGISTER and codified in the Code of Federal Regulations, shall be without Secretarial approval of a work plan.

b. *Work plan to be funished the Secretary.* The initiating office wishing to gain approval of such a regulation project shall prepare a work plan in memorandum form from the bureau or office head, through the appropriate policy review officials, to the Secretary. Each work plan shall serially numbered by the bureau or office. The work plan shall contain the following information:

(1) a description of the subject matter of the regulation project or whether a new regulation, or revision or rescission of an existing regulation is proposed;

(2) a justification of the need for a new or revised regulation or other action proposed;

(3) the statutory basis for the regulation;

(4) the name and telephone number of a knowledgeable official;

(5) if applicable or possible, a statement of whether a regulatory analysis will be prepared, or a statement as to when and how it will be determined whether such an analysis will be prepared;

(6) a brief description of the policy issues involved;

(7) a brief discussion of potential alternative approaches to be explored for solving the issues;

(8) the plan for obtaining public comments, which shall address whether a public hearing or conference will be held;

(9) the target dates for completion of the following steps in the development of the regulation:

(a) completion of advance notice of proposed rulemaking or notice of intent (if any), and proposed publication date for such notice;

(b) completion of the draft regulatory analysis, if applicable, and the preliminary draft of the notice of proposed rule-making;

(c) completion of the final draft of proposed rulemaking, the period of review within Treasury, and the proposed date for publication in the FEDERAL REGISTER;

(d) expiration of the period for written comments and completion of hearing, if any;

(e) completion of the final regulatory analysis, if applicable, and the preliminary draft of the final rulemaking; and

(f) completion of the final draft, the period for review within Treasury, and the proposed date for publication in the FEDERAL REGISTER;

(10) if applicable, the reasons why the regulation should not be considered significant in accordance with paragraph 8.; and

(11) a recommendation that the work plan receive Secretarial approval.

c. *Work plan for nonsignificant regulations.* If a work plan in accordance with b. (10) above states reasons why the regulation should not be considered significant, the work plan shall fully address the matters in b. (1) through b. (5) and b. (10), and may address all other matters in an abbreviated, conclusionary manner. For example, with respect to b.(9), only the information in b. (9)(f) need be specified.

d. *Approval of work plan.* Any reviewing official may disapprove or direct that a work plan be revised. By concurring and forwarding the work plan to the next reviewer, each reviewing official will be deemed to recommend approval of the work plan as presented. Approval of a work plan is limited to the Secretarial level. The initiating office may be required to revise the work plan prior to, or as a condition of, approval. An approved work plan is a commitment by the initiating bureau or office that the regulation project will be undertaken in conformity with the approved plan. Bureau and office heads will be held accountable for carrying out the plan as approved, whether revised or amended.

e. *Revision or amendment of work plan.* (1) The originating office may, at any time during the development of a regulation, initiate a revision of an approved work plan. Unless the Secretary has determined the regulation not to be significant, a material, substantive revision of items (1), (2), (3), (5), (6), (7), or (8) of the work plan, prior to publication of a notice of proposed rulemaking, requires resubmission for Secretarial approval. Any such revision made to the work plan after such publication does not require resubmission, but shall be explained in connection with approval of the final regulation under paragraph 14.c. A revision of item (9) also requires resubmission, if the target dates under (a), (c), or (f) are to be delayed for more than three months. In such event, the resubmission for approval shall state the reasons for the delay. Revision of item (10), at any time, requires resubmission for Secretarial approval.

(2) Nonmaterial, nonsubstantive changes in any item, and changes in item (9), other than as specified in e. (1) above, of approved work plans for significant regulations, or any changes (other than to item (10)) to work plans covering regulations identified as nonsignificant, may be accomplished by amendment. Amendments do not require Secretarial approval.

(3) Revisions or amendments to approved work plans shall be made by placing brackets "[]" around material to be deleted and underlining new language. This will permit immediate focus on changes and will provide a continous history of the work plan.

f. *Public availability of work plans.* Items (1) through (5) of approved work plans will usually be publicly available as published in semiannual agendas. In addition, other items of approved work plans will be publicly available upon request in accordance with the provisions of the Freedom of Information Act.

10. OPPORTUNITY FOR PUBLIC PARTICIPATION

As otherwise required, and in accordance with paragraph 7.c., each bureau and office shall give the public, in general, and State and local governments or their representatives, in particular, an early and meaningful opportunity to participate in the regulatory process. In so doing, bureaus and offices shall also take into account the provisions of the Federal Advisory Committee Act, and TD 10-06.E, Treasury Advisory Committee Management, dated September 2, 1977. Bureaus and offices may consider a number of ways to provide this opportunity, including:

(1) publishing an advance notice of proposed rulemaking;

(2) holding open conferences or public hearings;

(3) sending notices of proposed regulations to publications likely to be read by those affected; and

(4) notifying interested parties directly. Bureaus and offices shall allow at least 60 days for comment on proposed significant regulations. If this is not possible, the regulation shall be accompanied by a brief statement of the reason why a shorter time period is necessary.

11. SEMIANNUAL AGENDA

a. *Schedule of semiannual agenda.* Each year, by September 1, starting in 1978, the head of each bureau or office shall submit to the Executive Secretary, a statement of the dates on which the bureau or office proposes to publish its semiannual agenda. The Executive Secretary shall compile the Department's publication schedule on the basis of these submissions and, with Secretarial approval, submit the schedule for publication in the FEDERAL REGISTER on the first Monday in October of each year, starting in 1978.

b. *Semiannual agendas.* Each bureau or office shall publish its semiannual agenda in accordance with the schedule published in the FEDERAL REGISTER in October of each year, and may publish a supplement at any time. The publication of supplemental agendas shall be publicized in accordance with the applicable provisions of paragraph 10. The head of each bureau or office shall submit the semiannual agenda, or supplements thereto, for FEDERAL REGISTER publication by signing below the subscription, "By direction of the Secretary of the Treasury."

(1) Each semiannual agenda shall be composed of two parts, a list of significant existing regulations under development, and a list of significant regulations under development, and a list of significant existing regulations to be reviewed. Each list shall include significant regulations for which a work plan is not required by reason of the effective date provisions of paragraph 6., or by the waiver provisions of paragraph 5.d. Other regulations for which a work plan has not been prepared shall not be included. Regulations determined to be nonsignificant may also be listed within the appropriate list of significant regulations. For each regulation listed, the semiannual agenda shall set forth the information described in paragraph 9.b.(1) through (5). The semiannual agenda shall also indicate the status of regulations listed on prior semiannual agendas.

(2) In keeping with the intent of this Directive, bureaus and offices shall, as necessary, publish negative semiannual agendas.

(3) Upon publication of a semiannual agenda or supplement, the bureau

or office shall also furnish a copy to the Executive Secretary.

12. REVIEW OF EXISTING REGULATIONS

a. *Criteria.* Bureaus or offices shall periodically review their existing regulations to determine if they are achieving the policy goals set forth in paragraph 7. Selection of regulations for review shall be made on the basis of the following criteria listed in the order of their significance. Regulations which:

(1) were issued prior to enactment of legislation which either materially alters the statute under which the regulations were issued or provides significantly different rules concerning the subject regulatory matter from the rules contained in the regulations;

(2) are the subject of meaningful criticism or requests for review directed to the agency by the public, businesses, or State and local governments or their representatives;

(3) apply only with respect to a period of time for which the opportunity has expired for the agency to secure compliance;

(4) were issued with respect to circumstances or conditions which are no longer material;

(5) have not been invoked by those affected or the government for more than one year;

(6) the bureau or office considers are complied with at an unacceptable level by a significant portion of the public;

(7) by their terms (and without regard to the requirements of an underlying statute or court decision) impose a reporting, recordkeeping, or other burden on those affected thereby;

(8) may duplicate or overlap other regulations of the Federal government;

(9) have been the subject of a significant volume of litigation questioning their validity or interpretation;

(10) contain substantive rules that are not simply interpretative rules, general statements of policy or rules of agency organization, procedure, or practice and which have not been significantly revised in the preceding six years; and

(11) are complex and can be clarified and simplified.

b. *Identification.* The head of each bureau or office shall ensure that the bureau of office maintains a systematic process for the identification of regulations for review using the criteria set forth above.

c. *Work plan.* The bureau of office proposing a regulation for review shall prepare and obtain Secretarial approval of a work plan in accordance with paragraph 9., prior to starting the review of the regulation, unless not required by reason of the effective date provisions of paragraph 6. Review of a regulation shall follow the procedural steps applicable to the development of new regulations.

d. *Agenda.* Significant regulations approved for review shall be included in the semiannual agenda as provided in paragraph 11.

13. REGULATORY ANALYSIS

a. *Responsibility.* Some significant regulations may have major economic consequences for the general economy, for individual industries, geographic regions, or levels of State or local governments. For these regulations, a regulatory analysis shall be prepared. Such an analysis shall be a careful examination of alternative approaches, which is undertaken early in the regulatory process in order to be available to reviewers and the Secretary.

b. *Criteria.*. A regulatory analysis shall be prepared for significant regulations or amendments to existing regulations which will, or can reasonably be calculated or estimated to, result in:

(1) an annual impact (positive, negative, or combination) on the general economy of $100 million or more;

(2) an annual increase in costs or prices for an individual industry, geographic region, level of government, or identifiable class of individuals or business entities of $40 million or more; or

(3) an effect on an individual industry, geographical region, or level of government which is of such a magnitude, without reference to a particular dollar threshold, that:

(a) the continued existence of an industry, or significant sector thereof, is seriously threatened;

(b) severe dislocation, market disruptions, or shortages of labor would result; or

(c) the ability of a governmental unit to continue to carry out its governmental functions is seriously undermined.

c. *Exception.* A regulatory analysis will not be required if the economic or other consequences meeting the above criteria flow directly from the statute, international agreement, or court decision being implemented. In such event, an abbreviated, conclusionary statement setting forth these facts shall be prepared in lieu of a regulatory analysis and shall be publicly available in the same manner as a regulatory analysis.

d. *Discretion.* In addition to the specific criteria in b. above, a work plan submitted for Secretarial approval may provide that a regulatory analysis shall be prepared on any proposed significant regulation or amendment to an existing regulation. The Secretary may also direct that such an analysis be prepared as part, or as a condition, of Secretarial approval of the original or revised work plan.

e. *Preparation of draft regulatory analysis.* When an approved work plan requires a regulatory analysis, the originating office shall prepare a draft prior to, or at the time of, the actual drafting of the proposed regulation. The originating office shall obtain such information, expertise, assistance, or review as is necessary from any available source within and outside the Government. However, no essential data shall be sought (other than data protected from disclosure by law) from State or local governments, or from the private sector that is already available to the Government, even if in some other form. If it, nonetheless, becomes necessary to seek essential data from State or local governments or the private sector, it shall be done in the least burdensome manner, and in accordance with applicable laws concerning reports by the public and the safeguarding of proprietary information. Each regulatory analysis shall contain, as a minimum, the following:

(1) a succinct statement of the problem;

(2) a description of the major alternative ways of dealing with the problem that were considered; and

(3) an analysis of the economic consequences of each alternative and a detailed explanation of reasons for choosing one alternative over the others, including consideration of costs of compliance.

f. *Preparation of final regulatory analysis.* The originating office shall prepare the final regulatory analysis, using the same process as with the draft, to reflect changes resulting from public participation in the rulemaking process. The final regulatory analysis shall accompany the final rulemaking through all review and approval levels, including Secretarial approval.

g. *Availability.* An explanation of the regulatory approach selected or favored and a short description of other alternatives considered shall be included in both the notice of proposed rulemaking and the final rulemaking. Also, a statement shall be included as to how the public may obtain a copy of the draft or final regulatory analysis.

14. APPROVAL OF REGULATIONS

a. *Proposed regulations.* Each advance notice of proposed rulemaking, or notice of intent to hold a public hearing or conference, or notice of proposed rulemaking issued in accordance with an approved work plan shall be signed by, or at the direction of, the bureau or office head, approved, if otherwise required, by the appropriate policy official, and submitted by the bureau or office to the FEDERAL REGISTER for publication. if the approved

work plan includes a determination that the rulemaking does not involve a significant regulation, a statement shall be included in the notice that the regulation does not meet the Treasury criteria for a significant regulation.

b. *Nonsignificant final regulations.* Final regulations which have been determined not to be significant in an approved work plan shall be signed by the bureau or office head, approved, if otherwise required, by the appropriate policy official, and submitted by the bureau or office to the FEDERAL REGISTER for publication. The final rulemaking shall include a statement that the regulation does not meet Treasury criteria for a significant regulation.

c. *Significant final regulations.* regulations which are significant shall be signed by the bureau or office head, approved, if otherwise required, by the appropriate policy official, and forwarded to the Executive Secretary for the Secretarial determination that the regulation should be approved for publication in the FEDERAL REGISTER. The Secretarial determination shall be requested by a memorandum from the appropriate policy official. The memorandum shall contain or transmit the following:

(1) the justification of the need for the new or revised regulation or other final action;

(2) a brief discussion demonstrating the adequacy of consideration given to both the direct and indirect effects of the regulation;

(3) a brief discussion of alternative approaches considered and the reason(s) why the approach chosen is considered the least burdensome of the acceptable alternatives;

(4) evidence that public comments received during the development of the regulation have been considered and that an adequate response has been prepared, addressing the issues raised by the comments;

(5) documentation of new reporting burdens or recordkeeping requirements necessary for compliance;

(6) a plan for evaluating the effectiveness of the regulation after its issuance;

(7) a copy of the final regulatory analysis, where applicable; and

(8) a recommendation for Secretarial authorization to publish the regulation.

Approval of the recommendation to authorize publication of the regulation will evidence that the Secretary has determined the regulation to be needed and that all steps preliminary to publication have been satisfactorily completed. It will also evidence that the regulation has been reviewed, that it is written in plain English, and that it contains the name, address, and telephone number of a knowledgeable, responsible official. After approval, the regulation shall be submitted to the FEDERAL REGISTER for publication by the bureau or office.

15. RESPONSIBILITIES

a. *Heads of bureaus and offices* shall insure that:

(1) the initiation, preparation, publication, and review of regulations by their respective organizations are conducted in accordance with this Directive;

(2) proposed regulation projects, which require a work plan, are submitted for Secretarial approval with well articulated work plans responsive to the requirements of this Directive, and that work plans are accomplished as approved and by the specified target dates;

(3) when appropriate, those proposed regulation projects involving particularly far reaching or sensitive issues requiring particular review by the Secretary or Deputy Secretary are so identified; and

(4) the President's objectives as expressed in Executive Order 12044 and this Directive are met as fully as possible.

b. *Under Secretaries, the General Counsel, and Assistant Secretaries* shall insure that:

(1) heads of bureaus and offices reporting to them receive the cooperation and assistance they may require to carry out their responsibilities under this Directive; and

(2) every responsibility is carried out, including the identification of those proposed regulation projects involving particularly far reaching or sensitive issues requiring particular review by the Secretary or Deputy Secretary.

c. *The Assistant Secretary for Economic Policy* and, where appropriate, *the Assistant Secretary for Tax Policy* shall assist and cooperate with heads of bureaus and offices in preparing regulatory analyses, when required, and review, and advise the Secretary on, the adequacy of such analyses. The Office of Tax Analysis shall prepare those portions of regulatory analyses respecting Internal Revenue Service regulations dealing with economic consequences.

d. *The Executive Secretary* shall serve as the principal point of contact with the Office of Management and Budget and other agencies on the improvement of regulations and provide staff support to the Secretary by:

(1) compiling and publishing the annual listing of semiannual agenda publication dates;

(2) reviewing work plans;

(3) maintaining a current file of approved work plans;

(4) monitoring bureau and office publication and compliance with semiannual agendas and, for that purpose, maintaining a current file of published agendas;

(5) reviewing, and maintaining a current file of, regulatory analyses in draft and final form;

(6) reviewing final rulemaking requests and insuring that each such request and final rule complies with this Directive and is ready for Secretarial approval; and

(7) monitoring and evaluating the effectiveness of this Directive, in terms of the Executive order which it implements, and providing a report on such effectiveness to the Secretary by January 15, 1980.

16. JUDICIAL REVIEW

Nothing in this Directive is intended to provide new grounds for judicial review or to be interpreted as superseding any existing statutory obligation governing rulemaking.

17. EXPIRATION

Unless extended, this Directive expires on September 30, 1980.

18. OFFICE OF PRIMARY INTEREST

Office of the Executive Secretary, Immediate Office of the Secretary.

W. MICHAEL BLUMENTHAL.

* * * * *

This report is submitted for the Department of the Treasury.

Dated: November 2, 1978.

W. MICHAEL BLUMENTHAL,
Secretary of the Treasury.

[FR Doc. 78-31533 Filed 11-7-78; 8:45 am]

federal register

WEDNESDAY, NOVEMBER 8, 1978
PART IV

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

NATIONAL DIRECT STUDENT LOAN, COLLEGE WORK-STUDY, AND SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAMS

[4110-02-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Parts 144, 175, and 176]

NATIONAL DIRECT STUDENT LOAN, COLLEGE WORK-STUDY, AND SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAMS

AGENCY: Office of Education, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: 1. The Commissioner is revising sections 3, 4, 5, 6, 7, and 16 of the National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Program regulations. These three programs are popularly known as the three "campus-based" Federal programs of student financial aid.

2. These revisions are being made (a) to correct previous inequities in distributing funds among institutions of higher education and (b) to require that the institutions verify any estimated family income data on applications for financial aid submitted before January 1 for an award year beginning after that date.

3. As a result of these changes, the form used by institutions for applying for Federal funds will be simplified. Regional review panels will be eliminated. Funds will be distributed among institutions by formula, rather than in accordance with panel recommendations. The Commissioner's "discretionary" 10 percent of each appropriation will also be distributed among States by the same formula. Finally, no Federal funds may be given to any student based on unverified income data submitted before Januar 1. Verification will be optional on forms submitted after January 1.

DATES: Comments must be received on or before December 7, 1978. There will be hearings in New York, New Orleans, Chicago, and Seattle at the locations listed below.

ADDRESSES: Comments should be addressed to Mr. Thomas Butts, Room 4662 ROB, 400 Maryland Avenue SW., Washington, D.C. 20202.

November 27—New York, N.Y., Office of Education, Region II, Room 1-102-Lobby Floor, 26 Federal Plaza, New York, N.Y. 10007; 9 a.m. to conclusion. Contact person for scheduling presentation times: Ms. Tillie Wachs, 212-264-4045.

December 4—New Orleans, La., Tulane University, McAlister Drive University Center, Stibbs Room A and B, New Orleans, La.; 10 a.m. to conclusion. Contact person for scheduling presentation times: Ms. Carole Sivright, Dallas Regional Office, 214-767-3766.

December 6—Chicago, Ill., Loyola University, Downtown Campus, Regis Room, 820 N. Michigan Avenue, Chicago, Ill. 60611; 9 a.m. to conclusion. Contact person for scheduling presentation times: Mr. Tom Schindler, 312-353-8943.

December 8—Seattle, Wash., Federal Building, South Auditorium, 915 Second Avenue, Seattle, Wash., 98174; 9 a.m. to conclusion. Contact person for scheduling presentation times: Mr. Jesse Lockyer, 206-442-4156.

FOR FURTHER INFORMATION CONTACT:

Mr. Jack Reynolds, 202-245-0231.

SUPPLEMENTARY INFORMATION: The proposed amendments regarding distribution of campus-based student aid funds are based on recommendations made to the Commissioner by a panel of student financial aid experts and on public comment received on those recommendations. The recommendations were distributed to the public in the June 1978 Bulletin of the Bureau of Student Financial Assistance of the Office of Education (BSFA Bulletin), the relevant portions of which are reproduced below, after "Other comments." Readers are invited to read that part of the preamble for the text of the recommendations, and for the background and rationale of this proposal. Written comments were received on those recommendations, and public hearings were held during the first 2 weeks of July in San Francisco, Houston, Washington, D.C., and Chicago.

As a result of public comment on the recommendations of the panel of experts, this proposal varies from those recommendations in several ways. First, this proposal covers only the first year of the recommended 3-year phase-in process. A later Notice of Proposed Rulemaking will be required to carry out the second and third years of that process. This guarantees that public comment will be received on the results of the first year of the new procedure before the second and third years are incorporated in the regulations. Additionally, changes have been made in some details of the formulas recommended by the panel of experts.

This proposal is similar to the recommendations of the panel of experts in that it gives both current participants in the programs and new applicants a conditionally guaranteed level of funding during the first year of implementation of the new process. In general, the guarantee is conditional on enough money being appropriated for each program. This proposal differs from the recommendations in its definition of funding and in other details discussed below.

Under this proposal an institution's level of funding will be considered the greater of its actual 1977-78 expenditures or its projected 1978-79 expenditures. These amounts will be compared for each program separately.

Each institution's projected 1978-79 expenditures will be calculated by the Office of Education. This will be done in two steps: First, the Office of Education will determine for each institution what percent it spent of the funds available to it in each program during 1977-78. The data for making this determination will be taken from the fiscal-operations report filed by the institution as part of its application. Then, the amount of funds available to the institution in each program during 1978-79 will be multiplied by that percentage to determine its projected expenditures.

If an institution did not participate in a particular program during 1977-78 but has funds available to it in that program during 1978-79, 100 percent use will be assumed.

If an institution is a nonparticipant in all programs during 1978-79, it will also receive a conditional guarantee of funding. Since that guarantee cannot be based on the institution's actual 1977-78 or projected 1978-79 expenditures, a substitute measure will be used. That substitute measure will be the amount of funds awarded in each program to last year's new applicants for their expenditure during 1978-79 divided by the number of enrolled students in those schools. This will give an average award per enrolled student. Averages will be calculated by type and control, using a national data base. (Types of institutions are universities, 4-year schools, 2-year schools, area vocational schools, and others. Control means public, nonprofit private, and proprietary.) The average for each program will be multiplied by a new applicant's current actual enrollment to determine its conditional guarantee in that program for 1978-80.

This approach differs from that recommended by the panel of experts. Their recommendation was that a new applicant's funding level should be its "fair share," computed as described under "Calculation of fair shares."

Each institution, both "new" and "old," therefore will have a conditional guarantee for a specific amount of funding. If it has participated in one or two of the programs, but not all three, its conditional guarantee will cover only the program(s) in which it has participated. It will know this amount before it files its application for funding.

To apply for the funds covered by its conditional guarantee, an institution need only file its fiscal-operations report for 1977-78 (if it had funds for that year) plus an abbreviated application stating its request in each program. First-time applicants and those who had no funds for 1977-78 may file the application form only.

To receive more funds than its conditional guarantee, the institution must file the additional data discussed below in the description of fair shares.

The amount of funding an institution eventually receives may be lower than the amount of its conditional guarantee. There may not be enough money available either in the appropriation nationally or in the funds available for a particular State to honor all conditional guarantees fully. In that case reductions in funding will be made. The amount of reduction may vary State-by-State and program-by-program because of the operation of the various statutory State allotment/apportionment formulas.

To determine whether the conditional guarantees can be honored in full, the Commissioner will total them nationally and by State and compare those totals with the funds available. If available funds are sufficient to honor all conditional guarantees, they will be honored. Otherwise they will be reduced by the amount necessary to make them equal the amount of available funds.

If available funds exceed the amount of the conditional guarantees, the excess funds will be given to those institutions whose fair shares exceed the amount of their conditional guarantees.

CALCULATION OF FAIR SHARES

The Office of Education will compute by formula an institution's fair share of each appropriation. To have its fair share computed, an institution must supply the actual, verifiable date elements needed to perform the necessary calculations. Those data elements are defined in some detail in section 6 of the three regulations and are discussed further below under "Factors used in the formulas." One formula will be used for SEOG, a second one for NDSL and CWS.

Expressed in simple terms, SEOG need equals 70 percent of cost minus EFC and gift aid. Stated another way, if gift aid funds available to applicant undergraduate students plus their expected family contribution total less than 70 percent of their costs, the institution will be considered to have a need for SEOG funds.

That "need" will then be split between initial year (IY) funds and continuing year (CY) funds in the same proportion as the institution's requests in those two categories. For example, if the institution requests $100,000 in IY funds and $200,000 in CY funds and is determined to need $150,000 total in SEOG funds, that total will be divided between IY and CY in the proportion of 1:2, which would amount to $50,000 in IY and $100,000 in CY.

To determine an institution's fair share of the IY anbd CY appropriations, the amount of need for all applicant institutions for IY and CY funds will be divided by the total need for those funds to compute that institution "IY index" and its "Cy index." Those indexes will be multiplied by the appropriations for initial and continuing funds to determine the institution's fair share of those funds. If the institution does not supply the figures needed to make these computations, its fair share of the available funds will be assumed to equal its conditional guarantee.

The "self-help" formula to be used for CWS and NDSL considers both undergraduate and graduate students. The formula totals need for self-help among undergraduates plus need for self-help among graduate students. Self-help is the amount of funds a student receives from work or from loans.

Since 70 percent of undergraduate costs have already been considered in determining an institution's SEOG index, only 30 percent of undergraduate costs will be considered in determining the need for self-help among undergraduates. Need for self-help among undergraduates. Need for self-help at an institution is computed by adding the need for self-help among the various income-level categories of students attending the institution.

Specifically, for each undergraduate income cell (all of which are displayed in section 6 of the proposed regulations), need for self-help equals the lesser of (1) 30 percent of cost, or (2) cost minus expected family contribution (but not less than zero). As an example, suppose at one institution the average undergraduate cost is $4,000 and the expected family contribution (EFC) is $2,500 per student in one income cell. The per capita need for self-help funds is the lesser of (1) 30 percent of the cost, which is $1,200 (30 percent of $4,000), or (2) cost minus EFC, which is $1,500 ($4,000 minus $2,500). Since $1,200 is less than $1,500, the per capita need for self-help in that cell will be considered to be $1,200. If for another income cell the EFC is $3,900 per student, the per capita need for self-help funds is the lesser of (1) 30 percent of cost ($1,200), or (2) cost minus EFC ($100) or $100. Finally, if the EFC in a cell is $5,000 per student, the per capita need for self-help is zero.

For graduate students 100 percent of cost will be considered in determining the need for self-help funds. Thus, for each graduate student income cell the per capita need for self-help funds will be cost minus EFC (but not less than zero). An institution's total need for self-help funds is the sum of undergraduate and graduate need for those funds. An institution's self-help index will be computed by dividing its need for self-help funds by the total need of all institutions, nationally, for those funds.

The institution's fair share of the CWS appropriation will be calculated by multiplying the CWS appropriation by its self-help index. If the institution does not file the information needed by the Office of Education to make this calculation, its fair share will be assumed to equal its conditional guarantee.

For the NDSL program, each institution will receive a fair share of the amount available for lending in 1979-80. Funds available for lending include collections, other Fund income, and reimbursements of cancelled Direct loans as well as the appropriation and the matching institutional capital contributions. This amount will be multiplied by the institution's self-help index to give the institution's total approved level of expenditure (LOE), which is its fair share of the total funds available. If the institution does not file the information the Office of Education needs to compute its fair share of available funds, its LOE will be considered to equal its conditionally guaranteed amount.

The amount of new Federal capital contribution for any institution will be derived from its LOE, by subtracting from that amount its projected collections, other Fund income, and Federal reimbursements to its Fund of Direct Loans cancelled by its borrowers. The difference obtained by making that subtraction will be multiplied by 90 percent to determine its Federal Capital Contribution.

Institutions can expect the full amount of their calculated FCC if they can fulfill one of the following three requirements:

(1) The institution's default rate is less than 10 percent;

(2) The institution's default rate is more than 10 percent, but the number of loans made by that institution which are in default for less than 2 years on June 30, 1978, are at least 10 percent less than the number of loans made by that institution and in default for less than 2 years on June 30, 1977;

(3) The institution's default rate is more than 10 percent, but the institution can document, under § 144.7, that it has exercised due diligence as set forth in Subpart C of the NDSL regulations published in the FEDERAL REGISTER of November 24, 1976, for the past 2 award years.

NOTE.—See *Subpart C—Loan Collection—Due Diligence*, attached as an appendix to this NPRM.

In projecting an institution's collections, the Commissioner will consider its default rate. If its default rate is 10 percent or below, its collections will be projected by multiplying its actual 1977-78 collections by 121 percent. If

its default rate is greater than 10 percent, it will be expected to increase its 1977-78 collections by 121 percent plus the excess overdue amount.

The excess overdue amount will be computed as follows: First, the Commissioner will determine the amount of defaulted loans which would equal a 10 percent rate. This will be done by multiplying the total amount of matured loans by 10 percent. Second, the Commissioner will determine the ratio between this amount and the unpaid principal balance of defaulted loans, which the institution will report on line IIC6.8E of its fiscal-operations report. Third, this ratio will be subtracted from one. Fourth, the principal amount past due on defaulted loans (which is reported on line IIC6.8F) will be multiplied by this difference to determine the excess overdue amount.

As an example, suppose that an institution's Loan Fund has matured loans totalling $1,000,000. Further suppose that the unpaid principal balance of defaulted loans reported by the institution on line IIC6.8E of its fiscal-operations report equals $150,000. Then suppose that the past-due principal amount in line IIC6.8F of the institution's fiscal-operations report is $90,000. Using these figures, the institution's excess overdue amount would be calculated as follows:

1. Ten percent of $1,000,000 equals $100,000.
2. The ratio of $100,000 to $150,000 equals ⅔.
3. One minus ⅔ equals ⅓.
4. One-third times $90,000 equals $30,000, the excess overdue amount.

Shifting Funds in Self-Help Programs

A procedure will be established to accommodate those institutions filing under Part B which wish to shift a portion of funding from one self-help program to another.

In situations where the institutional formula generates a potential level of NDSL or CW-S funding in excess of that requested by an institution, this excess will be "brokered" (within the Office of Education funding process) with other institutions. For example, if the Self-Help formula provides a CW-5 recommendation which exceeds the maximum amount requested in that program, the difference will be put into an "excess" CW-S pool. Assuming that the institution's need for NDSL funds has not been fully met, each of these institutions will have its NDSL (FCC) recommendation increased by money in the "excess" NDSL (FCC) pool times its proportionate contribution to the "excess" CW-S pool. Similarly, other institutions may have their CW-S recommendation increased by the money in the "excess" CW-S pool times the proportionate contribution to the "excess" NDSL pool.

In this manner, shifting of funds by one institution between programs may be possible but no other institution needing those funds will be adversely affected. Shifting of self-help funds into SEOG will not be permitted.

Factors Used in the Formulas

There was considerable public confusion concerning the meaning of various terms used in the formulas recommended by the panel of experts, as those formulas were explained in the *BSFA Bulletin*. We are therefore offering the following clarification of the terms used in this proposal.

"Undergraduate costs" and "graduate student costs" will be computed as follows:

First, the institution will determine the number of "applicant students" in each category and report those numbers to the Office of Education. The institution will do this by counting the number of undergraduate and graduate students from whom it received completed applications for financial aid for 1977-78 (or comparable information in another form) and subtracting from these numbers the number of students who did not meet the requirements of (a) being a citizen or permanent resident of the United States and (b) being enrolled as at least a half-time student in an eligible program.

Second, the institution will tell the Office of Education its total tuition and fee revenue from all undergraduate students and its total tuition and fee revenue from all graduate students and the total numbers of those students. Using these numbers the Office of Education will compute the institution's average tuition and fee revenue per undergraduate student and its average tuition and fee revenue per graduate student. The Office of Education will then multiply these averages by the number of applicant students in each category to determine the total amount of tuition and fee revenue from applicant students in each category.

Third, the Office of Education will multiply the number of applicant students in each category by a single national average figure for living expenses plus books and supplies. The living expenses figure used will be the Basic Grant family size offset for 1977-78 for single persons, multiplied by three-fourths to cover 9 months rather than 12. For the 1979-80 application the living expense figure used will be $2,250. The Office of Education will add $200 to this figure for books and supplies.

Fourth, the Office of Education will add together the amounts it computes for total tuition and fee revenues from applicant students and for their living expenses and books and supplies to determine their total costs. This will be done separately for undergraduate and graduate students.

A number of commenters objected to the use of a single national figure for living expenses and suggested other figures they considered to be more sensitive to local variations in the cost of living. These recommendations were not accepted. The most "local" of the readily available published cost of living figures are the Department of Labor's figures for standard metropolitan statistical areas (SMSA's). The variation of living costs within each SMSA is at least as great as the difference between the least expensive and the most expensive SMSA. Therefore using the cost of living figures for SMSA's would not eliminate the inequity identified by the commenters.

"Expected family contribution" will be computed by the Office of Education. To do this, the Office of Education will multiply the number of students reported by the institution in each family income category by the national average expected family contribution for that income category. The Office of Education is considering two different alternatives for computing these averages. One alternative is to use data furnished us by the major private need analysis services and their method of computing expected family contributions. The other is to use the 1979-80 family contribution schedule for Basic Grants, which is currently under development, and Basic Grant data.

For the SEOG formula, "gift aid" is defined as including Basic Grants and State scholarships and grants plus all the categories of gift aid used by the institution in determining its maintenance of effort figures for CWS and SEOG. The amount to be deducted from cost will be 100 percent of the grant and scholarship funds received by the institution's students during 1977-78 from Basic Grants and from State scholarships and grants, plus two-thirds of the other scholarships and grants paid out by the institution during that year. The same State and institutional figures will be used for all of the later years of the new process. They will not be recomputed from year to year to reflect increased expenditures for scholarships and grants in later years either by the State or by the institution. This is being done in response to several commenters who objected that deducting State and institutional scholarships and grants from costs to determine the amount of Federal funds an institution will receive is unfair to those States and institutions which have made greater efforts than others to aid their needy students, often at considerable sacri-

fice to themselves. Some of these commenters complained that the recommended procedures would move funds out of their States to other States whose financial aid programs have been less commendable.

Since funds for the campus-based programs are allotted among the States by statutory formula, the amount of funds being reallotted from one State to another will be minimal. Furthermore, the Office of Education will be using a permanent base year (1977-78) to determine the amount of State and institutional gift aid it will deduct from costs. As a result institutions and States may increase their scholarship and grant expenditures without fear of losing future Federal funds.

On the other hand, the campus-based programs are not intended to replace State and institutional funds. That is the very meaning of the statutory requirement for maintenance of effort in the SEOG in CWS programs. Also, some institutions and States are much richer than others and therefore better able to provide scholarships and grants to their students. It would not be fair to ignore these differences in ability to pay. For both these reasons State and institutional expenditures for scholarships and grants must be considered. Using 1977-78 as a permanent base year accomplishes this purpose with a minimum of undesirable side effects.

"State scholarships and grants" include funds given by a State on a case-by-case basis to individual students. They do not include the "implicit" scholarships given to all students in public institutions in the form of low tuition and fees.

Other Comments

A number of commenters objected to implementing these proposed changes for the application which they must file in October 1978. They stated that the Office of Education is not giving them enough leadtime to collect the new information that will be required.

If an institution is not able to file these new figures, it will still receive its conditional guarantee, but it may not apply for an amount greater than its guarantee. Thus an institution's inability to supply these figures will not keep it from receiving funds but will prevent it from receiving any increase.

A few commenters objected to basing an institution's conditional guarantee on its actual expenditures or use rate in 1977-78, because that 1 year could have shown an abnormally low use, for a number of good reasons. Several other commenters objected to the fact that the recommendations made by the panel of experts did not include provisions to increase funding levels for inflation.

In response to these commenters, it should be noted that any institution, even one with a low use rate, may request additional funding and have the Office of Education compute its fair share. If an institution's fair share exceeds its conditional guarantee, it will share in any funds that remain available after all conditional guarantees have been funded. Any additional amount an institution receives as its fair share may or may not be enough to compensate for the amount of inflation it has experienced, much of which may be reflected in increased tuition and fees. However, these programs are not intended to help an institution increase its tuition and fees. In fact, proprietary institutions may not, by statute, increase their tuition and fees as a result of the aid their students receive under these programs.

Several commenters complained that the recommendations made by the panel of experts discriminated against independent students. Others complained that the recommendations would prevent an institution from shifting a portion of its CWS award to its SEOG award and *vice versa*, which is permitted by statute.

Both of these commenters appear to misunderstand the recommendations. An institution's fair share will be calculated by using an average living cost for single students. Independent students frequently have dependents. No allowance is made in the computations for those dependents. On the other hand, no deduction is being made for students whose living costs are lower than average, such as students who live in their parents home. We are not proposing to forbid an institution to consider an independent student's full living costs in computing that student's individual need, even though the Office of Education does not take them specifically into account in computing the institution's fair share. We are also not proposing to amend the statute to forbid an institution to shift a portion of its SEOG award to its CWS award and *vice versa*.

A number of commenters objected to the fact that the panel of experts recommended that Regional Panels should be abolished. These commenters believed that it is desirable to use a "human element" in evaluating applications and that the recommended process is excessively mechanized.

In response to these commenters we must state that the previous application procedures were tried for a number of years and failed to distribute funds fairly among all institutions, despite the fact that those procedures relied heavily on use of the "human element."

Several commenters claimed that the effect of the recommended changes would be to shift funds from low-cost schools to high-cost ones and therefore from disadvantaged students to students from middle-income families.

It should be emphasized that the only funds shifted under the proposed system will be those above the conditional guarantees. Each institution will continue to receive the amount of funds it has been spending. The formulas will only distribute funds above the conditional guarantees.

Preliminary computer simulations indicate that these additional funds are not likely to be distributed proportional to current funding. These simulations do not indicate an overall shift from low-cost to high-cost schools or *vice versa*. Rather, funds will be shifted from some low-cost schools to others and from some high-cost schools to others, reflecting the inequities in the old system.

We do not believe that our proposal will penalize disadvantaged students. If they are in low-cost institutions, Basic Grants will pay up to half their costs. Campus-based funds can be used to pay the remaining half of costs. If they are in high-cost institutions, their Basic Grants will not pay as much as half of their costs, because those costs are greater than $3,600, and a Basic Grant may not exceed $1,800. At a high-cost institution a student from a low-income family needs much larger amounts of campus-based funds than he or she would at a low-cost institution. These factors are all considered in the formulas.

The Office of Education used a survey to decide that 70 percent of undergraduate costs should be met with gift aid and family contributions. One commenter claimed that the survey is unreliable.

In response to this commenter, the Office of Education acknowledges that all surveys are fallible. For the purpose of this fund-distribution procedure, however, it is not essential that the survey data be absolutely accurate. The survey was adequate to show that nationally the share of need met with gift aid is between two-thirds and three-fourths of need. This is true in all categories of institution, both low-cost and high-cost. It is plainly apparent that it is not fair to give some institutions enough SEOG funds to enable them to meet the full need of all their needy students with gift aid, while other institutions are not able to do so. This would give the favored schools a competitive advantage. Therefore a value judgment has been made that SEOG funds will be restricted to those institutions which cannot meet approximately 70 percent of their students aggregate need with gift aid. This figure may be changed in the final reguation as additional facts become known concerning the amount

of the appropriation and other pertinent factors.

One commenter observed that the recommended changes would encourage grantsmenship by the "numbers gameplayers."

In reply to this commenter it must be stated that all the data which institutions furnish to the Office of Education under these new procedures will be audited. The HEW Audit Agency's audit guidelines will be amended to require the institution's independent auditors to verify these numbers as part of the audit procedure now required by all three of the campus-based programs.

VERIFICATION OF ESTIMATED INCOME DATA

The verification proposal in section 16 is not related to the changes being made in the institutional application process and the consequent changes being made in the methods of distributing funds among the States and among the institutions within a State. It is being included in this Notice of Proposed Rule Making only to avoid issuing a separate Notice.

Studies have shown that families make errors when they file application for financial aid using estimated income data for a year which has not yet been completed. Lower-income families tend to believe that they will make more money than they actually do. Higher-income families believe the opposite. To avoid these problems, the Office of Education is proposing that no campus-based funds may be disbursed to a student whose need has been computed using estimated data submitted before January 1. Institutions may continue to accept applications before January 1, but they must verify the estimates before disbursing campus-based funds. They may do this by requiring families which apply before January 1 to submit a copy of their Federal income tax form 1040 which proves that their proves that their estimate of income data was correct. If the estimate was not correct, the institution must make the appropriate adjustments in need analysis. Verification of data on applications submitted after January 1 is optional with the institution.

RECOMMENDATIONS OF THE PANEL OF EXPERTS

For the convenience of those readers who may not have seen the June 1978, *BSFA Bulletin*, we are repeating the substance of the recommendations made by the panel of experts. The earlier part of this preamble responds to the public comment we received on those recommendations.

PART I—BACKGROUND

During the summer of 1977, nine experts on student financial aid and related areas were asked by the Commissioner of Education to review the process by which Federal student assistance funds are awarded to institutions. He asked that recommendations be made toward improving the process for funding those institutions participating in the National Direct Student Loan (NDSL), College Work-Study (CW-S), and Supplemental Educational Opportunity Grant (SEOG) programs. The appointment of this Panel was prompted by recommendations made by the Student Financial Assistance Study Group, the General Accounting Office, and members of the financial aid community.

CRITICISM OF THE PRESENT FUNDING PROCESS

There has been growing agreement that the current funding process is inequitable, overly complex, and too time consuming. The funding process includes the following elements, some of which are based upon legislation, while others are based upon regulations:

1. The institutional application process.
2. A review and appeal process culminating in a recommended level of funding.
3. Establishment of a nationwide level of available funds.
4. Establishment of the available level of funds for the eligible institutions in each State including consideration of the statutory State allotment formulas, the regulatory Commissioner's discretionary 10 percent funds, and the level of recommended funding in each State.
5. The finalization of an award letter for each eligible institution.

The application process for campus-based funds has undergone many changes since 1970. In spite of the changes, however, the application process and the review and appeal process have required an inordinate amount of time on the part of institutions and OE staff. Up until 1977 when the application was developed for use by continuing institutions, funding decisions were based on unaudited projected figures which served to encourage grantsmanship.

The entire funding process is complicated by inflexible State allotment formulas which differ among the three campus-based programs in seemingly random and inconsistent ways. Furthermore, these statutory formulas have enrollment as their primary ingredient, and thus they bear little relationship to the actual financial need in a State. The present regulatory method of assigning the Commissioner's discretionary "10 percent funds" has ameliorated some of the problems of the rigid statutory formulas, but it has also encouraged grantsmanship.

PART II—OPERATING ASSUMPTIONS

The Panel has developed and agreed to a number of operating assumptions which must be a part of the new funding process.

1. *Phase in:* Any new funding process must be phased in over a period of years to prevent sudden and precipitous dislocations of funds.
2. *Streamlined process:* The funding process must be sufficiently streamlined to permit the mailing of institutional award letters as early as possible but not later than January. This implies that the Panel Review process will no longer exist in its present form.
3. *Standard measurements of need:* Data collected during the application process must allow a standard measurement of relative institutional financial need. The ability to make standard measurements implies that data must be actual (historical), verifiable, and auditable. Furthermore, the data must be compatible to the extent possible, with other Federal requests.
4. *Use of the data:* (a) The data collected during the application process must be computerized, edited, and made available in a very short time frame for funding decisions. (b) The data must also be available for the development of a nationwide Date Base which will allow the evaluation of future funding alternatives.
5. *Reduction of forms:* The Fiscal-Operations Report and the Tripartite application must be combined to assure that data will be available on time and to eliminate present duplication in the forms. (FISAP Report)
6. *Timing:* The appropriation process must precede the application process so that exact dollars available will be known at each step on the new funding process.
7. *Inclusion of unutilized funds:* Funds distributed in a new funding process must include not only new appropriations, but also, to the extent possible, unutilized funds from the prior year.
8. *Ease of administration:* There should be liberalized opportunities to transfer funds between the campus-based programs once they have been allocated. Furthermore, the distinction between Initial Year and continuing Year SEOG authorizations should be eliminated.
9. *Changing the formulas and the assignment of the 10 percent funds:* The State allocation formulas and the present method of assigning the discretionary 10 percent funds are inequitable and should be changed. The changes are generally seen as long-range changes, although some portion

of the 10 percent funds might be used to assist institutions stressed over the introduction of a new funding system.

10. *Differentiate grant aid from self-help:* The funding process should use a different conceptual framework for assigning SEOG funds than that used for assigning funds in the self-help programs of NDSL and CW-S. It is acknowledged that there is a great demand for grant assistance. It is difficult for very needy students to borrow enough or work enough to meet their educational costs, particularly at higher cost institutions.

11. *Peer involvement:* (Formerly the Panel Process) will be confined to an evaluative role of the Funding system and to the national appeal Process.

Part III—The New Funding Process

Based on its Operating Assumptions, the new process will be implemented in several phases. It is designed to use the strengths of the current interim funding system as well as to provide needed changes.

Phase I—(Effective Fall 1978 for 1979-80 Award Year)

PART A

An institution applying under Part A will be awarded funds in one or more of the campus-based programs based on the amount it is expected to use in the current year. (1978-79 award in each program multiplied by the percentage of the 1977-78 award used during 1978). This is similar to the formula Limit Concept used in the Fall of 1977. Adjustments will be made for cash carryover and collections of the NDSL program. All information needed will be taken from the FISAP report. Funding levels will, in general, be held relatively constant. Available funds not used to fund Part A will be held for use in funding Part B. No modification will be made in Part A because of an enrollment change or inflation. There will be no shifting of a portion of the request between programs in Part A.

Institutions Participating for the First Time in 1978-79

In the case of institutions receiving awards for the first time in 1978-79, 100 percent utilization will be assumed and recommendations under Part A will be equal to 1978-79 award levels. Such an institution may also apply under Part B. (See below)

Part B

Institutions wishing a greater level of funding than that permitted under Part A will be required to submit a minimal amount of additional data[1] on the combined Fiscal Operations Report and Tripartite Application (FISAP). A funding level under Part B will be calculated for each applicant institution with the use of formulas developed for the purpose of providing a standard measurement of institutional need. The formula to be employed for the self-help programs of NDSL and CW-S is different from the formula to be employed for the SEOG program. Those Part B institutions whose need, program by program, has not already been met under Part A will be awarded an additional sum based upon a formula produced institutional index and the sum remaining in each program after part Part A funding levels have been set. If additional funding becomes available, these new funds will be used to proportionately increase allocations under Part B.

New Institutions

Institutions which will be participating for the first time in 1979-80 will submit those items required of Part B filers. Data used to measure institutional need will be derived from cumulative Student Eligibility Report data available through the filing of applications in the BEOG program. A number of additional questions on enrollment will be included on the FISAP for use of newly applying institutions only.

Testing the Formulas

It is assumed that the possible availability of additional dollars under Part B will persuade a substantial number of institutions to provide the Office of Education with Part B data. This data base will, in turn, permit the testing, validating, and notification of the formulas prior to Phase II of the process at which time all institutions will be required to file Part B information. Since the formulas have been designed to produce standard measurements of financial need, one of the criteria used to evaluate the formulas will be the effectiveness with which financial need is measured at institutions with various cost and with various levels of non-campus-based financial aid programs.

Phase II (Effective in the Fall, 1979, or at Such Time as Formulas Have Been Sufficiently Tested and Determined to Produce Effective Results)

PART A

Institutional funding levels will be calculated in a manner similar to Phase I, Part A. However, institutions will be awarded no more than x percent (perhaps 90 percent) of their current funding level multiplied by the previous years' utilization percentage. Therefore, all else being equal, a higher level of funds will be available for the funding of Phase II, Part B, than were available for Phase I, Part B.

PART B

All institutions will be required to submit the information described under Phase I, Part B, and these data will be used to test the institution's need for further funds to supplement the amount available under Part A. Thus, the formulas which will have been developed will play an increasingly important role in the assignment of funds to institutions.

Phase III

PART A

Institutional funding will again be calculated in a manner similar to Phase II, Part A; however, the percentage protection of the previous level of utilization will decrease.

PART B

Part B will be similar to Phase II, Part B, with the exception that repeated data collection will only be necessary periodically, and may not be necessary for all data elements. Since the percentage protection of the previous level of funding has decreased in Phase III, Part A, the formulas will continue to play an increasingly important role in the assignment of funds to institutions.

How the System Will Work in 1978 (for the 1979-80 Award Period)

All institutions which have participated previously as well as newly applying institutions will be supplied with a new form, the FISAP (Fiscal Operations Report—Funding Application). Information requested in that report will be essentially the same information as that previously requested on the Fiscal Operations Report. It will include an additional short section to be completed by institutions wishing funding greater than previously utilized amounts (Part B) and those institutions applying for the first time.

Institutions will be given the option of applying for Part A only or additionally applying for Part B funds. If they apply for Part A only, they will have completed their request at the time they complete the Fiscal Operations Sections of the FISAP and the section requesting funds for the coming year. New institutions will not complete the Fiscal Operations Sections of the FISAP.

All FISAP's will be mailed to the OE Central office and put through a ma-

[1] Funds requested in each of the campus-based programs, total tuition and fee revenues, headcount enrollment, BEOG award level, State Grants and Scholarships, Institutionally administered grants and scholarships, and the number of enrolled students in various categories of family income.

chine edit. The edit print-out of tentative Part A recommended levels will be mailed to the institutions with instructions on how to make corrections. A copy will also be mailed to the Regional Office. Institutions will be responsible for resolving errors. Regional Office assistance will be available in the most difficult of cases, and corrections will be forwarded directly to the OE Central Office for Keypunch.

With the assistance of a software program designed for this purpose, State totals in each program will be derived and compared with sums available. Remaining sums will be used to satisfy Part B requests or whatever portion of those requests is possible. A set of formulas which measure relative need for Federal funds will be used to derive two measurements of need for each Part B applicant (one measurement for the SEOG program and one measurement for the Self-Help programs).

Institutions will be sent information on dollar recommendations made under Part A from the OE Central Office. If they have completed Part B, they will be informed of the recommended amount (if any) which will be available to them under Part B.

Since there will be no individual judgment exerted on these decisions, no Regional Panel will be used for the review.

Shifting in Self-Help Programs

A procedure will be established to accommodate those institutions filing under Part B which wish to shift a portion of funding from one self-help program to another.

NDSL Defaults

At the present time the Bureau is considering several approaches which would incorporate the NDSL default record into the Part A and/or Part B funding process. Comments will be welcomed regarding whether and how NDSL defaults should be incorporated in the funding process.

PART IV—THE FORMULAS—HOW THEY WORK

A. SEOG FORMULA

The SEOG formula=70 percent × cost—(EFC+BEOG+State Grant Aid+Institutional Grant Aid)

(70 percent was chosen because it represents the approximate average amount of nonreturnable aid received by students in all types of institutions.[1]) The terms in the formula are defined below along with the data sources which will be utilized.

(i) *Cost.* The term "Cost" is meant to reflect the aggregate cost of attendance of undergraduate applicants enrolled at the institution and will consist of tuition and fee costs and living costs. Tuition and fees will represent the total tuition and fee revenues from all undergraduates at the institution in 1977-78.

Living costs are equal to: 0.75 (Social Security annual budget for an individual) × total headcount undergraduate enrollment. The ".75" factor reflects a 9-month average school year compared to the 12-month living cost of the Social Security budget.

Total undergraduate tuition and fee revenues and total undergraduate living costs will be added together in order to obtain total undergraduate costs. In order to obtain the "Cost" figure for enrolled applicants, which will be used in the formula, the following calculation will be made by OE:

Enrolled undergraduate applicants over Total undergraduate headcount enrollment × Total undergraduate costs = the total "Cost" for enrolled undergraduate applicants. Example: An institution with an undergraduate headcount enrollment of 2,000 has 1,000 enrolled undergraduate applicants. If that institution's total undergraduate costs are $10 million, then their calculation would be:

Total Cost of Enrolled Undergraduate Applicants =1,000/2,000 × $10,000,000=$5,000,000

(ii) *Total expected family contribution (EFC).* Institutions will be requested to provide the number of enrolled applicants [2] by income level, dependency status (dependent-independent), and academic level (undergraduate-graduate [3]). (See chart in section 6 of the proposed regulation.) Based upon these data the Office of Education will calculate the total EFC for each income category based upon current need analysis methodology.

The sum of the total EFC's for each income category of undergraduates represents the value of "EFC" to be used in the SEOG formula.

(iii) *BEOG.* The term "BEOG" refers to total Basic Grant funds received by students at the institution in 1977-78. In future years it is expected that BEOG data will be provided by USOE, rather than by institutions.

(iv) *State grant and scholarship aid.* The Panel recommended defining State Grant Aid to be the sum of all State scholarships and grants for undergraduates for the academic year 1977-78. This amount would be held constant for future funding cycles to prohibit it becoming a disincentive for States to expand scholarship and grant programs.

(v) *Institutional grant and scholarship aid.* The Panel recommended difining Institutional Grant Aid as 70 percent of the grant and scholarship component of the institutional maintenance of level of effort for fiscal year 1977-78. This amount would be held constant for future cycles to prohibit it becoming a disincentive for institutions to expand scholarship and grant programs.

HOW THE FORMULA WILL WORK

The procedure for determining recommended levels (IY and CY) for Part B filers is:

1. Estimated need for SEOG will be computed as follows: 70 percent × Cost—(EFC+BEOG+State Grant Aid+Institutional Grant Aid)

2. A Relative National Index (RNI) will be calculated for each institution as the ratio of that institution's formula-determined need to the sum of the need for all institutions. This Relative National Index will then be split in proportion to the institution's request for IY and CY funds.

Example: If an institution requests $30,000 in IY funds and $70,000 in CY funds, its Relative National Index for IY funds will be 30 percent of its overall RNI and its Relative National Index for CY funds will be 70 percent of its overall RNI.

3. The Relative National Index for IY and CY funds multiplied by the corresponding IY and CY SEOG appropriation will equal the institutional Fair Shares of the available IY and CY SEOG funds.

Example: If an institution's Relative National Index for IY funds is .001 and the IY SEOG appropriation for that year is $150,000,000 that institution's Fair Share of IY SEOG funds is determined by:

Fair Share SEOG (IY)=$150,000,000×.001=$150,000

4. The amount the institution is scheduled to receive under Part A may be equal to, less than, or greater than that institution's Fair Share. If it is equal to or greater than the Fair Share, then it represents the maximum grant for that institution for that year.

5. If additional funds are available for Part B, they will be distributed based upon the relative amount by which the institutional Fair Share exceeds the amount the institution is scheduled to receive under Part A.

Example: If institution No. 1 has a Fair share of SEOG IY funds of $150,000 and its Part A recommendation is $100,000 then that institution's shortfall of Part A of Fair Share is $50,000. If institution No. 2 has a shortfall of Part A to Fair Share of $25,000.

[1] Cooperative Institutional Research Program: Higher Educational Research Institute (Fall 1975).

[2] Enrolled applicants are students enrolled at least half-time in an eligible program, who meet the program requirements for citizenship and whose family income, dependency status, and academic level are known to the institution.

[3] Only data for undergraduate students will be included in the calculation of the SEOG Index. Undergraduate and graduate data will be utilized in the CW-S and NDSL programs.

then institution No. 1 would receive twice as much Part B funds as institution No. 2.

B. SELF-HELP FORMULA (CW-S AND NDSL)

The Panel recommended one Self-Help formula to be used for both CW-S and NDSL allocations.

Self-help formula=(undergraduate "cost"—total undergraduate EFC)[4]+(graduate "costs"—total graduate EFC)[5]

The Self-Help formula represents the need for all loans and work, both federally subsidized and others, rather than just the need for CW-S and NDSL.

HOW THE SELF-HELP FORMULA WILL WORK FOR THE CW-S PROGRAM

1. A Relative National Index (RNI) will be calculated for each institution as the ratio of that institution's formula-determined need to the sum of the need for all institutions.

2. The Relative National Index multiplied by the CW-S appropriation will equal the institutional Fair Share of the available CW-S funds.

3. The amount the institution is scheduled to receive under Part A may be equal to, less than, or greater than that institution's Fair Share. If it is equal to or greater than the Fair Share, then it represents the maximum employment for that institution for that year.

4. If additional funds are available for Part B, they will be distributed based upon the relative amount by which the institutional Fair Share exceeds the amount the institution is scheduled to receive under Part A.

HOW THE SELF-HELP FORMULA WILL WORK FOR THE NDSL PROGRAM

1. A Relative National Index will be calculated for each institution as the ratio of that institution's formula determined need to the sum of the need for all institutions.

2. The Relative National Index multiplied by the national pool of funds to be lent[6] equals the institutional Fair Share of NDSL funds.

3. The level of expenditures under Part A may equal to, less than, or greater than that institution's Fair Share. If it is equal to or greater than the Fair Share, then it represents the maximum level of expenditures.

4. Institutions FCC will be calculated by subtracting its collections and reimbursements from its Part A level of expenditures.

5. If additional funds are available for Part A, they will be distributed based upon the relative amount by which the institutional Fair Share exceeds the amount of the level of expenditures under Part A.

SHIFTING FUNDS IN SELF-HELP PROGRAMS

In situations where the institutional formula generates a potential level of NDSL or CW-S funding in excess of that requested by an institution, this excess will be "brokered" (within the Office of Education funding process) with other institutions in the State. For example, if the Selp-Help formula provides a CW-S recommendation which exceeds the maximum amount requested in that program, the difference will be put into an "excess" CW-S pool. Assuming that the institution's need for NDSL funds has not been fully met, each of these institutions will have its NDSL (FCC) recommendation increased by money in the "excess" pool times its proportionate contribution to the "excess" CS-S pool. Similarly, other institutions may have their CW-S recommendation increased by the money in the "excess" CWS pool times the proportionate contribution to the NDSL pool.

In this manner, shifting of funds by one institutions between programs may be possible but no other institution needing those funds will be adversely affected. Shifting of self-help funds into SEOG will not be permitted.

Dated: August 23, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

Approved: October 27, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance No. 13.471 National Direct Student Loan; 13.463 College Work-Study; and 13.418 Supplemental Educational Opportunity Grant.)

PART 144—NATIONAL DIRECT STUDENT LOAN PROGRAM

1. Sections 144.3, 144.4, 144.5, 144.6, 144.7, and 144.16(i) of Part 144 of Title 45 of the Code of Federal Regulations are amended to read as follows:

§ 144.3 Apportionment and reapportionment of Federal capital contributions to States.

(a) *Apportionment.* (1) Ninety percent of the funds appropriated for Federal capital contributions will be apportioned in accordance with section 462(a)(1) of the act.

(2) After apportioning funds under subparagraph (a)(1), the Commissioner will apportion the remaining funds so that each institution in each State receives the amount of Federal capital contributions calculated under §§ 144.6 or 144.7.

(b) *Reapportionment.* If the apportionment to a State under paragraph (a) exceeds (1) the total amount of approved requests for Federal capital contributions of institutions in that State and (2) the amount to be transferred to carry out the State Student Financial Assistance Training Program under paragraph (c), the excess will be reapportioned. The Commissioner will reapportion those funds among the States according to the need for Federal capital contributions of institutions in each State as calculated under §§ 144.6 or 144.7.

(c) *Amounts to be transferred to the State Student Financial Assistance Training Program.* (1) The Commissioner may transfer an amount equal to .05 percent of a State's apportionment determined under paragraph (a) of this section, or $10,000, whichever is less, to that State under the State Student Financial Assistance Training Program authorized under Section 493C of the Higher Education Act of 1965, if the State has submitted an approved application.

(2) Funds reserved for transfer to the State Student Financial Assistance Training Program, which have not been granted to the appropriate agency by the end of the fiscal year for which appropriated, will be returned to that State's apportionment. The Commissioner may allocate this amount on an equitable basis to one or more institutions in that State.

(20 U.S.C. 1087bb and 1088b-3.)

§ 144.4 Allocation, reallocation and payment to institutions.

(a) When funds available within a State for Federal capital contributions are less than the amount of funds requested by institutions in that State, the funds will be distributed as set forth in § 144.6. However, allocations to proprietary schools may not exceed the difference between $190,000,000 and the amount appropriated for Federal capital contributions. If the allocations to proprietary schools would exceed that difference, the allocations to those schools will be reduced on a pro rata basis to the appropriate amount.

(b)(1) If an institution anticipates that it will not lend all the money allocated to it by the end of an award period, it must notify the Commissioner of the amount it does not expect to use. The Commissioner will reduce the institution's allocation accordingly.

(2) When enough Federal capital contributions become available for reallocation to make a significant increase in the amount of Federal capi-

[4] "Undergraduate cost—total undergraduate EFC" cannot exceed 30 percent of cost since it is assumed that 70 percent of undergraduate costs are being met by EFC and other assistance. Undergraduate need cannot be less than zero.

[5] "Graduate Cost—Total Graduate EFC" cannot be less than zero.

[6] FCC, ICC, Collections, and Reimbursements to the NDSL Fund.

tal contributions that can be awarded to other institutions in a State that have a need for those funds, the Commissioner will reallocate those funds on a pro rata basis to those other institutions.

(c) The Commissioner will make new Federal capital contributions available for a specific period of time. Funds will be paid to the institution in advance or by way of reimbursement, based on periodic fiscal reports.

(20 U.S.C. 1087bb.)

§ 144.5 Application.

(a) An institution that wishes to make loans under this program must file an application with the Commissioner for an approved level of expenditure before an annually established closing date. The application may request Federal capital contributions.

(b) The application must be on the form prescribed by the Commissioner and contain the information needed to determine the institution's level of expenditure and Federal capital contribution under the procedures set forth in § 144.6.

(c) The application must be signed by the official authorized to submit the application and must contain the names of the institution's Director of Student Financial Aid and the individual or official who will be responsible for the receipt, custody and disbursement of Federal funds.

(20 U.S.C. 1087bb.)

§ 144.6 Funding procedures.

(a)(1) The Commissioner will calculate an approved level of expenditure for each institution applying under paragraph (b) of this section (conditional guarantee). Institutions seeking a higher level of expenditure than their conditional guarantee may receive a higher level under paragraph (c) of this section. The amount of Federal capital contribution awarded depends in part on the institution's approved level of expenditure. The Federal capital contribution is calculated under paragraph (e) of this section.

(2) The amount of Federal capital contributions awarded as a result of the level of expenditure calculated under paragraph (b) is conditioned upon enough money being available in the State in which the institution is located to pay the amounts calculated under paragraph (e) to all institutions in that State. If the Federal capital contribution available in a State is below the amount calculated under paragraph (e), each institution's Federal capital contribution award will be reduced on a pro rata basis to the level of available funds.

(b)(1) An institution that participated in the NDSL program in the 1977-1978 and 1978-1979 award years will be approved for a level of expenditure for the 1979-1980 award year that is the greater of (i) its level of expenditure for the 1977-1978 award year, or (ii) its projected level of expenditure for the 1978-1979 award year.

(2) The level of expenditure for the 1977-1978 award year equals 104 percent of the amount of loans made in that award year.

(3) The projected level of expenditure for the 1978-1979 award year is calculated by multiplying the funds available for lending in 1978-1979 by the NDSL utilization rate for the 1977-1978 award year.

(4) As used in paragraph (b)(3) of this section, funds available for lending in 1978-1979 include—

(i) The Federal capital contribution awarded for 1978-1979,

(ii) The matching institutional capital contribution,

(iii) 110 percent of loan repayments received in 1977-1978,

(iv) Reimbursements for 1977-1978 Direct loan cancellations,

(v) Cash on hand as of June 30, 1978, and

(vi) Fund income.

(5) The 1977-1978 NDSL utilization rate equals the 1977-1978 level of expenditure (i.e., 104 percent of the amount of loans made) divided by the funds available for lending in 1977-1978. Funds available for lending in 1977-1978 included:

(i) The Federal capital contribution awarded for 1977-1978,

(ii) The matching institutional capital contribution,

(iii) Loan repayments received in 1977-1978,

(iv) Reimbursement for 1976-1977 Direct loan cancellations,

(v) Cash on hand as of June 30, 1977, and

(vi) Fund income.

(6) If an institution is participating in the NDSL program in the 1978-1979 award year, but did not participate in the NDSL program in award year 1977-1978, it will be considered to have a 100 percent utilization rate.

(7)(i) If an institution applies to participate in the NDSL program in the 1979-1980 award year, and is not participating in any of the campus based programs in the 1978-1979 award year, its level of expenditure will be calculated by comparing the institution to institutions of the same type and control, that first participated in the NDSL program in the 1978-1979 award year. Specifically, the authorized level of expenditure of the comparable institutions is divided by their number of enrolled students to get a per-student amount. The Commissioner multiplies that amount by the number of students enrolled at the applicant institution.

(ii) For the purpose of this subparagraph: control means public, nonprofit private, and proprietary; and type means universities, four year schools, two year schools, and others.

(8) If an institution applies to participate in the NDSL program in the 1979-1980 award year, is not participating in that program in 1978-1979, but is participating in the SEOG or CWS program in 1978-1979, it will not receive a conditional guarantee and must apply for a level of expenditure under paragraph (c).

(9) If the sum of Federal capital contributions awarded to all institutions in a State as a result of the level of expenditures approved under this paragraph is less than the State apportionment for Federal capital contributions calculated under § 144.3(a), awards will be increased to those institutions applying for a higher level of expenditure under paragraph (c). An increase in the Federal capital contribution under this subparagraph will increase the institution's level of expenditure by the same percentage as the percentage increase in the Federal capital contribution. To increase awards, the Commissioner will—

(i) Subtract from the State apportionment for Federal capital contributions calculated under § 144.3(a), the sum of the Federal capital contribution awards already determined as a result of the level of expenditure calculated under paragraphs (b)(1), (6), and (7) of this section.

(ii) Multiply the remainder by the relative State index for self-help of each institution that applies for additional funds under paragraph (c).

(iii) Add the amount obtained in (ii) for each institution to the amount previously calculated for that institution under paragraphs (b)(1), (6), or (7) of this section.

(10) For purposes of paragraph (b)(9)(ii) of this section, an eligible institution's relative State index for self-help is calculated by determining that institution's aggregate need for self-help under § 144.6(c)(1) and dividing that amount by the sum of the need for self help of all institutions in the eligible institution's State applying for additional funds under paragraph (c).

(c) *Calculation of fair share.* Each institution applying under this paragraph will receive a level of expenditure which represents the institution's "fair share" of the funds available for lending in the 1979-1980 award year. The "fair share" will be calculated by multiplying each institution's "self help relative national index" by the funds available for lending in the 1979-1980 award year. The Commissioner calculates an institution's "self help relative national index" as follows:

(1) The Commissioner determines the need for self help (need for funds from work and loan sources) of graduate students at the institution by—

(i) Establishing various income categories for dependent and independent graduate students,

(ii) Establishing an expected family contribution for each income category of dependent students and each income category of independent students, using need analysis methods approved under § 144.13,

(iii) Determining the average cost of education for graduate students,

(iv) Substracting from the average cost of education for graduate students, the calculated expected family contribution for each income category of dependent students, multiplying that amount by the number of students in that category and adding the amounts obtained for each income category of dependent students,

(v) Subtracting from the average cost of education for graduate students, the calculated expected family contribution for each income category of independent students, multiplying that amount by the number of students in that category, and adding the amounts obtained for each income category of independent students, and

(vi) Adding the amounts obtained under paragraphs (c)(1)(iv) and (v) of this section.

(2) The Commissioner determines the need for self help (need for funds from work and loan sources) of undergraduate students at the institution by:

(i) Establishing various income categories for dependent and independent undergraduate students;

(ii) Establishing an expected family contribution for each income category of dependent students and each income category of independent students, using need analysis methods approved under § 144.13,

(iii) Calculating 30 percent of the average cost of education for undergraduate students,

(iv) Multiplying the number of dependent students in each income category by the lesser of (A) 30 percent of the average cost of education for undergraduate students or (B) the average cost of education for undergraduate students minus the expected family contribution determined under paragraph (c)(1)(ii) of this section for that income category, and adding the amounts obtained for each income category of dependent students,

(v) Multiplying the number of independent students in each income category by the lesser of (A) 30 percent of the average cost of education for undergraduate students or (B) the average cost of education for undergraduate students minus the expected family contribution determined under paragraph (c)(1)(ii) of this section for that income category, and adding the amounts obtained for each income category of independent students,

(vi) Adding the amounts obtained in paragraphs (c)(1)(iv) and (v) of this section.

(3) For purposes of paragraphs (c)(1) and (2) of this section the average cost of education minus expected family contribution may not be less than zero.

(4) The total amount of self help need of the institution is the sum of the self help need of graduate students ((c)(1)(vi)) and undergraduate students ((c)(2)(vi)).

The following chart indicates the income categories and the manner in which the appropriate number of students will be reported.

NUMBER OF ENROLLED APPLICANTS BY INCOME CATEGORY FOR 1977-1978

INCOME	UNDERGRADUATE DEPENDENT	GRADUATE/PROF. DEPENDENT	INCOME	UNDERGRADUATE INDEPENDENT	GRADUATE INDEPENDENT
$0 - $ 5,999			$0 - $ 999		
$6,000 - $ 8,999			$1,000 - $1,999		
$9,000 - $11,999			$2,000 - $2,999		
$12,000 - $14,999			$3,000 - $3,999		
$15,000 - $17,999			$4,000 - $4,999		
$18,000 - $20,999			$5,000 - $5,999		
$21,000 - $23,999			$6,000 - $6,999		
$24,000 - $26,999			$7,000 - $7,999		
$27,000 - $29,999			$8,000 - $8,999		
$30,000 - over			$9,000 - over		
TOTAL					

(5) The Commissioner divides the result obtained in paragraph (c)(4) of this section by the sum of—

(i) The self help need of all institutions applying under this paragraph or under § 175.6(c) of the CWS regulations (45 CFR 175.6(c)), and

(ii) The conditional guaranteed level of expenditure for NDSL and the conditional guaranteed CWS amount for all institutions not applying under this paragraph or § 175.6(c) of the CWS regulations.

(6) The increase in an institution's level of expenditure may not exceed the difference between its "fair share" and its conditional guarantee.

(d) As used in paragraph (c):

(1) "Cost of education" is the cost of attendance for undergraduate and graduate students who satisfy the eligibility requirements of § 144.9(a) (1) and (2). These costs include tuition and fees and a standard cost for living expenses and books and supplies. (The institution will report its total tuition and fee revenues and the Commissioner will prorate this amount for eligible students.)

(2) "Funds available for lending in the 1979-1980 award year" include

(i) The 1979 appropriation for Federal capital contribution,

(ii) The matching institutional capital contribution,

(iii) 121 percent of 1977-1978 loan repayments,

(iv) Reimbursements for 1978-1979 Direct loan cancellations, and

(v) Fund income.

Determination of Federal Capital Contribution (FCC)

(e)(1) The Commissioner determines the Federal Capital Contribution (FCC) for an award year by

(i) Subtracting from an institution's approved level of expenditure for that year, the loan repayments for that year, fund income, and reimbursements for cancellations of direct loans for the previous year and,

(ii) Multiplying the remainder by 90 percent.

(2) Loan repayments for the purpose of calculating FCC for the 1979-80 award year will be considered to be 121 percent of the amount collected in the award year if

(i) The institution's default rate is 10 percent or less,

(ii) The institution's default rate is more than 10 percent, but the number of loans made by that institution, which are in default for less than 2 years, on June 30, 1978 are at least 10 percent less than the number of loans made by that institution and in de-

fault for less than 2 years on June 30, 1977, or

(iii) The institution's default rate is more than 10 percent, but the institution can document, under 144.7, that it has exercised due diligence as set forth in Subpart C of the NDSL regulations published in the FEDERAL REGISTER of November 24, 1976, for the past 2 award years.

NOTE.—See *Subpart C—Loan Collection—Due Diligence*, attached as an appendix to this NPRM.

(3) If an institution does not qualify under one of the three conditions in subparagraph 2, its loan repayments will be considered to be, for the purpose of calculating FCC for the 1979-80 award year,

(i) 121 percent of the amount collected in the 1977-1978 award year, plus

(ii) The amount it would have collected through June 30, 1978 if its default rate was 10 percent.

(f)(1) If an institution's "fair share" of the CWS appropriation exceeds its request for CWS funds, the Commissioner will place the excess in an "Excess CWS Pool." Similarly if an institution is scheduled to receive more Federal capital contributions than it requested, the Commissioner will place that excess in an "Excess Federal Capital Contribution (FCC) Pool."

(2)(i) If an institution has contributed to the "Excess CWS Pool," and its need for Federal capital contributions has not been fully met, it may receive additional Federal capital contributions from the "Excess FCC Pool."

(ii) If an institution has contributed to the "Excess FCC Pool" and its need for CWS funds has not been fully met, it may receive additional funds form the "Excess CWS Pool".

(iii) The amount of additional Federal capital contributions an institution may receive under this subparagraph is proportional to its contribution to the "Excess CWS Pool." The amount of additional CWS funds an institution may receive under this subparagraph is proportional to its contribution to the "Excess FCC Pool". Stated as an equation—

Additional FCC equals institutional contribution to Excess CWS Pool divided by Excess CWS Pool multiplied by Excess FCC Pool

Additional CWS equals institutional contribution to Excess FCC Pool divided by Excess FCC Pool multiplied by Excess CWS Pool

(g) Notwithstanding paragraphs (b), (c), (e) and (f) of this section, no institution may receive more Federal capital contributions than it requested.

(20 U.S.C. 1087bb.)

§ 144.7 Application review—approval of request.

(a) An institution may request a review of its calculated level of expenditure or Federal capital contribution. The Commissioner will convene a national review panel consisting of student financial aid officers and OE personnel.

(b) The review panel will review each request and notify the Commissioner of its recommendations and the reasons for its recommendations.

(c) The Commissioner will establish an approved level of expenditure and Federal capital contributions based on the procedures set forth in § 144.6 and the national review panel recommendations.

(20 U.S.C. 1087bb.)

§ 144.16 Making and disbursing loans.

* * * * *

(i) No loan may be made to a student whose need for the loan was computed using estimated data submitted to the institution before January 1 of the previous award year unless the institution verifies that information.

PART 175—COLLEGE WORK-STUDY PROGRAM

2. Sections 175.3, 175.4, 175.5, 175.6, 175.7, and 175.16(f) of Part 175 of Title 45 of the Code of Federal Regulations are amended to read as follows:

§ 175.3 Allotment of Federal funds to States.

(a) *Initial allotments.* Two percent of the CWS appropriation will be allotted in accordance with section 442(a) of the Act. An additional amount will be allotted in accordance with section 442(f) of the Act.

(b) *Initial allotment to States.* (1) Ninety percent of the amount remaining after allotment of funds under paragraph (a) will be allotted in accordance with section 442(b) and that portion of section 442(c) of the Act which relates to the 1972 allotment guarantee.

(2) After allotting funds under paragraph (a) and subparagraph (b)(1), the Commissioner will allot any amount remaining so that each institution in each State receives the amount of CWS funds calculated under §§ 175.6 or 175.7.

(c) *Amounts to be transferred to the State Student Financial Assistance Training Program.* (1) The Commissioner may transfer an amount equal to .05 percent of each State's initial allotment, as determined under paragraphs (a) and (b) of this section, or $10,000, whichever is less, to that State under the State Student Financial Assistance Training Program authorized under section 493C of the Higher Education Act of 1965, if the State has submitted an approved application.

(2) Funds reserved for transfer to the State Student Financial Assistance Training Program, which have not been granted to the appropriate agency by the end of the fiscal year for which appropriated, will be returned to that State's allotment under the College Work-Study Program. The Commissioner may allocate this amount on an equitable basis to one or more institutions in that State.

(20 U.S.C. 1088b-3.)

(d) *Reallotment.* The Commissioner will reallot the amount of any State's allotment which (1) exceeds the approved requests of institutions in that State, (2) has not been granted to any institution at the end of the fiscal year for which appropriated, or (3) has not been transferred to carry out the State Student Financial Assistance Training Program. The Commissioner will reallot those funds among the States according to the need for CWS funds of institutions in each State as calculated under §§ 175.6 or 175.7.

(42 U.S.C. 2752.)

§ 175.4 Allocation, reallocation and payment to institutions.

(a) When funds available within a State are less than the amount of funds requested by institutions in that State, the funds will be distributed as set forth in § 175.6.

(b)(1) If an institution anticipates that it will not use all the money allocated to it by the end of an award period, it must notify the Commissioner of the amount it does not expect to use. The Commissioner will reduce the institution's allocation accordingly.

(2) The Commissioner may reallocate those funds on an equitable basis to other institutions in the State that have a need for those funds. If no institution in that State has a need for those funds, the funds may be reallotted in accordance with section 175.3, for use in other States.

(c) The Commissioner will make funds available for a specific period of time. Funds will be paid to the institution in advance or by way of reimbursement, based on periodic fiscal reports.

(42 U.S.C. 2756.)

§ 175.5 Application.

(a) An institution that wishes to participate in the College Work-Study program must file an application with the Commissioner before an annually established closing date.

(b) The application must be on the form prescribed by the Commissioner and contain the information needed to determine the institution's allocation

of funds under the procedures set forth in § 175.6.

(c) The application must contain the information needed to determine whether the institution is complying with the maintenance of effort requirements set forth in § 175.20.

(d) The application must be signed by the official authorized to submit the application and must contain the names of the institution's Director of Student Financial Aid and the individual or official who will be responsible for the receipt, custody and disbursement of Federal funds.

(42 U.S.C. 2756.)

§ 175.6 Funding procedure.

(a) Institutions requesting CWS funds will receive an amount calculated under paragraph (b) of this section (conditional guarantee). An institution seeking more than its conditional guarantee may receive an additional amount under paragraph (c) of this section. The conditional guarantee is conditioned upon enough money being available in the State in which the institution is located to pay the amounts calculated under paragraph (b) to all institutions in that State. If the CWS funds available in a State will not fully satisfy all conditional guarantees, each institutions's award will be reduced on a pro rata basis to the level of available funds.

(b)(1) An institution that received CWS funds in the 1977-1978 and 1978-1979 award years will receive for the 1979-1980 award year, the greater of (i) its actual CWS expenditures for the 1977-1978 award year of (ii) its projected 1978-1979 award year expenditures.

(2)(i) An institution's projected 1978-1979 expenditure is calculated by multiplying its 1978-1979 allocation by the school's CWS utilization rate for the 1977-1978 award year.

(iii) The CWS utilization rate is calculated by dividing the CWS expenditure in an award year by the grant funds available for expenditure in that award year.

(3) If an institution received CWS funds for the 1978-1979 award year and did not participate in the CWS program in the 1977-1978 award year, it will be considered to have a 100 percent utilization rate.

(4)(i) If an institution applies to participate in the CWS program in the 1979-1980 award year, and is not participating in any of the campus based programs in the 1978-1979 award year, its conditional guarantee will be calculated by comparing the institution to institutions of the same type and control that first participated in the CWS program in the 1978-1979 award year. Specifically, the amount of CWS funds the comparable institutions received is divided by the number of enrolled students at the schools to get a per-student amount. The Commissioner multiples that amount by the number of students enrolled at the applicant institution.

(ii) For purposes of this subparagraph: control means public, nonprofit private, and proprietary; and type means universities, four year schools, two year schools, area vocational schools and others.

(5) If an institution applies to participate in the CWS program in the 1979-1980 award year, is not participating in that program in the 1978-1979 award year, but is participating in the SEOG or NDSL program in 1978-1979, it will not receive a conditional guarantee and must apply for funds under paragraph (c).

(6) If the sum of CWS conditional guarantee awards for all institutions in a State is less than the State allotment calculated under § 175.3(b), awards will be increased to those institutions applying for additional funds under paragraph (c). To increase awards, the Commissioner will—

(i) Subtract from the State allotment calculated under § 175.3(b), the sum of the awards already calculated in paragraphs (b)(1), (3), or (4) of this section for all institutions in the State.

(ii) Multiply the remainder by the relative State index for self help of each institution that applies for additional funds under paragraph (c).

(iii) Add the amount obtained in paragraph (b)(6)(ii) of this section for each institution to the amount calculated for that institution under paragraphs (b)(1), (3), or (4) of this section.

(7) For purposes of paragraph (b)(6)(ii) of this section, an eligible institution's relative State index is calculated by determining that institution's aggregate need for self help under § 175.6(c)(1) and dividing that amount by the sum of the aggregate self help need of all institutions in the eligible institution's State applying under paragraph (c).

(c) *Calculation of fair share.* Each institution applying under this paragraph will receive a "fair share" of the CWS appropriation. The "fair share" will be calculated by multiplying each institution's "self help relative national index" by the CWS appropriation. The Commissioner calculates an institution's self help relative national index as follows:

(1) The Commissioner determines the need for self help (need for funds from work and loan sources) of graduate students at the institution by—

(i) Establishing various income categories for dependent and independent graduate students,

(ii) Establishing an expected family contribution for each income category of dependent students and each income category of independent students, using need analysis methods approved under § 175.13,

(iii) Determining the average cost of education for graduate students,

(iv) Subtracting from the average cost of education for graduate students, the calculated expected family contribution for each income category of dependent students, multiplying that amount by the number of students in that category and adding the amounts obtained for each income category of dependent students,

(v) Subtracting from the average cost of education for graduate students, the calculated expected family contribution for each income category of independent students, multiplying that amount by the number of students in that category, and adding the amounts obtained for each income category of independent students, and

(vi) Adding the amounts obtained under paragraphs (c)(1) (iv) and (v) of this section.

(2) The Commissioner determines the need for self help (need for funds from work and loan sources) of undergraduate students at the institution by:

(i) Establishing various income categories for dependent and independent undergraduate students;

(ii) Establishing an expected family contribution for each income category of dependent students and each income category of independent students, using need analysis methods approved under § 175.13,

(iii) Calculating 30 percent of the average cost of education for undergraduate students,

(iv) Multiplying the number of dependent students in each income category by the lesser of (A) 30 percent of the average cost of education for undergraduate students or (B) the average cost of education for undergraduate students minus the expected family contribution determined under paragraphs (c)(2)(ii) of this section for that income category, and adding the amounts obtained for each income category of dependent students,

(v) Multiplying the number of independent students in each income category by the lesser of (A) 30 percent of the average cost of education for undergraduate students or (B) the average cost of education for undergraduate students minus the expected family contribution determined under clause (ii) for that income category, and adding the amounts obtained for each income category of independent students,

(vi) Adding the amounts obtained in paragraphs (c)(2) (iv) and (v) of this section.

(3) For purposes of paragraphs (c) (1) and (2) of this section, the average

cost of education minus expected family contribution may not be less that zero.

(4) The total amount of self help need of the institution is the sum of the self help need of graduate students ((c)(1)(vi)) and undergraduate students ((c)(2)(vi)).

The following chart indicates the income categories and the manner in which the appropriate number of students will be reported.

NUMBER OF ENROLLED APPLICANTS BY INCOME CATEGORY FOR 1977-1978

INCOME	UNDERGRADUATE DEPENDENT	GRADUATE/PROF. DEPENDENT	INCOME	UNDERGRADUATE INDEPENDENT	GRADUATE INDEPENDENT
$0 - $ 5,999			$0 - $ 999		
$6,000 - $ 8,999			$1,000 - $1,999		
$9,000 - $11,999			$2,000 - $2,999		
$12,000 - $14,999			$3,000 - $3,999		
$15,000 - $17,999			$4,000 - $4,999		
$18,000 - $20,999			$5,000 - $5,999		
$21,000 - $23,999			$6,000 - $6,999		
$24,000 - $26,999			$7,000 - $7,999		
$27,000 - $29,999			$8,000 - $8,999		
$30,000 - over			$9,000 - over		
TOTAL					

(5) The Commissioner divides the result obtained in paragraph (c)(4) of this section by the sum of—

(i) The formula determined self help need of all institutions applying under this paragraph, or under § 144.6(c) of the NDSL regulations (45 CFR 144.6(c)) and

(ii) The CWS conditional guarantee plus the conditional guaranteed level of expenditure for all institutions not applying under this paragraph or § 144.6(c) of the NDSL regulations.

(6) An institution may not receive more than the difference between its "fair share" and its conditional guarantee.

(d) As used in paragraph (c): "Cost of education" is the cost of attendance for undergraduate and graduate students who satisfy the eligibility requirements of § 175.9(a)(1) and (2). These costs include tuition and fees and a standard cost for living expenses and books and supplies. (The institution will report its total tuition and fee revenues, and the Commissioner will prorate that amount for eligible students.)

(e)(1) If an institution's "fair share" of the CWS appropriation exceeds its request for CWS funds, the Commissioner will place the excess in an "Excess CWS Pool." Similarly if an institution is scheduled to receive more Federal capital contribution than it requested, the Commissioner will place that excess in an "Excess Federal Capital Contribution (FCC) Pool."

(2)(i) If an institution has contributed to the "Excess CWS Pool," and its need for Federal capital contribution has not been fully met, it may receive additional Federal capital contributions from the "Excess FCC Pool."

(ii) If an institution has contributed to the "Excess FCC Pool" and its need for CWS funds has not been fully met, it may receive additional funds from the "Excess CWS Pool."

(iii) The amount of additional Federal capital contributions an institution may receive under this subparagraph is proportional to its contribution to the "Excess CWS Pool." The amount of additional CWS funds an institution may receive under this subparagraph is proportional to its contribution to the "Excess FCC Pool." Stated as an equation—

Additional FCC equals institutional contribution to Excess CWS Pool divided by Excess CWS Pool multiplied by Excess FCC Pool

Additional CWS equals institutional contribution to Excess FCC Pool divided by Excess FCC Pool multiplied by Excess CWS Pool

(f) Notwithstanding paragraphs (b), (c), and (e) of this section, no institution may receive more CWS funds than it requested.

(42 U.S.C. 2756)

§ 175.7 Application review—approval of request.

(a) An institution may request a review of the amount of its conditional guarantee. The Commissioner will convene a national review panel consisting of student financial aid officers and OE personnel.

(b) The review panel review each request and notify the Commissioner of its recommendations and the reasons for its recommendations.

(c) The Commissioner will set an award amount based on the procedures set forth in § 175.6 and the national review panel recommendations.

(42 U.S.C. 2756.)

§ 175.16 Payments to students.

* * * * *

(f) No payment may be made to a student whose need was computed using estimated data submitted to the institution before January 1 of the previous award period unless the institution verifies that information.

(42 U.S.C. 2754.)

PART 176—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

3. Sections 176.3, 176.4, 176.5, 176.6, 176.7, and 176.16(i), 4, 5, 6, 7 and 16 of Part 176 of Title 45 of the Code of Federal Regulations are amended to read as follows:

§ 176.3 Apportionment and reapportionment.

(a) *Initial grant—apportionment.* (1) Ninety percent of the funds appropriated for making initial grants for any fiscal year will be apportioned as set forth in section 413D(a) of the Act.

(2) After apportioning funds under paragraph (a)(1) of this section, the Commissioner will apportion the remaining funds so that each institution in each State receives the amount for initial grants calculated under §§ 176.6 or 176.7.

(b) *Initial grants—reapportionment.* The Commissioner will reapportion the part of any State's apportionment which exceeds the approved requests for initial grants of institutions in that State, or which has not been transferred to carry out the State Student Financial Assistance Training Program. The Commissioner will reapportion these funds among the remaining States according to the need for initial funds by institutions in these States as calculated under §§ 176.6 or 176.7.

(c) *Continuing grants—apportionment.* The Commissioner will apportion the funds appropriated for continuing grants so that each institution in each State receives the amount for continuing grants calculated under §§ 176.6 or 176.7.

(d) *Continuing grants—reapportionment.* Any funds apportioned under paragraph (c) which are later determined by the Commissioner to exceed the amount required by any State for continuing grants under §§ 176.6 or 176.7, or which have not been transferred to carry out the State Student Financial Assistance Training Program, will be reapportioned among the remaining States.

(e) *Amounts to be transferred to the State Student Financial Assistance*

Training Program. (1) The Commissioner may transfer an amount equal to .05 percent of each State's apportionment, as determined under paragraphs (a) and (c) of this section, or $10,000, whichever is less, to that State under the State Student Financial Assistance Training Program authorized under Section 493C of the Higher Education Act of 1965, if the State has submitted an approved application.

(2) Funds reserved for transfer to the State Student Financial Assistance Training Program, which have not been granted to the appropriate agency by the end of the fiscal year for which appropriated, will be returned to that State's apportionment. The Commissioner may apportion the amount on an equitable basis to one or more institutions in that State.

(20 U.S.C. 1070b-3 and 1088b-3.)

§ 176.4 Allocation, reallocation and payment to institutions.

(a) When funds available within a State for initial or continuing awards are less than the amount of funds requested by institutions in that State, the funds will be distributed as set forth in § 176.6.

(b)(1) If an institution anticipates that it will not use all the money allocated to it for initial or continuing grants by the end of an award period, it must notify the Commissioner of the amount it does not expect to use. The Commissioner will reduce the institution's allocation accordingly.

(2) The Commissioner may reallocate those funds on an equitable basis to other institutions in the State that have a need for those funds. If no institution in that State has a need for those funds, the funds may be reapportioned in accordance with § 176.3, for use in other States.

(3) The Commissioner will make funds available for initial and continuing grants for a specific period of time. Funds will be paid to an institution in advance or by way of reimbursement, based on periodic fiscal reports.

(20 U.S.C. 1070b-3.)

§ 176.5 Application.

(a) An institution that wishes to participate in the SEOG program must file an application with the Commissioner before an annually established closing date.

(b) The application must be on the form prescribed by the Commissioner and contain the information needed to determine the institution's allocation of funds under the procedures set forth in § 176.6.

(c) The application must contain the information needed to determine whether the institution is complying with the maintenance of effort requirements set forth in § 176.20.

(d) The application must be signed by the official authorized to submit the application and must contain the names of the institution's Director of Student Financial Aid and the individual or official who will be responsible for the receipt, custody and disbursement of Federal funds.

(20 U.S.C. 1070b-3.)

§ 176.6 Funding procedure.

(a) Institutions requesting SEOG funds will receive an amount calculated under paragraph (b) of this section (conditional guarantee). An institution seeking more than its conditional guarantee may receive an additional amount under paragraph (c) of this section. The conditional guarantee is conditioned upon enough money being apportioned or reapportioned to the State in which the institution is located to pay the amounts calculated under paragraph (b) to all institutions in that State. If the SEOG funds available in a State will not fully satisfy all conditional guarantees, each institution's award will be reduced on a pro rata basis to the level of available funds.

(b)(1) An institution that received SEOG funds in the 1977-1978 and 1978-1979 award years will receive for the 1979-1980 award year, the greater of (i) its actual SEOG expenditure for the 1977-1978 award year, of (ii) its projected 1978-1979 award year SEOG expenditure.

(2)(i) An institution's projected 1978-1979 SEOG expenditure is calculated by multiplying its 1978-1979 allocation by its SEOG utilization rate for the 1977-1978 award year.

(ii) The SEOG utilization rate is calculated by dividing the aggregate SEOG expenditure in an award year by the grant funds available for expenditure in that award year.

(3) If an institution received SEOG funds for the 1978-1979 award year and did not participate in the SEOG program in the 1977-1978 award year, it will be considered to have a 100% utilization rate.

(4)(i) If an institution applies to participate in the SEOG program in the 1979-1980 award year, and is not participating in any of the campus based programs in the 1978-1979 award year, its conditional guarantee will be calculated by comparing the institution to institutions of the same type and control, that first participated in the SEOG program in the 1978-1979 award year. Specifically, the amount of SEOG funds the comparable institutions received is divided by the number of enrolled students at the comparable schools to get a per-student amount. The Commissioner multiplies that amount by the number of students enrolled at the applicant institution to determine its conditional guarantee.

(ii) For purposes of this subparagraph: control means public, nonprofit private and proprietary; and type means universities, four year schools, two schools, and others.

(5) If an institution applies to participate in the SEOG program in the 1979-1980 award year, is not participating in that program in 1978-1979, but is participating in the CWS or NDSL program in 1978-1979, it will not receive a conditional guarantee and must apply for funds under paragraph (c).

(6) Each institution's conditional guarantee will be divided between initial grants and continuing grants. This division will be based on the percentage that the institution's request for each type of grant bears to its total request. (For example, if an institution requests $45,000 for initial grants and $55,000 for continuing, 45 percent of its conditional guarantee will be for initial grants and 55 percent for continuing grants).

(7) If the sum of initial year conditional guarantee awards for all institutions in a State is less than the State allotment for initial year grants calculated under § 176.3(a), awards will be increased to those institutions applying for additional funds under paragraph (c). To increase awards, the Commissioner will—

(i) Subtract from the State allotment for initial grants calculated under § 176.3(a), the sum of the awards already calculated in paragraphs (b)(1), (3) or (4) of this section for all institutions in the State.

(ii) Multiply the remainder by the relative State index for initial grants of each institution that applies for additional funds under § 176.6(c).

(iii) Add the amount obtained in paragraph (b)(7)(ii) of this section for each institution to the amount calculated for that institution under paragraphs (b)(1), (3) or (4) of this section.

(8) For purposes of paragraph (b)(7)(ii) of this section, an eligible institution's relative state index is calculated by determining that institution's aggregate need for initial year grants under § 176.6(c)(1) and dividing that amount by the sum of the need for initial year awards of all instituiuons in the eligible institution's State applying under paragraph (c).

(c) *Calculation of fair share.* Each institution applying under this paragraph will receive a "fair share" of the SEOG appropriation. An institution's fair share of the SEOG initial grant appropriation is calculated by multiplying the appropriation for initial grants by that institution's relative national index for initial grants. An institution's fair share of the SEOG con-

tinuing grant appropriation is calculated by multiplying the appropriation for continuing grants by that institution's relative national index for continuing grants.

(1) The Commissioner calculates a relative national index for initial grants by dividing each institution's need for initial grants (determined under paragraphs (c)(3) and (4) of this section) by the sum of the need for initial grants of all institutions applying for initial year funds. For purposes of this calculation, the need for initial year funds at an institution not applying for additional initial year funds under this paragraph is its conditional guarantee.

(2) The Commissioner calculates a relative national index for continuing grants by dividing each institution's need for continuing grants (determined under paragraphs (c)(3) and (4) of this section) by the sum of the need for continuing grants of all institutions applying for continuing funds. For purposes of this calculation, the need for continuing year funds of an institution not applying for additional continuing year funds under this paragraph is its conditional guarantee.

(3) The Commissioner calculates the need for SEOG funds for each institution applying under paragraph (c) under the following formula:

SEOG need=70 percent × cost of education—(Aggregate Expected Family Contribution (EFC)+Basic Grants+State Grants+¾ Institutional Grants)

(4) The Commissioner divides each institution's aggregate need for SEOG funds between initial grants and continuing grants. This division will be based on the percentage that the institution's request for each type of grant bears to its total request for SEOG funds. (For example, if a school asks for $45,000 for initial grants and $55,000 for continuing grants, 45 percent of the amount determined in paragraph (c)(1) of this section will be apportioned to initial grants and 55 percent to continuing grants.)

(5) An institution may not receive more than the difference between its "fair share" and its conditional guarantee for each type of grant (i.e., initial or continuing).

(d) As used in paragraph (c):

(1) "Aggregate Expected Family Contribution" (EFC) is calculated by the Commissioner by—

(i) Establishing various income categories for dependent and independent undergraduate students,

(ii) Establishing an expected family contribution for each income category of dependent students and each income category of independent students, using need analysis methods approved under § 176.13,

(iii) Multiplying the number of dependent students in each income category by the expected family contribution determined under paragraph (d)(1)(ii) of this section for that income category, and adding the amounts obtained for each income category of dependent students,

(iv) Multiplying the number of independent students in each income category by the expected family contribution determined under paragraph (d)(1)(ii) of this section for that income category, and adding the amounts obtained for each income category of independent students, and

(v) Adding the amounts obtained in paragraphs (d)(1) (iii) and (iv) of this section.

(2) "Cost of education" is the cost of attendance for undergraudate students who satisfy the eligibility requirements of § 176.9(a) (1) and (2). These costs include tuition and fees and a standard cost for living expenses and books and supplies. (The institution will report its total tuition and fee revenues and the Commissioner prorates this amount for eligible undergraduate students.)

The following chart indicates the income categories and the manner in which the appropriate number of students will be reported.

NUMBER OF ENROLLED APPLICANTS BY INCOME CATEGORY FOR 1977-1978

INCOME	UNDERGRADUATE DEPENDENT	INCOME	UNDERGRADUATE INDEPENDENT
$ 0 - $ 5,999		$0 - $ 999	
$ 6,000 - $ 8,999		$1,000 - $1,999	
$ 9,000 - $11,999		$2,000 - $2,999	
$12,000 - $14,999		$3,000 - $3,999	
$15,000 - $17,999		$4,000 - $4,999	
$18,000 - $20,999		$5,000 - $5,999	
$21,000 - $23,999		$6,000 - $6,999	
$24,000 - $26,999		$7,000 - $7,999	
$27,000 - $29,999		$8,000 - $8,999	
$30,000 - over		$9,000 - over	
TOTAL			

(3) State grants are the sum of all State grants and scholarships received by undergraduate students at the institution during the 1977-1978 award year.

(4) Institutional grants include the sum of those categories of undergraduate gift aid included in determining the maintenance of effort amount under § 176.20.

(e) Notwithstanding paragraphs (b) and (c) of this section, no institution may receive more money than it requested by initial or continuing grants.

(20 U.S.C. 1070b-3.)

§ 176.7 Application review—approval of request.

(a) An institution may request a review of its conditional guarantee. The Commissioner will convene a national review panel consisting of student financial aid officers and OE personnel.

(b) The review panel will review each request and notify the Commissioner of its recommendations and the reasons for its recommendations.

(c) The Commissioner will set an award amount based on the procedures set forth in § 176.6 and the national review panel recommendations.

(20 U.S.C. 1070b-3.)

§ 176.16 Payment of grant.

* * * * *

(i) No Supplemental Grant may be paid to a student whose need for the grant was computed using estimated data submitted to the institution before January 1 of the previous award period unless the institution verifies that information.

APPENDIX

From: FEDERAL REGISTER, Volume 41, No. 228—Wednesday, November 24, 1976

Subpart C—Loan Collection—Due Diligence

§ 144.41 General.

Each institution at which a Fund is established shall exercise due diligence as described in this subpart in the collection of the amounts due and payable to its Fund. In the exercise of such responsibility each institution must consistently utilize extensive and forceful collection practices. In particular, an institution shall:

(a) Provide to each borrower, not later than the time when he signs his promissory note, full disclosure of his rights and obligations thereunder:

(b)(1) Conduct an exit interview as described in § 144.42 with each borrower prior to his leaving the institution and provide the borrower at that time with a copy of his repayment schedule specifying the total amount of the loan and the dates and amounts of installments as they become due:

(2) If a borrower leaves the institution without notice, the institution shall mail the borrower a copy of his note and 2 copies of his repayment schedule and shall request the borrower to sign and return one of the copies of the repayment schedule.

(c) Maintain a written record of the exit interview, including a repayment schedule signed by the borrower which shall be made a part of the borrower's file;

(d) Maintain contact with the borrower after his leaving the institution in order to facilitate billing and in order to keep him informed on a timely basis of all changes in the program affecting his rights and obligations.

§ 144.42 Contact with the borrower prior to repayment period.

(a) *Coordination of institutional offices.* Each institution shall provide for the exchange of information among all appropriate institutional offices, e.g., the registrar, student financial aid, business, and alumni offices in order to determine (1) the approximate time a borrower will graduate in order that an exit interview may be conducted, or (2) whether a student has left school without proper notice so that it may mail the borrower required information.

(b) *Exit interview.* (1) Each institution shall, if possible, conduct an exit interview with each borrower prior to the time the borrower leaves the institution. The exit interview shall be conducted on an individual basis, except that, if individual interviews are not feasible, the institution may conduct group exit interviews.

(2) During the exit interview the institution shall provide the borrower with a detailed explanation of his obligations and rights. It shall advise the borrower: (i) Of the fact that he has received a loan which must be repaid on a timely basis as called for in his repayment schedule, (ii) of his responsibility to inform the institution immediately of any change of address, (iii) of the full amount of his loan including the interest rate, (iv) of the date and amount when the first payment becomes due, (v) of his responsibility to contact the institution prior to the due date of any installment if payment cannot be made for any reason, (vi) of his rights to deferment pursuant to 144.34, postponement pursuant to 144.35, and/or cancellation pursuant to 144.51 through 144.56 as well as his responsibility to submit timely certification of such right to the deferment, postponement, cancellation, (vii) of his right to accelerate loan repayments without penalty, (viii) of any optional features which the institution has inserted in its note including the minimum monthly repayment provision pursuant to § 144.32(e), total costs of collection chargeable to the borrower pursuant to § 144.32(j), and penalty charges pursuant to § 144.32(f).

(c) The institution shall contact each borrower no less than three times during the borrower's 9 month grace period as follows: (1) 90 days into the grace period the institution shall transmit to the borrower in writing the information described in paragraph (b)(2) of this section and such other information as is necessary to satisfy Truth in Lending Act regulations; (2) 180 days into the grace period the institution shall notify the borrower of the date of expiration of the borrower's grace period; and (3) no less than 30 days preceding the due date of the first repayment installment the institution shall notify the borrower of the date when his first payment become due and of the amount of principal and interest due at that time.

(d) If the institution finds that a borrower's address has changed, it shall implement the procedures set forth in 144.43(a)(4) in order to secure the borrower's correct address.

(20 U.S.C. 425 and 1087cc.)

§ 144.43 Billing procedures.

(a) Each institution shall establish and maintain regular billing and follow up procedures during the period in which any outstanding balance remains unpaid, including:

(1) The sending of:

(i) A letter of notice and a statement of account to each borrower no later than 30 days preceding the date on which the first repayment installment is due;

(ii) A statement of account to each borrower no fewer than 10 days preceding the due date of each payment subsequent to the first payment, unless a coupon system is established;

(iii) When any payment is not received within 15 days of the due date, a telephoned or written demand to the borrower for payment followed by two more such demands spaced 30 days apart if no response to the initial demand is received;

(2) The maintenance of a monthly list of payments in arrears with respect to loans not paid when due;

(3) Other procedures for effecting prompt and regular repayment including personal or telephonic contact where possible;

(4) In the case of a borrower whose address is no longer known, which may be evidenced by return of mail, performance of a thorough search of all reasonably accessible information which may lead to the borrower's current address, including records checks in all appropriate institutional offices, checks of the telephone directory or information operator in the city or town of the borrower's last known address, long distance phone calls to the borrower if a phone has been obtained and the use of the Office of Education's skip-tracing service, which will be provided free of charge to the institution.

(b) Costs incurred by the institution in carrying out the activities enumerated in paragraph (a) of this section shall be considered routine administrative expenses which may not be charged to the Fund, except for the costs of long distance phone calls to the borrower described in paragraphs (a)(3) and (a)(4) of this section, which may, in accordance with 144.46, be considered other collection costs chargeable to the Fund.

(20 U.S.C. 424 and 1087cc)

§ 144.44 Skip-tracing activities.

(a) If an institution is still unable to locate a borrower, in spite of its efforts pursuant to § 144.43(a)(4), it shall engage the services of a commercial skip tracing organization or perform equivalent skip tracing activities with its own personnel.

(b) If the borrower's address is located as a result of the activities described in paragraph (a) of this section, the institution shall immediately contact the borrower for the purpose of collecting amounts past due.

(20 U.S.C. 424 and 1087cc)

§ 144.45 Collection procedures.

(a) If an institution is still unable to obtain payment from a borrower after performing all of the activities set forth in § 144.46, be § 144.44, it shall utilize the services of a collection agency or perform such collection activities with its own personnel or shall resort to litigation.

(b) If a collection agency is used it must be bonded in an amount to cover those particular assets of the Fund which are under the control of the agency at any particular time.

(c) Notwithstanding the provisions of paragraph (a) of this seciton, if the amount of principal and interest outstanding on a loan is not more than $2, the institution may write-off that amount and need not take any further collection action with regard to that loan.

(20 U.S.C. 424 and 1087cc)

§ 144.46 Other collection costs—litigation costs.

(a) Reasonable costs incurred in carrying out the activities described in §§ 144.44(a) and 144.45 and the costs of long distance calls incurred in carrying out §§ 144.43 (a)(3) and (a)(4) and § 144.44(b) shall be considered other collection costs and may be charged to the Fund, except that any collection costs paid by the borrower may not be charged to the Fund. For audit purposes, such costs must be supported by appropriate financial statements (e.g. telephone bills and collection agency bills). The statement of the collection agency shall indicate specific amounts collected and charges retained.

(b) If an institution elects to perform its own collections, rather than using a collection agency, its actual costs of collection may be considered an other collection cost and charged to the Fund, so long as such costs do not exceed the costs that would have been permitted under paragraph (a) of this section if the institution had used a commercial collection agency.

(c) Reasonable litigation costs incurred in carrying out this subpart may be charged to the Fund.

(20 U.S.C. 424 and 1087cc)

§ 144.47 Utilization of fiscal agent.

(a) If an institution utilizes a billing service, collection agency or any other type of fiscal agent in carrying out its functions under this part, the function of such service or agency must be limited solely to the performance of ministerial acts. The ultimate responsibility of the institution to make determinations relative to the making and collection of loans and decisions relative to cancellation and deferment of loans cannot be delegated.

(b) If a billing service is used to carry out the functions pursuant to 144.43, the billing service may not deduct its fee from the funds it receives from borrowers.

(20 U.S.C. 424 and 1087cc)

§ 144.48 Use of commonly owned billing service and collection agency prohibited.

If in carrying out the activities required under 144.43 an institution uses a commercial billing service, it may not utilize a collection agency pursuant to 144.45 which owns or controls, or is owned or controlled by, the billing service or which is owned and controlled by a corporation, partnership, association or individual which also owns or controls the billing service.

(20 U.S.C. 1087cc)

§ 144.49 Bankruptcy of borrower.

An institution shall refrain from collection activity with respect to a loan in the event the borrower is adjudicated a bankrupt and such loan has been discharged. However, no such loan shall be written off until an official notice of the adjudication has been received by the institution. Such notification must be maintained in the file of that borrower to support the writeoff entry. If the institution receives any payment from a borrower subsequent to his adjudication as a bankrupt, it shall deposit such payment in its Fund.

(20 U.S.C. 424, 1087cc)

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Federal Register

WEDNESDAY, NOVEMBER 8, 1978
PART V

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

Health Care Financing Administration

Office of Human Development Services

■

STERILIZATIONS AND ABORTIONS

Federal Financial Participation

[4110-84-M]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER D—GRANTS

PART 50—POLICIES OF GENERAL APPLICABILITY

Provision of Sterilization in Federally Assisted Programs of the Public Health Service

AGENCY: Public Health Service.

ACTION: Final rules.

SUMMARY: The Department is promulgating new rules to govern expenditures for sterilizations provided under various Department programs. Three parallel sets of regulations are being issued. This set applies to programs of Federal financial assistance administered by the Public Health Service; the other two sets, which appear in this issue of the FEDERAL REGISTER, apply to the progams administered under title XIX of the Social Security Act and the social services programs administered by the Administration for Public Services of the Office of Human Development Services. The rules are being revised at this time because the recent decision in *Relf* v. *Weinberger*, C.A. No. 74-1797 (D.C. Cir. 1977) resolved questions as to the scope to the Department's authority to regulate in this area. Based on its experience under the rules which currently apply to sterilizations under the Federal programs and the public comment received during rulemaking, the rules below establish new rules applicable to sterilizations.

EFFECTIVE DATE: These rules are effective February 6, 1979.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On December 13, 1977, the Department of Health, Education, and Welfare proposed new rules to govern Federal Financial participation in sterilizations funded through various programs administered by the Department under the Social Security Act and the performance of sterilizations by programs and projects funded by the Public Health Service. 42 FR 62718. In addition to inviting written comments on the proposed rules, the Department held public hearings, both in Washington, D.C., and in the Department's 10 regions, to get the views of interested persons. The substance of the comments received, both through the hearings and the approximately 500 written comments submitted, is set forth below. A discussion of the Department's actions in response to those comments also appears. The historical context in which the Department's policies on sterilization were developed, the rules previously applicable to sterilizations, relevant provisions of the proposed and final rules and the Federal programs themselves are summarized at the outset.

The discussion below applies to the rules being issued on this date which apply to programs funded by the Public Health Service, title XIX of the Social Security Act ("Medicaid"), and the social services programs under titles I, IV,-A, X, XIV, XVI (AABD), and XX of the Social Security Act. The rules applicable to the Public Health Service programs appear below; the rules applicable to title XIX appear elsewhere in this issue of the FEDERAL REGISTER. The rules applicable to the social services programs also appear elsewhere in this issue.

I. THE DEVELOPMENT OF THE DEPARTMENT'S POLICIES ON FEDERALLY FUNDED STERILIZATIONS

A. POLICIES OF THE CURRENT RULES

1. *Background.* Before 1973, the Department funded sterilizations, among other family planning services, under a number of Department programs. Although the statutes authorizing such services all required that receipt of such services be "voluntary," [1] the Department had not defined what that term meant in the context of sterilization. In mid-1973, several tragic examples of sterilization abuse under the Federal programs were brought to its attention—the sterilization of the adolescent Relf sisters in Alabama and a case of coerced sterilization in South Carolina. The Department responded to these situations in July 1973 by imposing a moratorium on the Federal funding of sterilization of persons under 21 or legally incapable of consent.

In September 1973, the Department began rulemaking proceedings, which ultimately resulted in the rules issued on February 6, 1974. Those rules permitted, among other things, the sterilization of minors and persons legally incapable of giving consent if certain procedures were followed. 39 FR 4730. The *Relf* litigation was initiated immediately to enjoin implementation of those rules. In March 1974, Judge Gesell of the United States District Court for the District of Columbia held that the February 6 rules were inconsistent with the statutory requirement of voluntariness insofar as they permitted the provision of sterilization to persons who could not give legally effective consent under State law, and permanently enjoined the Department from providing Federal funds for the sterilization of such persons. *Relf* v. *Weinberger*, 372 F. Supp. 1196 (D. D.C. 1974). Although the Department appealed the *Relf* decision, in April 1974 it adopted as an interim measure the rules summarized in section 2 below.

2. *Current policies.* The current policies are found in the existing rules, 42 CFR 50.201-50.204 and 45 CFR 205.35, and in the moratoruim on any sterilization of individuals under 21 or legally incapable of consenting to be sterilized declared by the Secretary on July 27, 1973, 38 FR 20903 (August 3, 1973). These policies are still in effect and will remain in full force until the date these rules become effective, 60 days from the date of their publication. In brief, the current policies are:

a. Federal financial participation is available only in the sterilization of people at least 21 years old who are mentally competent under State law. In other words, Federal funding is not available for any sterilization of a person who is either under 21 or who is mentally incompetent.

b. In Medicaid and the social services programs, Federal financial participation is available in the sterilization of people at least 21 years old only where informed consent, as defined and required by the current rules, is obtained. In all except so-called therapeutic sterilizations, legally effective informed consent must be obtained at least 72 hours prior to the sterilization. In the programs administered by PHS, PHS-supported projects may not perform or arrange for the performance of sterilizations unless these conditions are met.

B. POLICIES OF THE PROPOSED RULES

1. *Background.* In 1977, the Court of Appeals for the District of Columbia vacated the injunction entered against the Department in 1974. It further indicated that the Department had the legal authority to define a Federal standard of "voluntariness" and took note of the Department's intention to engage in rulemaking to devise that standard. *Relf* v. *Weinberger*, C.A. No. 74-1797 (D.C. Cir. 1977). Shortly

[1] Under title XIX of the Social Security Act ("Medicaid") family planning services are to be provided to "eligible individuals who desire such services." Section 1905(a)(4)(C), 42 U.S.C. 1396d(a)(4)(C) title V of the Act provides that "acceptance of family planning services * * * shall be voluntary on the part of the individual to whom such services are offered * * *" Section 508(a)(3), 42 U.S.C. 708(a)(3). Title X of the Public Health Service Act authorizes support for "voluntary family planning projects." Section 1001(a), 42 U.S.C. 300(a).

thereafter, the Department published the proposed rules for public comment.

2. *Proposed rules.* The proposed rules proposed the following policies: (1) Retention of the minimum age of 21. (2) Extension of the waiting period from 72 hours to 30 days. (3) Alternatives for the sterilization of mentally incompetent individuals with the capacity to give informed consent: under one option, the present ban on the sterilization of such individuals (and all other mentally incompetent individuals) would continue; under the other option, the sterilization of such individuals would be permitted where they are capable of understanding and consenting to the sterilization and if certain procedural safeguards were followed. (4) Limitation of the circumstances under which institutionalized individuals could be sterilized. (5) Prohibition of payment for hysterectomies done for family planning purposes and provision to persons undergoing hysterectomies for other, nonfamily planning purposes of information that the procedure results in sterility, along with a written acknowledgement that such information was presented. (6) The following changes to the informed consent procedures of the current regulations: (a) individuals to be sterilized would be required to be informed of the elements of informed consent orally; (b) if the consent form was not in the individual's primary language, an interpreter was required; (c) provision for handicapped individuals was required; (d) certifications as to certain facts from the individual obtaining the consent, the physician performing the procedure, and, where applicable, the interpreter was required; (e) instead of the alternative "long" and "short" form consent forms permitted under the present regulations, use of a specific consent form was mandated; (f) documentation of compliance with the consent form and other requirements as required as a condition of payment for the procedure.

C. POLICIES OF THE FINAL RULES

1. *Policy considerations.* In developing the final rules, the Department has attempted to reconcile several competing policy considerations. Two of these are statutory. On the one hand, it is the policy of all of the Federal statutes under which family planning services are provided to encourage access to and use of those services, including sterilization. On the other hand, it is also the policy of those statutes that receipt of such services be voluntary, and that no one be sterilized [2] in the absence of full knowledge or against one's will. Implementation of this policy requires a strong enforcement program including monitoring of the recipients of Federal financial assistance to see that the procedural safeguards contained in the regulation are followed. Therefore, at the same time that safeguards are built into the sterilization consent process, these requirements must be carefully crafted to permit effective enforcement.

Accommodating these three policy considerations has required making difficult judgments, since they in many cases dictate conflicting results. However, these rules reflect what is hoped to be a workable balance between them, in which no one consideration is given so much weight that another is not achieved, and in which the overall goal of providing federally funded sterilizations to those who voluntarily choose this service is realized.

The final rules resolve the competing considerations of insuring access to sterilization and insuring that this access does not lead to involuntary sterilizations in two ways. They limit the access of those individuals least able to give an informed consent or those least able to understand the consequences of a permanent and irreversible sterilization. In addition, they establish procedures to insure that those individuals who have access to federally funded sterilizations are provided an opportunity to make an informed and voluntary choice. This must be accomplished without burdensome administrative procedures or excessive paperwork.

These approaches have been developed in light of the third consideration guiding the Department's decisionmaking—the need to ensure the enforceability of the rules. The Department's enforcement record was criticized repeatedly at the public hearings and in many of the written comments. Therefore, in designing these rules the Department had to consider not only its need to develop effective safeguards against abuse but also its need to enforce them. This has dictated the adoption of policies that minimize exceptions, that do not make subtle or individual distinctions, and that are susceptible to verification or documentation.

Because the proposed rules carried forward some of the current policies, the Department scrutinized the public comment for evidence that the current rules have either unduly restricted access to sterilization services or alternatively, that they have permitted abuse of those services. It also paid particular attention to the experience gained in the administration of similar requirements in various jurisdictions, such as New York and California, as well as the testimony of individuals familiar with situations outside the Federal programs. On this basis and based on its own experience in adminstering the current rules, it has revised the proposed rules as described below.

2. *Final rules.* a. *Eligibility for Federally funded sterilizations*—The claims of involuntary sterilization poignantly made by the plaintiffs in cases such as *Relf* v. *Weingberger, supra,* and *Madrigal* v. *Quilligan,* CA. No. 75-2057 (C.D. Cal. 1975), along with the testimony and comments elicited during rulemaking concerning the need for an enforceable program, have led the Department to adopt the following policies with regard to access to sterilization.

The final rules prohibit Federal funding of sterilizations to any of the following: Persons under 21, mentally incompetent persons, and institutionalized persons. The public comment produced no hard evidence that the first two restrictions created undue hardship in the past. Indeed, there was a balance between examples cited of potential hardship and of potential for abuse if the policies were made less restrictive. Given the irreversibility of the procedure, the Department feels that the balance should be struck in favor of safeguarding such persons from potential sterilization abuse.

b. *Informed Consent*—There is no evidence that the existing procedures requiring informed consent have unduly impeded access to sterilization services. To the contrary, in fiscal year 1976 alone, medicaid reimbursed State claims for the sterilization of over 67,000 individuals.

However, both the Department's experience with the current rules and the public comments suggested the need to improve those procedures in certain respects. First, the public comment suggested the need to provide additional safeguards. Second, much concern was voiced about the burdensomeness of some of the proposed procedures. Third, the public comment also stressed the need for adequate monitoring and enforcement of the procedures. The Department is likewise cognizant of this last need, and it is concerned about the difficulty of monitoring and enforcing compliance with complex procedures in national programs.

The final rules attempt to accommodate these concerns. The requirements that have been added to the regulations are all aimed at increasing the understanding of the individual to be sterilized while at the same time imposing minimal burdens on providers. For example, the Department has ex-

[2] Section 205 of Pub. L. 94-63, 42 U.S.C. 300a-8 (note), makes it a felony, punishable by a fine up to $1,000, or by imprisonment of up to one year, or both, to coerce any person to undergo an abortion or sterilization through the threat of withholding any service or benefits under a program receiving Federal financial assistance.

plicitly prohibited the obtaining of consent while a woman is in the hospital for labor or childbirth. This should eliminate the major situation in which coercion is alleged to have taken place. Neither this requirement, nor the other requirements such as allowing a witness to be present when consent is obtained, providing for the expiration of the consent form in 180 days and giving a copy of the consent form to the individual to be sterilized should burden significantly the physician providers. To the contrary, they accord with sound medical practice by assuring a knowledgeable patient.

The Department has responded also to the major objection voiced by physicians and others concerned with access to sterilization services. While the 30-day waiting period has been retained, the final rules provide for a waiver by the patient in certain circumstances. This change will give providers the flexibility they need to perform sterilizations in a limited group of cases—those delivering prematurely or having emergency abdominal surgery—without the added risk of a second operation, even if 30 days have not elapsed from the date consent was obtained. Moreover, while this does provide an exception, it is one in which verification of the circumstances will be possible and the conditions for operation of the waiver can be documented.

These and other changes in the final rules are discussed more fully in section III.

II. Federal Programs Under Which Sterilization Is Provided

The Department funds family planning services, including sterilizations, under several Federal statutes. Three agencies within the Department are responsible for administering programs under which sterilizations are performed—the Medicaid Bureau (MMB) of the Health Care Financing Administration (HCFA), the Administration for Public Services (APS) of the Office of Human Development Services (OHDS), and the Public Health Service (PHS).

A. The Medicaid Program

The medical assistance (medicaid) program under title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., which is administered by MMB, provides for Federal matching of reimbursements for family planning services pursuant to sections 1902(a)(13) and 1905(a)(4)(C) of the Act, 42 U.S.C. 1396a(a)(13) and 1396d(4)(C). MMB has not defined family planning services by regulation; however, its policy has been to consider sterilization as a federally funded family planning service.

B. The Title XX Social Services Program

Title XX of the Social Security Act, which is administered by APS, authorizes grants to States for social services, including family planning services. See section 2002(a)(1) of the Act, 42 U.S.C. 1397a(a)(1). While title XX itself does not mandate the provision of family planning services, however, title IV-A effectively does mandate such services in a State's Title XX plan. In order for a State to qualify for Federal financial participation under title IV-A of the Social Security Act (aid to families with dependent children), the State's title IV-A plan must provide that family planning services will be provided under title XX. Section 402(a)(15) of the Social Security Act, 42 U.S.C. 602(a)(15) as amended by Pub. L. 93-647 (the legislation enacting title XX).

C. The AFDC and Aged, Blind and Disabled Programs in Guam, Puerto Rico, and the Virgin Islands

In Guam, Puerto Rico, and the Virgin Islands, titles I, X, XIV, and XVI of the Social Security Act are relevant to the provision of sterilizations. (In all other jurisdictions those titles have been superseded by the new title XVI (Supplemental Security Income) and title XX (Social Services).) Each of those titles provides, at subsection (c)(1) of sections 3, 1003, 1403, and 1603, and 1353(c)(1), 42 U.S.C. 303(c)(1), 1203(c)(1), and 881, respectively, that in order to qualify for Federal payments the State plan must provide that the State agency must make available "at least those services to help them attain or retain capability for [self-support or] self-care which are prescribed by the Secretary." (The bracketed words do not appear in title I.) 45 CFR 222.59, applicable to the original adult titles, authorizes family planning as an optional service under those titles. 45 CFR 222.7 (also applicable to the original adult titles) provides that "eligible individuals must be free to determine whether to accept or reject services from the agency."

Title IV-A reads virtually identically for Guam, Puerto Rico, and the Virgin Islands as for the other States except that the provision in section 402(a)(15) referring to title XX does not apply. In these jurisdictions section 402(a)(15) requires that the title IV-A plan itself must provide for family planning services.

D. Programs Administered by the Public Health Service

Title V of the Social Security Act, which is administered by PHS, requires each State, as a condition to the receipt of formula grant funds for maternal and child health and crippled children's services, to include in its State plan a program of family planning service projects. See section 505(a)(8) of the Act, 42 U.S.C. 705(a)(8).

PHS also funds sterilizations under title X of the Public Health Service Act. Section 1001(a), 42 U.S.C. 300(a). In addition, family planning services are included in the care offered by community health centers under section 330 of the Public Health Service Act, 42 U.S.C. 254c, and in the migrant workers health program under section 319 of the Act, 42 U.S.C. 247d.

Public Health Service personnel perform sterilizations in PHS hospitals, in the Indian Health Service, and in other direct programs. Although these rules govern only sterilizations funded in the programs of Federal financial assistance, the policies of the rules are simultaneously being made applicable to these direct programs by administrative directive.

III. Summary of Public Comment and Changes to the Rules

The preamble to the Notice of Proposed Rulemaking identified several major issues on which public comment was particulary solicited. Specifically, the public was asked to comment on the definition of "sterilization" in the proposed rules, the appropriateness of the 30-day waiting period, the appropriateness of the age 21 minimum, the provisions relating to the sterilization of mental incompetents and institutionalized individuals, the effectiveness of the informed consent procedures of the proposed rules, and the appropriateness of excluding hysterectomy as a family planning technique. In general, the public comment focused on these major issues. The discussion of the public comment and the revisions to the proposed rules below likewise is organized around these major issues.

The policies adopted for both the programs funded under the Social Security Act and those funded under the Public Health Service Act are identical. The regulations differ only in the choice of regulatory mechanism, since the HCFA and APS programs regulate by restricting Federal financial participation if the Federal requirements are not followed, while PHS regulates primarily by making following the requirements a condition of the grant. Consequently, differences between the two types of regulations are generally mechanical in nature. Since the policies are the same and in the interests of brevity and clarity, only the PHS regulations are set out in full in the preamble below, with references to the corresponding sections of the HCFA regulations.

A. DEFINITION OF "STERILIZATION"

Text of proposed rule (42 CFR 50.202(a). (CF., 45 CFR 205.35-2(a)):

"Sterilization" means any medical procedure or operation for the purpose of rendering an individual permanently incapable of reproducing.

Text of final rule (42 CFR 50.202. (CF., 42 CFR 441.251)):

"Sterilization" means any medical procedure, treatment, or operation for the purpose of rendering an individual permanently incapable of reproducing.

Summary of Public Comment

Over 50 comments were received on the definition of sterilization. Approximately one-quarter of these endorsed the proposed definition. The remaining comments made the following points:

1. Several comments recommended that the word "solely" or "primarily" be inserted before the word "purposed," to emphasize that the regulations do not apply to procedures done for other purposes. Two comments suggested that the definition be amended to exclude explicitly procedures which, while they produce sterility, are done for purposes totally unrelated to the intent to sterilize, e.g., hysterectomy for uterine carcinoma.

2. A number of comments dealt with the question of whether the definition of sterilization should distinguish between "therapeutic" and "nontherapeutic" sterilizations and, if so whether therapeutic sterilizations should be covered by some or all of the proposed requirements. The comments argued that a procedure which is medically indicated should not be encumbered with the restrictions of the regulations. One commenter suggested, on the other hand, that the definition should be amended to state that it covers both therapeutic and nontherapeutic sterilizations.

3. A number of comments disagreed with the definition's test of whether or not a procedure is a sterilization, i.e., whether the purpose of the procedure is to produce sterility. It was suggested that the purpose test creates a loophole, in that practitioners will avoid the restrictions of the regulations simply by articulating a different purpose for a procedure. To close this loophole, it was suggested that the test instead be whether the procedure would have the effect of producing sterility, possibly with an exception for cases where the procedure is necessary to correct a substantial danger to life or health.

4. Several comments stated that the definition should be modified to reflect the likelihood of failure and/or reversibility of sterilizations. It was suggested that absent such a modification, the definition is medically inaccurate, since there is a small risk of failure and some chance of reversing certain sterilization procedures (e.g., tubal ligations). One commenter also pointed out that advances in medical technology (such as the availability of sperm banks and artificial insemination) would remove many sterilizations from the definition.

5. Several comments pointed out that it is possible to sterilize by administering certain drugs or x-rays, and the definition as proposed would not cover such cases. It was suggested that the word "treatment" be added to the definition to close this loophole.

6. Other suggestions included adding a reference to "males," adding a reference to "emergency" and "nonemergency" sterilizations, and modifying the definition to explicitly exclude hysterectomies.

Department's Response

The Department agrees that the comment discussed in paragragh 5 above identifies a loophole in the definition of sterilization. The definition has accordingly been modified to include "treatment" (by drugs or x-rays) for the purpose of inducing sterility. The remainder of the comments have not been accepted, for the following reasons.

1. The comments which suggested modifying the word "purpose" with "solely" or "primarily," introducing the "therapeutic"/"nontherapeutic" distinction, and substituting an "effect" test for the "purpose" test have been rejected for related reasons. As a policy matter, the Department believes that the procedural protections of the regulations should apply to so-called "therapeutic" sterilizations (i.e., ones which are medically indicated but one of the purposes of which is to produce sterility), as well as to those sterilizations done solely for family planning purposes. In either case, the individual is making a decision which is usually irreversible. To the extent any other medical options exist (such as alternative forms of birth control), he or she should have the opportunity to exercise that option. If less stringent requirements apply to therapeutic sterilizations than to nontherapeutic sterilizations, there may also be an incentive to characterize as therapeutic a sterilization that properly should be characterized as nontherapeutic or the two definitions might be appied differently by different providers, creating problems for monitoring and enforcement. Thus, the therapeutic/nontherapeutic distinction has not been added to the definition, nor have the words "solely" and "primarily", which would have the effect of introducing the distinction, been added. Since the definition clearly applies to both types of sterilization, however, it was considered unnecessary to add an explicity statement to that effect.

It should be emphasized that the definition as proposed and adopted does not cover medical procedures which, while they may have the effect of producing sterility, have an entirely different purpose, such as removal of a cancerous uterus or prostate gland. In such a case, there is no reasonable alternative to the procedure. The point of the informed consent and other procedural requirements of the regulations is to permit exercise of a reproductive choice. However, since there is no choice in such a situation and imposition of such procedural requirements could also be medically inadvisable, the rationale for imposing the requirements does not apply. Since the "effect" test would reach such situations, it was rejected as too broad.

2. The proposed definition has not been modified to reflect the risk of failure and likelihood of reversing the procedure. The definition's test of sterilization is whether the purpose of the procedure is to produce sterility, and the risk of failure and chance of reversal are unrelated to this test. Specifically, the accepted medical purpose in all such procedures is to produce permanent sterility, not to produce sterility in all but a few cases or for some temporary time period.

The questions of incorporating provision for sterilization procedures which medical technology may in the future make reversible is more problemmatic. Since such situations are at present hypothetical and thus their ramifications cannot be understood, however, the Department considers it inadvisable to establish rules relating to them at this time.

3. The suggestion that the definition refer to "males" has been rejected as redundant. The suggestion that the definition explicitly exclude hysterectomies was not adopted for two reasons: (1) Hysterectomy is still used as a sterilization procedure and to exclude it from the definition of sterilizations would artificially ignore common medical practice; and (2) it is felt that the concern underlying the suggestion—to make clear that hysterectomies for family planning purposes are not an approved form of sterilization—is more appropriately handled through a prohibition on their use, rather than by limiting the definition.

B. 30-DAY WAITING PERIOD

Text of Proposed Rule

1. *42 CFR 50.204 (Cf., 45 CFR 205.35-4(b)):*

Programs or projects to which this subpart applies shall perform or arrange for the performance of sterilization of a mental-

ly competent individual only when the following requirements are met:

* * * * *

(b) At least 30 days have passed between the date of informed consent and the date of the sterilization.

2. *Related requirements:* 42 CFR 50.203(a)(7) (Cf., 45 CFR 205.35-3(a)(7)); 42 CFR 50.203(b)(4)(ii) (Cf., 45 CFR 205.35-3(b)(4)(ii)); appendix. For text of these sections, see sections F and G below.

Text of Final Rule

1. *42 CFR 50.203 (Cf., 42 CFR 441.256(b), (c)):*

Programs or projects to which this subpart applies shall perform or arrange for the performance of sterilization of a mentally competent individual only if the following requirements have been met:

* * * * *

(d) At least 30 days but no more than 180 days have passed between the date of informed consent and the date of sterilization, except in the case of premature delivery or emergency abdominal surgery. An individual may consent to be sterilized at the time of premature delivery or emergency abdominal surgery if at least 72 hours have passed after he or she gave informed consent to sterilization. In the case of premature delivery, the informed consent must have been given at least 30 days before the expected date of delivery.

2. *Related requirements:* 42 CFR 50.204(a)(7) (Cf., 42 CFR 441.257(a)(1)(vii)); 42 CFR 50.205(c)(2) (Cf., 42 CFR 441.258(c)(2)); appendix. For text of these sections, see sections F and G below.

Summary of Public Comment

Almost 300 comments addressed the 30 day waiting period requirement of the proposed rules. The majority of these comments (over 200) either opposed it absolutely or advocated provision for waiver of the waiting period for special circumstances. The comments articulated the following concerns:

1. The comments supporting the 30-day waiting period as proposed cited several reasons for adopting the requirement. First, 30 days would provide the time necessary to consult with family, friends and others about the procedure and its irreversible consequences. Second, the 30-day period would also allow adequate time for the individual to get away from the environment in which consent was obtained and, to the extent the person was intimidated by that environment, would allow more exercise of choice. Third, it was suggested that there is no such thing as an "emergency" sterilization, and thus the 30-day waiting period would not work a hardship. The experience in New York City under a similar 30-day waiting period requirement was cited as an example that such a requirement does not duly interfere with access to services.

2. Comments opposing the 30-day waiting period requirement gave several grounds for their opposition. A number of comments stated that the waiting period—which is generally not required for persons who can afford to pay for their own sterilizations—would discriminate against the poor. Many comments also pointed out that the waiting period would create a hardship for and limit access to sterilizations for residents of rural areas, migratory workers, and many low-income individuals. Such individuals may find it difficult to get to a health care facility and hence do so only infrequently, because of the travel time involved or, where the sterilization is performed 30 days or more after delivery, the necessity of arranging for child care. In this regard, several comments cited the example of North Carolina, where a 30-day waiting period requirement was repealed in 1973 on the ground that it unduly impeded access to sterilization for residents of rural areas and patients with emergency conditions. a few physicians also stated that the New York and California waiting period requirements had likewise occasioned hardship. Another objection voiced was that the 30-day waiting period would mean that persons whose eligibility for medicaid terminated during that period would be unable to obtain a federally funded sterilization. Several comments objected that the waiting period was overly broad and should not apply to men or to nonpregnant women, since they would not be subject to the coercion associated with obtaining a consent during labor, delivery, or abortion. Other comments objected to the waiting period per se on the grounds that it (1) is arbitrary and will not prevent abuse, and (2) constitutes excessive regulation of medical practice.

The majority of objections to the waiting period as proposed, however, stemmed from concern about hardships it would cause in certain exceptional situations. Specifically, imposition of an inflexible requirement in cases of premature delivery, emergency abdominal surgery or unanticipated abortion was objected to as medically unsound. If a rigid requirement is imposed in such cases, the individual will have to undergo two surgical procedures, with concomitantly increased risks. It was suggested that since none of these circumstances is foreseeable and they can also be documented, there is little likelihood that a waiver covering these circumstances would be subject to abuse. Several comments recommending such a waiver suggested nevertheless that no waiver be permitted for a short time period (e.g., 72 hours) after consent was obtained in order to ensure that the consent was not obtained under the stress of labor or another medical emergency.

Department's Response

The Department is persuaded by the numerous comments objecting to the inflexibility of the 30-day waiting period as proposed for the reasons set out above. Consequently, the final rule adopts provision for waiver by the individual of the waiting period requirement in cases of emergency abdominal surgery or premature delivery. It should be noted, however, that the waiver does not apply to cases of unanticipated abortions, since—unlike situations involving emergency abdominal surgery or premature delivery—an abortion in the first trimester of pregnancy is not generally considered a major surgical procedure with consequent double exposure to the risks of major surgery. Moreover, since Federal funding for abortion is currently restricted by law, the Department is concerned that permitting waiver in cases of unanticipated abortion may create potential for abuse, in that women may be persuaded to consent to a sterilization in order to obtain an abortion funded from other resources.

To ensure that the waiver provision is not abused, however, two other requirements have been added. Specifically, even in a case to which the waiver would otherwise apply, a federally funded sterilization may not be performed less than 72 hours after the consent was obtained. Moreover, where the waiver applies, the physician performing the procedure is required to certify that the sterilization was performed less than 30 days but more than 72 hours after consent was obtained because of emergency abdominal surgery or premature delivery, as applicable, and furnish certain details. See 42 CFR 50.205(c)(2) (Cf., 42 CFR 441.258(c)(2)); appendix (physician's certification). It is felt that this latter requirement will both discourage abuse and facilitate monitoring of compliance.

The Department has rejected the remainder of the comments, for the following reasons:

1. The Department disagrees with and has not accepted the numerous recommendations for a shorter or no waiting period. The purpose of the waiting period is twofold: (1) To give the individual sufficient time for careful consideration of the sterilization decision, and (2) in cases where consent is obtained in an intimidating environment or stressful situation (such as during hospitalization), to increase the likelihood that those individuals will be able to reconsider the decision

free of those circumstances. It is felt that the 30-day period responds to both of these considerations while not creating an undue lag between the consent and performance of the procedure. While the choice of 30 days is admittedly somewhat arbitrary, the Department notes that it poses no medical burden (in terms of additional surgical procedures) greater than a waiting period of, say, 7 or 14 days. It has, however, the advantage of giving the individual more time to reflect on the consequences of the decision than those shorter periods. Moreover, the Department does not agree that the waiting period will necessitate an additional and unnecessary hospitalization and exposure to surgery. In most cases, the consent can be obtained well in advance of the anticipated hospitalization for delivery. In cases where there is a premature delivery or emergency abdominal surgery intervening before the 30-day waiting period has run, provision for waiver of the waiting period in most such cases has been added.

2. The most troublesome policy issues are presented by those comments pointing out the barrier to access which the waiting period raises for certain people who, by virtue of their circumstances, have difficulty obtaining health care (e.g., migrants, rural residents, persons whose medicaid eligibility terminates during the waiting period). The Department recognizes that for such individuals the waiting period may pose a substantial hardship. Nevertheless, it does not believe that provision for waiver of the waiting period should be made for such individuals. Provision for waiver in such cases would be extremely hard to administer and susceptible to abuse. For example, even assuming that a definition of rural areas satisfactory for these purposes could be developed, applying it would call for complex judgments in each case. Monitoring the application of such a waiver provision would also call for knowledge and information about the transportation and population characteristics of rural areas that the Department does not have. With respect to migrants, assuming the provision for waiver were tied to job movement within the waiting period, it would similarly be hard to ascertain whether such circumstances had indeed existed at the time the waiver was made, since the migrant will generally no longer be available to check with. While the situation of persons whose medicaid eligibility terminates is unfortunate, their situation is no different from that of persons whose eligibility terminates while they are waiting for treatment or admission for any other kind of scheduled medical care. Such a situation is thus not a function of the waiting period per se but rather of the structure of the medicaid program itself. It is felt that on balance the difficulty of administration and potential for abuse in providing such waivers outweigh the advantages they would present.

3. The Department has not accepted the suggestion that the waiting period be waived for males and nonpregnant women. The comments argued that since those individuals are not subject to coercion under labor or delivery, the waiting period is not needed. This argument misconceives the rationale for the 30-day waiting period. The purpose of the 30-day waiting period is not just to prevent coercion but to insure, insofar as possible, that the individual reflects carefully on the consequences of the proposed sterilization and makes a decision that he or she will not later regret, since the procedure must be considered to be irreversible. Considerations that were not thought of at the time the consent was signed may become apparent later as the procedure is considered and discussed with friends and family. These underlying policy considerations apply to males and nonpregnant females as much as they do to women in labor or delivery. Moreover, it appears that the universe of males and nonpregnant women seeking sterilization is large enough to make applying these requirements to that universe warranted. For example, Departmental data for 1975 indicates that only 38 percent of tubal ligations were post-partum; thus, approximately 62 percent of all tubal ligations were performed on nonpregnant women. Thus, the Department does not believe that waiver of the waiting period is appropriate for men and nonpregnant women.

4. The Department disagrees with and has not accepted the comments which characterized the waiting period as "discriminatory," "arbitrary" or "excessive." The need to prevent abuse of sterilization dictates imposition of procedural requirements that protect the right to choose. The waiting period helps serve this purpose, in that abuse appears likely to occur when persons are pressured or rushed into a decision. Moreover, the waiting period requirement as revised in these rules takes account of cases of medical hardship. Accordingly, the Department does not believe that it can fairly be characterized as arbitrary.

C. MINIMUM AGE OF 21

Text of Proposed Rule

1. *42 CFR 50.204 (Cf., 45 CFR 205.35-4(c)):*

Programs or projects to which this subpart applies shall perform or arrange for the performance of sterilization of a mentally competent individual only when the following requirements are met:

* * * * *

(c) The individual is at least 21 years old.

2. *Related requirements:* a. *42 CFR 50.206 (Cf., 45 CFR 205.35-6):*

Programs or projects to which this subpart applies shall not perform or arrange for the performance of sterilizations of individuals under 21 years old.

b. Appendix. For text of the Appendix, see section G below.

Text of Final Rule

1. *42 CFR 50.203(a) (Cf., 42 CFR 441.253(a)):*

Programs or projects to which this subpart applies shall perform or arrange for the performance of sterilization of an individual only if the following requirements have been met:

(a) The individual is at least 21 years old at the time consent is obtained.

2. *Related requirements:* Appendix. For text of the appendix, see section G below.

Summary of Public Comment

Approximately 150 comments addressed the proposed rule to set the minimum age for sterilization under a Federal program at 21. Approximately one-quarter of them supported the age 21 floor on sterilization as proposed. Most of the remaining comments advocated lowering the floor to age 18 or the State age of consent or providing for waiver of the age 21 floor in certain circumstances. A few comments urged raising the minimum age. The comments cited the following considerations in support of their respective positions:

1. The comments supporting the age 21 floor as proposed gave several reasons in support of their position. In general, it was suggested that persons under 21 are more susceptible to coercion than those over 21 and are more likely to lack the maturity to make an informed decision. Because the procedure is generally irreversible, these considerations favor protecting such individuals by limiting their access to the procedure. Also, several studies show a higher rate of regret at being sterilized among younger women than among those who were sterilized at a later age. (E.g., Moor, "Sequelae of Tubal Ligation, Medicial and Psychological," Am. J. Obs. Gyn., Vol. 101 No. 3, June 1978, pp. 350-1.) A speaker from the New York City Health and Hospitals Corporation noted that experience over a 2-year period with the Corporation's ban on sterilizations of persons under 21 had produced only one instance where the policy had caused undue hardship. Several of the comments advocated adopting the age

21 floor as proposed, but re-evaluating it in 18 months or 2 years on the basis of experience.

2. The comments advocating raising the minimum age for sterilization to, among others, age 26 or 35, based this recommendation generally on the higher regret rate among young women discussed above and the fact that at age 21 persons are just entering their prime childbearing years.

3. The comments opposing the age 21 floor as proposed cited a number of reasons for their opposition, as follows:

a. Many comments noted that the age of majority is 18 in virtually all States (47) and only in one State (Mississippi) is the age of consent to medical procedures as high as 21. Comments cited this as overwhelming evidence that—at least in the judgment of State legislatures—persons age 18 and over have sufficient maturity to give informed consent to sterilization. Other comments advocated setting the minimum age at the age of consent set by State law, since capacity to consent to medical procedures has traditionally been an area regulated by the States.

b. A number of comments also argued that many persons have completed their families before the age of 21 and should have the option of terminating reproduction before then also. In this regard statistics were cited showing that in 1975 almost 230,000 second and higher order births (including almost 35,000 third and higher order births, of which over 5,000 were fourth and higher order births) occurred to women under 21 years of age. In general, it was suggested that where persons have had several children at an early age, they are more likely to have the maturity to consent to sterilization and less likely later to regret the procedure, and thus should have access to it. A number of comments also pointed out that the age 21 floor would work a hardship on persons who have had one or more children at an early age, who do not want or medically should not have more children, and for whom other methods of contraception have been ineffective or are medically contraindicated.

c. Many comments expressed concern about effect of the age 21 floor as it relates to the plight of some mentally retarded individuals under 21. According to the comments, many such individuals are unable to use the temporary forms of birth control, and cannot cope with pregnancy, birth, and child care. For some such individuals sterilization may thus mean the difference between institutionalization and deinstitutionalization, while for others it may be the most effective means of preventing a frightening or debilitating experience.

d. Other comments opposed the age 21 on the grounds that it: (1) discriminates against individuals under 21 and limits their rights of self-determination; (2) usurps the State's authority to regulate the age of consent for this procedure.

4. A large number of comments objected to the age 21 floor as proposed on the grounds of its inflexibility. These comments in general took the position that while the age 21 floor might be appropriate in most cases, in some cases it would create undue hardship. They accordingly suggested provision for waiver of the age 21 floor in certain circumstances. The following circumstances were suggested as a basis for waiver of the age 21 floor:

a. Where the individual has a condition or conditions (such as severe heart disease or advanced renal disease) which make a pregnancy life-threatening, regardless of age;

b. Where preganancy is inadvisable because the person has a short life expectancy due to a congenital problem;

c. Where pregnancy is inadvisable because there is a high probability of producing offspring with serious genetic disease;

d. Where the woman to be sterilized has already had some number (e.g., two or three) of previous pregnancies resulting in miscarriage, still birth or detriment to her health.

A number of the comments suggesting waiver in such circumstances advocated that procedural safeguards be required as a condition of the waiver. For example, they suggested safeguards such as the review committee mechanism proposed for the sterilization of mental incompetents or obtaining concurring opinions of one or two other physicians that the waiver was appropriate. It was suggested that if application of a waiver were tied to such procedural restrictions, potential for abuse would be small, particularly since the conditions under which waiver would be granted would generally be objectively verifiable.

Department's Response

The Department has decided to retain the age 21 floor as proposed. While much of the support for retaining the age 21 floor as proposed was admittedly anecdotal in nature, so was much of the evidence cited against it. The public comments did elicit some fairly persuasive evidence that the regret rate among young persons who have been sterilized is significantly higher than among those who were sterilized at a later age. These studies suggest that, even assuming that persons under 21 are capable of fully understanding the ramifications of the decision to be sterilized, they will be more likely to regret that decision as their circumstances change in later years. For example, a recent study notes that—

> A crucial feature (in determining whether or not sterilization is regretted) appears to be the age at sterilization * * *. Norris suggested that sterilization under the age of 30 may result in regret. These findings (of the Winston study) tend to support his view. (M. L. Winston, "Why 103 Women Asked for Reversal of Sterilization," British Medical Journal, Vol. 2, July 1977, at 306.)

In the Department's view, therefore, it is advisable to apply a policy of restraint in this area, particularly since it seems highly likely that young persons are indeed more susceptible to suggestion and coercion than are older individuals. As noted by the court in *Voe* v. *Califano*, C.A. No. N-77-195 (D. Conn., 1977): "the * * * evident purpose of an age 21 rule is to eliminate those instances where substantial questions of informed consent might arise, and that is plainly a legitimate objective."

However, recognizing that information on the ramifications of this important policy is still imperfect, the Department has accepted the suggestion to review the operation of the regulations at a later date, and will accordingly undertake such review in 36 months, to ascertain whether (1) the policy has caused undue hardship and (2) there is further evidence supporting this policy choice.

Proposed § 50.206 has been eliminated. Since the final rules simplify the rules applicable to mental incompetents and institutionalized individuals, it was felt that the section was no longer needed for clarity, and it thus has been removed as redundant. The final rule has also been changed to clarify that the individual must be 21 at the time consent is obtained.

Other considerations entering into the Department's decision to retain the age 21 floor as proposed are set out in the discussion below.

1. The Department is not raising the minimum age above 21. The figures on the large number of second and higher order births below the age of 21 cited in paragraph 3b of the preceding section suggest that raising the age floor above 21 would indeed work a hardship on many individuals, since an increasingly high number of persons complete their families with each year of age over 21. The choice of age 21 over a higher age is also favored by the fact that above age 21 all present State statutes presume that individuals are legally capable of making such a choice for themselves.

2. The Department recognizes that most States have set the age of consent to medical procedures at 18 or below, and that this evidences a consensus as to the capacity of persons

ages 18-21 to consent in general which conflicts with its judgment. Nevertheless, it is clear that in making policy choices for the administration of a Federal program, State law is not controlling. See generally, *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52 (1976); see also, *Relf* v. *Weinberger, supra; Peck* v. *Califano*, C.A. No. C-76-229 (D. Utah, 1977); *Voe* v. *Califano*, C.A. No. N-77-195 (D. Conn., 1977). For the reasons stated above, the Department is of the view that the provision of federally funded sterilizations only to persons 21 and over represents sound policy. Moreover, setting an age dependent upon State law is administratively less practical than setting age 21 as the floor. According conclusive effect to State law in this area would force the Department to make numerous individualized judgments (both as to what the State law of consent is and whether a given individual can be considered legally able to consent under it) which the Department cannot feasibly make. Age 21, by contrast, is the only age at or over which persons in every State have the legal capacity to consent to sterilization. It thus facilitates administration of a national program, since the Department is not compelled to administer policies that differ from State to State.

The Department recognizes that setting the age floor at 18 for all States except those few in which the age of consent is higher would have most of the administrative advantages of the age 21 floor and yet in almost all States obviate the potential hardship of the age 21 floor on individuals between the ages of 18 and 21. However, an age 18 floor (with an exception for certain States) would effectively be as arbitrary a minimum as the age 21 floor, since age 18, while the age of majority in most States, is higher than the age of consent for medical procedures in many of those States. Thus, the rationale for an age 18 floor is the same as that for the age 21 floor. However, it lacks the administrative feasibility of the age 21 floor, since it would require treating individuals in several States differently than individuals in most States. More important, the Department feels, for the reasons outlined above, that as between protection against abuse and mistake on the one hand and access to sterilization on the other hand, the policy choice—at least as it concerns young people—should err on the side of caution. This is undeniably better achieved by the age 21 floor.

3. The Department recognizes that there are a substantial number of persons who have completed their families at an early age and for whom sterilization is the family planning method of choice. The age 21 floor denies such persons Federal assistance in exercising that choice. Nevertheless, temporary methods of birth control which have no side effects and a high degree of effectiveness are generally available to such persons and will be provided under the Federal programs. The potential for coercion of young people and the greater potential for regret among them, when taken together with the availability of temporary methods of birth control in most cases, leads the Department to choose the age 21 minimum.

4. The Department has decided not to provide federally funded sterilizations to any mentally incompetent individuals, whether over or under the age of 21. The bases for this decision—and for the rejection of the comments advocating provision of sterilization to mentally incompetent individuals under 21—are discussed in section D below.

5. The Department has decided against adopting a provision for waiver of the age 21 floor as suggested in the public comments. The considerations discussed above in support of the age 21 floor suggest that provision for waiver would be inappropriate. Moreover, while most of the circumstances for which waiver is suggested involve medical indications and thus are potentially verifiable, they would create problems of compliance. Unlike the conditions for waiver of the 30 day requirement, which depend on very limited facts, the conditions suggested as a basis for waiver of the age 21 floor are essentially open-ended, as they are not limited to any particular disease or set of physical conditions. Thus, applying the conditions for waiver would require individualized judgments by providers and thus would tend to lead to inconsistent applications. Moreover, determining whether such waivers were warranted would require auditors to make medical judgments beyond their expertise.

6. The age 21 floor concededly gives persons over 21 a choice under the federally funded family planning programs which is not available to persons under 21. The reasons for this are discussed above, and in the Department's view, justify this restriction of the latter individuals' "right to self-determination" in the area of family planning. The Department disagrees with the comment that the Federal Government is usurping State authority to regulate the age of consent. This regulation does not affect the right of States to regulate the age of consent to sterilization. What it does is make the age of 21 a condition precedent to the provision of a federally funded sterilization.

D. STERILIZATION OF MENTALLY INCOMPETENT INDIVIDUALS

Text of Proposed Rule

a. *42 CFR 50.205 (Cf., 45 CFR 205.35-5):*

(a) Programs or projects to which this subpart applies shall not perform or arrange for the performance of a sterilization of any person declared mentally incompetent by a State, Federal, or local court, or who is in fact mentally incompetent under Federal or State law.

* * * * *

or

(a) Programs or projects to which this subpart applies shall not perform or arrange for the performance of a sterilization of a mentally incompetent individual, or any individual institutionalized in a correctional, mental, or other facility unless:

(1) The individual has voluntarily given his/her informed consent in accordance with the procedures prescribed in § 50.203;

(2) At least 30 days have elapsed between the date of informed consent and the date of sterilization;

(3) The individual is at least 21 years old;

(4) The sterilization review committee has certified to a court, after a hearing at which counsel representing the patient has presented the evidence for and against such a certification, that all of the requirements for sterilization have been met, that the patient understands the nature and consequences of the proposed sterilization procedure as set forth in § 50.203(a), and that the patient has voluntarily consented to be sterilized; and

(5) The court has found, after a hearing at which counsel for the patient has presented the evidence for and against such a finding, that all of the requirements for sterilization have been met, that the patient understands the nature and consequences of the proposed sterilization procedure as set forth in § 50.203(a), and that the patient has voluntarily consented to be sterilized.

(b) Programs or projects to which this subpart applies shall not perform or arrange for the performance of a sterilization of a mentally incompetent individual who does not understand the nature and consequences of the proposed sterilization procedure as set forth in § 50.203(a).

b. *Related requirements:*

1. *42 CFR 50.202(d) (Cf., 45 CFR 205.35-2(d)):*

(d) "A mentally incompetent individual" means a person who has been declared mentally incompetent by a Federal, State, or local court, or who is in fact mentally incompetent under Federal or State law.

2. 42 CFR 50.203(b)(4)(i), (ii) (Cf., 45 CFR 205.35.3(b)(4)(i), (ii)). For the text of these sections, see sections F and G of the preamble below.

Text of Final Rule

a. *42 CFR 50.206 (Cf., 42 CFR 441.254):*

Programs or projects to which this subpart applies shall not perform or arrange for the performance of a sterilization of any mentally incompetent individual * * *.

b. *Related requirements:*

1. *42 CFR 50.202 (Cf., 42 CFR 441.251):*

"A mentally incompetent individual" means a person who has been declared mentally incompetent by a Federal, State, or local court of competent jurisdiction for any purpose unless he or she has been declared competent for purposes which include the ability to consent to sterilization.

2. 42 CFR 50.205(c)(1), (2) (Cf., 42 CFR 441.258(c)(1), (2)); appendix. For the text of these sections, see sections F and G of the preamble below.

Summary of Public Comment

The proposed rules proposed two alternative approaches to the sterilization of the mentally incompetent. Under the first alternative, the present moratorium on the sterilization of such individuals would be continued. Under the second alternative, mentally incompetent individuals who could give informed consent under the regulations could be sterilized if the requirements applicable to all sterilizations were met and the review committee and judicial review procedures of the proposed rules were followed. The discussion below treats these alternatives separately, along with the other major issue in this area addressed by the public comments: the definition of "Mentally incompetent individual."

1. *Alternative No. 1: No Sterilization of mentally incompetent individuals.* Most of the public comment on this alternative opposed it. The arguments given both for and against adoption of this alternative were generally as follows:

a. The minority favoring adoption of this policy gave the following reasons in support of their position. Some stated that the mentally incompetent by definition cannot give informed consent and thus, to the extent informed consent is statutorily required or represents the most reasonable reading of the legislative intent, sterilization of such individuals should not be provided under the Federal programs. A number of comments also stated that because of the hardship childbearing by a mentally incompetent individual could present for the individual's family or the difficulty or inconvenience of having such an individual use temporary methods of birth control, the family or other guardian or custodian of a mentally incompetent individual could be tempted to consent to sterilization to minimize this burden, irrespective of the "best interests" of the individual; it was felt that permitting federally funded sterilizations of such individuals could lead to abuse in such cases. A few comments noted that some mentally incompetent individuals are "incompetent" only temporarily and may subsequently improve (e.g., persons whose incompetence is based on emotional dysfunction). It was suggested that it would be improper to deprive such people of the ability later to exercise their right to reproduce. Finally, a number of public interest groups supported adoption of this alternative on the ground that the Department has not proved that it is able to police the present safeguards against sterilization abuse effectively. Until it can do so, it should not undertake to enforce compliance with even more complicated safeguards in an area which is as sensitive and susceptible to abuse as is the sterilization of the mentally incompetent.

b. The comments favoring provision of sterilization to mentally incompetent individuals in many cases distinguished between the sterilization of persons who are mentally incompetent under State law but who are nevertheless able to provide informed consent and mentally incompetent persons who are unable to give informed consent, such as the profoundly retarded. While some of the arguments cited in favor of sterilization of the two groups overlap, in general they do not. Accordingly, they are discussed separately below.

i. *Sterilization of mentally incompetent individuals with the mental capacity to give informed consent.* A number of reasons were cited in support of providing federally funded sterilizations to this group. In general, however, the basic concern stated was that such persons should not be deprived of their right not to have children, since by definition they are capable of making an informed decision on the matter. As long as adequate safeguards are provided (and generally the Department's proposed safeguards were considered adequate), it was felt that such individuals should not be deprived of access to sterilization. Moreover, even though such individuals may be able to make an informed decision about sterilization, they may nevertheless be unable—mentally or emotionally—to cope with parenthood. Having children may thus physically, emotionally and financially burden them and their families or, if they are in an institution, burden the staff caring for them and their offspring. Since many such individuals may not be able to use temporary methods of birth control, depriving such individuals of access to sterilization may cause their parents or guardians to institutionalize them in order to ensure that pregnancy is avoided.

ii. *Sterilization of mentally incompetent individuals who lack the mental capacity to give informed consent.* A substantial number of comments also favored provision of sterilization to this group. Among the reasons cited in support of this position were the following: Continued fertility is against their best interests and that of society, since preganancy itself has substantial risks, such persons are by definition unable to rear their offspring, and the children of such persons are subject to severe and unavoidable medical and social risk. Since temporary methods of birth control are, almost by definition, unsuitable for this group, they should have access to sterilization. It was also suggested that parents and guardians of such individuals regularly consent to irreversible medical procedures on their behalf; there is thus no basis for treating sterilization differently. Moreover, since the parents and guardians of such individuals are generally the ones who will have to assume the burdens of any unwanted preganancies, equity dictates that they should exercise the choice as to termination of reproductive capacity.

2. *Alternative No. 2: Provision for the sterilization of certain mentally incompetent individuals.* The policy considerations raised by the public comment in support of sterilizing mentally incompetent individuals who can give an informed consent are set out in paragraph (1)(b)(i) above. The remainder of the public comment on Alternative No. 2 concerned the mechanism proposed for carrying out this proposed policy and focused on: (1) The review committee mechanism; and (2) the provision for court review of the review committee's finding.

a. *Review committee.* (i) A large number of comments, while implicitly or explicitly endorsing the concept of the review committee, questioned its composition as proposed. In general, the comments advocated inclusion of the following types of persons to protect the patient's rights: An attorney for the patient; a person familiar with the patient's medical history; a psychologist; a psychiatrist; a patient advocate. In order to insure that the patient's right not to be sterilized is protected, other comments suggested measures such as requiring that at least one member of the review committee be of the same sex and race or ethnic background as the patient and requiring that no members of the review committee be affiliated with the institution caring for the patient.

(ii) Other comments questioned or suggested alternatives to the specific committee procedures proposed. A few comments expressed the view that the lawyer required by the proposed rules could not ethically present the evidence both for and against sterilization. Several comments stated that the patient should be present at the review committee hearing and a few comments felt that the patient rather than the family or a professional should request committee review. A

few comments felt that the procedures should be spelled out in more detail.

b. *Court review.* A few comments objected to the provision for court review in addition to the review committee procedures as too expensive. Other comments suggested that only court review should be required, on the grounds that determination of competence is traditionally a judicial function. A third point of view was that court review should be required regardless of the outcome of the review committee hearing.

3. *Definition of "mentally incompetent individual."* The public comment on proposed § 50.205 revealed extensive confusion over the term "mentally incompetent individual." Numerous comments indicated uncertainty over whether the definition covered the "mentally retarded", the "mentally impaired", the "mentally handicapped". Several comments noted that the term "mental incompetence" sets a test which is irrelevant, since what is at issue is not mental competence but ability to understand the procedure and its effects. A great number of comments questioned what the proposed test of "incompetence in fact" meant. In this regard, one attorney stated that since the parameters of legal incompetence differ, often radically, from State to State, the term "incompetence in fact" is so vague as to be meaningless. Another attorney suggested that since under many State laws persons are presumed competent until adjudicated incompetent, the term and the application of it mandated by the regulations would require persons such as physicians and social workers to perform a judicial function they have no legal authority to perform. Still other comments objected to the "incompetence in fact" test as essentially unfair, in that it requires the health care provider to make a complex legal judgment, the accuracy of which might only be possible to ascertain after the fact.

Several clarifications of the definition were suggested. One organization recomended changing the definition to cover only persons who have been adjudicated incompetent or are known to be mentally incompetent under applicable law. Other comments suggested deleting all references to persons who are incompetent in fact, and defining as mentally incompetent only those who have been so adjudicated. Other comments suggested that all noninstitutionalized persons who have not been judicially declared incompetent be governed by the same procedures, on the grounds that most of the more serious case of mental incompetence will be covered either by having been declared incompetent or by being institutionalized.

Department's Response

The Department has clarified the definition of "mentally incompetent individual" as suggested by many of the comments and has accepted the view that the Federal programs should not provide sterilizations to persons who are mentally incompetent. These changes and the reasons therefor are set forth in the discussion of the comments below.

1. Alternative No. 1: No sterilization of mentally incompetent individuals. The public comment failed to elicit any persuasive evidence that the present moratorium, which this alternative would essentially continue, has cause significant hardship. It did, however, underscore the difficulty and sensitivity of the medical and legal judgments that would have to be made if the Department were to permit sterilization of mental incompetents as a class. For example, the Department considers that it would be unsound public policy to permit sterilization of persons who are only temporarily incompetent. Yet making a reliable judgment as to the permanence of a person's incompetence may well call for a degree of expertise not generally available to providers. Certainly, policing the administration of such a distinction would appear to be beyond the Department's present capabilities. The Department also agrees with the comments that the difficulty of coping with many mentally incompetent individuals either in or outside an institutional setting might result in abuse if sterilization were permitted. Thus, it feels that alternative No. 1 represents the sounder policy.

Moreover, while the Department may well have the legal authority to permit the sterilization of incompetents, it is now of the view that exercising it is a policy change so fundamental as to call for clear congressional endorsement. To date, the available evidence suggests that Congress agrees with the present policy of prohibiting federally funded sterilizations to mental incompetents. See, for example, the approval of the Department's present requirement of informed consent in the legislative history of Pub. L. 94-63. S. Rep. No. 94-29 at 57-58; H. Rep. No. 94-192 at 31.

The Department's response to the public comments opposing this alternative is as follows:

a. *Sterilization of mentally incompetent individuals with the mental capacity to give informed consent.* Where a person has the mental (but not legal) capacity to give informed consent and absent a potentially coercive institutional setting, whether to treat him or her differently than other people becomes a troublesome question. However, since mental competence is essentially a legal concept, the Department does not feel that either it or health care providers can second-guess a judicial finding of incompetence. In this regard, it should be noted that such a person could obtain readjudication of his or her competency. The Department has hence changed the rules to provide that if a person has been adjudicated incompetent for any purpose he or she may not be sterilized under the Federal programs unless he or she is adjudicated competent for purposes which include the ability to consent to sterilization.

b. *Sterilization of mentally incompetent individuals who lack the mental capacity to give informed consent.* The Department is sympathetic to the reasons advanced by those advocating provision of sterilization to such individuals. Nevertheless, it has not accepted their comments. Its reasons are set out in paragraph 1 of this section above. In addition, it is felt that until an effective enforcement program has been established, the potential for sterilization abuse is too great.

2. *Alternative No. 2: Provision for sterilization of certain mentally incompetent individuals.* As stated in paragraph 1a of this section above, the Department has revised the definition to make clear that certain "mentally incompetent" individuals may obtain sterilizations under the Federal programs. However, the rule limits this access to those mental incompetents who have been readjudicated competent for the purposes which include the ability to consent to sterilization. The Department has concluded that the review committee/court review provision of the proposed rules are unnecessary for such individuals and accordingly has eliminated them. The bases for this conclusion are two-fold: (1) Such persons are by definition competent for purposes of consenting to the service in question; and (2) the potential for coercion of such individuals who are institutionalized is eliminated by the prohibition on sterilization of institutionalized individuals (see section E below).

As is also stated above, the Department has chosen alternative No. 1 with respect to all other mentally incompetent individuals. This choice makes irrelevant the provisions for review committee approval and court review of alternative No. 2. Hence, the public comment on those provisions will not be discussed.

3. *Definition of "mentally incompetent individual."* As stated above in paragraph 1 of this section, the proposed definition of mentally incompetent individual has been modified to clarify that the term covers individuals who have been adjudicated incompetent for any purpose unless they are specifically adjudicated competent

for purposes which include the ability to consent to sterilization. In accordance with the suggestion of many of the comments received on the proposed definition, all references to "incompetence in fact" have been deleted. It is recognized that the definition thus does not cover persons who are in fact incompetent under applicable law to consent to sterilization but who have not been so adjudicated. Nevertheless, the Department is persuaded by the public comment that the proposed test of "incompetence in fact" would indeed prove to be unworkable, and require of providers judgments that they are legally and professionally unable to make. Moreover, the Department feels that the prohibition on the provision of sterilization to institutionalized individuals, together with the requirement that the physician and person obtaining the consent certify that the individual to be sterilized appears to be mentally competent, will insure that most such individuals do not get sterilized.

E. STERILIZATION OF INSTITUTIONALIZED INDIVIDUALS

Text of Proposed Rule

a. *42 CFR 50.205(b) (Cf., 45 CFR 205.35-5):*

(b) Programs or projects to which this subpart applies shall not perform or arrange for the performance of a sterilization of any individual institutionalized in a correctional, mental or other facility unless:

(1) The individual has voluntarily given his/her informed consent in accordance with the procedures prescribed in § 50.203;

(2) At least 30 days have elapsed between the date of informed consent and the date of the sterilization;

(3) The individual is at least 21 years old;

(4) The sterilization review committee has certified to a court, after a hearing at which counsel representing the patient has presented the evidence for and against such a certification, that all of the requirements for sterilization have been met, that the patient understands the nature and consequences of the proposed sterilization procedure as set forth in § 50.203(a), and that the patient has voluntarily consented to be sterilized; and

(5) The Court has found, after a hearing at which counsel for the patient has presented the evidence for and against such a finding, that all of the requirements for sterilization have been met, that the patient understands the nature and consequences of the proposed sterilization procedure, as set forth in § 50.203(a), and that the patient has voluntarily consented to be sterilized.

(b) *Related requirements:* 42 CFR 50.209(b), (c) (Cf., 45 CFR 205.35-9(b), (c)). For text of these sections, see section I of the preamble below.

Text of Final Rule

(a) *42 CFR 50.206 (Cf., 42 CFR 441.254):*

Programs or projects to which this subpart applies shall not perform or arrange for the performance of a sterilization of any * * * institutionalized individual.

(b) *Related requirement: 42 CFR 50.202 (Cf., 42 CFR 441.251):*

"Institutionalized individual" means a person who is (1) involuntarily confined or detained, under a civil or criminal statute, in a correctional, or rehabilitative facility including a mental hospital or other facility for the care and treatment of mental illness, or (2) confined, under a voluntary commitment, in a mental hospital or other facility for the care and treatment of mental illness.

Summary of Public Comment

1. Relatively few of the public comments addressed the issue of provision of sterilization to institutionalized individuals. Of those that did, most took the position that sterilization should not be provided to such individuals because of the "inherently coercive" nature of institutions. Several comments pointed out that the control institutions exert over those institutionalized in them would lead to abuse. For example, consenting to sterilization could be manipulated by the conferring of rewards (such as furloughs, less demanding work assignments) or punishments (such as more demanding work assignments, denial of exercise privileges). Several comments also pointed out that since programs for conjugal visits or similar programs are relatively rare in institutions, there is little need to provide access to the procedures. One comment suggested that provision of sterilization to prisoners is particularly inappropriate since their imprisonment itself may cause family changes that may make them wish to reverse the decision when they are released.

2. A number of comments supported the proposed policy of providing sterilization to institutionalized individuals, but suggested other or additional safeguards. Several comments suggested that another patient from the same institution, patient's attorney, or patient advocate should participate in the review committee and court procedures. A couple of comments suggested that institutions be prohibited from promising rewards (such as early release from prison) or punishment as an incentive for sterilization and advocated modifying the consent form to reflect such a requirement. Other safeguards proposed were increasing the waiting period to 90 days, providing strict monitoring, requiring the procedure to be performed in a civilian hospital.

3. A few comments expressed confusion over the meaning of the term "institutionalized individuals" and suggested definition of the term. Other comments assumed the term applied only to certain subgroups of the universe of persons in institutions, such as persons incarcerated in correctional facilities. Several comments suggested that, if it is decided to provide sterilization to institutionalized individuals, the safeguards should differ depending on the type of institution involved.

Department's Response

1. The Department is persuaded by the comments opposing provision of sterilization to institutionalized individuals for the reasons described above. In this regard, the Department notes that due to the separation of sexes characteristic of prisons, there is little need for the service among that population. Other institutions are generally dedicated to the care of the mentally incompetent or minors, classes of persons to whom the Department has decided that federally funded sterilizations should not be provided, for the reasons set out above. As for any institutions that do not fall within these three groups (as well as for these three types of institutions), the potential for abuse inherent in institutions pointed out by the public comments likewise favors prohibiting Federal funding of the sterilization of persons confined in them. Consequently, the rules have been revised to prohibit the federally funded sterilization of all institutionalized individuals. This decision makes unnecessary the safeguards of the proposed rules or the other safeguards suggested by the public comment. Accordingly, they are not discussed.

2. The Department agrees with the comments pointing out the need to define "institutionalized individuals" and accordingly has added the definition set out in § 50.202. The intent of the definition is to cover institutions which, because of the legal nature of the confinement or the mental disability of the person confined, constitute a potentially coercive environment. It would thus cover all institutions where persons are confined as a result of a court order including facilities such as reform schools or "halfway houses", where the confinement, while perhaps not as restricted as prison, is involuntary. It also covers all mental institutions and facilities such as halfway houses regardless of whether the person has been civilly committed or voluntarily signed him or herself in as a patient. The definition does not cover health care institutions, such as acute care hospitals, which are not primarily residential and which provide medical services.

F. INFORMED CONSENT PROCEDURES

Text of Proposed Rule

1. *42 CFR 50.203 (Cf., 45 CFR 205.35-3)):*

Informed consent does not exist unless a consent form is completed voluntarily and in accordance with all the requirements of this paragraph.

(a) *Preparing to obtain informed consent.* An individual who obtains informed consent for a sterilization procedure must provide orally all of the following information or advice to the individual who is to be sterilized.

(1) Advice that the individual is free to withhold or withdraw his/her consent to the procedure at any time prior to the sterilization without affecting his/her right to future care or treatment, and without loss or withdrawal of any federally funded programs benefits to which the individual might be otherwise entitled;

(2) A description of available alternative methods of family planning and birth control;

(3) A full description of the benefits or advantages he/she may expect to gain as a result of the sterilization;

(4) Advice that the sterilization procedure is considered to be irreversible;

(5) A thorough explanation of the specific sterilization procedure to be performed;

(6) A full description of the discomforts and risks which may accompany and follow the performing of the procedure, including an explanation of the type and possible effects of any anesthetic to be used;

(7) Advice that the sterilization will not be performed for at least 30 days; and

(8) An opportunity to ask and have answered any questions he/she may have concerning the sterilization procedure.

(b) *Filling out the consent form.* (1) *Language of the consent form.* The consent form should be in the primary language of the patient. If the consent form is not in the primary language of the patient, an interpreter must be made available to assist the individual.

(2) *Provisions for the handicapped.* Suitable arrangement must be made to ensure that consent information is effectively communicated to blind, deaf and other handicapped patients.

(3) *Signatures on the consent form.* The consent form must be signed and dated by:

(i) The patient; and

(ii) The interpreter, if one is provided; and

(iii) The individual who obtains the consent of the patient; and

(iv) The physician who will perform the sterilization procedure.

(4) *Required certification.* (i) The person securing the patient's consent must certify by signing the consent form that, before the patient signed the consent form he/she advised the patient that no Federal benefits may be withdrawn because of the patient's decision not to be sterilized, that he/she explained orally the requirements for informed consent as set forth on the consent form, and that the patient, to the best of his/her knowledge and belief, appeared mentally competent and knowingly and voluntarily consented to be sterilized.

(ii) The physician performing the sterilization must certify by signing the consent form, that immediately prior to the performance of the sterilization, he/she advised the patient that no Federal benefits may be withdrawn because of the patient's decision not to be sterilized, that he/she explained orally the requirements for informed consent as set forth on the consent form, and that the patient, to the best of his/her knowledge and belief appeared mentally competent and knowingly and voluntarily consented to be sterilized. The physician will further certify that, to the best of his/her knowledge and belief, at least 30 days have passed between the date upon which the patient signed the consent form, and the date upon which the sterilization was performed.

(iii) The physician performing the sterilization must, in cases where court orders are required by this section, certify, by signing the consent form, and he/she was provided with a copy of the court order prior to the performance of the sterilization.

(c) *Following State and local procedures.* In addition to the consent procedures required by this part, any requirement of State and local law, except one of spousal consent, must be followed.

2. *Related requirements:* a. *42 CFR 50.202(b) (Cf., 45 CFR 205.35-2(b)):*

"Informed consent" to a sterilization procedure means a written authorization to be sterilized given by the person to be sterilized and given voluntarily and with an understanding of the nature and consequences of the procedure to be performed.

b. *42 CFR 50.204 (Cf., 45 CFR 205.35-4):*

Programs or projects to which this subpart applies shall perform or arrange for the performance of sterilization of a mentally competent individual only when the following requirements have been met:

(a) The individual has voluntarily given his/her informed consent in accordance with all the procedures prescribed in section 50.203.

Text of final rule

1. *42 CFR 50.204-50.205 (Cf., 42 CFR 441.257-441.258):*

§ 50.204 *Informed consent requirement.*

Informed consent does not exist unless a consent form is completed voluntarily and in accordance with all the requirements of this section and § 50.205 of this subpart.

(a) An individual who obtains informed consent for a sterilization procedure must offer to answer any questions the individual to be sterilized may have concerning the procedures, provide a copy of the consent form and provide orally all of the following information or advice to the individual who is to be sterilized:

(1) Advice that the individual is free to withhold or withdraw consent to the procedure at any time before the sterilization without affecting his or her right to future care or treatment, and without loss or withdrawal of any federally funded program benefits to which the individual might be otherwise entitled;

(2) A description of available alternative methods of family planning and birth control;

(3) Advice that the sterlization procedure is considered to be irreversible;

(4) A thorough explanation of the specific sterilization procedure to be performed;

(5) A full description of the discomforts and risks that may accompany and follow the performing of the procedure, including an explanation of the type and possible effects of any anesthetic to be used;

(6) A full description of the benefits or advantages that may be expected as a result of the sterilization; and

(7) Advice that the sterilization will not be performed for at least 30 days except under the circumstances specified in § 50.203(d) of this subpart.

(b) An interpreter must be provided to assist the individual to be sterilized if he or she does not understand the language used on the consent form or the language used by the person obtaining consent.

(c) Suitable arrangements must be made to insure that the information specified in paragraph (a) of this section is effectively communicated to individuals to be sterilized who are blind, deaf or otherwise handicapped.

(d) A witness chosen by the individual to be sterilized may be present when consent is obtained.

(e) Informed consent may not be obtained while the individual to be sterilized is:

(i) In labor or childbirth;

(ii) Seeking to obtain or obtaining an abortion; or

(iii) Under the influence of alcohol or other substances that affect the individual's state of awareness.

(f) Any requirement of State and local law for obtaining consent, except one of spousal consent, must be followed.

§ 50.205 *Consent form requirements.*

(a) *Required consent form.* The consent form appended to this subpart or another consent form approved by the Secretary must be used.

(b) *Signature on the consent form.* The consent form must be signed and dated by:

(1) The individual to be sterilized; and

(2) The interpreter, if one is provided; and

(3) The individual who obtains the consent; and

(4) The physician who will perform the sterilization procedure.

(c) *Required certifications.* (1) The person securing the consent must certify by signing the consent form that: (i) before the individual to be sterilized signed the consent form, he or she advised the individual to be sterilized that no Federal benefits may be withdrawn because of the decision not to be sterilized, (ii) he or she explained orally the requirements for informed consent as set forth on the consent form, and (iii) to the best of his or her knowledge and belief, the individual to be sterilized appeared mentally competent and knowingly and voluntarily consented to be sterilized.

(2) The physician performing the sterilization must certify by signing the consent form that: (i) shortly before the performance of the sterilization, he or she advised the individual to be sterilized that no Federal benefits may be withdrawn because of the decision not to be sterilized, (ii) he or she explained orally the requirements for informed consent as set forth on the consent form, and (iii) to the best of his or her knowledge and belief, the individual to be sterilized appeared mentally competent and knowingly and voluntarily consented to be sterilized. Except in the case of premature delivery or emergency abdominal surgery, the physician must further certify that at least 30 days have passed between the date of the individual's signature on the consent form, and the date upon which the sterilization was performed. If premature delivery occurs or emergency abdominal surgery is required within the 30-day period, the physician must certify that the sterilization was performed less than 30 days but not less than 72 hours after the date of the individual's signature on the consent form because

of premature delivery or emergency abdominal surgery, as applicable. In the case of premature delivery, the physician must also state the expected date of delivery. In the case of emergency abdominal surgery, the physician must describe the emergency.

(3) If an interpreter is provided, the interpreter must certify that he or she translated the information and advice presented orally to the individual to be sterilized, read the consent form and explained its contents, and, to the best of the interpreter's knowledge and belief, the individual to be sterilized understood what the interpreter told him or her.

2. *Related requirement: 42 CFR 50.203 (Cf., 42 CFR 441.253):*

Programs or projects to which this subpart applies shall perform or arrange for the performance of sterilization of a mentally competent individual only when the following requirements have been met:

(c) The individual has voluntarily given his or her informed consent in accordance with all the procedures of § 50.204 of this subpart.

(d) At least 30 days but no more than 180 days have passed between the date of informed consent and the date of the sterilization * * *.

Summary of Public Comment

Between the hearings and written comments, several hundred comments addressed the consent procedures of the proposed rules. While the comments generally supported the thrust of the proposed procedures, they also suggested a number of modifications. The major criticisms and suggestions of the public comment are summarized below.

1. There was widespread opposition to permitting consent to be obtained in situations where the individual is under stress or for some reason incapable of exercising judgment. Of particular concern was obtaining consent during labor, childbirth, or abortion. Generally, the comments addressing this issue proposed banning obtaining consent in such circumstances.

2. Several approaches were suggested to insure that consent to the procedure is informed and voluntary. A number of comments suggested revision of the consent procedures to provide for expiration of the consent within a certain period (e.g., 120 days, 180 days). Among the grounds given were that persons' circumstances may change significantly over a long period of time and cause a revision of their desires, or that passage of time may cause people to forget information relevant to the procedure. Another alternative suggested was to have the individual to be sterilized initially sign a declaration of intent and then sign the consent immediately prior to surgery. A similar approach proposed was to require the individual to sign the consent a second time prior to surgery.

3. Many comments took the position that the regulations should require more counseling or the provision of different or additional information. The following were suggested:

a. A number of comments advocated requiring that the individual undergo one or more counseling sessions prior to the procedure to insure that he or she makes an informed choice. Many of these comments also suggested additional requirements relating to the counselors. For example, it was suggested that the counselors should be of the same sex or ethnic background of the patient, that they should be specially trained nonphysician staff, that they should speak the patient's language where the patient does not speak English.

b. Several comments advocated requiring provision of the consent form or a pamphlet detailing the information required under proposed § 50.203, so that the individual to be sterilized could consider the information during the 30-day period. Others advocated requiring showing of a film setting forth the required information, particularly for persons with literacy problems. One comment suggested that grantees and State Agencies be required to mount public information campaigns to familiarize the patient population with the elements of informed consent.

c. While most comments agreed that individuals to be sterilized should be told that the procedure is irreversible, several suggested that they should also be informed of the failure rates associated with the various procedures since they are relevant risks. Others advocated a prohibition on the use of the potentially misleading phrase "tying the tubes." Several testifiers urged expansion of the discomforts and risks required to be conveyed, e.g., explanation of the infant mortality rate (so that persons considering sterilization while pregnant do not automatically assume that the infant will survive), the increased risk of ectopic pregnancies attendant on certain procedures, the mortality rates associated with the various procedures. Several comments advocated requiring the project or provider obtaining the consent to offer alternative birth control measures during the waiting period.

4. Several comments stated that the rules should emphasize that the individual to be sterilized has the right to have a witness of his or her choice present when consent is obtained.

5. Several providers objected to the requirement that physicians certify as to the patient's appearance of competency as calling for a legal judgment or one generally beyond their expertise.

6. A great number of comments stated that the proposed consent procedures would be ineffective unless closely monitored and enforced. Several of these suggested specific programs. A couple suggested the establishment of federally financed review boards to interview patients and review cases on a regular basis. One comment suggested requiring monitoring by citizen committees.

7. The main opposition to the proposed procedures was twofold. First, a number of providers objected to the expense involved, particularly where the Federal procedures duplicate procedures to be followed by the providers because of other requirements. Second, a number of physicians opposed the procedures in general on the ground that they constitute an undue intrusion into the physician-patient relationship.

Department's Response

The Department has accepted a number of the public comments, generally for the reasons stated above. Specifically, it is persuaded by the numerous objections to permitting consents obtained in stressful situations or situations of clearly impaired judgment. While in the Department's view such a limitation was implicit in the proposed rules, it has been made explicit here. See § 50.204(e) (Cf., 42 CFR 441.257(b)). The requirement for an interpreter has been clarified: if the person obtaining the consent does not speak a language the patient understands, an interpreter is to be made available to translate the explanation of the procedure and its consequences. See § 50.204(b) (Cf., 42 CFR 441.257(a)(3)). It also agrees with the suggestion that the duration of the consent should be limited; an expiration date of 180 days from the signature of the consent has thus been added. See § 50.203(d) (Cf., 42 CFR 441.253(d)). The Department also agrees that the right of the individual to be sterilized to have a witness present when consent is obtained when he or she chooses, although arguably implicit in the proposed rules, is sufficiently important to justify explicit mention. Such a provision has hence been added. See § 50.204(d) (Cf., 42 CFR 441.257(a)(4)). The Department has accepted the suggestion that it require that the individual to be sterilized be given a copy of the consent form for consideration during the waiting period. See § 50.204(a) (Cf., 42 CFR 441.257(a)(1)). Finally, the certification requirement has been revised to delete the physician certification provisions made irrelevant by the elimination of the review committee/court review process, and to add the interpreter certification requirement already present in the proposed consent form. See § 50.205(c) (2), (3) (Cf., 42 CFR 441.258(c) (2), (3)).

The Department has rejected the remainder of the public comment on this issue, for the following reasons:

1. The suggestions for a two-tier signature process, discussed in paragraph 2 of the preceding section, have not been accepted. It is felt that such a requirement would complicate the consent process unduly, in view of the other patient protections built into the process. In particular, the new requirement that the individual to be sterilized be provided a copy of the consent form to keep during the waiting period will, since the consent form itself clearly states that consent may be withdrawn at any time, serve substantially the same purpose of making clear to the individual that he or she may withdraw consent prior to performance of the sterilization.

2. The comments suggesting expansion of the consent process to include additional counseling (through individual sessions, films, etc.) have been rejected as administratively infeasible, particularly in a program the size of medicaid. Admittedly, inclusion of such additional procedures is desirable, and is encouraged where feasible. Nevertheless, the Department is of the view that the consent procedures of the final rules, if followed, should insure that sufficient information is provided for individuals to make an informed decision, without excessively encumbering the delivery of services in terms of time or expense.

3. The comments advocating requiring presentation of specific information (such as infant mortality rates) have not been accepted, since medical judgment may differ as to what constitutes relevant risk, and the amount of risk, discomfort and so on may also differ for different individuals. The Department feels that such judgments are most appropriately left to those professionals who deal with the individual during the consent process. Accordingly, it is not mandating the provision of particular facts (such as infant mortality rates, failure rates, rate of ectopic pregnancy with certain procedures), although the procedures themselves require that all areas relevant to the decision (benefits, risks and so on) be discussed. Hence, many of the particular facts that comments suggested be required will generally be conveyed in the discussion of discomforts and risks. Requiring that a specific pamphlet be used would be analogous, so this suggestion has likewise been rejected. However, while the Department is not inclined to mandate use of an informational pamphlet, it is strongly of the view that provision of a pamphlet is an efficient and effective means of reinforcing the information required to be given orally. It also gives the individual to be sterilized information to consider during the waiting period. Consequently, it has developed pamphlets setting out the general information required under § 50.204(a) for male and female surgical sterilizations. The Department plans to make these pamphlets generally available for use by providers and encourages their use. These pamphlets are published following the rules below.

4. The requirement that the attending physician certify that, to the best of his knowledge and belief the patient appeared competent has been retained despite the objections raised. Since the physician is only certifying to the extent of his knowledge and belief, the requirement does not impose a duty on him that is beyond his expertise. It does, however, help insure that the physician will take pains to satisfy him or herself that the individual to be sterilized is competent, and thus may help avoid abuse.

5. The Department agrees that compliance with the consent procedures should be carefully monitored and enforced. While not all the suggestions made in this regard are administratively feasible, the Department intends to seek compliance with its requirements by providers. For a full statement of its plans in this regard, see the discussion under section I of the preamble below.

6. The Department disagrees with the comments that the consent procedures impose an undue administrative or financial burden on providers. It should be noted that the consent procedures of these rules build upon the procedures of the present rules. As noted in section I C above, experience with the present rules has not shown that their consent requirements impede the delivery of sterilizations. Thus, the Department is not inclined to believe that these procedures will be unduly burdensome, when considered in light of the need to insure informed consent.

7. The Department likewise does not believe that the consent procedures of these rules intrude unduly into the physician-patient relationship. As noted above, the Department is not prescribing what specific facts must be conveyed to patient; rather, it is prescribing only the general kinds of information to be communicated, leaving the selection of which facts are relevant to the particular patient's situation up to the physician. Moreover, the Department believes that the consent procedures of these rules accord with sound medical practice and, indeed, several of the comments took this position. Even assuming for the purpose of argument that these procedures do intrude to a limited extent into the physician-patient relationship, however, the Department notes that such an intrusion is apparently approved of by Congress, as evidenced by the legislative history cited in section III D above.

G. INFORMED CONSENT FORM

Text of Proposed Rule

1. *Appendix.*

NOTICES: Your decision at any time not to be sterilized will not result in the withdrawal or withholding of any benefits provided by programs or projects receiving, Federal funds.

CONSENT TO STERILIZATION

I have asked for and received information about sterilization from ———— (doctor or clinic).

When I first asked for the information, I was told that the decision to be sterilized is completely up to me. I was told that I could decide not to be sterilized. If I decide not to be sterilized, my decision will not affect my right to future care or treatment and I will not lose any help or benefits from programs receiving Federal funds such as A.F.D.C. or medicaid that I am now getting or for which I may become eligible.

I understand that the sterilization must be considered permanent and not reversible. I have decided that I do not want to become pregnant, bear children or father children.

I was told about those temporary methods of birth control that are available and could be provided to me which will allow me to bear or father a child in the future. I have rejected these alternatives and freely chosen to be sterilized.

I understand that I will be sterilized by an operation known as a ————. The discomforts, risks, and benefits associated with the operation have been explained to me. All my questions have been answered to my satisfaction.

I understand that the operation will not be done until at least 30 days after I sign this form. I understand that I can change my mind at any time and that my decision at any time not to be sterilized will not result in the withholding of any benefits or medical services provided by Federally funded programs.

I am —— years old. I was born on — (day), ———— (month), —— (year).

I, ———— , hereby consent of my own free will to be sterilized by ———— by a method called ————.

I also consent to the release of this form and other medical records about the operation to:

Representatives of the Department of Health, Education, and Welfare or

Employees of programs or projects funded by that Department but only for purposes of research or for determining if Federal laws were observed.

You are requested to supply the following information, but it is not required:

Race and ethnicity designation (please check).

Black (not of Hispanic origin) ————
Hispanic ————
Asian or Pacific Islander ————
American Indian or Alaskan Native ————
White (not of Hispanic origin) ————

Patient's signature ————
Date: ————
(Month, day, year)

Where the consent form is not in the primary language of the patient:

I have read the consent form to ———— in ———— language and explained its contents to him/her. To the best of my knowledge and belief he/she understood this explanation.

Interpreter ————————————
Date ————————————

Before ———— (name of individual) signed this consent form, I explained to him-her the nature of the sterilization operation ————, the fact that it is intended to be a final and irreversible procedure and the discomforts, risks, and benefits associated with it.

I counseled the patient that alternative methods of birth control are available which are temporary. I explained that sterilization is different because it is permanent.

I informed the patient that his/her consent can be withdrawn at any time and that he/she will not lose any health services or any benefits provided by Federal funds.

To the best of my knowledge and belief that patient is at least 21 years old and appears mentally competent. He/she knowning and voluntarily requested to be sterilized and appears to understand the nature and consequence of the procedure.

Signature of person obtaining consent ——
Date ————————————
Facility ————————————
Address ————————————

PHYSICIAN'S STATEMENT

Immediately before I performed a sterilization operation upon ———— (name of patient) I explained to him/her the sterilization operation ————, the fact that it is intended to be a final and irreversible procedure and the discomforts, risks and benefits associated with it.

I counseled the patient that alternative methods of birth control are available which are temporary. I explained that sterilization is different because it is permanent.

I informed the patient that his/her consent can be withdrawn at any time and that he/she will not lose any health services or benefits provided by Federal Funds.

To the best of my knowledge and belief at least thirty days have passed since the patient consented to the sterilization.

To the best of my knowledge and belief the patient is at least 21 years old and appears mentally competent. He/She knowingly and voluntarily requested to be sterilized and appeared to understand the nature and consequences of the procedure.

Physician ————————————
Date ————————————

Alternative final paragraph for use where court order is required:

To the best of my knowledge and belief the patient is at least 21 years old. He/She knowingly and voluntarily requested to be sterilized and appears to understand the nature and consequences of the procedure. I have been provided with a copy of the attached court order.

Physician ————————————
Date ————————————

2. *Related requirements:*

a. *42 CFR 50.203(b) (Cf., 45 CFR 205.35-3(b)): For text of this section see section E of the preamble above.*

b. *43 CFR 50.209(a) (Cf., 45 CFR 205.35-9(a)):*

Federal financial assistance administered by the Public Health Service may not be used for expenditures for sterilization procedures unless the consent form appended to this section or another form approved by the Secretary is used for purposes of this section.

Text of Final Rule

1. *Appendix:*

NOTICE: YOUR DECISION AT ANY TIME NOT TO BE STERILIZED WILL NOT RESULT IN THE WITHDRAWAL OR WITHHOLDING OF ANY BENEFITS PROVIDED BY PROGRAMS OR PROJECTS RECEIVING FEDERAL FUNDS.

CONSENT TO STERILIZATION

I have asked for and received information about sterilization from ———— (doctor or clinic).

When I first asked for the information, I was told that the decision to be sterilized is completely up to me. I was told that I could decide not to be sterilized. If I decide not to be sterilized, my decision will not affect my right to future care or treatment and I will not lose any help or benefits from programs receiving Federal funds, such as A.F.D.C. or medicaid, that I am now getting or for which I may become eligible.

I UNDERSTAND THAT THE STERILIZATION MUST BE CONSIDERED PERMANENT AND NOT REVERSIBLE. I HAVE DECIDED THAT I DO NOT WANT TO BECOME PREGNANT, BEAR CHILDREN OR FATHER CHILDREN.

I was told about those temporary methods of birth control that are available and could be provided to me which will allow me to bear or father a child in the future. I have rejected these alternatives and chosen to be sterilized.

I understand that I will be sterilized by an operation known as a ————. The discomforts, risks and benefits associated with the operation have been explained to me. All my questions have been answered to my satisfaction.

I understand that the operation will not be done until at least thirty days after I sign this form. I understand that I can change my mind at any time and that my decision at any time not to be sterilized will not result in the withholding of any benefits or medical services provided by Federally funded programs.

I am over 21 years of age and was born on —(day) ———— (month) ———— (year).

I, ————, hereby consent of my own free will to be sterilized by ———— by a method called ————. My consent expires 180 days from the date of my signature below.

I also consent to the release of this form and other medical records about the operation to:

Representatives of the Department of Health, Education, and Welfare or

Employees of programs or projects funded by that Department but only for determining if Federal laws were observed.

I have received a copy of this form.

Signature ————————————
Date:————————————
(Month, day, year)

You are requested to supply the following information, but it is not required:

Race and ethnicity designation (please check)
Black (not of Hispanic origin) ————
Hispanic ————————————
Asian or Pacific Islander ————
American Indian or Alaskan Native ———
White (not of Hispanic origin) ————

INTERPRETER'S STATEMENT

If an interpreter is provided to assist the individual to be sterilized:

I have translated the information and advice presented orally to the individual to be sterilized by the individual obtaining this consent. I have also read the consent form to ———— in ———— language and explained its contents to him/her. To the best of knowledge and belief he/she understood this explanation.

Interpreter ————————————
Date ————————————

STATEMENT OF PERSON OBTAINING CONSENT

Before ———— (name of individual) signed this consent form, I explained to him/her the nature of the sterilization operation ————, the fact that it is intended to be a final and irreversible procedure and the discomforts, risks and benefits associated with it.

I counseled the individual to be sterilized that alternative methods of birth control are available which are temporary. I explained that sterilization is different because it is permanent.

I informed the individual to be sterilized that his/her consent can be withdrawn at any time and that he/she will not lose any health services or any benefits provided by Federal funds.

To the best of my knowledge and belief the individual to be sterilized is at least 21 years old and appears mentally competent. He/She knowingly and voluntarily requested to be sterilized and appears to understand the nature and consequence of the procedure.

Signature of person obtaining consent ——
Date ————————————
Facility ————————————
Address ————————————

PHYSICIAN'S STATEMENT

Shortly before I performed a sterilization operation upon ———— (name of individual to be sterilized), on ———— (date of sterilization operation). I explained to him/her the nature of the sterilization operation ———— (specify type of operation), the fact that it is intended to be a final and irreversible procedure and the discomforts, risks and benefits associated with it.

I counseled the individual to be sterilized that alternative methods of birth control are available which are temporary. I explained that sterilization is different because it is permanent.

I informed the individual to be sterilized that his/her consent can be withdrawn at any time and that he/she will not lose any health services or benefits provided by Federal funds.

To the best of my knowledge and belief the individual to be sterilized is at least 21 years old and appears mentally competent. He/she knowingly and voluntarily requested to be sterilized and appeared to understand the nature and consequences of the procedure.

(Instructions for use of alternative final paragraphs: Use the first paragraph below except in the case of premature delivery or emergency abdominal surgery where the sterilization is performed less than 30 days after the date of the individual's signature on the consent form. In those cases, the second paragraph below must be used. Cross out the paragraph which is not used.)

(1) To the best of my knowledge and belief at least 30 days have passed between the date of the individual's signature on this consent form and the date the sterilization was performed.

(2) This sterilization was performed less than 30 days but more than 72 hours after the patient consented to the sterilization because of the following circumstances (check applicable box and fill in information requested):

———— Premature delivery
Individual's date of expected delivery:

———— Emergency abdominal surgery (describe circumstances):

Physician ————————
Date ————————

2. *Related requirements:*

a. *42 CFR 50.205 (Cf., 42 CFR 441.258)*: For text of this section, see Section F of the preamble above.

b. *42 CFR 50.209(a) (Cf., 42 CFR 257(a)(5))*:

Federal financial assistance administered by the Public Health Service may not be used for expenditures for sterilization procedures unless the consent form appended to this section or another form approved by the Secretary is used.

Summary of Public Comment

Approximately 100 comments addressed various aspects of the consent form required under the proposed rules. In general, the following modifications were suggested:

1. Many responses dealt with the proposed requirement that the consent form be in the "primary language" of the individual to be sterilized or, if it is not, that a translator be provided. While some comments agreed with the rule as proposed, a number of others pointed out problems with it. Several respondents noted that this requirement would create problems in the case of Indians because of the numerous Indian languages and because many Indians neither read nor write their native language. It was also pointed out that in the case of patients from an ethnic group of small numbers in an area, securing the services of a translator may be difficult. It was argued that where such individuals also understand English, it makes little sense to require the form to be translated. Another comment noted that where a patient understands English as well as his or her native language, it can be difficult to determine which is his or her "primary language." It was suggested that the Department change the requirement to the patient's "preferred language," a language the patient "fully understands," or a language the patient "can reasonably be expected to understand."

2. A few comments disagreed with the proposed rule's approach of requiring the use of the consent form in the appendix. A couple of these stated that each health care facility should design its own consent form in compliance with Federal standards in order to allow for local needs. Another comment opposed the required consent form on the ground that it would supplant form that had been worked out to withstand court challenge. A group representing gynecologists opposed the form on the ground that the form for sterilization should not be different than that for other surgical procedures. A couple of comments, however, took the position that the Secretary should permit use of only the consent form in the appendix.

3. A number of comments took the position that the consent form itself should set out certain kinds of information. Several comments stated that the consent form should contain all of the elements of informed consent. Other comments urged inclusion of specific items of information, such as information relating to failure rates associated with the various procedures, discomforts and risks associated with the various procedures, and other methods of birth control.

4. A number of comments took issue with the provision in the consent form permitting its release for research purposes, mainly on the ground that it could lead to breaches of confidentiality. A number of these simply opposed release per se, while the remainder took the position that release of the form for research purposes without the patient's name would be acceptable. A few comments urged that the regulations provide penalties for breach of confidentiality, require that patients' names be deleted from the forms after passage of a certain period of time, and that information relating to sterilization be exempt from release under the Freedom of Information Act.

5. The certification provisions of the proposed rules generated much comment. Several dozen comments urged that the requirement for initial certification from the person obtaining the consent be clarified to provide that the individual may not be a physician. In general, these comments took the position that physicians frequently lack the time or ability to provide a full explanation, often intimidate patients so that the patients may not seek clarification of points that confuse them, and often present patients with only one choice when there may in fact be more than one. Other comments urged that the regulations require that the person obtaining the consent be a trained professional (although not a physician) to insure that an adequate explanation is presented. A number of providers expressed concern that the requirement for physician certification would cause unnecessary paperwork and expense. One physician recommended that the physician certification be modified to state that the physician performing the procedure had not recommended the procedure and had not solicited the consent. A number of comments evidenced confusion with the requirement, assuming that the physician signing the certification had to be "the physician obtaining the consent." One comment stated that physician certification would be inappropriate where the counseling was done by a separate agency, apparently on the ground that the provision would require the physician to certify to facts he could not attest to. Other comments questioned whether the "physician performing the sterilization" could be a resident or intern.

6. A number of comments agreed with the proposed rule's provision making spousal consent, if required by State law, inapplicable for purposes of the Federal programs. Other comments expressed confusion on the subject, and a few opposed it on the grounds that it would interfere with family life. One Indian group felt that a spousal consent requirement should be imposed for Indians in view of the importance of family in Indian life.

7. A few comments addressed the problem of how the consent form should be signed by the illiterate or physically handicapped. They recommended stipulating that the consent form be signed or marked in a manner acceptable at law for one unable to sign.

8. Several comments expressed concern over requiring the consent form to comply with State and local law on the ground that it invites those governments to impose additional restrictive and perhaps questionable requirements.

Department's Response

The Department has made several changes in the consent form in response to the public comment. As noted in the preceding section, additional requirements relating to the period of effectiveness of the consent form and provision of a copy of the consent form to the individual to be sterilized were added to §§ 50.203 and 50.204. The consent form itself has likewise been modified to reflect these added requirements. The consent form of the final rules also reflects the provision for waiver of the 30 day requirement and the additional certification required in such circumstances by § 50.205(c)(2). Permitting release of the form for research purposes has also been dropped. This consent provision would have indisputably increased access to the forms, and concomitantly increased the potential for unintended release of very private information. Moreover, it is felt that most research needs will be adequately met by use of general patient data without information identifying individuals. Finally, the Department has amended the requirement for an interpreter if the consent form is not in the patient's "primary language". Under these rules, the interpreter requirement applies only if the form is not in a language that the patient "understands." It is felt that this change should obviate the difficulties with the provision of the proposed rules forecast by the public comment, yet insure that the basic purpose of the requirement (i.e., that the patient understands the form and hence has the information needed to give an informed consent) is met.

The remainder of the suggestions made by the public comment were not accepted, for the following reasons:

1. The approach of requiring use of the consent form in the appendix unless an alternate one is approved by the Department has been retained. Experience under the present rules has shown the difficulty of securing compliance where the choice of form is left to the providers without requiring prior departmental approval. The Department recognizes, however, that many providers may wish to use forms that contain additional information than that set out in the consent form of the appendix. While the Department encourages the use of the consent form set out in the appendix, it is concerned primarily that the consent form evidence that the required information was presented and contain the required certifications. Accordingly, the Department will permit providers to use such forms, if they are approved by the Department prior to use.

2. The Department has not mandated the inclusion of specific facts relating to the procedure in the consent form itself as suggested by the public comment. Its reasons for not doing so are set out at paragraph 3 of the "Department's response" section of section III F of the preamble above. As noted in the preceding paragraph, however, providers may use a consent form different than that set out in the appendix if it is approved, and consequently may include such information on an approved form as in their judgment appears advisable.

3. While the Department has revised the certification requirements as explained above, it has not accepted all the suggestions made concerning the certifications. Most of the comments on this issue in some way concerned the role of physicians in initially obtaining consent. The Department agrees with many of the comments that trained nonphysician personnel can play an extremely valuable role in explaining the elements of informed consent to individuals considering sterilization, and in many cases serve the purpose of these rules as well or better than would a physician. Nevertheless, it believes that the critical part of the process is what information is communicated, not who communicates it. These rules enumerate what information must be presented, and the Department is not prepared to assume that physicians will not comply with them in good faith. To require otherwise might also unduly intrude into the physician-patient relationship. Moreover, requiring use of trained nonphysician personnel may be impractical for providers with small staffs, such as those in rural areas. These considerations are sufficient in the Department's view to dictate retention of the requirement as proposed. Thus, under these rules, the person obtaining the consent may, but is not required to, be the physician performing the procedure. Since the person obtaining the consent may be the physician performing the procedure, it is considered inappropriate to adopt the suggestion that the physician performing the procedure certify that he neither recommended the procedure nor solicited the consent.

4. These rules retain the proposed requirement relating to spousal consent. It should be noted, however, that the provision of these rules is simply that a State requirement of spousal consent need not be followed under these rules in order to obtain a sterilization under the Federal programs; they do not supersede State law requirements as to what constitutes a legally effective consent. The Department has not adopted the suggestion that spousal consent be required for Indians, in part because such a requirement may be consitutionally questionable and in part because such a requirement would be administratively impracticable.

5. With respect to the query as to whether residents or interns can sign the physician certification, if a resident or intern is the physician performing the procedure, he or she is the person who should sign the physician's certification.

6. The Department has not changed the other requirement relating to following State and local laws. To date, States do not appear to have adopted more restrictive policies under the current rules, which contain an identical requirement. If the danger foreseen by the public comment in this regard materializes, the Department will reconsider its position.

7. The Department has not revised the requirement relating to signature by the patient to provide for signature by mark or other means. In general, the term "signature" includes signature by mark or by other means evidencing assent. See, e.g., *Joseph Denunzio Fruit Co.* v. *Crane*, 79 F. Supp. 117, 128 (S.D. Cal. 1948); *Bustillos* v. *State*, 213 S.W. 2d 837, 841, 152 Tex. Cr. R. 324 (Tex. Cr. App., 1948). In any event, if further formalities are required under State or local law where a person is unable to sign his or her name, § 50.204(f) requires that they be followed. Thus, the requirement as presently stated meets the concerns raised by the public comment, and the requirement accordingly has not been revised.

H. HYSTERECTOMIES

Text of Proposed Rule

1. *42 CFR 50.207 (Cf., 45 CFR 205.35-7):*

(a) Programs or projects to which this subpart applies shall not perform or arrange for the performance of any hysterectomy for the purpose of rendering an individual permanently incapable of reproducing, unless [exception with appropriate safeguards, to be added if comments describe circumstances in which sterilization by hysterectomy is generally accepted as the appropriate method].

(b) Programs or projects to which this subpart applies may perform or arrange for the performance of a hysterectomy the purpose of which is other than to render the patient permanently incapable of reproducing, provided that:

(1) The individual who secures the usual authorization from the patient or her representative, if any, to perform the hysterectomy has informed the patient and her representative, if any, orally and in writing, that the hysterectomy will render the patient permanently incapable of reproducing; and

(2) The patient or her representative, if any, has signed a written acknowledgment of receipt of the foregoing information.

2. *Related requirements:* a. *42 CFR 50.208(a) (Cf., 45 CFR 205.35-8(a)):*

A program or project must, with respect to any sterilization procedure or hysterectomy it performs or arranges, (1) meet all requirements of this subpart; and (2) provide legal counsel for the patient at all review committee and court proceedings described in this subpart.

b. *42 CFR 50.209(b) (Cf., 45 CFR 205.39-9(b)):*

A program or project shall not use Federal financial assistance for any sterilization or hysterectomy without first receiving documentation showing that the requirements of this subpart have been met. Documentation includes consent forms, review committee certifications, court orders, and acknowledgments of receipt of hysterectomy information.

Text of final rule: 1. *42 CFR 50.207 (Cf., 42 CFR 441.255)*

(a) Programs or projects to which this subpart applies shall not perform or arrange for the performance of any hysterectomy solely for the purpose of rendering an individual permanently incapable of reproducing or where, if there is more than one purpose to the procedure, the hysterectomy would not be performed but for the purpose of rendering the individual permanently incapable of reproducing.

(b) Programs or projects to which this subpart applies may perform or arrange for any hysterectomy not covered by paragraph (a) of this section, only if:

(1) The person who secures the authorization to perform the hysterectomy has informed the individual and her representative, if any, orally and in writing, that the hysterectomy will render her permanently incapable of reproducing; and

(2) The individual or her representative, if any, has signed a written acknowledgment of receipt of the foregoing information.

2. *Related requirements:* a. *42 CFR 50.208(a) (Cf., 42 CFR 441.252):*

A program or project must, with respect to any sterilization procedure or hysterectomy it performs or arranges, meet all the requirements of this subpart.

b. *42 CFR 50.209(b) (Cf., 42 CFR 441.256):*

A program or project shall not use Federal financial assistance for any sterilization or hysterectomy without first receiving documentation showing that the requirements of this subpart have been met. Documentation includes consent forms, and acknowledgments of receipt of hysterectomy information.

Summary of Public Comment

In general, the public comment supported the proposed rules and opposed creating any exceptions to the proposed requirement that hysterectomies for contraceptive purposes only may not the provided under the Federal programs. The remainder of the comments were generally as follows:

1. The largest number of criticisms of the proposed rule took the position that hysterectomies for family planning purposes should be permitted under the rules when there are medical indications (such as fibroids, fallen uterus, retroverted uterus) which by themselves do not mandate a hysterectomy but taken together with a desire to end fertility do favor hysterectomy as the preferred treatment. Several of the comments, including the comment of the National Commission for the Protection of Human Subjects, advocated that the rules be changed to prohibit Federal funding of hysterectomies "solely" for contraceptive purposes, in order to clarify that any hysterectomy for which there are medical indications (whether or not those indications are sufficient to justify hysterectomy) is not covered by proposed § 50.207(a).

2. Several physicians commented that hysterectomy solely for contraceptive purposes is appropriate and should be permitted since subsequent removal of the unterus is increasingly likely due to the increasing incidence of uterine pathology. In this regard, one comment suggested that this question should be left to the professional judgment of the treating physician, while two other comments opposed the rule on the ground that it deprives the patient of a full choice in the selection of a sterilization procedure.

3. Several comments advocated provision of hysterectomies to the severely retarded and the physically handicapped where indicated by considerations of hygiene and emotional health. It was suggested that the rules be revised to permit this.

4. Several comments expressed the fear that by disallowing payment for hysterectomies done for contraceptive purposes the Department would: (1) Encourage physicians to contrive medical justifications to secure Federal payment for the procedure; and (2) remove such hysterectomies from the procedural protections of the rules. These comments suggested permitting hysterectomies solely for contraceptive purposes subject to safeguards such as the following: (1) Mandatory second opinion; (2) preoperative monitoring; and (3) compliance audits at frequent intervals.

5. A majority of the comments addressing the proposed § 50.207(b) (relating to medically indicated hysterectomies) supported it. A number of these, however, also recommended that such procedures should be made subject to the consent requirements of the rules or suggested special consent requirements.

6. Several comments suggested that instead of treating hysterectomies in the context of sterilization, the Department should develop separate rules dealing with hysterectomies. Several other comments urged expanding the hysterectomy information requirement of proposed § 50.207(b)(1) to all procedures which have the effect of sterilizing an individual.

Department's Response

Since the public comment failed to elicit any circumstances which would justify permitting exceptions to the requirement of proposed § 50.207(a), the Department has eliminated the proposed provision for waiver. Aside from that change, the rule is otherwise unchanged in substance. However, it has been changed to clarify the Department's intent to exclude payment for hysterectomies done for sterilization purposes for which there are also some medical indications which are themselves insufficient to justify performance of a hysterectomy. The Department's reasons for rejecting the suggestions made by the public comment are as follows:

1. The Department has not accepted the comments that proposed § 50.207(a) be amended by the inclusion of the word "solely" with no other change, since such a change would not be consistent with its intent. The premise of these comments was that hysterectomy could and should be used where there are medical indications for the procedure which do not independently justify it, but, taken together with a desire for sterility, make it the preferred treatment mode. However, the Department does not believe that hysterectomy is an appropriate method of sterilization, since, compared to other forms of sterilization, hysterectomy is a risky, painful, and expensive procedure. The fact that the desire for sterilization is just one of several indications for hysterectomy does not make the procedure any less a sterilization in intent when the sterilization purpose is the decisive factor in making the choice to perform the hysterectomy. Since the Department does not consider hysterectomy an appropriate method of sterilization, it does not believe it should fund its use in such situations.

2. The Department disagrees with the comments that it should fund hysterectomies for contraceptive purposes for the reasons set out above. Indeed, comments received from physicians during the comment period reinforced its impression that the medical profession does not consider such hysterectomies to represent sound medical practice. While it is true that the Department's decision in this regard deprives women of one sterilization option, the Department feels that the policy considerations stated above sufficiently justify this restriction of choice.

3. The Department has not accepted the comments advocating provision of hysterectomies to the severely retarded and the physically handicapped. The former, it should be noted, could most likely not be sterilized under these rules in any event (see § 50.206). As for the latter, if the hysterectomy is medically necessary, the procedure would come under § 50.207(b) and hence a special provision is unnecessary.

4. The Department recognizes that by disallowing expenditures for hysterectomies for contraceptive purposes it may create some incentive for providers to fabricate medical rationales for the procedures. Nevertheless, it is not prepared to assume that providers will act in such bad faith and believes, further, that the potential of PSRO review and disapproval together with the potential of malpractice liability for clearly unnecessary procedures should serve to minimize abuses of the rules. Moreover, the Department, through HCFA, has recently begun encouraging recipients under the Federal programs to obtain second opinions when hysterectomy is recommended by a physician, and believes that such action may go far to reducing the unnecessary utilization of the procedure.

The comments criticizing the rules on the ground that they remove hysterectomies for contraceptive purposes from the procedural protections of the rules raise a more troublesome issue. The point is undoubtedly a valid one. However, the basic question raised by these comments is which approach more effectively discourages such hysterectomies—insuring that the patient knows about their risks or removing the financial incentive to provide them. The Department believes that the latter approach has a greater like-

lihood of success, and accordingly has retained it.

5. The Department has not expanded the consent requirements applicable to sterilizations to medically indicated hysterectomies as recommended by a number of comments for two reasons. First, the requirement that women receiving such hysterectomies must be told that their effect will be to render them sterile will insure that they will be given the opportunity to consider the procedure in light of that information. Second, there are by definition substantial medical indications for such hysterectomies. The Department is unwilling at this juncture to prescribe further how providers should act in the provision of such medical treatment on the ground that doing so might overregulate the physician-patient relationship.

6. The Department believes it is valid to treat hysterectomies in the context of sterilization because hysterectomies are a widely used method of sterilization. Although the Department may not approve of that practice, it does not consider it appropriate to ignore it. Accordingly, the provisions relating to hysterectomies have been retained in these rules.

7. The Department is not accepting the suggestion to expand the hysterectomy requirements to cover other procedures resulting in sterilization. First, there is no ready method of identifying such procedures. Second, to date the Department is aware of no other procedures that have been as widely overutilized as a method of sterilization as has hysterectomy. Hence, there does not appear to be similar need for such a requirement with respect to other procedures.

I. MONITORING AND ENFORCEMENT

Text of Proposed Rule

1. *42 CFR 50.208 (Cf., 45 CFR 205.35-8):*

(a) A program or project must, with respect to any sterilization procedure or hysterectomy it performs or arranges: (1) Meet all requirements of this subpart; and (2) provide legal counsel for the patient at all review committee and court proceedings described in this subpart.

(b) The program or project shall maintain sufficient records and documentation to assure compliance with these regulations, and must retain such data for at least 3 years.

(c) The program or project shall submit other reports as required and when requested by the Secretary.

Text of Final Rule

1. *42 CFR 50.208 (Cf., 42 CFR 441.252, 441.256):*

(a) A program or project must, with respect to any sterilization procedure or hysterectomy it performs or arranges, meet all requirements of this subpart.

(b) The program or project shall maintain sufficient records and documentation to assure compliance with these regulations, and must retain such data for at least 3 years.

(c) The program or project shall submit other reports as required and when requested by the Secretary.

2. *42 CFR 50.210 (Cf., 42 CFR 441.259):*

The Secretary will request public comment on the operation of the provisions of this subpart no later than 3 years after their effective date.

Summary of Public Comment

As is evident from the summaries of public comment in the preceding sections, a theme running throughout the public comment as a whole was the need for effective monitoring and enforcement of the regulations. While most of these comments stressed the need for such activity rather than proposing mechanisms for conducting it, several specific suggestions were made, as follows:

1. A number of comments suggested that the Department reevaluate the regulations after a certain time period (generally, 18-24 months) in light of experience with them.

2. Several comments suggested targeting evaluation efforts on particular groups (such as the rural poor, the young, the mentally incompetent) to determine what, if any, hardship the regulations have caused for those groups.

3. Other comments suggested specific monitoring and enforcement programs. A Member of Congress urged the Department to set up an oversight program under the Inspector General. Other comments suggested requiring monitoring by federally funded citizens review boards or similar groups.

Department Response

The Department has revised the reporting requirements of the regulation to be consistent with its deletion of the proposed review committee/court review requirements. It also agrees with the public comment on this issue generally, and intends to monitor and enforce compliance with the regulations to the best of its ability. Specifically, HCFA, PHS, and APS will continue their present monitoring efforts of their programs as a whole. Those efforts will be supplemented by a special program of monitoring conducted by the Inspector General to identify instances of chronic or particular noncompliance and take appropriate enforcement steps. Finally, the Department will review these rules after 3 years of experience with them to determine what, if any, aspects of them may be causing hardship among the population served by the Federal programs and what, if any, of the compliance requirements need to be changed. A section providing for such review has accordingly been added.

The Department notes that several provisions of these rules should make such monitoring easier than it has been in the past. The requirement that the consent form set out in the appendix or another approved form be used should virtually eliminate one troublesome area of compliance, while the documentation requirements of these rules will facilitate compliance reviews. In addition, acquisition of the racial and ethnic data requested on the consent form should serve to highlight situations where sterilization procedures are being overprescribed for one or more groups.

As the above indicates, the Department is accepting most of the specific suggestions made by the public comment. It has, however, not accepted the suggestion to set up private, federally funded review panels, since at this juncture it is not convinced that such a program is needed in view of the monitoring and enforcement efforts it plans to make.

J. BALANCE OF THE RULES BETWEEN ACCESS TO STERILIZATION AND PROTECTION AGAINST ABUSE

Summary of Public Comment

While many persons speaking at the public hearings stated either that the proposed rules struck an adequate balance between access to sterilization and protection against abuse or that the rules needed to be strengthened to provide for further protection, most of the written comment stated that the proposed rules would unduly impede access. The following reasons were given in support of this position:

1. A number of comments stated that the few abuses inherent in a massive health care system do not justify altering the current adequate informed consent procedures that characterize medical practice in the United States.

2. Other comments stated that everyone should not be penalized for the sake of the rare individual who has second thoughts after the operation and who then blames the hospital and physician for "coercion." Most of those who eventually regret their sterilization operation do so because of unpredictable changes in their life circumstances. When regretters are asked what they would do if they had it to do over again, most respond that given the circumstances at the time they got the operation, their decision would be the same.

3. Several comments suggested that the whole approach of the rules is wrong: The emphasis should be on finding abusers rather than "punish-

ing the average person who requests sterilization but cannot pay."

4. It was also suggested that the proposed rules would increase health care costs; interfere with women's rights to reproductive self-determination; limit the medical choices of poor women (i.e. create a double standard in medicine); result in more unwanted births, child abuse, maternal deaths from septic abortions, etc.; and create unnecessary paperwork.

Department's Response

In general, the Department believes that these rules strike an appropriate balance between the goals of access to sterilization services and protection against abuse. Its reasons for this are fully set out in section I C of the preamble above. With respect to the particular comments made, the Department responds as follows:

1. As noted above, the consent procedures of the final rules build upon the consent procedures of the current rules. Thus, the Department does not believe they materially alter the current practice applicable in this area under the Federal programs.

2. While the incidence of regret may in fact be rare, it appears that it is predictably higher among certain groups, especially among the young. See section III C of the preamble above. Moreover, even if the regret rate is low, the Department is of the view that the potential for tragedy in such cases is great enough to warrant safeguards against its occurrence.

3. The Department agrees that it is important to find providers who abuse sterilization services and prevent them from continuing such abuse. However, it does not agree that it can reasonably do this by eliminating the procedural protections of the regulations, since those procedures in part define what constitutes abuse. Moreover, assuming for the moment that the Department could ascertain what constituted abuse without procedures defining compliance, the approach suggested of punishing abusers rather than restricting access would mean that the Department could only act after abuse had occurred rather than preventing it.

4. It is true that these rules do restrict one family planning choice for the persons who receive services under the Federal programs. The basis for this restriction are set out above and, in the Department's view, fully warrant it. Moreover, it should be noted that temporary forms of birth control are still available under the Federal programs, so while these rules may in some cases restrict choice, they do not preclude access to family planning services per se.

5. Although some comments suggested that these rules will increase health care costs, at present, the Department believes that the increase in cost will not differ significantly from present costs, since many of the procedures are already required under the current rules.

K. TECHNICAL AND CONFORMING CHANGES

The Department has made a number of changes in the regulations which are essentially technical in nature. The major ones are summarized below.

1. Both the PHS and Medicaid regulations are renumbered and slightly reorganized, to take account of the ongoing Departmental effort to simplify regulations. In addition, the medicaid regulations have been moved to a different title of the Code of Federal Regulations, in line with the ongoing recodification of the medicaid regulations.

2. The recodification of the medicaid regulation necessitates revision of the social services regulations, applicable to sterilizations, since they incorporate the former medicaid regulation by reference. A final rule revising the social services regulations to refer to the recodified medicaid regulation is thus being issued.

3. The Department has attempted to make its references to the person being sterilized consistent throughout the regulation. Thus, the term "patient" has been eliminated and the term "individual to be sterilized" substituted.

4. References in proposed 42 CFR §§ 50.208 and 50.209 (proposed §§ 205.35-8 and 205.35-9) to review committee certifications and proceedings, court orders and court proceedings, and legal counsel have been dropped, consistent with the deletion from these rules of the review committee/court review procedures of the proposed rules.

5. The "State Agency" requirements of proposed 45 CFR § 205.35-8 have been changed to "State plan" requirements in the HCFA rules to facilitate compliance enforcement.

6. A definition of the term "arrange for" has been added to the PHS regulations to make clear that these requirements do not apply where the project's connection with the procedure is so tenuous as to make it impracticable for it to enforce compliance with these requirements. The medicaid regulations have no such definition, since the structure of their programs does not make it appropriate.

In view of the foregoing, the Assistant Secretary of Health, with the approval of the Secretary of Health, Education, and Welfare, hereby revises subpart B of part 50, title 42 Code of Federal Regulations, as set forth below.

Dated: September 8, 1978.

CHARLES MILLER,
Acting Assistant Secretary for Health.

Approved: October 30, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

Subpart B of 42 CFR Part 50 is revised to read as follows:

Subpart B—Sterilization of Persons in Federally Assisted Family Planning Projects

Sec.
50.201 Applicability.
50.202 Definitions.
50.203 Sterilization of a mentally competent individual aged 21 or older.
50.204 Informed consent requirement.
50.205 Consent form requirements.
50.206 Sterilization of a mentally incompetent individual or an institutionalized individual.
50.207 Sterilization by hysterectomy.
50.208 Program or project requirements.
50.209 Use of Federal financial assistance.
50.210 Review of regulation.
Appendix: Required consent form.

AUTHORITY: Sec. 215, Public Health Service Act, as amended (42 U.S.C. 216).

Subpart B—Sterilization of Persons in Federally Assisted Family Planning Projects

§ 50.201 Applicability.

The provisions of this subpart are applicable to programs or projects for health services which are supported in whole or in part by Federal financial assistance, whether by grant or contract, administered by the Public Health Service.

§ 50.202 Definitions.

As used in this subpart:

"Arrange for" means to make arrangements (other than mere referral of an individual to, or the mere making of an appointment for him or her with, another health care provider) for the performance of a medical procedure on an individual by a health care provider other than the program or project.

"Hysterectomy" means a medical procedure or operation for the purpose of removing the uterus.

"Institutionalized individual" means an individual who is (1) involuntarily confined or detained, under a civil or criminal statute, in a correctional or rehabilitative facility, including a mental hospital or other facility for the care and treatment of mental illness, or (2) confined, under a voluntary commitment, in a mental hospital or other facility for the care and treatment of mental illness.

"Mentally incompetent individual" means an individual who has been declared mentally incompetent by a Federal, State, or local court of competent

jurisdiction for any purpose unless he or she has been declared competent for purposes which include the ability to consent to sterilization.

"Public Health Service" means the Health Services Administration, Health Resources Administration, National Institutes of Health, Center for Disease Control, Alcohol, Drug Abuse and Mental Health Administration and all of their constituent agencies.

The "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

"Sterilization" means any medical procedure, treatment, or operation for the purpose of rendering an individual permanently incapable of reproducing.

§ 50.203 Sterilization of a mentally competent individual aged 21 or older.

Programs or projects to which this subpart applies shall perform or arrange for the performance of sterilization of an individual only if the following requirements have been met:

(a) The individual is at least 21 years old at the time consent is obtained.

(b) The individual is not a mentally incompetent individual.

(c) The individual has voluntarily given his or her informed consent in accordance with the procedures of § 50.204 of this subpart.

(d) At least 30 days but not more than 180 days have passed between the date of informed consent and the date of the sterilization, except in the case of premature delivery or emergency abdominal surgery. An individual may consent to be sterilized at the time of premature delivery or emergency abdominal surgery, if at least 72 hours have passed after he or she gave informed consent to sterilization. In the case of premature delivery, the informed consent must have been given at least 30 days before the expected date of delivery.

§ 50.204 Informed consent requirement.

Informed consent does not exist unless a consent form is completed voluntarily and in accordance with all the requirements of this section and § 50.205 of this subpart.

(a) A person who obtains informed consent for a sterilization procedure must offer to answer any questions the individual to be sterilized may have concerning the procedure, provide a copy of the consent form, and provide orally all of the following information or advice to the individual who is to be sterilized:

(1) Advice that the individual is free to withhold or withdraw consent to the procedure any time before the sterilization without affecting his or her right to future care or treatment and without loss or withdrawal of any federally funded program benefits to which the individual might be otherwise entitled;

(2) A description of available alternative methods of family planning and birth control;

(3) Advice that the sterilization procedure is considered to be irreversible;

(4) A thorough explanation of the specific sterilization procedure to be performed;

(5) A full description of the discomforts and risks that may accompany or follow the performing of the procedure, including an explanation of the type and possible effects of any anesthetic to be used;

(6) A full description of the benefits or advantages that may be expected as a result of the sterilization; and

(7) Advice that the sterilization will not be performed for at least 30 days except under the circumstances specified in § 50.203(d) of this subpart.

(b) An interpreter must be provided to assist the individual to be sterilized if he or she does not understand the language used on the consent form or the language used by the person obtaining the consent.

(c) Suitable arrangements must be made to insure that the information specified in paragraph (a) of this section is effectively communicated to any individual to be sterilized who is blind, deaf or otherwise handicapped.

(d) A witness chosen by the individual to be sterilized may be present when consent is obtained.

(e) Informed consent may not be obtained while the individual to be sterilized is:

(1) In labor or childbirth;

(2) Seeking to obtain or obtaining an abortion; or

(3) Under the influence of alcohol or other substances that affect the individual's state of awareness.

(f) Any requirement of State and local law for obtaining consent, except one of spousal consent, must be followed.

§ 50.205 Consent form requirements.

(a) *Required consent form.* The consent form appended to this subpart or another consent form approved by the Secretary must be used.

(b) *Required signatures.* The consent form must be signed and dated by:

(1) The individual to be sterilized; and

(2) The interpreter, if one is provided; and

(3) The person who obtains the consent; and

(4) The physician who will perform the sterilization procedure.

(c) *Required certifications.* (1) The person obtaining the consent must certify by signing the consent form that: (i) before the individual to be sterilized signed the consent form, he or she advised the individual to be sterilized that no Federal benefits may be withdrawn because of the decision not to be sterilized, (ii) he or she explained orally the requirements for informed consent as set forth on the consent form, and (iii) to the best of his or her knowledge and belief, the individual to be sterilized appeared mentally competent and knowingly and voluntarily consented to be sterilized.

(2) The physician performing the sterilization must certify by signing the consent form, that: (i) shortly before the performance of the sterilization, he or she advised the individual to be sterilized that no Federal benefits may be withdrawn because of the decision not to be sterilized, (ii) he or she explained orally the requirements for informed consent as set forth on the consent form, and (iii) to the best of his or her knowledge and belief, the individual to be sterilized appeared mentally competent and knowingly and voluntarily consented to be sterilized. Except in the case of premature delivery or emergency abdominal surgery, the physician must further certify that at least 30 days have passed between the date of the individual's signature on the consent form and the date upon which the sterilization was performed. If premature delivery occurs or emergency abdominal surgery is required within the 30-day period, the physician must certify that the sterilization was performed less than 30 days but not less than 72 hours after the date of the individual's signature on the consent form because of premature delivery or emergency abdominal surgery, as applicable. In the case of premature delivery, the physician must also state the expected date of delivery. In the case of emergency abdominal surgery, the physician must describe the emergency.

(3) If an interpreter is provided, the interpreter must certify that he or she translated the information and advice presented orally, read the consent form and explained its contents and to the best of the interpreter's knowledge and belief, the individual to be sterilized understood what the interpreter told him or her.

§ 50.206 Sterilization of a mentally incompetent individual or of an institutionalized individual.

Programs or projects to which this subpart applies shall not perform or arrange for the performance of a sterilization of any mentally incompetent individual or institutionalized individual.

§ 50.207 Sterilization by hysterectomy.

(a) Programs or projects to which this subpart applies shall not perform

or arrange for the performance of any hysterectomy solely for the purpose of rendering an individual permanently incapable of reproducing or where, if there is more than one purpose to the procedure, the hysterectomy would not be performed but for the purpose of rendering the individual permanently incapable of reproducing.

(b) Programs or projects to which this subpart applies may perform or arrange for the performance of a hysterectomy not covered by paragraph (a) of this section only if:

(1) The person who secures the authorization to perform the hysterectomy has informed the individual and her representative, if any, orally and in writing, that the hysterectomy will render her permanently incapable of reproducing; and

(2) The individual or her representative, if any, has signed a written acknowledgment of receipt of that information.

§ 50.208 Program or project requirements.

(a) A program or project must, with respect to any sterilization procedure or hysterectomy it performs or arranges, meet all requirements of this subpart.

(b) The program or project shall maintain sufficient records and documentation to assure compliance with these regulations, and must retain such data for at least 3 years.

(c) The program or project shall submit other reports as required and when requested by the Secretary.

§ 50.209 Use of Federal financial assistance.

(a) Federal financial assistance adminstered by the Public Health Service may not be used for expenditures for sterilization procedures unless the consent form appended to this section or another form approved by the Secretary is used.

(b) A program or project shall not use Federal financial assistance for any sterilization or hysterectomy without first receiving documentation showing that the requirements of this subpart have been met. Documentation includes consent forms, and acknowledgments of receipt of hysterectomy information.

§ 50.210 Review of regulation.

The Secretary will request public comment on the operation of the provisions of this subpart not later than 3 years after their effective date.

APPENDIX: REQUIRED CONSENT FORM

NOTICE: YOUR DECISION AT ANY TIME NOT TO BE STERILIZED WILL NOT RESULT IN THE WITHDRAWAL OR WITHHOLDING OF ANY BENEFITS PROVIDED BY PROGRAMS OR PROJECTS RECEIVING FEDERAL FUNDS.

CONSENT TO STERILIZATION

I have asked for and received information about sterilization from ———— (doctor or clinic). When I first asked for the information, I was told that the decision to be sterilized is completely up to me. I was told that I could decide not to be sterilized. If I decide not to be sterilized, my decision will not affect my right to future care or treatment. I will not lose any help or benefits from programs receiving Federal funds, such as A.F.D.C. or medicaid that I am now getting or for which I may become eligible.

I UNDERSTAND THAT THE STERILIZATION MUST BE CONSIDERED PERMANENT AND NOT REVERSIBLE. I HAVE DECIDED THAT I DO NOT WANT TO BECOME PREGNANT, BEAR CHILDREN OR FATHER CHILDREN.

I was told about those temporary methods of birth control that are available and could be provided to me which will allow me to bear or father a child in the future. I have rejected these alternatives and chosen to be sterilized.

I understand that I will be sterilized by an operation known as a ————. The discomforts, risks and benefits associated with the operation have been explained to me. All my questions have been answered to my satisfaction.

I understand that the operation will not be done until at least 30 days after I sign this form. I understand that I can change my mind at any time and that my decision at any time not to be sterilized will not result in the withholding of any benefits or medical services provided by federally funded programs.

I am at least 21 years of age and was born on — (day), ———— (month), —— (year).

I, ————, hereby consent of my own free will to be sterilized by ———— by a method called ————. My consent expires 180 days from the date of my signature below.

I also consent to the release of this form and other medical records about the operation to:

Representatives of the Department of Health, Education, and Welfare or

Employees of programs or projects funded by that Department but only for determining if Federal laws were observed.

I have received a copy of this form.

Signature ————————————
Date: ————————————
(Month, day, year)

You are requested to supply the following information, but it is not required:

Race and ethnicity designation (please check)
Black (not of Hispanic origin) ————
Hispanic ————
Asian or Pacific Islander ————
American Indian or Alaskan native ————
White (not of Hispanic origin) ————

INTERPRETER'S STATEMENT

If an interpreter is provided to assist the individual to be sterilized:

I have translated the information and advice presented orally to the individual to be sterilized by the person obtaining this consent. I have also read him/her the consent form in ———— language and explained its contents to him/her. To the best of my knowledge and belief he/she understood this explanation.

Interpreter ————————————
Date ————————————

STATE OF PERSON OBTAINING CONSENT

Before ———— (name of individual), signed the consent form, I explained to him/her the nature of the sterilization operation ————, the fact that it is intended to be a final and irreversible procedure and the discomforts, risks and benefits associated with it.

I counseled the individual to be sterilized that alternative methods of birth control are available which are temporary. I explained that sterilization is different because it is permanent.

I informed the individual to be sterilized that his/her consent can be withdrawn at any time and that he/she will not lose any health services or any benefits provided by Federal funds.

To the best of my knowledge and belief the individual to be sterilized is at least 21 years old and appears mentally competent. He/She knowingly and voluntarily requested to be sterilized and appears to understand the nature and consequence of the procedure.

Signature of person obtaining consent ——
Date ————————————
Facility ————————————
Address ————————————

PHYSICIAN'S STATEMENT

Shortly before I performed a sterilization operation upon ———— (name of individual to be sterilized), on ———— (date of sterilization), ———— (operation), I explained to him/her the nature of the sterilization operation ———— (specify type of operation), the fact that it is intended to be a final and irreversible procedure and the discomforts, risks and benefits associated with it.

I counseled the individual to be sterilized that alternative methods of birth control are available which are temporary. I explained that sterilization is different because it is permanent.

I informed the individual to be sterilized that his/her consent can be withdrawn at any time and that he/she will not lose any health services or benefits provided by Federal funds.

To the best of my knowledge and belief the individual to be sterilized is at least 21 years old and appears mentally competent. He/She knowingly and voluntarily requested to be sterilized and appeared to understand the nature and consequences of the procedure.

(Instructions for use of alternative final paragraphs: Use the first paragraph below except in the case of premature delivery or emergency abdominal surgery where the sterilization is performed less than 30 days after the date of the individual's signature on the consent form. In those cases, the second paragraph below must be used. Cross out the paragraph which is not used.)

(1) At least 30 days have passed between the date of the individual's signature on this consent form and the date the sterilization was performed.

(2) This sterilization was performed less than 30 days but more than 72 hours after the date of the individual's signature on this consent form because of the following circumstances (check applicable box and fill in information requested):

☐ Premature delivery
Individual's expected date of delivery: ——

☐ Emergency abdominal surgery:
(Describe circumstances): _____

Physician _____
Date _____

Your Sterilization Operation: Information for Women

WHY THIS PAMPHLET IS IMPORTANT TO YOU

Sterilization is an operation which is intended to make it impossible for you to ever become pregnant. This pamphlet describes the different types of sterilization operations, their benefits, their discomforts, and their risks. You should read the pamphlet completely.

Both men and women can be sterilized. This pamphlet is about sterilization operations for a woman. (Ask your doctor or clinic for the pamphlet on sterilization for a man.)

If the Federal Government is to pay for your sterilization, certain conditions must be met. They are listed on page . The purpose of these conditions is to ensure that you understand sterilization and that you choose freely to have this operation.

MAKING UP YOUR MIND

Sterilization must be considered permanent. For nearly all women, once this operation has been done, it can never be undone. Some doctors try to undo a sterilization by rejoining the tubes. This is a difficult and expensive operation and it doesn't work very often. Some people call sterilization "tying the tubes." But don't think the tubes can be untied! They can't. So it's not a good idea to think your sterilization can be undone.

Make sure you do not want to bear children under any circumstances before you decide to be sterilized. Are you sure you would not want to bear children even if one of your present children died? Or your husband died? Or you got divorced and remarried? Be sure, before you decide to be sterilized.

No one can force you to be sterilized! Don't let anyone push you into it. If you do not want to be sterilized, no one can take away any of your Federal benefits such as welfare, Social Security, or health care—including sterilization at a later date. No one can force you to be sterilized as a condition for delivering your baby or performing an abortion.

To have this operation paid for with Federal funds, you must be at least 21 years old. If you are married, you should discuss the operation with your husband. However, his consent is not required if Medicaid or any other Federal Government program is going to pay for your operation. Your consent to sterilization cannot be obtained while you are in the hospital for childbirth or abortion, or if you are under the influence of alcohol or other substances that affect your state of awareness.[1]

You must sign the consent form at least 30 days before you plan to have the operation. This is so you will have at least 30 days to think it over and discuss it with your family and others. You can change your mind any time before the operation and can cancel your appointment if you do.

[1]This condition, the minimum age of 21, and the 30-day waiting period must be met if the Federal Government is to pay for your sterilization.

OTHER METHODS OF BIRTH CONTROL

There are many other ways to avoid pregnancy. Before you decide to be sterilized, think about these other methods of birth control.

TEMPORARY METHODS OF BIRTH CONTROL

The following methods of birth control are temporary. This means that when you or your partner stop using them you can become pregnant. Temporary methods of birth control are effective only if you use them according to instructions. If you think you might want to become pregnant later, you should use a temporary method of birth control instead of sterilization.

Ask your doctor or clinic for pamphlets and counseling on any of these temporary methods of birth control if you want them. If you decide you want a temporary method of birth control, ask for it today.

Birth control pill—A pill you take regularly which makes you 98 percent certain you will not get pregnant. It is usually safe, but has occasional side effects and rare serious complications. The pill has been linked in some women with minor side effects such as darkening of the skin of the face, nausea, and vaginal discharge. More serious complications which occur infrequently include depression, increased tendency for abnormal blood clotting, increased risk of heart attack and stroke (especially among women over age 35 who smoke), and a small increased risk of liver or gall bladder disease.

Loop, coil, intrauterine device (IUD)—A small piece of plastic a doctor or family planning specialist inserts into your uterus (womb) which makes you 96 percent certain you will not get pregnant. It is usually very safe, but has occasional side effects and rare serious complications. IUD use has been linked in some women with irregular periods, cramps, and increased risk of infection of the uterus.

Diaphragm with contraceptive jelly or cream—A cup of rubber or soft plastic you place in your vagina each time before intercourse. Contraceptive jelly or cream must be used with the diaphragm for it to be effective. Sometimes it fails if it is not used properly (85-90 percent effective) and you can get pregnant anyway, but it has no risk of serious complications.

Contraceptive foam, foaming tablet—A foam (which looks like shaving cream) or a tablet you place in your vagina each time before intercourse. Sometimes it fails (85 percent effective) and you can get pregnant anyway. It occasionally has minor side effects.

Condom, prophylactic—A thin sheath of rubber the man places over his penis each time before intercourse. Sometimes it fails (90 percent effective) and you can get pregnant anyway, but there is no risk of serious complications. A condom and contraceptive foam or diaphragm can be used at the same time for extra protection.

Natural methods—A type of birth control in which you do not have intercourse on the 8-15 days each month when you are likely to get pregnant. It is sometimes hard to tell when these days occur and effectiveness depends on proper instruction and motivation. The sympto-thermal method (90 percent effective) is an example of natural methods. It involves keeping a chart of your body temperature and checking your cervical mucus. Effectiveness depends upon the care with which you follow it. Some people think of natural methods as only rhythm (the calendar method), but this method is no longer recommended by experts in natural methods. There is no risk of complications with natural methods.

STERILIZATION FOR A MAN

A man can be sterilized by an operation called a vasectomy. This operation is intended to make it impossible for him to ever father children. It is simpler, quicker, and safer than the sterilization operation for a woman, so you and your partner may decide that it is better for him to have the sterilization operation. (Ask your doctor or clinic for the pamphlet on sterilization for a man.)

WHAT ABOUT ABORTION?

Abortion does not prevent pregnancy. It is an operation to stop a pregnancy which has already started. It should be done during the first 3 months of pregnancy. It can be done later, but it is more expensive, less safe, and usually requires that you stay in a hospital. Abortion works to stop a pregnancy almost 100 percent of the time. There are some discomforts and occasional complications (sometimes serious) with abortion. When this pamphlet was written, Medicaid and some other Federal Government programs would pay for abortions only in certain cases. Ask your doctor or clinic.

WHEN CAN A WOMAN HAVE A STERILIZATION OPERATION?

A sterilization operation can be done at different times. A talk with your doctor or clinic can help you to decide what might be most suitable for you.

A woman can have a sterilization operation at any time in her life. This means a woman can have a sterilization operation at any time she wants. It doesn't matter if she is not married or doesn't have children. It is up to her.

A woman can have a sterilization operation right after having a baby. This means that a woman may want to be sterilized while she is in the hospital for the delivery. A woman should think about this early in her pregnancy because in order for the sterilization to be paid for with Federal funds she must sign the consent form at least 30 days before the baby is due. If the woman delivers prematurely or has emergency abdominal surgery at least 72 hours after she has signed the consent form, she does not need to wait 30 days, and the sterilization may be performed at the same time as the other surgery. She should be sure that she would not want to have children again even if the baby did not live very long after birth.

A woman can have a sterilization operation at the same time she has a baby by cesarean section. Sometimes a baby has to be delivered by an operation through the abdomen. This is called a cesarean section. A sterilization operation can be done at the same time through the same incision, but the woman must make up her mind at least 30 days before the baby is due.

A woman can have a sterilization operation right after she has an abortion if she has signed the consent form at least 30 days previously. Remember that an abortion which is delayed may be more difficult and carry more risk. If a woman is not sure about the sterilization, she can still have an abortion, and then decide to be sterilized or not at a later time.

FACTS ABOUT THE OPERATION

The surgical method of birth control is called a tubal sterilization or tubal ligation.

In this operation the doctor blocks or separates each of your two tubes so that your eggs cannot travel through them from your ovaries to your uterus. Blocking the tubes makes pregnancy impossible. (See figures at left.) Menstruation (monthly bleeding period) continues as before. Tubal sterilization will not change your hormones (will not cause change of life).

IS THE OPERATION GUARANTEED TO WORK?

Tubal sterilization works almost all the time. This means that only from 2 to 5 out of every 1,000 women who have the operation will still get pregnant. This is usually because the two ends of the tubes have grown back together. It is more than 99 percent effective—higher than all other methods of birth control for women. You should use some temporary method of birth control until you have your operation. Your doctor will try to be certain you are not already pregnant at the time of the operation.

FOUR TYPES OF TUBAL STERILIZATION

1. Laparotomy, mini-laparotomy;
2. Laparoscopy;
3. Postpartum tubal ligation; and
4. Vaginal tubal ligation.

The operation you have depends on your health and your doctor. Talk to him or her about which operation you will have.

LAPAROTOMY, MINI-LAPAROTOMY

In both of these operations, the doctor makes an incision (cut) in the lower portion of your abdomen. The difference between the two is the length of the incision and the extensiveness of the surgery. In a mini-laparotomy the incision is very short (1 or 2 inches) and leaves only a small scar. In a laparotomy it is much longer (3 to 5 inches) and leaves a longer scar. Ask your doctor which method he or she uses.

Through the incision on the abdomen, the doctor can reach both tubes, one at a time. The doctor can either remove a section and then use surgical thread to tie the tubes shut or seal them with electric current, bands, or clips. After the tubes are sealed, the incision on your abdomen is stitched closed.

The operation, including the anesthesia, takes about 30 minutes. With a mini-laparotomy, you will probably stay in the hospital less than 24 hours, and be back to normal in 2 or 3 days. With a laparotomy, you will be in the hospital 4 days or more, and it may be 2 weeks before you feel back to normal.

LAPAROSCOPY

Using a special needle, the doctor inflates your abdomen with a harmless gas which pushes your intestines away from your uterus and tubes. (See figure at left.)

The doctor then makes a small incision about one-half inch long near your navel. A "laparoscope," or special telescope, is inserted through this incision. It is a thin metal tube with a light on it which allows the doctor to see your tubes, and through which the doctor can insert the operating instrument. Your tubes are sealed by the use of electric current, bands, or clips. Some doctors make a second small incision at the pubic hairline to insert the operating instrument.

After the gas in your abdomen is released, the incision is closed.

The operation, including the anesthesia, takes about 30 minutes. You will probably stay in the hospital less than 24 hours and be back to normal in 2 or 3 days. Because of the gas, you may feel a pain in your neck or shoulders and you may seem bloated after the surgery. This goes away after a day or two.

POSTPARTUM TUBAL LIGATION

This operation is done in the hospital shortly after a woman has a baby. The doctor makes a small incision below your navel. The doctor then closes off a section of each tube using surgical threads. After the tubes are tied, a small section between the ties is removed. The incision below your navel is stitched closed.

The operation, including the anesthesia, usually takes about 30 minutes. Having the operation may make your hospital stay a day or two longer. How fast you get better will depend on how you feel after having the baby.

VAGINAL TUBAL LIGATION

In this operation, the doctor makes a small incision far back in the vagina. Through this, the doctor finds your tubes, then closes them off either with electric current, bands, or clips, or by removing a small section and closing the ends with surgical threads. After the tubes are sealed, the incision in your vagina is stitched closed.

Sometimes the doctor will use a metal tube with a light (called a culdoscope) to see your tubes and seal them.

The operation, including the anesthesia, usually takes about 30 minutes. Your stay in the hospital will probably be less than 24 hours. You should be back to normal in 2 or 3 days. After this type of operation, you should not have intercourse for 3 to 4 weeks so the vagina can heal.

THE ANESTHETIC

With any method of sterilization, you will first be given an anesthetic which is a drug to keep you from feeling pain during the operation. A medical person who specializes in anesthesia may do this part of the operation.

Sometimes the operation is done under "general" anesthesia. That means you will be asleep during the operation. The drugs used are a gas which you inhale and/or a liquid given to you by injection.

Sometimes the operation is done under "local" anesthesia or "spinal" anesthesia. That means you are awake, but do not feel any pain.

A local anesthetic is given by injection into the skin. It makes your skin numb.

A spinal anesthetic is given by injection low in the spine. This type of injection makes you feel numb from the waist down.

With local or spinal anesthesia, you may also be given pills or another injection to help you relax.

You should have a chance to discuss and participate in the decision regarding your type of anesthesia with someone before your operation.

BENEFITS OF TUBAL STERILIZATION

The benefits of tubal sterilization are:

You never have to use a temporary method of birth control again (such as the pill or the IUD).

You don't have to worry about getting pregnant.

DISCOMFORTS AND RISKS

No matter which type of operation you have, you can expect to feel pain and soreness in your abdomen for a few days. You can take medicine to help relieve the discomfort.

If you had general anesthesia, you may have a sore throat for a day or two from the tube used to keep your airway open while you were asleep. This goes away quickly and is not serious. Spinal anesthesia may give some persons a temporary headache.

Sterilization operations have some risks, including a very small risk of death. This is true of any type of operation. serious problems happen rarely. Most of the time serious problems can be treated and cured by the doctor without further surgery; however, an operation may be necessary to correct some of these problems.

Some of the medical problems you could have during or after a sterilization operation:

1. You may bleed from the incision on your skin or in your vagina.
2. You may bleed inside your abdomen. (Another operation may be necessary to stop the bleeding.)
3. You may get an infection on or near the stitches or inside your abdomen.
4. The operation may not make you sterile. The operation cannot be guaranteed 100 percent to make you sterile. From 2 to 5 out of 1,000 women get pregnant after the operation.
5. As in other operations, the anesthetic drugs used to put you to sleep or to make the operation painless may cause problems. You may vomit while under anesthesia, and pneumonia may result.

Go back to your doctor at once if you get fever and/or severe pain in your abdomen. Either of these could be signs that you have an infection.

WHAT ABOUT HYSTERECTOMY?

Hysterectomy is different from tubal sterilization. Instead of blocking off the tubes, the whole uterus is taken out. A hysterectomy should be done only when there is a disease of the woman's uterus or some other problem that can only be treated by removing the uterus.

A hysterectomy is a much more serious operation than a tubal sterilization. A hysterectomy takes much longer to do, and the woman is in the hospital longer than with a tubal sterilization. There are more discomforts, and there is a greater chance of serious health problems. For these reasons, neither medicaid nor any other Federal program will pay for a hysterectomy if the only reason you are having it is to avoid bearing children, and you have no disease of your uterus.

SUMMARY

If you are sure you do not want to bear children and you want to become permanently sterile, then tubal sterilization is a safe, effective operation. It requires a relatively brief stay in the hospital, and problems are rare.

IF YOU HAVE QUESTIONS

If there is anything that is not clear to you, or anything you are worried about, it is important that you bring up these ques-

tions. All of your questions should be answered to your satisfaction before the operation.

REMEMBER

You may change your mind at any time before the operation. Make sure you do not wish to bear children under any circumstances before you decide to be sterilized.

RULES FOR STERILIZATION OPERATIONS FUNDED BY THE FEDERAL GOVERNMENT

You must be at least 21 years old.

You must wait at least 30 days to have the operation after you sign the consent form except in instances of premature delivery or emergency abdominal surgery that take place at least 72 hours after consent is obtained.

Your consent to sterilization cannot be obtained while you are in the hospital for childbirth or abortion, or under the influence of alcohol or other substances that affect your state of awareness.

You may, if you choose, bring someone with you when you sign the consent form.

Your consent is effective for 180 days from the date you sign the consent form.

Be sure to take this pamphlet and your signed consent form with you.

YOUR STERILIZATION OPERATION: INFORMATION FOR MEN

WHY THIS PAMPHLET IS IMPORTANT TO YOU

Sterilization is an operation which is intended to make it impossibe for you to ever father children. This pamphlet describes the sterilization operation for a man—called vasectomy—its benefits, its discomforts, and its risks. You should read the pamphlet completely.

Both men and women can be sterilized. (Ask your doctor or clinic for the pamphlet on sterilization for a woman.) The man's operation is easier, safer, and less expensive than the woman's operation.

If the Federal Government is to pay for your sterilization, certain conditions must be met. They are listed on page ——. The purpose of these conditions is to ensure that you understand sterilization and that you choose freely to have this operation.

MAKING UP YOUR MIND

Sterilization must be considered permanent. For nearly all men, once this operation has been done, it can never be undone. Some doctors try to undo a vasectomy by rejoining the tubes. This is a difficult and expensive operation and it doesn't work very often. So it's not a good idea to think your vasectomy can be undone.

Some men have heard about storing their sperm in sperm banks to use later. There is not enough known right now about keeping sperm to show that it works.

Make sure you do not want to father children under any circumstances before you decide to be sterilized. Are you sure you would not want to father children even if one of your present children died? Or your wife died? Or you got divorced and remarried? Be sure, before you decide to be sterilized.

No one can force you to be sterilized! Don't let anyone push you into it. If you do not want to be sterilized, no one can take away any of your Federal benefits such as welfare, Social Security, or health care—including sterilization at a later date.

To have this operation paid for with Federal funds, you must be at least 21 years old. If you are married, you should discuss the operation with your wife. However, her consent is not required if Medicaid or any other Federal program is going to pay for your operation.

You must sign the consent form at least 30 days before you have the operation.[1] This is so you will have at least 30 days to think it over and discuss it with your family and others. You can change your mind any time before the operation and can cancel your appointment if you do.

OTHER METHODS OF BIRTH CONTROL

There are other ways to avoid fathering children. Before you decide to be sterilized, think about these other methods of birth control.

TEMPORARY METHODS OF BIRTH CONTROL

The following methods of birth control are temporary. This means that when you or your partner stop using them you can father children. Temporary methods of birth control are effective only if you use them according to instructions. If you think you might want to father children later, you should use a temporary method of birth control instead of sterilization.

Ask your doctor or clinic for pamphlets and counseling on any of these temporary methods of birth control if you want them. If you decide you want a temporary method of birth control, ask for it today.

Condom, prophylactic—A thin sheath of rubber the man places over his penis each time before intercourse. Sometimes it fails (90 percent effective) and the woman can get pregnant anyway, but there is no risk of serious complications. A condom and contraceptive foam or diaphragm can be used at the same time for extra protection.

Birth control pill—A pill the woman takes regularly which makes her 98 percent certain she will not get pregnant. It is usually safe, but has occasional side effects and rare serious complications. The pill has been linked in some women with minor side effects such as darkening of the skin of the face, nausea, and vaginal discharge. More serious complications which occur infrequently include depression, increased tendency for abnormal blood clotting, increased risk of heart attack and stroke (especially among women over age 35 who smoke), and a small increased risk of liver of gall bladder disease.

Loop, coil, intrauterine devise (IUD)—A small piece of plastic a doctor or family planning specialist inserts into the woman's uterus (womb) which makes her 96 percent certain she will not get pregnant. It is usually very safe, but has occasional side effects and rare serious complications. IUD use has been linked in some women with irregular periods, cramps, and increased risk of infection of the uterus.

Diaphragm with contraceptive jelly or cream—A cup of rubber or soft plastic the woman places in her vagina each time before intercourse. Contraceptive jelly or cream must be used with the diaphragm for it to be effective. Sometimes it fails if it is not used properly (85-90 percent effective) and she can get pregnant anyway, but it has no risk of serious complications.

Contraceptive foam, foaming tablet—A foam (which looks like shaving cream) or a tablet the woman places in her vagina each time before intercourse. Sometimes it fails (85 percent effective) and she can get pregnant anyway. It occasionally has minor side effects.

Natural methods—A type of birth control in which the woman does not have intercourse on the 8-15 days each month when she is likely to get pregnant. It is sometimes hard to tell when these days occur, and effectiveness depends on proper instruction and motivation. Effectiveness can be as high as 90 percent for the sympto-thermal method if used properly. There is no risk of complications with natural methods.

STERILIZATION FOR A WOMAN

A woman can be sterilized by an operation called a tubal ligation. This operation is intended to make it impossible for her to ever bear children. Tubal ligation is more complex and not as safe as the sterilization operation for a man. (Ask your doctor or clinic for the pamphlet on sterilization for a woman.)

WHEN CAN A MAN HAVE A STERILIZATION OPERATION?

A man can have a sterilization operation at any time in his life. This means a man can have a sterilization operation at any time he wants. It doesn't matter if he is not married or doesn't have children. It is up to him.

FACTS ABOUT THE OPERATION

The surgical method of birth control is called a vasectomy. It is done in a doctor's office or clinic. Under local anesthesia, the doctor closes off the sperm duct (tubes) so that sperm cannot get through these ducts into the semen (the fluid ejected at climax). (See diagram at left.) When there are no sperm in the semen, you cannot cause a pregnancy. Only the sperm are blocked, not the liquid part of the semen. You will still ejaculate (eject fluid) as before. Vasectomy will not change your hormones. (NOTE: Vasectomy is not castration. The testicles are not removed.)

HOW A VASECTOMY IS DONE

First, a local anesthetic is given by injection into your skin on each side of the scrotum (sac) to make it temporarily numb. You will feel mild pain, like a pin prick, for a few seconds.

Once the area is numb, the doctor makes one or two very small (one-half inch) incisions (cuts). Through these, the doctor reaches the sperm ducts, cuts them, and closes them off. The incisions on the skin are then closed with stitches. The scars can hardly be seen after a couple of weeks.

The operation, including anesthesia, usually takes about 15-20 minutes. You can usually go home shortly after the operation.

IS THE OPERATION GUARANTEED TO WORK?

Vasectomy works almost all the time. This means that only about 1 out of 1,000 men who have the operation will still be able to get a woman pregnant. This is usually because the two ends of the ducts have grown back together. It is more than 99 percent effective—higher than all other methods of birth control for men. You should use some temporary method of birth control until you have your operation.

[1] This condition must be met if the Federal Government is to pay for your sterilization.

You are not immediately sterile after your vasectomy. There will still be some sperm in your ducts until you have ejaculated 10 or more times after your operation. During this time, you can still cause a pregnancy. So it is important that you and your partner use another good method of birth control until tests of your semen show it contains no more sperm. Your doctor will tell you when to return for a simple test of your semen under a microscope.

BENEFITS OF VASECTOMY

The benefits of vasectomy are:

You never have to use a temporary method of birth control again (such a rubber).

You never have to worry about making a woman pregnant.

DISCOMFORTS AND RISKS

Vasectomy is considered a safe and simple operation, but there is a small chance you will have some medical problems afterwards. You can expect some soreness after the operation. This is not serious and will go away after a few days.

Serious medical problems happen rarely. Most of the time they can be treated and cured by the doctor without further surgery; however, an operation may be necessary to correct some of them. Some of the medical problems you could have after a sterilization operation:

1. You may have swelling around the incision on your skin. This happens right after the operation and is only temporary.

2. You may have bleeding under the skin which causes a bruise. This usually clears up by itself. Ice bags are often recommended to reduce the chance of this bleeding.

3. You may get an infection either on the skin or inside the scrotum. It is important to follow the doctor's recommendations about the care and cleansing of the incision while it is healing.

4. The operation may not make your sterile. The operation cannot be guaranteed 100 percent to make you sterile. About 1 out of 1,000 men who have the operation will still be able to get a woman pregnant.

Go back to your doctor at once if swelling lasts for more than a few days, or you have a fever, or you have severe pain.

A very few men (4 out of 1,000 who have had the operation) said they had sexual problems after the operation. These were either decreased sexual desire or inability to have an erection. There is no medical explanation for these rare symptoms, and they are believed to result from an emotional reaction to the operation.

Some doctors have reported long term medical problems, but so far research has not proven that such problems really exist.

SUMMARY

If you are sure you do not want to father children and you want to become permanently sterile, then vasectomy is a safe, effective operation. It requires only a short time in a doctor's office or clinic, and problems are rare.

IF YOU HAVE QUESTIONS

If there is anything that is not clear to you, or anything you are worried about, it is important that you bring up these questions. All of your questions should be answered to your satisfaction before the operation.

REMEMBER

You may change your mind any time before the operation. Make sure you do not wish to father children under any circumstances before you decide to be sterilized.

RULES FOR STERILIZATION OPERATIONS FUNDED BY THE FEDERAL GOVERNMENT

You must be at least 21 years old.

You must wait at least 30 days to have the operation after you sign the consent form.

You may, if you choose, bring someone with you when you sign the consent form.

Your consent is effective for 180 days from the date you sign the consent form.

BE SURE TO TAKE THIS PAMPHLET AND YOUR SIGNED CONSENT FORM WITH YOU.

[FR Doc. 78-31576 Filed 11-7-78; 8:45 am]

[4110-35-M]

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER C—MEDICAL ASSISTANCE PROGRAMS

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

Federal Financial Participation in State Claims for Sterilizations

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final rules.

SUMMARY: These rules amend the existing requirements for sterilizations that are paid for under the Medicaid program (Title XIX of the Social Security Act).

Our experience under current regulations, and the responses to a Notice of Proposed Rulemaking published on December 13, 1977 (42 FR 62718) confirmed the need for these amendments.

The intent is to assure that individuals considering sterilization are fully aware of the consequences and the available alternatives to sterilization, and have ample time to consider the matter; and that Medicaid agencies have documentation showing that all the requirements were met for sterilizations funded under the Medicaid program.

EFFECTIVE DATE: These rules are effetive on February 6, 1979.

FOR FURTHER INFORMATION CONTACT:

Emily J. Nichols, Room 2607, Switzer Building, 330 C Street, SW., Washington, D.C. 20201, 202-245-9263.

SUPPLEMENTARY INFORMATION: The Department is adopting uniform requirements with respect to sterilizations for Medicaid, for the six social services programs administered by the Administration for Public Services of the Office of Human Development Services, and for programs administered by the Public Health Service. These regulations are all being published in this issue of the FEDERAL REGISTER. A single preamble, fully explaining the new regulations and responding to the comments on the previous proposed rules, was prepared jointly by the responsible organizational units. It is published with the amendments to the Public Health Service regulation (42 CFR Part 50) published elsewhere in this issue.

42 CFR Chapter IV is amended by adding a new Part 441, Subpart F, to read as follows:

Subparts A Through E [Reserved]

Subpart F—Sterilizations

Sec.
441.250 Applicability.
441.251 Definitions.
441.252 State plan requirements.
441.253 Sterilization of a mentally competent individual aged 21 or older.
441.254 Mentally incompetent or institutionalized individuals.
441.255 Sterilization by hysterectomy.
441.256 Additional condition for Federal financial participation (FFP).
441.257 Informed consent.
441.258 Consent form requirements.
441.259 Review of regulations.
Appendix: Required consent form.

AUTHORITY: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart F—Sterilizations

§ 441.250 Applicability.

This subpart applies to sterilizations and hysterectomies reimbursed under Medicaid.

§ 441.251 Definitions.

As used in this subpart:

"Hysterectomy" means a medical procedure or operation for the purpose of removing the uterus.

"Institutionalized individual" means an individual who is (a) involuntarily confined or detained, under a civil or criminal statute, in a correctional or rehabilitative facility, including a mental hospital or other facility for the care and treatment of mental illness; or (b) confined, under a voluntary commitment, in a mental hospital or other facility for the care and treatment of mental illness.

"Mentally incompetent individual" means an individual who has been declared mentally incompetent by a Federal, State, or local court of competent jurisdiction for any purpose, unless the individual has been declared com-

petent for purposes which include the ability to consent to sterilization.

"Sterilization" means any medical procedure, treatment, or operation for the purpose of rendering an individual permanently incapable of reproducing.

§ 441.252 State plan requirements.

A State plan must provide that the Medicaid agency will make payment under the plan for sterilization procedures and hysterectomies only if all the requirements of this subpart were met.

§ 441.253 Sterilization of a mentally competent individual aged 21 or older.

FFP is available in expenditures for the sterilization of an individual only if—

(a) The individual is at least 21 years old at the time consent is obtained;

(b) The individual is not a mentally incompetent individual;

(c) The individual has voluntarily given informed consent in accordance with all the requirements precribed in §§ 441.257 through 441.258; and

(d) At least 30 days, but not more than 180 days, have passed between the date of informed consent and the date of the sterilization, except in the case of premature delivery or emergency abdominal surgery. An individual may consent to be sterilized at the time of a premature delivery or emergency abdominal surgery, if at least 72 hours have passed since he or she gave informed consent for the sterilization. In the case of premature delivery, the informed consent must have been given at least 30 days before the expected date of delivery.

§ 441.254 Mentally incompetent or institutionalized individuals.

FFP is not available for the sterilization of a mentally incompetent or institutionalized individual.

§ 441.255 Sterilization by hysterectomy.

(a) FFP is not available in expenditures for a hysterectomy if—

(1) It was performed solely for the purpose of rendering an individual permanently incapable of reproducing; or

(2) If there was more than one purpose to the procedure, it would not have been performed but for the purpose of rendering the individual permanently incapable of reproducing.

(b) FFP is available in expenditures for a hysterectomy not covered by paragraph (a) of this section only if—

(1) The person who secured authorization to perform the hysterectomy has informed the individual and her representative, if any, orally and in writing, that the hysterectomy will render the individual permanently incapable of reproducing; and

(2) The individual or her representative, if any, has signed either a written acknowledgement of receipt of that information.

§ 441.256 Additional condition for Federal financial participation (FFP).

FFP is not available in expenditures for any sterilization or hysterectomy unless the Medicaid agency, before making payment, obtained documentation showing that the requirements of this subpart were met. This documentation must include a consent form or an acknowledgement of receipt of hysterectomy information.

§ 441.257 Informed consent.

(a) *Informing the individual.* For purposes of this subpart, an individual has given informed consent only if—

(1) The person who obtained consent for the sterilization procedure offered to answer any questions the individual to be sterilized may have concerning the procedure, provided a copy of the consent form and provided orally all of the following information or advice to the individual to be sterilized:

(i) Advice that the individual is free to withhold or withdraw consent to the procedure at any time before the sterilization without affecting the right to future care or treatment and without loss or withdrawal of any federally funded program benefits to which the individual might be otherwise entitled.

(ii) A description of available alternative methods of family planning and birth control.

(iii) Advice that the sterilization procedure is considered to be irreversible.

(iv) A thorough explanation of the specific sterilization procedure to be performed.

(v) A full description of the discomforts and risks that may accompany or follow the performing of the procedure, including an explanation of the type and possible effects of any anesthetic to be used.

(vi) A full description of the benefits or advantages that may be expected as a result of the sterilization.

(vii) Advice that the sterilization will not be performed for at least 30 days, except under the circumstances specified in § 441.253(c).

(2) Suitable arrangements were made to insure that the information specified in paragraph (a)(1) of this section was effectively communicated to any individual who is blind, deaf, or otherwise handicapped;

(3) An interpreter was provided if the individual to be sterilized did not understand the language used on the consent form or the language used by the person obtaining consent;

(4) The individual to be sterilized was permitted to have a witness of his or her choice present when consent was obtained;

(5) The consent form requirements of § 441.258 were met; and

(6) Any additional requirement of State or local law for obtaining consent, except a requirement for spousal consent, was followed.

(b) *When informed consent may not be obtained.* Informed consent may not be obtained while the individual to be sterilized is—

(1) In labor or childbirth;

(2) Seeking to obtain or obtaining an abortion; or

(3) Under the influence of alcohol or other substances that affect the individual's state of awareness

§ 441.258 Consent form requirements.

(a) *Content of consent form.* The consent form must be a copy of the form appended to this subpart or another form approved by the Secretary.

(b) *Required signatures.* The consent form must be signed and dated by—

(1) The individual to be sterilized;

(2) The interpreter, if one was provided;

(3) The person who obtained the consent; and

(4) The physician who performed the sterilization procedure.

(c) *Required certifications.* (1) The person securing the consent must certify, by signing the consent form, that (i) Before the individual to be sterilized signed the consent form, he or she advised the individual to be sterilized that no Federal benefits may be withdrawn because of the decision not to be sterilized; (ii) he or she explained orally the requirements for informed consent as set forth on the consent form; and (iii) to the best of his or her knowledge and belief, the individual to be sterilized appeared mentally competent and knowingly and voluntarily consented to be sterilized.

(2) The physician performing the sterilization must certify, by signing the consent form, that: (i) Shortly before the performance of sterilization, he or she advised the individual to be sterilized that no Federal benefits may be withdrawn because of the decision not to be sterilized; (ii) he or she explained orally the requirements for informed consent as set forth on the consent form; and (iii) to the best of his or her knowledge and belief, the individual appeared mentally competent and knowingly and voluntarily consented to be sterilized. Except in the case of premature delivery or emergency abdominal surgery, the physician must further certify that at least 30 days have passed between the date of the individual's signature on the consent form and the date upon which the sterilization was performed.

(3) In the case of premature delivery or emergency abdominal surgery per-

formed within 30 days of consent, the physician must certify that the sterilization was performed less than 30 days, but not less than 72 hours after informed consent was obtained because of premature delivery or emergency abdominal surgery and—

(i) In the case of premature delivery, must state the expected date of delivery; or

(ii) In the case of abdominal surgery, must describe the emergency.

(4) If an interpreter is provided, the interpreter must certify that he or she translated the information and advice presented orally and read the consent form and explained its contents to the individual to be sterilized and that, to the best of the interpreter's knowledge and belief, the individual understood what the interpreter told him or her.

§ 441.259 Review of regulations.

The Secretary will request public comment on the operation of this subpart not later than 3 years after its effective date.

APPENDIX: REQUIRED CONSENT FORM

NOTICE: Your decision at any time not to be sterilized will not result in the withdrawal or withholding of any benefits provided by programs or projects receiving Federal funds.

CONSENT TO STERILIZATION

I have asked for and received information about sterilization from (doctor or clinic). When I first asked for the information, I was told that the decision to be sterilized is completely up to me. I was told that I could decide not to be sterilized. If I decide not to be sterilized, my decision will not affect my right to future care or treatment. I will not lose any help or benefits from programs receiving Federal funds, such as A.F.D.C. or Medicaid that I am now getting or for which I may become eligible.

I understand that the sterilization must be considered permanent and not reversible. I have decided that I do not want to become pregnant, bear children or father children.

I was told about those temporary methods of birth control that are available and could be provided to me which will allow me to bear or father a child in the future. I have rejected these alternatives and chosen to be sterilized.

I understand that I will be sterilized by an operation known as a ————. The discomforts, risks and benefits associated with the operation have been explained to me. All my questions have been answered to my satisfaction.

I understand that the operation will not be done until at least 30 days after I sign this form. I understand that I can change my mind at any time and that my decision at any time not to be sterilized will not result in the withholding of any benefits or medical services provided by Federally funded programs.

I am at least 21 years of age and was born on (Day) (Month) (Year).

I, ————, hereby consent of my own free will to be sterilized by ———— by a method called ————. My consent expires 180 days from the date of my signature below.

I also consent to the release of this form and other medical records about the operation to:

Representatives of the Department of Health, Education, and Welfare or

Employees of programs or projects funded by that Department but only for determining if Federal laws were observed.

I have received a copy of this form. (Signature) (Date) (Month) (Day) (Year).

You are requested to supply the following information, but it is not required: (Race and ethnicity designation (please check)) Black (not of Hispanic origin); Hispanic; Asian or Pacific Islander; American Indian or Alaskan native; or White (not of Hispanic origin).

INTERPRETER'S STATEMENT

If an interpreter is provided to assist the individual to be sterilized:

I have translated the information and advice presented orally to the individual to be sterilized by the person obtaining this consent. I have also read him/her the consent form in ———— ———— language and explained its contents to him/her. To the best of my knowledge and belief he/she understood this explanation. (Interpreter) (Date).

STATEMENT OF PERSON OBTAINING CONSENT

Before (name of individual) signed the consent form, I explained to him/her the nature of the sterilization operation ————, the fact that it is intended to be a final and irreversible procedure and the discomforts, risks and benefits associated with it.

I counseled the individual to be sterilized that alternative methods of birth control are available which are temporary. I explained that sterilization is different because it is permanent.

I informed the individual to be sterilized that his/her consent can be withdrawn at any time and that he/she will not lose any health services or any benefits provided by Federal funds.

To the best of my knowledge and belief the individual to be sterilized is at least 21 years old and appears mentally competent. He/She knowingly and voluntarily requested to be sterilized and appears to understand the nature and consequence of the procedure. (Signature of person obtaining consent) (Date) (Facility) (Address).

PHYSICIAN'S STATEMENT

Shortly before I performed a sterilization operation upon (Name of individual to be sterilized) on (Date of sterilization) (operation), I explained to him/her the nature of the sterilization operation (specify type of operation), the fact that it is intended to be a final and irreversible procedure and the discomforts, risks and benefits associated with it.

I counseled the individual to be sterilized that alternative methods of birth control are available which are temporary. I explained that sterilization is different because it is permanent.

I informed the individual to be sterilized that his/her consent can be withdrawn at any time and that he/she will not lose any health services or benefits provided by Federal funds.

To the best of my knowledge and belief the individual to be sterilized is at least 21 years old and appears mentally competent. He/She knowingly and voluntarily requested to be sterilized and appeared to understand the nature and consequences of the procedure.

(*Instructions for use of alternative final paragraphs:* Use the first paragraph below except in the case of premature delivery or emergency abdominal surgery where the sterilization is performed less than 30 days after the date of the individual's signature on the consent form. In those cases, the second paragraph below must be used. Cross out the paragraph which is not used.)

(1) At least 30 days have passed between the date of the individual's signature on this consent form and the date the sterilization was performed.

(2) This sterilization was performed less than 30 days but more than 72 hours after the date of the individual's signature on this consent form because of the following circumstances (check applicable box and fill in information requested): ● Premature delivery.

Individual's expected date of delivery:————

□ Emergency abdominal surgery: (describe circumstances):————(Physician) (Date).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program.)

Dated: September 11, 1978.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

Approved: October 30, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-31577 Filed 11-7-78; 8:45 am]

[4110-92-M]

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS); DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

FEDERAL FINANCIAL PARTICIPATION IN STATE CLAIMS FOR STERILIZATION AND ABORTIONS

AGENCY: Administration for Public Services (APS), Office of Human Development Services (OHDS), HEW.

ACTION: Final rules.

SUMMARY: These rules amend the requirements for sterilizations for which Federal financial assistance might be claimed under the six social services programs administered by APS. The purpose is to conform the rules for these programs to the rules being adopted for Medicaid and for programs administered by the Public Health Service.

EFFECTIVE DATE: These rules are effective on February 6, 1979.

FOR FURTHER INFORMATION CONTACT:

Mrs. Johnnie U. Brooks, Room 2225, Switzer Building, 330 C Street, SW., Washington, D.C. 20201, 202-245-9415.

SUPPLEMENTARY INFORMATION: In three sets of regulations published today in the FEDERAL REGISTER, the Department is issuing new rules governing expenditures for sterilizations provided under various Department programs. One set of rules applies to the title XIX program (Medicaid); one set applies to programs administered by the Public Health Service; and this set applies to the social services programs administered by the Administration for Public Services. A comprehensive preamble, discussing the provisions of the new rules and responding to the comments received on the notice of proposed rulemaking, is set forth with the PHS regulations (42 CFR Part 50) published elsewhere in this issue.

The programs administered by APS are those under titles I, IV-A, X, XIV, XVI(AABD) and XX of the Social Security Act. The title XX program is implemented in the 50 States and the District of Columbia. The regulations for title XX appear in 45 CFR Part 228. The other programs are implemented in Guam, Puerto Rico and the Virgin Islands and are subject to the regulations in 45 CFR Parts 220 and 222.

These six programs, and the Medicaid program, are currently subject to the rule on sterilizations set forth in 45 CFR 205.35. However, the Medicaid regulation being published today revises that rule and recodifies it in 42 CFR Part 441, Subpart F. Rather than setting out the rule in detail for the APS programs, we are merely incorporating the new Medicaid rule by reference in the pertinent regulations for APS. The present rule in 45 CFR 205.35 is vacated.

We are also taking this opportunity to correct a technical omission with respect to the rules on abortions for which financial assistance might be claimed under the APS programs. On July 21, 1978, final rules were published governing Federal financial participation in State claims for abortions. (43 FR 31868) These rules are effective August 21, 1978 for Medicaid, for programs administered by the Public Health Service, and for title XX. Through an oversight, the rules for the other social services programs administered by APS were not amended to reflect the change in policy on abortions. Since we are again incorporating the Medicaid rule by reference, and are doing so in the same section that deals with sterilization, we have added that amendment to this rule. For a full discussion of the rule on abortion, see the preamble for the July 21, 1978 publication.

WAIVER OF PROPOSED RULEMAKING

Because these amendments merely conform the APS regulations to the amendments adopted for Medicaid and PHS, we consider them to be technical in nature and believe that their omission from the proposed rule did not preclude full public review and comment. Therefore, we believe that further notice of proposed rulemaking is unnecessary and are publishing these rules in final. In accordance with the Medicaid and PHS regulations, the amendments pertaining to sterilizations will be effective February 6, 1978. The rules pertaining to abortions are effective on August 21, the effective date of the rules published on July 21. Therefore, the Secretary amends 45 CFR Chapter II as set forth below.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

1. Section 205.35 of Part 205 is vacated and reserved as follows, and its content amended and relocated to 42 CFR Part 441, Subpart F.

§ 205.35 [Reserved]

* * * * *

PART 220—SERVICE PROGRAMS FOR FAMILIES AND CHILDREN: TITLE IV PARTS A AND B OF THE SOCIAL SECURITY ACT

2. Section 220.21 of Part 220 is revised to codify the first paragraph as (a) and to add paragraphs (b) and (c) to read as follows:

§ 220.21 Family planning services.

(a) Family planning services must be offered and provided to those individuals wishing such services, specifically including medical contraceptive services (diagnosis, treatment, supplies, and followup), social services and educational services. Such services must be available without regard to marital status, age, or parenthood. Individuals must be assured choice of method and there must be arrangements with varied medical resources so that individuals can be assured choice of source of service. Acceptance of any services must be voluntary on the part of the individual and may not be a prerequisite or impediment to eligibility for the receipt of any other service or aid under the plan. Medical services must be provided in accordance with the standards of other State programs providing medical services for family planning (e.g., maternal and child health services).

(b) Federal financial participation in State claims for abortions is governed by 42 CFR 449.100 through 449.109.

(c) If a State authorized sterilization as a family planning service, it must comply with the provisions of 42 CFR Part 441, Subpart F.

PART 222—SERVICE PROGRAMS FOR AGED, BLIND, OR DISABLED PERSONS: TITLES I, X, XIV AND XVI OF THE SOCIAL SECURITY ACT

3. Section 222.59 of Part 222 is revised to codify the first paragraph as (a) and to add paragraph (b) to read as follows:

§ 222.59 Services to individuals to meet special needs.

(a) Services may include any or all of the following individual service items: Legal services for persons desiring the help of lawyers with their legal problems (see separate policies governing the provision of such services); family planning; services for such groups as alcoholics, drug addicts, and mentally retarded individuals; special services to the blind, deaf, and other disabled individuals.

(b) Regarding the provision of family planning services:

(1) If a State authorizes abortions, Federal financial participation in State claims is governed by 42 CFR 449.100 through 449.109.

(2) If a State authorizes sterilization, it must comply with the provisions of 42 CFR Part 441, Subpart F.

PART 228—SOCIAL SERVICE PROGRAMS FOR INDIVIDUALS AND FAMILIES: TITLE XX OF THE SOCIAL SECURITY ACT

4. Section 228.63 of Part 228 is revised to amend paragraph (c) to read as follows:

§ 223.63 Family planning services.

(a) FFP is available in the cost of family planning services provided without regard to income.

(b) For purposes of this part, family planning services means counseling, educational and medical services (including diagnosis, treatment and continuing supervision, necessary laboratory examinations and tests, drugs, supplies, devices and related counseling furnished, prescribed by, or under the supervision of, a physician) to enable individuals (including minors) voluntarily to limit their family size, to space their children, or to correct infertility.

(c) If a state authorizes sterilization as a family planning service, it must comply with the provisions of 42 CFR Part 441, Subpart F, except that the State plan requirement under 42 CFR 441.252 does not apply to the title XX program.

(Sec. 101, Pub. L. 95-205, 91 Stat. 1461, December 9, 1977; Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).)

(Catalog of Federal Domestic Assistance Program No. 13.642, Social Services for Low Income and Public Assistance Recipients.)

NOTE.—It has been determined that this document does not require preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: September 11, 1978.

ARABELLA MARTINEZ,
Assistant Secretary for Human Development Services.

Approved: October 30, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-31578 Filed 11-7-78; 8:45 am]

Federal Register

WEDNESDAY, NOVEMBER 8, 1978
PART VI

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

■

WETLAND-RIPARIAN AREA PROTECTION AND MANAGEMENT

Availability of Interim Guidelines To Implement E.O. 11990

PREVIOUSLY PUBLISHED DOCUMENTS

Listed below are other documents on implementation of Executive Orders 11988 and 11990 previously published in the FEDERAL REGISTER:

Agency	1978 Date of Issue	Vol. 43 FR, Page No.
Interior Department, Bureau of Land Management	Sept. 28	44798
Commerce Department, Office of the Secretary	Sept. 29	45284
Transportation Department, Office of the Secretary	Sept. 29	45285
Nuclear Regulatory Commission	Oct. 6	46499
Interior Department, Heritage Conservation and Recreation Service	Oct. 13	47449
Small Business Administration	Oct. 20	49237
Interior Department, Reclamation Bureau	Oct. 27	50391

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

WETLAND-RIPARIAN AREA PROTECTION AND MANAGEMENT

Policy and Protection Procedures—Interim Guidelines

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Availability of Interim Guidelines.

SUMMARY: The Bureau of Land Management (BLM) has developed interim policy and interim internal procedures to implement Executive Order 11990, Protection of Wetlands. The purpose of this notice is to inform the public that these guidelines are available for review. The final policy and procedures will be published in the FEDERAL REGISTER and made part of the Bureau Manual after the guidelines are reviewed and revised.

DATE: Comment by: January 8, 1978.

ADDRESS: Copies of the interim guidelines are available from the Director (360), Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240. Comment should be sent to the preceding address and all comments will be available for public inspection in room 2649 at the above address from 7:45 a.m. to 4:15 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Dr. William B. Krohn, 202-343-6189 or 6792.

SUPPLEMENTARY INFORMATION: BLM anticipates publishing Manual Section 6740 (Wetland-Riparian Area Protection and Management) to provide policy and internal procedures to implement Executive Order 11990. Additionally, Executive Order 11988 (Floodplain Management) and Section 102(a) (8) and (11) of the Federal Land Policy and Management Act of 1976 (43 USC 1701) mandate strong Bureau programs for the conservation of wetland-riparian areas.

The proposed Manual Section establishes policy and procedures for the identification, enhancement, and protection of fresh, brackish, and saline wetland areas. These guidelines have been reviewed internally by BLM and are applicable to all Bureau actions. In meeting BLM responsibilities for the acquisition, disposal, and management of public lands it will be policy:

1. To avoid long- and short-term adverse impacts associated with the destruction, loss, or degradation of wetland-riparian areas.

2. To avoid the direct or indirect support of new construction in wetland-riparian areas whenever there is a practical alternative.

3. To preserve and enhance the natural and beneficial values of wetland-riparian areas which may include constraining or excluding those uses causing irreparable damage.

4. To include practical measures to minimize harm in all actions causing definable adverse impacts to wetland-riparian areas.

The Bureau's planning process will be the mechanism for implementing BLM Manual Section 6740. An outline of this process, specifically as related to floodplain management, was published on September 28, 1978, in the FEDERAL REGISTER (43 FR 44798). The major steps of BLM's planning system described in this publication apply to the protection and management of wetland-riparian areas.

The Department of the Interior's interim guidelines on floodplain management and wetland protection, published on June 9, 1978, in the FEDERAL REGISTER (43 FR 25319-25321), were used in developing the proposed BLM Manual Section 6740.

ARNOLD E. PETTY,
Director,
Bureau of Land Management.

OCTOBER 31, 1978.

[FR Doc. 78-31601 Filed 7-8-78; 8:45 am]

Federal Register

WEDNESDAY, NOVEMBER 8, 1978
PART VII

CIVIL AERONAUTICS BOARD

REDUCTION IN AIR TAXI REPORTING REQUIREMENTS

Classification and Exemption of Air Taxi Operators

[6320-01-M]

CIVIL AERONAUTICS BOARD

[14 CFR Part 298]

[EDR-367, Docket 33910, Dated: November 2, 1978]

REDUCTION IN AIR TAXI REPORTING REQUIREMENTS

Classification and Exemption of Air Taxi Operators

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board on its own initiative is proposing to reduce the amount of information now required to be submitted by air taxi operators and commuter air carriers by eliminating some reports and reducing the filing frequency of others. State governments collecting the same air taxi data would be encouraged to share these data with the Board in return for exempting their air taxi operators from Board reporting requirements. The limited period of confidential treatment accorded commuter origin and destination (O&D) data would also be eliminated.

DATES: Comments by: January 8, 1979.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 33910, Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Raymond Kurlander, Director, Bureau of Accounts and Statistics, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5270.

SUPPLEMENTARY INFORMATION: As part of its continuing efforts to reduce reporting burdens, the Board is proposing in this notice revisions to Part 298, Classification and Exemption of Air Taxi Operators, 14 CFR Part 298, which would eliminate annual reporting altogether for most air taxi operators, while consolidating, and reducing the filing frequency of schedules required of those air taxis classified as commuter air carriers.

In developing these proposed revisions, the Board's staff looked at the current reporting requirements for air taxi operators, including commuter air carriers, and found several areas in which the need for air taxi operating data had changed. Highlights of the resulting proposals are:

1. Eliminate reporting altogether on CAB Form 298-D, "Report of All Revenue Operations (Excluding Rotary-Wing and All-Cargo Operations) Performed by Air Taxi Operators, Including Commuter Air Carriers;"

2. Eliminate one of the three reports comprising CAB Form 298-C, "Report of Scheduled Operations of Commuter Air Carriers," consolidate the remaining schedules of Form 298-C into a new one-page format, reduce the filing frequency from quarterly to semiannually, and reduce the required number of copies from three to one;

3. Modify the definition of "commuter air carrier" to exclude air taxi operators with mail contracts of $20,000 or less per year who would otherwise not qualify as commuters;

4. Add a provision to encourage State governments collecting the same commuter operating data as the Board collects to share these data with us in return for exemption of their commuters from our reporting requirements.

5. Eliminate the limited period of confidential treatment currently accorded commuter O&D data.

The following discussion expands on each of these proposals.

Reporting by Air Taxi Operators

Currently, air taxi operators are required to file with the Board one annual report, CAB Form 298—D. This report contains only four basic data items, categorized into domestic and international operations: number of passengers carried, aircraft hours flown, aircraft miles flown, and number of departures performed.

When this filing requirement was established, the information was used both by the Board and by the National Transportation Safety Board (NTSB). This report is no longer necessary, however, to carry out the Board's responsibilities, and we now understand that the NTSB's needs for this information would be satisfied by providing them with periodic air taxi survey data.

Thus, the burden of submitting CAB Form 298-D is no longer warranted, and we are proposing to eliminate the reporting requirement. In its place, we will have the Director, Bureau of Accounts and Statistics, under delegated authority, conduct periodic surveys of the air taxi industry to satisfy NTSB's needs. Any air taxi operators and commuter air carriers to be included in a survey will be notified of this in advance.

Reporting by Commuter Air Carriers

In addition to CAB Form 298-D, air taxi operators classified as commuter air carriers are also required to file quarterly CAB Form 298-C. This report consists of three separate schedules: a certification statement, Schedule A-1 containing a "Report of Aircraft Operated" and a report of "Flight and Traffic Statistics in Scheduled Operations by Commuter Air Carriers," and Schedule T-1, "Report of Revenue Traffic by On-Line Origin and Destination." CAB Form 298-C covers only scheduled operations and excludes any data for on-demand service.

We have tentatively decided that the "Report of Aircraft Operated" on Schedule A-1 can be eliminated from this filing requirement. The report presents FAA registration, type, model, and passenger and cargo capacity information for the aircraft used in operations during the reporting quarter. Since we already collect this information biennually for air taxi reregistration and receive amendments from the air taxis whenever there is a change in the status of aircraft operated, repeated submission on a quarterly basis does not appear to be necessary.

Additionally, we have proposed to consolidate the remaining schedules of CAB Form 298-C into a new one-page format which commuters would file semiannually as opposed to the present quarterly requirement. With the proposed elimination of CAB Form 298-D discussed above, this proposal would reduce commuter reporting from the current 13 separate schedules per year to only two.

Definition

Currently, an air taxi operator is classified as a "commuter air carrier" if it either (1) performs at least five round trips per week and publishes flight schedules, or (2) transports mail by air under contract with the U.S. Postal Service. We propose to modify this definition to exclude those air taxis having mail contracts of $20,000 or less per year [1] who would otherwise not qualify as commuters. This would relieve those small businesses from the reporting requirements associated with commuter status when they are classified as commuters only because of small mail contracts. We estimate that as many as fifteen small commuters could benefit from this change in definition.

The change in definition, along with the elimination of CAB Form 298-D

[1] As reasonably estimated at the beginning of any reporting period for compensation to be earned over the next 12 months. These estimates can be verified by referring to bids for, amendments to, and renewals of mail contracts on USPS Form 7405, 7447, and 7450 or subsequent replacement forms.

discussed above, would reduce the reporting requirements for qualifying carriers from the current 13 schedules per year to none at all.

INVITATION FOR STATE PARTICIPATION

We propose to add a provision to Part 298 which would permit and encourage the sharing of air taxi operating data with those States already collecting these data. This provision would give the Director, Bureau of Accounts and Statistics, delegated authority to exempt a commuter air carrier or group of commuter air carriers from the reporting requirements of Part 298 when the information prescribed by the Board can be collected from State governments with at least the same degree of reliability and timeliness that the Board has now.

This concept stems directly from a program we have recently designed with the Alaska Transportation Commission, whose needs for air taxi data are equivalent to ours. The Alaska Commission collects the same air taxi data we do and, under the new air taxi reporting system, would provide us with these data in return for our suspension of the recurring reporting requirements for Alaskan air taxis.

Since the reporting benefit which would be derived from this "single reporting system" need not be restricted to Alaskan carriers, all States who collect air taxi data are invited to participate in this sharing program. What we hope to accomplish through this type of program is to eliminate the duplication that occurs when small businesses must file the same or similar information with different levels of government. We encourage any comments or proposals from State agencies concerning this sharing program.

PUBLIC DISCLOSURE OF ORIGIN AND DESTINATION DATA

We have also tentatively decided to eliminate the limited period of confidential treatment accorded to commuter O&D data now reported on Schedule T-1 of CAB Form 298-C. There are several reasons for this conclusion.

In 1970, the Board decided to restrict the disclosure of commuter traffic data and stated that immediate disclosure of these data would subject a commuter carrier to a competitive disadvantage in relation to another air taxi (ER-605, adopted February 24, 1970 (35 FR 3897, February 28, 1970)). For this and other competitive reasons, we decided to treat these data in the same manner as certificated carrier service segment data, then similarly restricted.

Public policy favors disclosure of all data filed with the Board unless there are sufficient countervailing reasons for withholding.[2] We have tentatively decided that these reasons no longer exist for the data involved here. To begin with, immediate disclosure of commuter traffic should not cause any substantial competitive injury vis-a-vis other air taxis, since each would have equal access to the others' data. Also, since 1970, commuters have substantially increased their share of the total air traffic market and have established themselves as a strong part of the scheduled air transportation system, often providing replacement service for certificated carriers. Thus, there no longer appears to be a need for protective treatment of these data. To continue the restricted release of these commuter data while freely releasing certificated carriers' domestic service segment data (ER-973, adopted October 15, 1976 (41 FR 46582, October 22, 1976)), could provide commuters with an artificial competitive advantage at a time when the Board is trying to return the air carrier system to a greater reliance on less-restricted competition for operational decisions.

Prompt public disclosure of commuter traffic data should improve the performance of the air transportation system, in that airport agencies and air carriers will be better able to evaluate the air service needs of local communities. Further, immediate disclosure of this information should spur additional development of the air taxi industry as the link of small communities to the certificated air system.

Thus, we propose to eliminate § 298.62 "Public disclosure of schedule T-1 data" in its entirety.

In view of recent organizaitonal changes within the Board, we are also planning to make several technical changes which would delete the terms "Bureau of Operating Rights" and "Office of Facilities and Operations" to be replaced by the terms "Bureau of Pricing and Domestic Aviation" and "Office of Administrative Support Operations," respectively.

PROPOSED RULE

The Board proposes to amend Part 298 of its Economic Regulations (14 CFR Part 298) as follows:

1. The Table of Contents would be amended by revoking and reserving §§ 298.62 and 298.63 and by adding a new § 298.65 to Subpart F as follows:

Subpart F—Requirements for Filing of Flight Schedules and Reports

Sec.

* * * * *

298.62 [Reserved]
298.63 [Reserved]

* * * * *

298.65 Reporting exemption for State collection of data.

* * * * *

2. Paragraph (f) of § 298.2 would be amended to read as follows:

§ 298.2 Definitions.

* * * * *

(f) "Commuter air carrier" means an air taxi operator which (1) performs at least five round trips per week between two or more points and publishes flight schedules which specify the times, days of the week and places between which they are performed, or (2) transports mail by air under a contract or contracts with the U.S. Postal Service when the total amount of the contract or contracts is estimated at the beginning of any reporting period (January 1 and July 1) to be in excess of $20,000 over the next 12 months.

* * * * *

3. All references in Part 298 to the term "Bureau of Operating Rights" would be deleted and replaced by the term "Bureau of Pricing and Domestic Aviation."

§ 298.60 [Amended]

4. Section 298.60 would be amended by deleting the term "Office of Facilities and Operations" and by replacing it with the term "Office of Administrative Support Operations."

5. Section 298.61 would be revised in its entirety, to read as follows:

§ 298.61 Reporting of scheduled operations by commuter air carriers.

(a) Each "commuter air carrier" shall file CAB Form 298-C "Report of Scheduled Operations of Commuter Air Carriers" as prescribed in this section.[3]

(b) The original of CAB Form 298-C shall be filed with the Bureau of Accounts and Statistics semiannually for the 6-month periods ended June 30 and December 31 of each year to be received on or before August 10 and February 10, respectively. NOTE: Due dates falling on a Saturday, Sunday, or national holiday will become effective on the first following working day.

(c) The information included in this report shall pertain only to flights performed in scheduled service during the 6-month reporting period. The numeric carrier code and the date code established by the Bureau of Accounts and Statistics shall be inserted in the spaces provided in the hearing of the report. All information shall be typed or neatly printed.

[2] Freedom of Information Act, as amended, 80 Stat. 250, 5 U.S.C. 552; *see, National parks and Conservation Association* v. *Kleppe*, 547 F.2d 673 (D.C. Cir. 1976).

[3] CAB Form 298-C is filed as part of the original document and can be obtained from the Publications Services Division, Civil Aeronautics Board, Washington, D.C. 20428.

(d) The "Flight and Traffic Statistics in Scheduled Operations" section of this report shall be filled out as follows:

(1) Line 1 "Aircraft-Hours Flown" shall show the total airborne aircraft hours flown computed from the moment an aircraft leaves the ground until it touches ground at the end of each flight stage.

(2) Line 2 "Aircraft-Miles Flown" shall show the total aircraft-miles operated computed in airport-to-airport distances for each flight stage as actually operated, whether or not actually performed according to the scheduled service pattern.

(3) Line 3 "Number of Departures Performed" shall show the total number of takeoffs performed, including extra section takeoffs and takeoffs from nonscheduled airports resulting from deviations from the scheduled service pattern.

(4) Line 4 "Revenue Passenger-Miles" shall show total revenue passenger-miles, computed by multiplying the aircraft-miles flown on each flight stage by the number of revenue passengers carried on that flight stage.

(5) Line 5 "Available Seat-Miles" shall show total revenue seat-miles available, computed by multiplying the aircraft-miles flown on each flight stage by the number of passenger seats available for sale on that flight state.

(6) Line 6 "Revenue Ton-Miles" shall show total revenue ton-miles, computed by first multiplying the aircraft-miles flown on each flight stage by the number of pounds of revenue traffic carried on that flight stage to obtain revenue pound-miles. Revenue pound-miles are then divided by 2,000 pounds to find revenue ton-miles. For passengers and their baggage, a standard weight of 200 pounds per passenger may be used.

(7) Line 7 "Available Ton-Miles" shall show total revenue ton-miles available, computed by first multiplying the aircraft-miles flown on each flight stage by the number of pounds of aircraft capacity available for use on that stage to obtain revenue pound-miles available. Revenue pound-miles available are then divided by 2,000 pounds to find available ton-miles.

(8) Line 8 "Number of Departures Scheduled in Passenger Service" shall show the total number of takeoffs scheduled to be performed in passenger service.

(9) Line 9 "Number of Scheduled Departures Completed in Passenger Service" shall show the total number of scheduled departures in passenger service reported on line 8 which were performed, excluding extra sections. To determine if a departure is performed as scheduled, only the originating point of a flight stage need be considered; whether the flight lands at its scheduled destination or not has no bearing.

(e) The "Report of Revenue Traffic by On-Line Origin and destination" section of this report shall show the total traffic in scheduled service for the period as follows:

(1) Each pair of origin and destination airports shall appear only once, i.e., no entry shall have the same origin and destination airports as another entry.

(2) The origin and destination data shall be for the on-line movement of traffic rather than for flight stages or flight origin and destination. For example, if a flight operates from A to B to C with 5 passengers enplaning at A, 1 deplaning and 2 enplaning at B, and 6 deplaning at C, the applicable passenger data would be reported as follows:

Origin airport	Destination airport	No. of Passengers
A	B	1
A	C	4
B	C	2

(3) Only the ultimate origins and destinations of the traffic moving on the reporting carrier's system shall be reported. Using the example given above, the traffic report would remain the same, even if the carrier operated one flight from A to B and a different flight from B to C, as long as the passengers' on-line origins and destinations remained the same.

(4) Only one grand total shall be shown in the space provided after the final traffic entry. Do not use subtotals.

(5) Columns (1) and (2) shall show the airport codes for the movement of traffic from the point of origin to the point of destination. Carriers shall use the airport codes in the *Official Airline Guide* (OAG). If an airport cannot be found in the OAG, the carrier shall, until otherwise instructed by the Board, insert its own code for the airport in column (1) or (2) followed by an asterisk, and shall identify the airport and its location in the space provided.

(6) Columns (3), (4) and (5) shall show the total number of revenue passengers, pounds of cargo, and pounds of mail, respectively, transported from the point of on-line origin to the point of on-line destination.

(f) The information requested in CAB Form 298-C may be submitted on any comparable form prepared on automatic data processing equipment if the substitute form has been approved by the Director, Bureau of Accounts and Statistics, Civil Aeronautics Board, Washington, D.C. 20428. Data in any approved format shall contain the same column headings arranged in the same sequence as in CAB Form 298-C.

§§ 298.62 and 298.63 [Reserved]

6. Sections 298.62 and 298.63 would be revoked and reserved.

7. Section 298.64 would be revised in its entirety to read as follows:

§ 298.64 Requests for extensions of time within which to file reports or for waivers from reporting requirements.

(a) If circumstances prevent the filing of CAB Form 298-C on or before the due date, a written request for an extension may be submitted. Except in cases of emergency, the request must be delivered to the Board's Bureau of Accounts and Statistics in writing at least 3 days in advance of the due date. The request must state good and sufficient reason to justify the granting of the extension and the date when the reports can be filed. If the request is denied, the air carrier remains subject to the filing requirements to the same extent as if no request for extension of time had been made.

(b) The Director, Bureau of Accounts and Statistics, may waive any reporting requirement contained in § 298.61 upon his own initiative or upon Written request from any commuter air carrier if the waiver is in the public interest and the request demonstrates that (i) unusual circumstances warrant such a departure, (ii) a specifically defined alternative procedure or technique will result in a substantially equivalent or more accurate portrayal, and (iii) the application of the alternative procedure will maintain or improve uniformity in reporting between commuter air carriers.

8. A new § 298.65 would be added to Subpart F to read as follows:

§ 298.65 Reporting exemption for State collection of data.

(a) The Director, Bureau of Accounts and Statistics, may exempt a commuter air carrier from the reporting requirements of § 298.61 if a State government collects the information specified in this section and provides it to the Board by the dates specified in that section. The data provided to the Board in this manner must be at least as reliable as if they were collected by the Board directly.

(b) The Director, Bureau of Accounts and Statistics, will provide assistance to any State agency interested in participating in this exemption program.

9. CAB Form 298-C would be amended as shown in Exhibit A (filed as part of the original document).

(Secs. 204(a) and 416(b) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 771, 91 Stat. 2184, 49 U.S.C. 1324(a), and 1386(b).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

* * * * *

[FR Doc. 78-31602 Filed 11-7-78; 8:45 am]

Federal Register

WEDNESDAY, NOVEMBER 8, 1978
PART VIII

DEPARTMENT OF ENERGY

Economic Regulatory Administration

■

PRODUCTION INCENTIVES FOR MARGINAL PROPERTIES

Proposed Rulemaking and Public Hearing

[3128-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Parts 211 and 212]

[Docket No. ERA-R-78-18]

PRODUCTION INCENTIVES FOR MARGINAL PROPERTIES

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE), in the interest of optimizing the production of domestic crude oil from the nation's older, declining properties, presents several alternative proposals for incentives to promote increased production of domestic crude oil.

One of the alternative proposals described in this Notice would apply, if adopted, to crude oil produced and sold from "marginal properties" and would provide for immediate eligibility of a portion of the crude oil produced and sold from such properties for market clearing prices. The proposal would also provide that all domestic crude oil produced and sold from such properties would gradually qualify for market clearing prices.

Under another of the alternative proposals, producers would be permitted, generally, to update the base production control levels (BPCLs) and adjustments to these BPCLs for their properties, and would be permitted to accomplish a one-time elimination of current cumulative deficiencies, without regard to whether the properties would qualify as "marginal." Under a third alternative, a certain volume of the daily crude oil production of each well on a property would be eligible for sale at market clearing prices, regardless of whether the property is considered "marginal" in a technical sense. Finally, there is an alternative proposal to increase generally the ceiling prices of lower tier crude oil in order to keep pace with increasing operating costs for certain types of domestic production.

A related proposal is to eliminate the current 21 cents per barrel entitlement "penalty" on uncontrolled crude oil.

DATES: Comments by January 22, 1979, 4:30 p.m.; Requests to speak by January 2, 1979, 4:30 p.m.; Hearing dates: *Austin Hearing:* January 9, 1979, 9:30 a.m.; *Los Angeles Hearing:* January 11, 1979, 9:30 a.m.

ADDRESSES: All comments to: Public Hearing Management, Docket No. ERA-R-78-18, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461. Requests to speak: *Austin Hearing:* Department of Energy, P.O. Box 3228, 2626 W. Mockingbird Lane, Dallas, 75235, Attn: A. Millard; *Los Angeles Hearing:* Department of Energy, 3d Floor, 111 Pine Street, San Francisco, Calif. 94111, Attn: R. Laffel; Hearing locations: *Austin Hearing:* Federal Building, Room 5777, 300 East 8th Street, Austin, Tex.; *Los Angeles Hearing:* Los Angeles Convention Center, 1201 South Figureroa Street, Los Angeles, Calif.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), Economic Regulatory Administration, 2000 M Street NW., Room 2214B, Washington, D.C. 20461, 202-254-5201.

William Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street NW., Room B110, Washington, D.C. 20461, 202-634-2170.

William Carson (Office of Regulations and Emergency Planning), Economic Regulatory Adminstration, 2000 M Street NW., Room 2304, Washington, D.C. 20461, 202-254-7200.

Cheryl Anderson (Office of General Counsel), Department of Energy, 12th and Pennsylvania Avenue NW., Room 7134, Washington, D.C. 20461, 202-566-2085.

SUPPLEMENTARY INFORMATION:

I. *Background*
A. *Third stage of EPCA implementing regulations*
B. *The Energy Conservation and Production Act*
II. *General principles underlying consideration of the proposals*
III. *Alternative amendments proposed*
A. *Alternative proposal No. 1: Market price for certain production from "marginal" properties*
B. *Alternative proposal No. 2: Updating of BPCL for all properties*
C. *Alternative proposal No. 3: Release of some crude oil production from all wells to market prices*
D. *Alternative proposal No. 4: Increase in lower tier ceiling price*
IV. *Other conforming amendments*
V. *Findings required by EPAA section 8(b)(2); specific information requested*
VI. *Additional proposal to eliminate 21 cents per barrel entitlement penalty for uncontrolled crude oil*
VII. *Comment procedures*

I. Background

A. Third stage of EPCA implementing regulations

On May 4, 1976, the Federal Energy Administration (FEA) issued a Notice of Proposed Rulemaking and Public Hearing (41 FR 18873, May 7, 1976) to consider whether additional incentives, beyond the lower tier and upper tier price levels (including adjustments for inflation and as a production incentive) that had been adopted pursuant to the pricing policy of the Energy Policy and Conservation Act ("EPCA," Pub. L. 94-163), would be needed to maintain or increase production volumes in any classifications of domestic crude oil. At that time any amendment to provide such incentives would have been required to be submitted to Congress pursuant to the review procedures established by section 551 of the EPCA for composite price adjustments in excess of the adjustments for inflation and as a production incentive which were then permitted without such review.

Any such amendment submitted for Congressional review was required by section 8(e)(2) of the Emergency Petroleum Allocation Act of 1973 ("EPAA," Pub. L. 93-159), as amended by section 401 of the EPCA, to be accompanied by a finding that it was necessary to provide a more adequate incentive with respect to:

(A) The discovery or development of high cost and high risk properties (including new wildcat properties, and properties located on the Outer Continental Shelf, properties located north of the Arctic Circle, deep wells and deep horizons in onshore or offshore properties, and properties operated by independent producers);

(B) The application of enhanced recovery techniques to producing properties to obtain a level of production higher than would otherwise occur from those properties but for such adjustment; or

(C) Sustaining production from marginal wells, including production from stripper wells.

Accordingly, the FEA proposed additional incentives with respect to each of the three categories specified in the EPAA (i.e., the discovery and development of high cost and high risk properties, the application of enhanced recovery techniques, and sustaining production from marginal wells). Among the proposals from that proceeding were:

(1) Qualification for stripper well prices (which at that time were subject to the upper tier ceiling price rule) according to well depth, onshore or offshore location, as well as average daily production; and

(2) Market level prices instead of upper tier prices for crude oil produced and sold from stripper well properties.

Final action on any of the proposals in that proceeding was ultimately deferred due to (1) the increased pricing flexibility afforded by the elimination of the 3 percent limitation on the production incentive adjustments contained in the Energy Conservation and Production Act ("ECPA," Pub. L. 94-385), which was enacted on August 14, 1976 during the pendency of the proceeding, and (2) the express priorities identified in the ECPA for treatment

under that increased pricing flexibility.

B. THE ENERGY CONSERVATION AND PRODUCTION ACT

The ECPA amended the EPAA in several significant respects regarding crdue oil prices. Specifically, the ECPA removed the EPCA 3 percent limitation on adjustments to the composite price as a production incentive, so that only the overall limitation of 10 percent on the combined effect of adjustments to reflect inflation and as a production incentive was retained. The EPCA has limited the annual rate of adjustment to the rate of inflation, as measured by the first revision of the GNP deflator, plus not more than 3 percent as a production incentive, with the total rate of adjustment not to exceed 10 percent per year. The ECPA permitted increased pricing flexibility to up to a full 10 percent per year, with the result that composite price increases as a production incentive could exceed 3 percent if the rate of inflation were below 7 percent.

This increased pricing flexibility provided a means to encourage domestic production, and the ECPA included as express priorities in this regard the application of bona fide tertiary recovery techniques and adjustments to certain gravity price differentials that were associated at that time with heavy crude oil.

Action has since been taken to accomplish adjustments to gravity price differentials (41 FR 48324, November 3, 1976) and to provide additional price incentives for bona fide tertiary enhanced recovery techniques (43 FR 33679, August 1, 1978).

Effective September 1, 1976, crude oil produced and sold from stripper well properties is exempt from first sale price controls. Congress provided a statutory exemption for crude oil produced and sold from stripper well properties (first in the EPAA and later in the ECPA) to provide an incentive to maintain domestic crude oil production from marginal producing properties. Under the current ECPA exemption, Congress determined the qualifying limits for the exemption to be production of crude oil at levels of 10 barrels or less per well per day during any preceding consecutive 12-month period beginning after December 31, 1972. Although such crude oil is statutorily exempt from first sale price reported to DOE, are given an imputed price (as determined under section 121 of the ECPA), and are included in the calculations to determine the actual weighted average first sale price each month for all domestic crude oil.

We have determined that the examination, begun by the FEA, of additional production incentives for domestic crude oil (particularly with respect to domestic crude oil volumes the production of which may be marginally economic to produce at currently controlled price levels) should be continued. Accordingly, set forth in section III, below, are four alternative proposals which are not necessarily mutually exclusive to amend the price regulations to provide such production incentives for domestic crude oil. We are requesting comments on these alternatives, and we may adopt whichever proposal (or variation thereof) we determine to be most appropriate.

II. General Principles Underlying Consideration of the Proposals

An important element of the policy of the DOE is to promote the maximization of domestic crude oil production, and thus to promote national energy self-sufficienty, in a manner compatible with the mandates of the EPAA and overall national policies.

In this connection, we wish to consider whether current controlled crude oil price levels under our regulations, and particularly lower tier crude oil price levels, may be resulting in the premature abandonment of domestic crude oil producing properties that would be self-sustaining in the absence of controls or at higher price levels. Also, we are aware that the present crude oil price control system may to some extent be creating incentives for producers not to undertake actions that would increase crude oil production, because allowing production to decline might result in more favorable regulatory treatment than if production efforts were maintained or increased.

We desire to prevent the crude oil price regulations from operating in a fashion that is counterproductive to the goal of maximizing domestic crude oil production, and in an effort to address the potential problems discussed above we are setting forth, in section III, below, four alternative proposals. These proposals would have the effect of permitting an increase in the price of crude oil produced from the properties to which the provisions would apply, in some cases to market price levels.

Our consideration of whether to adopt any of these proposals, and if so which of them (or variations of them) to adopt, will be guided by several considerations. First, we want to determine whether and to what extent their adoption would be likely to result in increased production above that which would occur in the absence of their adoption. (As indicated in section V of this notice, to the extent that the price of lower tier crude oil would be increased as a result of any of these proposals, a finding must be made that the price increase would be likely to result in a level of production above that which would occur in the absence of the price increase.) Second, we wish to establish at least a general correlation between the amount of the price increases that would be involved and the amount of increased production that would result from these proposals. Finally, if we determine to adopt any of these alternatives (or variations thereof), we will give appropriate weight to the administrative feasibility of each particular alternative or variations thereof. The matter of administrative feasibility involves such factors as the desirability of avoiding undue compliance costs and uncertainties, both for the producer and also for the DOE.

In determining which if any of the alternatives to adopt, we will balance all of the foregoing considerations, as well as any other relevant factors. We may adopt any variations of these proposals that are determined to be appropriate, or a combination of more than one of these alternatives. Our primary purpose is to take such action as may be necessary to assure that our regulations do not operate to produce the potential counterproductive results described above.

III. Alternative Amendments Proposed

A. ALTERNATIVE PROPOSAL NO. 1: MARKET PRICE FOR CERTAIN PRODUCTION FROM "MARGINAL" PROPERTIES

This proposal is designed generally to provide incentives for maintaining marginal domestic production that more closely correspond to costs of production at different well depths. It is intended to determine whether production costs for domestic crude oil significantly increase in proportion to the depth of that production. For example, per-well operating costs at well depths of greater than 8,000 feet are generally significantly more than the per-well operating costs at depths of 2,000 feet or less.

While section 12 of the EPAA does not permit the exemption of additional volumes of domestic crude oil production from the composite price restrictions of section 8 of the EPAA, the Conference Report accompanying the EPCA made it clear that Congress intended to provide—

broad authority to establish ceiling prices for classifications of domestic crude oil production if he finds that such classifications are administratively feasible and will optimize domestic production. Subject to the statutory requirement that such ceiling price and such classification be supported by appropriate findings, the President would have authority, in certain instances, to establish a ceiling price which could be at levels above the then current market clearing price as long as the actual weighted average first sale price for the totality of domestic crude oil production does not exceed the maximum weighted average price under

this Act. (S. Rep. No. 94-516, 94th Cong., 1st sess. 191 (1975))

In the exercise of this authority, we are proposing under this alternative to establish a new classification of domestic crude oil produced from "marginal" properties, called "market tier" crude oil, which would immediately be eligible to be sold without regard to the current ceiling prices applicable to first sales of lower tier and upper tier crude oil. However, because of the constraints of section 12 of the EPAA with regard to exempting additional volumes of domestic crude oil production from the composite price restrictions, we would require actual volumes and actual first sale prices of such market tier crude oil to be reported to DOE for inclusion in the composite price calculations.

Under this proposal, once qualified, a marginal property" would be assigned a "Marginal Base Production Control Level" (BPCL), and any volumes of current production and sale in excess of the Marginal BPCL could be sold at market clearing prices. (All other volumes of current production and sale that are equal to or less than the Marginal BPCL would be classified as either lower tier or upper tier crude oil, as more fully explained below.) Additionally, an imputed decline rate would operate continuously to decrease the property's Marginal BPCL so as to provide an additional incentive to maintain or increase production levels.

1. Qualification as a "marginal property"

Inasmuch as our proposed concept of a "marginal property" is analogous to a stripper well property, and because the calculations to be used in determining a property's qualification are similar to those used for stripper well properties, Rulings 1974-28, 1974-29, 1974-30, 1975-12, 1975-15, 1977-6, and relevant portions of Rulings 1977-1 and 1977-2 would apply with respect to marginal properties as well as stripper well properties.

a. Determination of "average completion depth"

In order to qualify a property as a "marginal property, a producer would first determine the property's "average completion depth" by computing the average depth, in feet, of all completions of crude oil producing wells on the property, divided by the total number of crude oil producing wells on the property. For audit purposes, a producer would be required to provide evidence of completion depth for each well documented by applications for drilling or other permits submitted to the applicable State regulatory body. For properties located in States where no such applications are required, or where no such regulatory body exists, the producer would be required to provide evidence of completion depth for each well documented by an affidavit executed by a registered petroleum engineer. Where a well produced crude oil during the qualifying period from two or more completion depths at the same time, the well could be counted as two or more wells—and the various completion depths averaged—only where the well qualifies as a multiple completion well for purposes of the stripper well property exemption, as interpreted in Ruling 1975-12, i.e., where

(a) the well consists of two (or more) separate tubing strings run inside the casing, each of which carries crude oil from a separate and distinct producing formation, and

(b) the production capabilities of each formation are unaffected by any change in the production level of any other formation producing through the same well.

In all other cases, e.g., where a single well produces crude oil from two or more different completion depths but does not otherwise meet the criteria in Ruling 1975-12, the producer would count the well as one well and would use as the completion depth the distance in feet to the lowest completion depth. The only exception to this rule would arise where a well produced crude oil during the qualifying period from two or more separate and distinct producing reservoirs, and the producer had properly elected to treat the separate reservoirs as separate properties during the entire qualifying period. In such a case, one or more separate and distinct reservoirs could qualify as marginal properties depending upon average daily production during the qualifying period. (Comments are specifically requested to address the most appropriate treatment of separate and distinct producing reservoirs subject to the same right to produce crude oil, where the producer elected to segregate such reservoirs (or was required to reaggregate previously segregated reservoirs) during the qualifying period so that there was discontinuity in property treatment during the qualifying period.)

b. Qualifying period

After determining the property's average completion depth, the producer would then determine the property's average daily production during the qualifying period. Under this proposal, the qualifying period would begin on July 1, 1977 and end on June 30, 1978, and once a property qualified as marginal, it would retain that status for the duration of price controls—even though production levels subsequently increased above the qualifying limits—in order to provide the additional incentive to increase production levels. We are proposing to use an historical qualifying period—rather than a "rolling" qualifying period as is used for the stripper well property exemption—so as to eliminate any incentive to curtail production in order to qualify a particular property as "marginal." A full year period is proposed because our experience with the stripper well property exemption indicates that in most cases one year appears to be the optimum period to establish marginal status while providing the incentive of market prices: It is generally long enough to compensate for short-term production anomalies and establish representative production levels, and it is not an inordinately long period of time for a property to be operated near its economic limit.

We specifically request comments upon whether we should use as the qualifying period an historical period, as proposed, or rather a "rolling" period in which the qualifying status of the property would be based upon the consecutive 12-month period immediately (or a certain number of months) preceding the month in which the property would qualify for "marginal" status. We recognize that the value of avoiding incentives to curtail production, reflected in the use of a specific historical period as the qualifying period, must be weighed against the value of applying the incentive on a basis reflecting a relatively current production picture for the property. In this regard, comments are requested on the feasibility of administering a current qualification period on a case-by-case basis, with eligibility conditioned upon a showing that the property's recent production decline was consistent with its historical rate of decline.

c. Determination of "average daily production"

A property's average daily production would be determined in the same way as is done for stripper well properties, and the provisions of the relevant stripper well property rulings would be applicable with respect to such computations.

d. Qualifying thresholds

Once the property's average completion depth and average daily production had been determined, the producer would compare those figures with qualifying limits that we will establish, if this proposal is adopted, after our consideration of all the data submitted in response to this Notice and otherwise available to us. In order to provide an example for data computations, and for the purpose of eliciting comments, the qualifying limits set forth below should be considered as one possible approach:

Average completion depth in feet and average daily production: 2,000 or more but less than 4,000—20 barrels or less; 4,000 or more but less than

6,000—25 barrels or less; 6,000 or more but less than 8,000—30 barrels or less; 8,000 or more—35 barrels or less.

For example, assume that a property consisted of four producing wells completed at depths of 3,300 feet, 4,700 feet, 4,500 feet, and 6,600 feet, and that during the qualifying period all four wells were operating at the maximum feasible rate of production, with no production disruptions or other curtailments. Assume also that during this period a total of 29,500 barrels of crude oil, excluding condensate recovered in nonassociated production, were produced from the property. Under our proposal, the property's average completion depth would be computed as follows:

$$ACD = \frac{3,300 + 4,700 + 4,500 + 6,600}{4}$$

$$= 4,775 \text{ feet}$$

The property's average daily production would be computed as follows:

$$ADP = \frac{29,500 \text{ barrels}}{(365 \text{ days})\ (4 \text{ wells})}$$

$$= 20.21 \text{ barrels per well per day}$$

Accordingly, the property as described in the example would qualify as a marginal property because for its average completion depth of 4,775 feet (more than 4,000 but less than 6,000 feet) it produced less than 25 barrels of crude oil per well per day during the qualifying period. Therefore, as of the effective date of this rule, if adopted, the producer could certify the property as a marginal property and begin to determine volumes of market tier crude oil, if any.

In the third-stage EPCA proceeding, referred to previously, the FEA suggested the possibility of adopting a qualifying depth/volume scale similar to depth allowables utilized by some state agencies. In addition, certain legislation introduced in the most recent session of Congress would have established qualifying levels based upon certain current state regulatory allowables. The depth/volume qualifying scale set forth above is based upon the scale proposed in recent legislation and based upon Texas Railroad Commission allowables. We specifically request comments upon the economic bases for these qualifying limits, and more generally we request comments and information establishing production costs at various completion depths for purposes of establishing the appropriate qualifying production limits.

2. Determination of market tier crude oil volumes

In order to provide an incentive for producers to maintain production of crude oil from marginal properties, and to provide the further incentive to increase domestic production from such properties, once a property qualifies for treatment as a marginal property the producer would be permitted to establish a more recent base production control level—designated as a Marginal BPCL—designed to provide an incentive base line against which current production levels would be measured for eligibility for market level prices. Generally, the property's Marginal BPCL would, in the first month of eligibility, be equal to a certain percentage—to be established at a later date in light of data received in response to this Notice—of the property's average monthly production and sale of crude oil in the qualifying period, and would be adjusted downward in succeeding months. Current volumes of crude oil that were produced and sold in excess of the Marginal BPCL would be eligible for market prices in the first sale. Volumes equal to or less than the property's Marginal BPCL would be sold as lower tier and upper tier crude oil in the same proportion as the property's old-to-new crude oil ratio during the qualifying period. This proposal would have the effect of preserving a property's relative proportions of old and new crude oil (as existed in the qualifying period), and gradually releasing volumes of current production from each controlled tier to the market tier until the property's Marginal BPCL was ultimately reduced to zero, and all of the property's current production of crude oil could be sold at market prices.

a. Calculation of the marginal BPCL

As an example, during the first month after the effective date of this rule, if adopted, the property's Marginal BPCL would be equal to a percentage, to be specified later, of the property's average monthly production and sale of all crude oil, excluding condensate recovered in non-associated production, during the qualifying period. In the second month, and for successive months thereafter, the Marginal BPCL would be reduced each month by a reduction factor, which represents a specified percentage of the property's Marginal BPCL for the first month of eligibility.

For purposes of the examples that follow, and in order to solicit comments, we have used a 1.1 percent per month reduction factor, which is based upon an imputed decline rate for all marginal properties of 0.9 per cent month, plus an additional margin of 0.2 per cent per month as an additional production incentive. While our data tend to confirm that the average decline rate among all domestic crude oil properties is on the order of 0.9 per cent per month, we specifically solicit comments addressed to the validity of this assumption. The imputed decline rate would be applicable to all marginal properties except those that have demonstrated an actual historical decline rate of more than the imputed decline rate that we adopt for marginal properties generally. For such properties, the reduction factor would be equal to the property's actual monthly historical decline rate, plus 0.2 per cent. Our proposal is to measure a property's actual monthly decline rate over any 3 calendar-year period (selected by the producer) beginning after December 31, 1972 and ending before January 1, 1978.

Calculation of a property's actual decline rate would be accomplished by comparing the property's total production and sale of crude oil during the first year of the 3-year period selected, with the property's total production and sale of crude oil during the first calendar year following the 3-year period. Where the comparison results in a total decline which is equal to or greater than the imputed decline rate, the reduction factor would be greater than the monthly reduction factor that we adopt for marginal properties generally.

For example, assume that a marginal property produced and sold 15,000 barrels of crude oil during calendar year 1973, and that it produced and sold 11,000 barrels of crude oil during calendar year 1976. The actual decline rate would be calculated as follows:

$$DR = \frac{1 - \frac{A}{B}}{36}$$

Where:

A = total production and sale of crude oil during 1976

B = total production and sale of crude oil during 1973

$$DR = \frac{1 - \left(\frac{11,000}{15,000}\right)}{36}$$

$$= \frac{1 - (.73)}{36}$$

$$= \frac{.27}{36}$$

$$= .0075 \text{ or } .75 \text{ per cent}$$

Because the marginal property in this example had an actual decline rate of less than the imputed decline rate of 0.9 percent, the imputed decline rate would be used, resulting in a reduction factor of 1.1 percent per month. However, if during 1976 the property produced and sold 10,000 barrels of crude oil, the decline rate would be calculated as follows:

$$DR = \frac{1 - \frac{A}{B}}{36}$$

$$= \frac{1 - \frac{10,000}{15,000}}{36}$$

$$= \frac{1 - (.67)}{36}$$

$$= \frac{.33}{36}$$

$$= .00917 \text{ or } .917 \text{ per cent}$$

Because the marginal property in the second example experienced an actual decline rate that was greater than 0.9 percent per month, the reduction factor would equal 1.17 percent per month, i.e., 0.917 percent per month plus 0.2 percent, equals 1.17.

The following formula incorporates the use of the decline rate, and would be used to determine a property's Marginal BPCL for any month following qualification as a marginal property. To illustrate this formula, and in the other examples that follow, we have set the percentage of the property's average monthly production and sale of all crude oil to be used in calculating the property's marginal BPCL at 80 percent. The Marginal BPCL could be set anywhere from 100 percent to zero (as in some legislative propsals), and we invite comments on the level at which the Marginal BPCL should appropriately be established.

$$\text{Marginal BPCL} = .8\left(\frac{A}{365}\right) - C\left(\frac{A}{365}\right)(DR + .002)(.8)$$

Where:

A = the total number of barrels of domestic crude oil produced and sold from the property concerned during the qualifying period.

B = the number of days in the current month.

C = the number of months, excluding the current month, since the effective date of this section (or the date of the producer's qualification, whichever is later).

DR = the decline rate for the particular marginal property concerned

Thus, each month following the effective date of this rule, if adopted, the producer would compare the marginal property's total current monthly production and sale of crude oil against the property's Marginal BPCL for that month. All crude oil produced and sold in the current month in excess of the property's Marginal BPCL would qualify as market tier crude oil and could be sold without regard to the ceiling price rules of Part 212. The following example illustrates such calculations.

Assume an effective date of December 31, 1978 for this rule, that we adopt an imputed decline rate of .9 percent per month, and that a marginal property produced and sold a total of 12,000 barrels of crude oil during the qualifying period. For purposes of this example, assume also that the property's decline rate has been calculated to be 1.03 percent per month. Using the formula set forth above, the property's Marginal BPCL for April 1979, for example, would be computed as follows:

$$\text{Marginal BPCL} = .8\,\frac{AB}{365} - C\,\frac{AB}{365}\,(DR + .002)\,(.8)$$

$$= .8\,\frac{12{,}000 \times 31}{365} - 3\,\frac{12{,}000 \times 31}{365}$$

$$(.0103 + .002)(.8)$$

$$= .8\,(1019.18 - 3\,(1019.18)\,(0.0123)\,(.8)$$

$$= 815.34 - 30.09$$

$$= 785.25$$

Assuming that production and sale of domestic crude oil from the property had declined to 900 barrels per month by April 1979, 114.75 barrels of crude oil would qualify as market tier crude oil in that month and could be sold without regard to the lower and upper tier ceiling price rules. The remaining 785.25 barrels of crude oil (equal to the property's Marginal BPCL) could qualify in whole, or in part as new crude oil, as explained below.

(Once a property has qualified as marginal, any existing cumulative deficiency would be eliminated, and would not begin to run until such time as market tier crude oil had been produced and sold from the property, and production and sale volumes subsequently declined to below the property's Marginal BPCL. As with the two tier price system, a cumulative deficiency rule would be used to prevent the practice of withholding volumes of current production so as periodically to qualify larger production volumes as market tier crude oil, and to provide an additional incentive to maintain increased production levels. However, the operation of the cumulative deficiency rule would be suspended during periods of suspended production due to mechanical failure or other disruption in production.)

3. Calculation of Old and New Crude Oil Volumes

Under our proposal, a producer of crude oil from a marginal property would be assured of the average relative proportions of old and new crude oil that were produced and sold from the property during the qualifying period. This would be accomplished by applying a "new crude oil ratio" to current production and sale volumes equal to or less than the property's Marginal BPCL, which do not qualify as market tier crude oil. The new crude oil ratio would simply be a measure of the proportion of new crude oil volumes to total crude oil volumes produced and sold from the property concerned during the qualifying period. In the example above, if 1,500 barrels of new crude oil (properly determined under 10 CFR 212.72) had been produced and sold from the property as new crude oil during the qualifying period, the "New crude oil ratio would be determined as follows:

$$\text{New crude oil ratio} = \frac{\text{total number of barrels of new crude oil produced and sold during the qualifying period}}{\text{total number of barrels of domestic crude oil produced and sold during the qualifying period}}$$

$$= \frac{1{,}500}{12{,}000}$$

$$= .125$$

Applying this ratio in the example above, the 785.25 barrels of crude oil not qualified as market tier crude oil would be classified in April 1979 as follows:

$$\text{New crude oil} = (785.25)\,(.125)$$
$$= 117.79 \text{ barrels}$$

$$\text{Old crude oil} = 785.25 - 117.79$$
$$= 667.46 \text{ barrels}$$

To summarize the results of the calculations for the marginal property described in the example above, the total production of 900 barrels of domestic crude oil produced and sold from the property in April 1979 would be classified as follows:

Market tier crude oil	=	114.75 barrels
New crude oil	=	117.79 barrels
Old crude oil	=	667.46 barrels
Total production and sale	=	900 barrels

We invite comments on this proposal and in particular ask commenters for their views concerning (1) what percentage of a property's average monthly production and sale of all crude oil during the qulaifying period should be used in calculating the property's Marginal BPCL under the proposed system and (2) what is the appropriate reduction factor for decreasing the Marginal BPCL on a monthly basis.

It should be emphasized again that the use of an 80 percent (.8) multiplier for determining the initial marginal BPCL level is for illustrative purposes only. The use of that multiplier would mean that, if the property's produc-

tion in the first month after qualification equalled the average monthly production during the qualifying period, 20 percent of that production would be "released" to market level prices. We specifically request comments upon whether we should adopt a higher or lower number as providing the appropriate incentive to maintain or increase production from marginal properties.

B. ALTERNATIVE PROPOSAL NO. 2: UPDATING OF BPCL FOR ALL PROPERTIES

Under this proposal, which might be adopted independently or in conjuction with some variation of the proposal described in Alternative No. 1, producers would be provided an option to establish a BPCL for a particular property based on production from the property in 1977, in addition to the existing options to establish the property's BPCL based on either 1972 or 1975 production levels. In connection with this action, the producer would be permitted to eliminate any current cumulative deficiency existing with respect to the property prior to the month in which this proposal, if adopted, becomes effective as a final rule.

If the producer selects the 1977 calendar year to establish the property's BPCL under this alternative, such BPCL could then be adjusted, in accordance with the formula of § 212.76 for determing adjusted BPCL's, based upon the decline in production experienced between 1974 and 1977.

This alternative would apply basically to properties producing only lower tier crude oil, and is intended generally to permit producers to establish and thereafter adjust a BPCL that is more current than that provided for under the present provisions of the crude oil pricing regulations. Where elected, this alternative would appear to provide incentives to maintain or increase crude oil production by allowing producers to receive upper tier prices for production is excess of the property's more recent decline rate, without requiring the producer to "pay back" from such increased production the amount by which prior production was less than the property's prior BPCL. The one-time elimination of the current cumulative deficiency would assure that there are no disincentives to increase production solely by reason of the fact that such increased production would otherwise be required to be sold at lower tier prices.

A variation of this proposal which we wish to consider is one which is similar in all respects, except that the decline rate and the adjusted BPCL for the property would be calculated in the manner provided under Alternative Proposal No. 1 for the Marginal BPCL, rather than under § 212.76. That is, the decline rate would be based upon the decline calculated for any three year period beginning after December 31, 1972 and ending before January 1, 1978, and would then be adjusted on a monthly basis rather than on a semi-annual basis as provided in § 212.76. Moreover, adjustments would not be dependent upon whether the property produced only old crude oil or produced a total volume of crude oil that is below the BPCL volumes, as is the case under § 212.76 .

As proposed here, under either variation of this alternative there would be no initial multiplier applied to the BPCL adopted, and the decline rate applied would not include any additional "incentive factor." In these respects, the variations discussed above would differ from the manner in which the Marginal BPCL would be established under Alternative Proposal No. 1.

C. ALTERNATIVE PROPOSAL NO. 3: RELEASE OF SOME CRUDE OIL PRODUCTION FROM ALL WELLS TO MARKET PRICES

Under this proposal, a certain volume of the daily crude oil production of each well on a property would be eligible for sale at market clearing prices. We are, specifically soliciting comments on the question of how many barrels of crude oil per day per well should be released to market prices under this proposal in order to provide an adequate incentive for maintaining domestic production. For example, we could permit the first 10 barrels per day of crude oil produced from each well on a property to be sold at market clearing prices to provide an incentive for domestic production. This should counteract any tendency of producers to refrain from stimulating recovery, but instead allowing production to decline normally, in order to qualify for stripper well pricing under the current regulations.

As a variation of this proposal, the incentive of releasing a certain volume of crude oil to market prices might be applied only to those properties that have secondary or tertiary recovery projects in order to encourage the use of enhanced recovery methods. In commenting on this proposal, commenters are asked to address the question as to whether it would be necessary and administratively feasible for us to require some type of evidence, such as state agency certification, that the property for which the incentive is sought is subject to a *bona fide* secondary or tertiary recovery project.

D. ALTERNATIVE PROPOSAL NO. 4: INCREASE IN LOWER TIER CEILING PRICE

This proposal would increase the ceiling price of lower tier crude oil by an amount to be determined in light of data received in response to this Notice.

On September 1, 1977, the FEA issued Crude Oil Price Schedule No. 8 (42 FR 45284, September 9, 1977), which implements the policy contained in the President's National Energy Plan and provides for monthly increases in lower tier and upper tier ceiling prices, beginning September 1, 1977, at the rate of inflation (measured by the first revision of the GNP deflator).

Comments received in connection with the rulemaking proceeding that culminated in Crude Oil Price Schedule No. 8 indicated that adjustments to the lower tier ceiling price measured by the adjusted GNP deflator might not be adequate to keep pace with increasing costs of oil field materials and services, with the result that operating costs may begin to exceed revenues for certain types of production subject to lower tier ceiling prices. Accordingly, we are interested in this proceeding in receiving data related to documented operating costs (both generally and with respect to particular properties), and the extent, if any, to which these operating costs are approaching lower tier ceiling price levels.

We also request comments as to whether as an incentive for domestic crude oil production, it is necessary to raise the ceiling price of lower tier crude oil generally, or whether case-by-case determinations by the Office of Hearings and Appeals are sufficient for this purpose. Commenters are asked to specify, and support with data, the increment to the lower tier ceiling price which they consider necessary to provide an adequate incentive for domestic production. With respect to this and the other proposals, specific comments are requested on whether the increased revenues to producers that would result from adoption of the proposals are needed to meet current operating expenses, to provide funds for new enhanced recovery projects, or to provide funds for exploration activities.

IV. OTHER CONFORMING AMENDMENTS

Should we decide to adopt any of the proposals described in this Notice, other conforming amendments to the Mandatory Petroleum Allocation and Price Regulations would need to be made. Although we are not proposing specific conforming amendments in this Notice, we solicit comments on the particular areas identified below, as well as any other technical amendments that would be needed.

1. With respect to Alternative Proposals No. 1 and No. 3, the certification requirements in 10 CFR 212.131 would need to be amended so that actual volumes and prices of market

tier crude oil could be identified in first sales, and reported to the DOE, as crude oil volumes and prices to be used in determining compliance with the composite price restrictions of section 8 of the EPAA.

2. Again with respect to Alternative Proposals No. 1 and No. 3, technical amendments to the Entitlements Program would have to be made so that volumes of market tier crude oil could be treated as "exempt" crude oil and properly cost equalized.

3. In the case of Alternative Proposal No. 1, substantive amendments to 10 CFR 212.75 applicable to unitized properties may be appropriate to avoid the creation of a disincentive to producers of marginal properties to enter unitization agreements.

Comments should address these and any other collateral issues that may be raised by the alternative proposals discussed in this Notice.

V. FINDINGS REQUIRED BY EPAA SECTION 8(b)(2); SPECIFIC INFORMATION REQUESTED

Section 8(b)(2) of the EPAA provides:

(2) No amendment to the regulation under section 4(a) after the date of enactment of this section may permit, in any month which begins after such date, an increase in the price for any volume of old crude oil production from any properties unless the President finds that such amendment—

(A) will give positive incentives for (i) enhanced recovery techniques, or (ii) deep horizon development, from such properties; or

(B) is necessary to take into account declining production from such properties; and

(C) is likely to result in a level of production from such properties beyond that which would otherwise occur if no such amendment were made.

To the extent that any proposal set forth above, if adopted, would result in any volumes of old crude oil (as defined in the EPAA) being sold prior to June 1, 1979, at prices in excess of the lower tier ceiling price rule, the EPAA section 8(b)(2) findings set forth above would be required to be made.

Because of the constraints imposed by EPAA section 8(b)(2), we wish to emphasize that the alternative proposals set forth in this Notice with respect to incentives for domestic production can be seriously considered only if supported by detailed cost and revenue data. Therefore, to the extent that comments are submitted in response to this Notice either in support of or in opposition to particular incentives, they should be accompanied by as much supporting financial data, either general in nature or relating to specific properties, as are available to the commenter. As noted below, we will treat as confidential (according to our determination), and withhold from the public, data submitted pursuant to this Notice that are proprietary in nature, that are so labelled and that are otherwise submitted in accordance with the procedures set out below for the submission of confidential data.

In order to help focus comments on those issues of most interest in connection with incentives for production from marginal properties and other domestic production, we request that commenters address themselves to as many of the following issues as possible, in addition to those issues previously identified in the discussion of particular alternatives:

(1) Whether, as a general regulatory policy, incentives are needed to maintain production from "marginal" wells, such as those described above, or whether a case-by-case analysis by the Office of Hearings and Appeals is sufficient to provide such incentives.

(2) Whether, if generally-applicable incentives are adopted, a case-by-case analysis by the Office of Hearings and Appeals would continue to be necessary to provide relief to other "marginal" properties not explicitly covered by those regulations.

(3) Whether, and to what extent, if any, the incentives discussed above would, if adopted, result in an overall increase in total recoverable domestic crude oil reserves or in the amount of crude oil recovered from any particular reservoir or property.

(4) The extent to which price increases to provide the incentives that are suggested would affect actual composite price levels.

(5) Whether alternative or additional incentives, other than those described above, might better optimize domestic production in general and production from marginal properties in particular.

(6) Whether the following parameters, including representative per-barrel oil well production cost data, would be appropriate in a generally-applicable regulation to describe categories of "marginal" production: production rate in barrels per day, well depth (by 2,000 foot or other increments), the type of artificial lift used, the crude oil/water production ratio; and whether there are any other criteria that would be appropriate and practical for this purpose.

(7) Whether well depth should be measured as the distance from ground level to the point of perforation. Also, by what physical means should well depth be measured?

(8) Whether classifications of "marginal" crude oil production should be established and calculated on a well-by-well, lease, reservoir, property, or other basis.

(9) Whether a qualified marginal property should retain its status once qualified (as with stripper well properties), or whether such properties should be required to requalify periodically. If so, should requalification occur annually, semi-annually, monthly, or on some other periodic basis?

(10) Whether the initial qualification period for marginal properties should be the twelve months proposed, or some other period.

(11) Whether the price of crude oil produced and sold in excess of a property's Marginal BPCL should be permitted in first sales to receive a market clearing price. If so, what are the economic justifications, including representative production cost data?

(12) We understand that offshore production operations are generally more expensive than onshore operations and we solicit comments as to whether modifications might be made to the depth bracket and average daily production thresholds proposed in this Notice so that they might be applied to offshore wells.

(13) Data are also requested on the extent to which inflation of oil field materials and service costs is comparable to the adjusted GNP deflator, as measured since February 1, 1976 and as measured since May 1, 1973, and the extent to which such inflation has caused operating costs to approach or exceed lower tier ceiling price levels. In this regard, we request specific data regarding operating costs generally, and with regard to specific properties.

(14) We also solicit data on the number of wells that have been plugged and abandoned since February 1, 1976 (as compared with the number of wells that were plugged and abandoned in historical periods prior to February 1, 1976), and estimates of volumes of domestic crude oil, if any, that have been lost as a result.

VI. ADDITIONAL PROPOSAL TO ELIMINATE 21 CENTS PER BARREL ENTITLEMENT PENALTY FOR UNCONTROLLED CRUDE OIL

In its March 29, 1976 amendments to the entitlements program (41 FR 13899, April 1, 1976), the FEA adopted a fixed advantage or bias under the program for refiners' receipts of lower and upper tier domestic crude oils as compared with receipts of imported crude oil. This adjustment is implemented by fixing the entitlement price at an amount that is 21 cents less than the exact differential between the weighted average cost of refiners' receipts of imported and exempt domestic crude oils, on the one hand, and those of lower tier crude oil, on the other.

The FEA stated its rationale for this provision as follows:

FEA has further concluded, on the basis of comments solicited and received on this issue, that a fixed advantage of 21 cents per barrel for all domestic crude oil production over receipts of imported crude oil is also

appropriate, in that the import program identifies this amount as being necessary to preserve incentives for refining domestic crude oil. Thus, § 211.67(i) has been amended to provide that the entitlement price will be the exact differential between the weighted average costs to refiners of old oil and of imported crude oil less 21 cents. (41 FR at 13901)

It appears that this fixed advantage for refiners' receipts of domestic crude oil may not be serving the purpose for which it was intended, and may be imposing an inappropriate burden on those refiners that are dependent upon imported crude oil. We have therefore tentatively concluded that this 21 cents per barrel penalty should be eliminated. In this regard it should be noted that there now appear to be adequate incentives to refine domestic crude oil, including, in addition to special entitlements adjustments such as those for heavy California crude oil, the fact that the average cost of imported crude oil exceeds that of uncontrolled domestic crudes that are also used in calculating the entitlements price, even without the 21 cents penalty. We are interested in receiving comments upon this proposal, and views as to whether the benefit (if any) from the penalty is outweighed by any adverse competitive impact upon import-reliant refiners. Comments are also requested on whether the deletion of this 21 cents per barrel entitlement adjustment should be accompanied by a corresponding increase in the lower tier ceiling price pursuant to the alternative proposal set forth earlier in this Notice.

Removal of this penalty would be accomplished by amending § 211.67(i)(4) to provide that the entitlement price is equal to the exact differential, for the month concerned, between the weighted average costs to refiners of lower tier crude oil and such weighted average cost of imported crude oil, ANS crude oil, stripper well crude oil, incremental tertiary crude oil, and other exempt domestic crude oils. In addition, reference to the 21 cents per barrel disadvantage, found in § 211.67(b)(2) (relating to the calculation of the entitlement obligation for upper tier crude oil) would be deleted.

VII. Comment Procedures

A. Written comments

You are invited to participate in this proceeding by submitting data, views or arguments with respect to the issues set forth in this Notice. Comments should be submitted to the address indicated in the "ADDRESSES" section of this Notice and should be identified on the outside envelope and on documents submitted with the designation "Production Incentives for Marginal Properties," Docket No. ERA-R-78-18. You should submit fifteen copies. All comments received will be available for public inspection in the DOE Reading Room GA-152, James Forrestal Building, 1000 Independence Avenue SW., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. We will consider all comments received by January 22, 1979, 4:30 p.m.

You should identify separately any information or data you consider to be confidential and submit them in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat them according to our determination.

B. Public hearings

1. *Request Procedure.*—The times and places for the hearings are indicated in the "DATES" and "ADDRESSES" section of this Notice. If necessary to present all testimony, hearings will be continued at 9:30 a.m. of the next business day following the first day of the hearing.

You may make a written request for an opportunity to make an oral presentation at the hearings. The requests should contain a phone number where you may be contacted through the day before the hearing. Since it may be necessary to limit the number of persons making such presentations, you should be prepared to describe your interest in this proceeding, and why you are a proper representative of a group or class or persons that has such an interest, and to give a concise summary of your proposed oral presentation.

We will notify each person selected to be heard before 4:30 p.m., January 5, 1979. Persons scheduled to speak at the hearings must bring 100 copies of their statement to the appropriate hearing location indicated in the "ADDRESSES" section of this Notice on the date of the hearing.

2. *Conduct of the Hearings.* We reserve the right to select the persons to be heard at these hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

We will designate a DOE official to preside at the hearings, which will not be judicial or evidentiary-type in nature. Questions may be asked only by those conducting the hearings, and there will be no cross-examination of persons presenting statements. Any decision made by the DOE with respect to the subject matter of the hearings will be based on all information available to the DOE. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at the hearings. Such questions must be submitted to the address indicated above for requests to speak, for the location concerned, three days before the hearings. If you wish to ask a question at the hearings, you may submit it, in writing, to the presiding officer. We will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

The presiding officer will announce any further procedural rules needed for the proper conduct of the hearing.

We will have transcripts of the hearings made and we will retain the entire record of the hearings, including the transcripts, and make them available for inspection at the DOE Freedom of Information Office, Room GA-152, James Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

As required by section 7(c)(2) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, a copy of this Notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments on this proposal.

We have determined that this Notice proposes the adoption of a significant regulation requiring the preparation of a regulatory analysis for purposes of Executive Order No. 12044, "Improving Government Regulations" (43 FR 12661, March 24, 1978) and the DOE Interim Management Directive, "Procedures for the Development and Analysis of Regulations, Standards, and Guidelines" (43 FR 18634, May 1, 1978). Accordingly, a regulatory analysis is in preparation and will be available upon completion in the near future.

Pursuant to the requirements of the Department of Energy Organization Act (Pub. L. 95-91), a copy of this Notice has been referred, concurrently with its issuance, to the Federal Energy Regulatory Commission for a determination, within the comment period prescribed herein, whether the proposed amendments would significantly affect any matter within the Commission's jurisdiction.

(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, we propose to amend Parts 211 and 212 of Chapter II, Title 10 of the Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., November 2, 1978.

DAVID J. BARDIN,
Administrator, Economic Regulatory Administration.

ALTERNATIVE NO. 1

1. Section 212.73 is amended to revise paragraph (a) to read as follows:

§ 212.73 Lower tier ceiling price rule.

(a) *Rule.*—Except as provided in § 212.74 with respect to new crude oil; except as provided in § 212.75 for certain crude oil produced from unitized properties; except as provided in § 212.78 for incremental crude oil produced from qualified tertiary enhanced recovery projects; except as provided in Supart C of this Part for exempt crude oil; and except as provided in § 212.79 with respect to market tier crude oil, no producer may charge a price higher than the lower tier ceiling price for any first sale of domestic crude oil.

* * * * *

2. A new § 212.79 is added to read as follows:

§ 212.79 Crude oil produced and sold from marginal properties.

(a) *Rule.*—Notwithstanding the provisions of § 212.73(a), a producer may in any month charge any price in first sales of market tier crude oil produced and sold from a marginal property.

(b) *Definitions.*—For purposes of this section—

"Average completion depth" means for a particular marginal property the sum of all completion depths for all wells that produced crude oil (excluding condensate recovered in nonassociated production) from the property during the qualifying period, divided by the number of wells that produced crude oil (excluding condensate recovered in nonassociated production) during the qualifying period.

"Average daily production" means the qualified maximum total production of crude oil (excluding condensate recovered in nonassociated production) produced from a property, divided by 365 times the number of wells that produced crude oil (excluding condensate recovered in nonassociated production) from that property in the qualifying period. To qualify as maximum total production, each well on the property must have been maintained at the maximum feasible rate of production throughout the qualifying period and in accordance with recognized conservation practices, and not significantly curtailed by reason of mechanical failure or other disruption in production.

"Completion depth" means the depth in feet measured from the surface of the earth to the deepest point of perforation from which a well produces crude oil.

"Decline Rate" means, with respect to a particular marginal property, (1) the imputed decline rate, which is equal to —— percent; or (2) the property's actual decline rate during any three calendar year period beginning after December 31, 1972 and ending before January 1, 1978, determined pursuant to the following formula:

$$DR = \frac{1 - \left(\frac{A}{B}\right)}{3C}$$

Where:

A = the total number of barrels of domestic crude oil produced and sold from the property concerned during the first calendar year following the three calendar year period

B = the total number of barrels of domestic crude oil produced and sold from the property concerned during the first calendar year of the three calendar year period.

whichever decline rate is greater.

"Marginal base production control level" means a number of barrels of crude oil computed pursuant to the following formula:

$$\text{Marginal BPCL} = \left(\frac{\quad}{\quad}\right)\frac{AB}{365} - C\,\frac{AB}{365}\,(DR \times \quad)\left(\frac{\quad}{\quad}\right)$$

Where:

A = the total number of barrels of domestic crude oil produced and sold from the margina. property concerned during the qualifying period.

B = the number of days in the current month

C = the number of months, excluding the current month, since the effective date of this section

DR = the decline rate for the particular marginal property concerned

"Marginal cumulative deficiency" means, for a particular marginal property, the total number of barrels by which production and sale of crude oil has been less than the property's marginal base production control level subsequent to the first month in which market tier crude oil was produced and sold from the marginal property concerned, minus the total number of barrels of domestic crude oil produced and sold from the marginal property in each prior month, which was in excess of the property's marginal base production control level for that month but which was not classified as market tier crude oil because of this requirement to reduce the amount of market tier crude oil each month by the amount of the marginal cumulative deficiency. For any month during which the marginal property produces no crude oil because production is curtailed or otherwise disrupted, the marginal cumulative deficiency shall be reduced by the number of barrels of domestic crude oil that would otherwise have been produced and sold from the marginal property in that month had the production curtailment or disruption not occurred. "Marginal property" means a property whose average daily production of crude oil (excluding condensate recovered in non-associated production) per well during the qualifying period did not exceed the number of barrels shown in the following table for the corresponding average completion depth:

TABLE

Average completion depth in feet	*Barrels per day*
2,000 or more but less than 4,000	___ or less
4,000 or more but less than 6,000	___ or less
6,000 or more but less than 8,000	___ or less
8,000 or more.....	___ or less

"Market tier crude oil" means, with respect to a particular marginal property, the total number of barrels of domestic crude oil produced and sold from the marginal property in a particular month, less the marginal base production control level for the marginal property concerned, less the marginal property's marginal cumulative deficiency.

"New crude oil" means, with respect to a particular marginal property, the total number of barrles of domestic crude oil produced and sold from the marginal property in a particular month less the total number of barrels of market tier crude oil produced and sold from the marginal property in that month, times the new crude oil ratio for the marginal property.

"New crude oil ratio" means, with respect to a particular marginal property, the total number of barrels of new crude oil (determined pursuant to § 212.72) produced and sold from the property concerned during the qualifying period, divided by the total number of barrles of domestic crude oil produced and sold from the property concerned during the qualifying period.

"Old crude oil" means, with respect to a particular marginal property, the total number of barrels of domestic crude oil produced and sold from the marginal property in a particular month, less the number of barrels of market tier crude oil produced and sold from the property concerned in that month, less the number of barrels of new crude oil produced and sold from the property concerned in that month.

"Qualifying period" means the 12-month period ending June 30, 1978.

ALTERNATIVE NO. 2

1. Section 212.72 is amended by revising the definitions of "Base productioan control level," "Current cumulative deficiency," and "New crude oil" to read as follows:

§ 212.72 Definitions.

* * * * *

"Base production control level" means: (1) With respect to months ending prior to February 1, 1976:

(A) If crude oil was produced and sold from the property concerned in every month of 1972, the total number of barrels of domestic crude oil produced and sold from that property in the same month of 1972;

(B) If crude oil was not produced and sold from the property concerned in every month of 1972, the total number of barrels of crude oil produced and sold from that property in 1972, divided by 12;

(2) With respect to months commencing after January 31, 1976, except as provided in § 212.76, either:

(A) The total number of barrels of old crude oil produced and sold from the property concerned during calendar year 1975, divided by 365, multiplied by the number of days in the month in 1975 which corresponds to the month concerned; or

(B) If the producer elects to certify crude oil sales for 1972 in accordance with § 212.131(a)(2), the total number of barrels of crude oil produced and sold from the property concerned during the calendar year 1972, divided by 366, multiplied by the number of days during the month in 1972 which corresponds to the month concerned.

(3) With respect to months commencing after————, except as provided in § 212.76 either:

(A) The total number of barrels of old crude oil produced and sold from the property concerned during calendar year 1977, divided by 365, multiplied by the number of days in the month in 1977 which corresponds to the month concerned, or

(B) If the producer elects to certify crude oil sales for 1975 in accordance with § 212.131(a)(2), the total number of barrels of old crude oil produced and sold from the property concerned during calendar year 1975, divided by 365, multiplied by the number of days in the month in 1975 which corresponds to the month concerned; or

(C) If the producer elects to certify crude oil sales for 1972 in accordance with § 212.131(A)(2), the total number of barrels of crude oil produced and sold from the property concerned during the calendar year 1972, divided by 366, multiplied by the number of days during the month in 1972 which corresponds to the month concerned.

"Current cumulative deficiency" means: (1) prior to February 1, 1976, the total number of barrels by which production and sale of crude oil was less than the base production control level, for all months in which production and sale of crude oil was less than the base production control level, subsequent to the first month in which new crude oil was produced and sold, minus the total number of barrels of domestic crude oil produced and sold in each prior month which was in excess of the base production control level for that month, but which was not classified as new crude oil because of this requirement to reduce the amount of new crude oil in each month by the amount of the current cumulative deficiency;

(2) Prior to ————, the total number of barrels by which production and sale of crude oil has been less than the base production control level subsequent to the first month (after February 1, 1976) in which new crude oil was produced and sold, minus the total number of barrels of domestic crude oil produced and sold in each prior month after February 1, 1976, which was in excess of the base production control level for that month, but which was not classified as new crude oil because of this requirement to reduce the amount of new crude oil in each month by the amount of the current cumulative deficiency;

(3) Effective ————, the total number of barrels by which production and sale of crude oil has been less than the base production control level subsequent to the first month (after ————,) in which new crude oil was produced and sold, minus the total number of barrels of domestic crude oil produced and sold in each prior month after ————, 1976 which was in excess of the base production control level for that month, but which was not classified as new crude oil because of this requirement to reduce the amount of new crude oil in each month by the amount of the current cumulative deficiency.

* * * * *

"New crude oil" means, with respect to a specific property: (1) Prior to February 1, 1976, the total number of barrels of domestic crude oil produced and sold in a specific month, less (A) the base production control level for that month, and less (B) the current cumulative deficiency;

(2) Prior to ————, the total number of barrels of domestic crude oil produced and sold in a specific month, less (A) the property's base production control level for that month and less (B) the current cumulative deficiency since February 1, 1976;

(3) Effective ————, the total number of barrels of domestic crude oil produced and sold in a specific month, less (A) the property's base production control level for that month and less (B) the current cumulative deficiency since ————; and shall not in any period include any number of barrels not certified as new crude oil pursuant to the provisions of § 212.131(a)(1) within the consecutive two-month period immediately succeeding the month in which the crude oil is produced and sold, except where such recertification is explicitly required or permitted by FEA order, interpretation, or ruling.

2. Section 212.76 is revised to read as follows:

§ 212.76 Adjustments to base production control levels.

(a) *Eligibility.* (1) with respect to each property from which no new crude oil is produced in any month in the 5-month period ending June 30, 1976, or ending ————, [5 months after the effective date] if the BPCL is established under paragraph (3)(A) of the definition of BPCL in § 212.76, a producer may, for each 6-month semiannual period commencing after June 30, 1976 or ————, as the case may be, adjust the base production control level for the property concerned for each month during that 6-month period in accordance with paragraph (b) of this section.

(2) With respect to each property from which new crude oil is produced and any month in the 5-month period ending June 30, 1976, or ending ———— [5 months after the effective date] if the BPCL is established under paragraph (3)(A) of the definition of BPCL in § 212.76, a producer may adjust the base production control levels applicable thereto in accordance with paragraph (b) of this section, commencing with the 6-month semiannual period immediately following a 6-month semiannual period ending subsequent to June 30, 1976 or ————, as the case may be, in which the total amount of crude oil produced and sold from the property concerned was less than the sum of the base production control levels for that period.

(b) *Rule.* The base production control level for properties which qualify for an adjusted base production control level may be adjusted only in accordance with the following formulae:

(1) For the first six-month semi-annual period:

$$ABPCL = \left(1 - \frac{ARPD}{1.33}\right) (BPCL)$$

(2) For each Subsequent six-month semi-annual period

$$ABPCL = \left(1 - \frac{ARPD}{2}\right) (ABPCL')$$

Where:

ABPCL=The adjusted base production control level for the month concerned.

BPCL=The base production control level for the month concerned, computed under § 212.72 as revised effective ————.

ABPCL'=The sum of the adjusted base production control levels for the immediately preceding 6 month period as computed pursuant to this section, divided by the number of days in that period and multiplied by the number of days in the month concerned.

ARPD=The annual rate of production decline applicable to the property concerned. If the BPCL is established under paragraph (3)(B) or (3)(C) of the definition of BPCL in § 212.72, the ARPD is determined by subtracting the total amount of crude oil produced and sold from the property concerned in 1975 from that property's total amount of crude oil produced and sold in 1972. The result, expressed as a percentage of the total amount of crude oil produced and sold from that property in 1972, is divided by three to obtain the ARPD. If the BPCL is established under paragraph (3)(A) of the definition of BPCL in § 212.72, the ARPD is determined by subtracting the total amount of crude oil produced and sold from the property concerned in 1977 from that property's total amount of crude oil produced and sold in 1974. The result, expressed as a percentage of the total amount of crude oil produced and sold from that property in 1974, is divided by three to obtain the ARPD.

ALTERNATIVE NO. 3

1. Section 212.73 is amended to revise paragraph (a) to read as follows:

§ 212.73 Lower tier ceiling price rule.

(a) *Rule.* Except as provided in § 212.74 with respect to new crude oil; except as provided in § 212.75 for certain crude oil produced from unitized properties; except as provided in § 212.78 for incremental crude oil produced from qualified tertiary enhanced recovery projects; except as provided in Subpart C of this Part for exempt crude oil; and except as provided in § 212.79 with respect to market tier crude oil, no producer may charge a price higher than the lower tier ceiling price for any first sale of domestic crude oil.

* * * * *

2. A new § 212.79 is added to read as follows:

§ 212.79 Market tier price rule.

(a) *Rule.* Notwithstanding the provisions of § 212.73 (a), a producer may in any month charge any price in first sales of the first———barrels of crude oil produced per day from each well on a property.

ALTERNATIVE NO. 4

1. Section 212.73 is amended to revise paragraphs (b) and (c) to read as follows:

§ 212.73 Lower tier ceiling price rule.

* * * * *

(b) *Lower tier ceiling price determination other than in Alaska and California.* The lower tier ceiling price for a particular grade of domestic crude oil in a particular field other than in Alaska or California is the sum of: (1) The highest posted price at 6 a.m., local time, May 15, 1973, for transactions in that grade of crude oil in that field, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; plus (2) ——— per barrel.

(c) *Lower tier ceiling price determination in Alaska and California.* In Alaska and California, the lower tier ceiling price for a particular grade of domestic crude oil in a particular field is the sum of: (1) The highest posted price at 6 a.m., local time, May 15, 1973, for transactions in that grade of crude oil in that field, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; plus (2) ——— per barrel; plus (3) 2 cents for each degree API gravity between 34 degrees API gravity and 40 degrees API gravity that the domestic crude oil being offered for sale is below 40 degrees API gravity, plus (4) 3 cents for each degree API gravity that the domestic crude oil being offered for sale is below 34 degrees API gravity.

ADDITIONAL PROPOSAL

1. Section 211.67 is amended to revise paragraph (b)(2) and (i)(4) to read as follows:

§ 211.67 Allocation of domestic crude oil

* * * * *

(b) *Required purchase of entitlements by refiners.*

* * * * *

(2) To calculate the number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for purposes of the definition of national domestic crude oil supply ratio in § 211.62 of this subpart, paragraph (b)(1) of this section and paragraph (c) of this section, each barrel of old oil shall be equal to one barrel of deemed old oil and each barrel of upper tier crude oil shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil, stripper well crude oil (as defined in part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less such weighted average cost per barrel to refiners of upper tier crude oil, and the denominator of which is the entitlement price for that month.

* * * * *

(i) *Issuance and transfer of entitlements.*

* * * * *

(4) The price at which entitlements shall be sold and purchased shall be fixed by the ERA for each month and shall be the exact differential between the weighted average cost per barrel to refiners of old oil and such weighted average cost of imported crude oil, ANS crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter, such costs to be equivalent to the delivered costs to the refinery.

* * * * *

[FR Doc. 78-31600 Filed 11-6-78; 9:22 am]

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