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Federal Register

MONDAY, JANUARY 15, 1979



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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	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

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

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

***NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)**

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601 1544
610 1544
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145 1983
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510 1983
522 1381
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[6450-01-M]

Title 10—Energy

CHAPTER II—DEPARTMENT OF ENERGY

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

1978 Interpretations of the General Counsel

AGENCY: Department of Energy.

ACTION: Notice of Interpretations.

SUMMARY: Attached are the Interpretations and responses to Petitions for Reconsideration issued by the Office of General Counsel of the Department of Energy under 10 CFR Part 205, Subpart F, during the period December 1, 1978, through December 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Diane Stubbs, Office of General Counsel, Department of Energy, 12th & Pennsylvania Avenue, NW., Room 1121, Washington, D.C. 20461, (202) 633-9070.

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

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on the accuracy of the factual statement used as a basis for the Interpretation (10 CFR 205.84(a)(2)) and may be rescinded or modified at any time (§ 205.85(d)).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

The responses to Petitions for Reconsideration published herein have been issued in accordance with the provisions set forth in 10 CFR 205.85(f). It should be emphasized that the reconsideration procedure is not the equivalent of an administrative appeal, but merely provides a mechanism to insure that no inadvertent errors are made which affect the validity of the interpretation.

Issued in Washington, D.C., January 8, 1979.

EVERARD A. MARSEGLIA, Jr.,
Acting Assistant General Counsel for Interpretations and Rulings, Office of General Counsel.

APPENDIX A.—*Interpretations*

No.	To	Date	Category
1978-62	HNG Petrochemicals, Inc.	Dec. 4	Price
1978-63	Northern Natural Gas Company, *et al.*; MAPCO, Inc., *et al.*	Dec. 13	Price

INTERPRETATION 1978-62

To: HNG Petrochemicals, Inc.
Date: December 4, 1978.
Rules Interpreted: 10 CFR 212.162; 212.167; Ruling 1975-18.
Code: GCW-PI-Part 212, Subpart K; Natural Gas Shrinkage; Firm, def.

FACTS

HNG Petrochemicals, Inc. (HNG) and Houston Pipe Line Company, Intratex Gas Company, and Valley Pipe Lines, Inc. (collectively referred to as "the pipeline companies") are wholly-owned subsidiaries of Houston Natural Gas Corporation.

HNG is the sole owner and operator of several gas plants, the operator and part owner of one gas plant and a part owner, but not operator, of another gas plant. All these gas plants are located in Texas near the pipeline companies' interconnected gathering and transmission system. At these plants, HNG extracts natural gas liquids (NGL's) and fractionates natural gas liquid products (NGLP's). Thus, HNG is a "refiner" as defined in 10 CFR 212.31 and a "gas plant owner" and "gas plant operator" as defined in 10 CFR 212.162. Because HNG does not refine crude oil, its pricing of NGL's and NGLP's is governed solely by Part 212, Subpart K. 10 CFR 212.161(b)(1).

The pipeline companies make the first sale of the natural gas processed by HNG's plants,[1] to gas utilities, industries, and other primarily large-scale consumers located within the State of Texas.[2] In May 1973 and thereafter, most of these sales of residue gas have been made strictly on a Btu basis, but some are made on a volumetric (Mcf) basis with the sales contracts specifying a minimum Btu content for the gas.

HNG calculates maximum lawful prices for the NGL's and NGLP's that it sells. An important component of such calculations is increased product costs, which include increased "cost of natural gas shrinkage." 10 CFR 212.162 and 212.167. HNG has elected to aggregate and allocate increased shrinkage costs on a firm-wide basis under 10 CFR 212.168(b).[3]

HNG requests an interpretation as to whether Subpart K requires the cost of natural gas shrinkage to be measured only by reference to contract prices for sales of residue gas by the gas processor at the tailgate of the processing plant. HNG seeks to include all of the residue gas sales prices of the pipeline companies (excluding only intra-firm sales) when calculating a weighted average sales price to be used in HNG's firm-wide shrinkage calculations. HNG's request also raises the question of how it may compute the weighted average cost of natural gas shrinkage on a firm-wide basis when the price terms in the relevant contracts for

[1] Department of Energy (DOE) regulations, rulings, and interpretations also refer to this "processed" gas as "residue" or "outlet" gas, and these terms are used interchangeably in this Interpretation. This Interpretation is not addressed to instances in which HNG processes natural gas under a contract whereby the processed gas is sold by a natural gas producer to the pipeline companies

[2] To varying degrees the residue gas the pipeline companies sell may be intermixed with "wet" streams that contain gas fed into the pipeline companies' distribution system and sold without extraction of those wet streams' liquid content. The processed gas from HNG's plants is commingled, so that it is impossible to trace processed gas sold to particular plants.

[3] *See HNG Petrochemicals, Inc.*, Interpretation 1978-16, 43 FR 19825 (May 9, 1978).

the sale of the residue gas are stated sometimes on an Mcf basis. In its amended request dated February 24, 1978, as supplemented by representations made by the firm in a conference held on May 31, 1978, HNG seeks to convert the price terms in the pipeline companies' contracts for sale of residue gas on a Btu and sometimes on an Mcf basis to their Btu "equivalent" and calculate a weighted average cost of natural gas shrinkage in the relevant month strictly on a Btu basis.

ISSUES

1. In computing increased product costs incurred since May 1973 attributable to the sale of NGL's and NGLP's may HNG determine the "cost of natural gas shrinkage," as defined in 10 CFR 212.162, pursuant to the pipeline companies' contracts for sale of natural gas?

2. In computing "cost of natural gas shrinkage" on a firm-wide basis, how is HNG to account for the different price terms (Btu or Mcf) used in the pipeline companies' contracts for sale of the processed natural gas?

INTERPRETATION

For the reasons discussed below, in computing increased product costs incurred since May 1973 for sale of its NGL's and NGLP's under Subpart K, HNG may determine the weighted average cost of natural gas shrinkage with reference to the pipeline companies' contracts for sale of the commingled residue gas. Subpart K, as interpreted by Ruling 1975-18, 40 FR 55860 (December 2, 1975), requires that for both May 1973 and the current month HNG compute this cost in two steps, with reference to (1) the weighted average price of residue gas sold on a Btu basis and (2) the weighted average price of residue gas sold on an Mcf basis, as described below.

Section 212.167(b)(3) defines "increased product costs" for NGL's and NGLP's to include:

"[T]he difference between the weighted average cost of natural gas shrinkage per thousand cubic feet (MCF) of natural gas processed in the month of May 1973, and the weighted average cost of natural gas shrinkage per thousand cubic feet (MCF) of natural gas processed in the current month, multiplied by the number of thousand cubic feet (MCF's) of natural gas processed in the current month."

Section 212.162 provides:

"Cost of natural gas shrinkage means the reduction in selling price per thousand cubic feet (MCF) of natural gas processed which is attributable to the reduction in volume or BTU value of the natural gas resulting from the extraction of natural gas liquids, as determined pursuant to the contract in effect at the time for which cost of natural gas shrinkage is being measured, and under which the processed natural gas is sold."

The pipeline companies' contracts for sale of the processed natural gas are the contracts pursuant to which HNG measures its cost of natural gas shrinkage under 10 CFR 212.167(b) and 212.162.[4] Subpart K requires neither that the gas plant owner or operator be a party to the contracts for sale of the processed natural gas nor that these contracts provide for sale of the gas at the tailgate of the processing plant. The preamble to the rulemaking adopting Subpart K states: [5]

"The total increased shrinkage cost attributable to the entire volume of natural gas processed to obtain a given volume of natural gas liquids may be attributed to the prices charged for those liquids in a first sale, *without regard to which entity actually retains title to the natural gas*, and therefore "incurs" an increased shrinkage cost by virtue of reduced natural gas sales revenues."

As the situation of HNG and the pipeline companies demonstrates, the first sale of processed natural gas to an unaffiliated entity may occur at widely varying locations, ranging from points at or near the tailgate of the processing plant to distant points along the distribution system, depending on where the seller is able to provide and the purchaser is able to receive delivery of the processed gas. The shrinkage calculations in Subpart K were not intended to interfere with these normal commercial interrelationships, but were intended generally to provide an economic incentive to extract NGL's from natural gas. The method for measuring increased shrinkage costs is based on three objective criteria: the extraction loss, the volumes of natural gas processed, and the sales prices of the residue gas. Such figures are used regardless of which entity has title to and sells the processed natural gas to an unaffiliated entity and regardless of the location at which such a sale is made.

Therefore, HNG's "weighted average price per unit (MCF or BTU) for processed natural gas" (Ruling 1975-18, § 2b) must be determined by reference to the pipeline companies' contracts for sale of natural gas from the distribution system interconnected with the outlets of gas processing plants in which HNG has an interest, excepting only sales by the pipeline companies to affiliated entities.

HNG has also requested an interpretation as to how the relevant residue gas sales price terms should be incorporated in its shrinkage calculations. Inasmuch as HNG has elected to aggregate and allocate product costs on a firm-wide basis, pursuant to 10 CFR 212.168(b), HNG must continue to calculate and apply shrinkage costs on the same basis. To compute shrinkage costs on a firm-wide basis, weighted average residue gas sales prices must also be computed on a firm-wide basis in this case. As stated in Ruling 1975-18:

"Where the increased costs associated with several volumes of processed natural gas have been aggregated, the residue price which is used to determine the cost of natural gas shrinkage is a weighted average of all contract price terms under which the different volumes of processed natural gas are sold."

The relevant contracts for the sale of the residue gas specify that gas is sold on a Btu basis in most cases, and in some cases on an Mcf basis. Ruling 1975-18, *supra*, *establishes the appropriate method of obtaining one weighted average residue gas selling price. The difficulty in directly applying this formula to HNG's firm-wide shrinkage calculations is that HNG's firm-wide sales of residue gas are made on two bases (Btu and Mcf), not on one basis as set forth in the example in Ruling 1975-18, supra.* Because residue gas sales are made on two bases, the price terms cannot be weight-averaged directly to compute one weighted average residue gas selling price.

In order to comply with § 212.162 and in keeping with the principles enunciated in Ruling 1975-18, *supra*, HNG should calculate its shrinkage costs with reference to the relevant contractual price terms for processed natural gas. Since the gas is priced under these contracts on two different bases, then in order accurately to calculate the shrinkage costs attributable to extraction with reference to the relevant price terms of the contracts under which the processed gas is sold, HNG must establish a firm-wide weighted average sales price for residue gas sold on each basis according to the proportion by volume of gas sold on each basis. These calculations produce a firm-wide weighted average cost of "Btu" shrinkage and a firm-wide weighted average cost of "Mcf" shrinkage, which when added together yield the firm's total weighted average cost of natural gas shrinkage in the relevant month.

In the manner of Ruling 1975-18, these calculations of HNG's cost of natural gas shrinkage for May 1973 and the current month may be expressed in the following formula:

$$C_{wa} = \left(\frac{B}{B+M}\right)\left(\frac{V_{btu} \times P_{btu}}{I_{mcf}}\right) + \left(\frac{M}{B+M}\right)\left(\frac{V_{mcf} \times P_{mcf}}{I_{mcf}}\right)$$

Where:

C_{wa} = The weighted average cost of natural gas shrinkage.

B = The volume of residue gas sold pursuant to Btu contracts.

M = The volume of residue gas sold pursuant to Mcf contracts.

V_{btu} = The aggregate value in Btu of the natural gas liquids, natural gas liquid products, ethane, and plant fuel extracted from the processed gas stream, determined by converting them to the unit of measurement by which the residue gas

[4] HNG and the pipeline companies are part of the same firm under Part 212, and these contracts are the only ones in effect for the first sale of the natural gas to an unaffiliated entity after processing. Even if HNG and the pipeline companies were not part of the same firm, the conclusion in this Interpretation would not be changed, and HNG would still be permitted, in computing shrinkage, to utilize the pipeline companies' contracts for the first sale of the processed natural gas to an unaffiliated entity where there is no sale of the processed gas to the pipeline companies at a point prior to the pipeline companies' sale of the processed gas. Therefore, it makes no difference for HNG's shrinkage calculations that the pipeline companies, instead of HNG, sell the residue gas from natural gas streams processed by HNG's plants.

[5] 39 FR 44407, §V (December 24, 1974) (emphasis added).

is sold, in accordance with the procedures set forth in ruling 1975-18.

P_{btu} = The weighted average price per Btu unit for processed natural gas, as determind pursuant to the contracts in effect at the time for which the cost of natural gas shrinkage is being measured, and under which the processed natural gas is sold on a Btu basis.

V_{mcf} = The aggregate value in Mcf of the natural gas liquids, natural gas liquid products, ethane, and plant fuel extracted from the processed gas stream, determined by converting them to the unit of measurement by which the residue gas is sold, in accordance with the procedures set forth in ruling 1975-18.

P_{mcf} = The weighted average price per Mcf unit for processed natural gas, as determined pursuant to the contracts in effect at the time for which the cost of natural gas shrinkage is being measured, and under which the processed natural gas is sold on an Mcf basis.

I_{mcf} = The volume in Mcf's of the inlet gas, exclusive of any condensate (which is "crude oil" as that term is defined in § 212.31).

Neither of the methods suggested by HNG for calculating the cost of natural gas shrinkage fulfills the requirements of 10 CFR 212.162 that the "cost of natural gas shrinkage" be computed with reference to the price *terms* (Btu and/or Mcf) by which the residue gas is sold. In its original request of July 11, 1975, HNG proposed to compute this cost with reference to the pipeline companies' weighted average sales price per *Mcf* of residue gas sold. Such an amount would be determined by dividing HNG's total sales revenue by total Mcf's of gas sold. In its amended request of February 24, 1978, HNG proposed to compute this cost in reference to the pipeline companies' weighted average sales price per *Btu* of residue gas sold, determined by dividing HNG's total sales revenue by the sum of (1) the Btu content of gas sold pursuant to Mcf contracts and (2) the Btu content of gas sold pursuant to Btu contracts.[6] Either method would effectively ignore the price term (Btu or Mcf) in some of the pipeline companies' contracts for sale of the residue gas. Since in the relcant periods the pipeline companies have always sold residue gas pursuant to both Btu and Mcf contracts, HNG's shrinkage calculations must be based on the actual terms (both Btu and Mcf) in sales of residue gas.

Accordingly, HNG must compute the "cost of natural gas shrinkage" pursuant to both the Btu and Mcf contracts for sale of the residue gas in the relevant periods in the manner described above.

INTERPRETATION 1978-63

To: Northern Natural Gas Company, *et al.*,[1] MAPCO, Inc., *et al.*[2]

Date: December 13, 1978.

Rules Interpreted: 10 CFR 212.31, 212.91, 212.161, 212.162, 212.163, and 212.164.

Code: GCW—PI—Part 212, Subparts F and K; Def. of Reseller, Refiner, Firm, and First Sale; Non-product Cost Increases

FACTS

Northern Natural Gas Company (Northern) and MAPCO, Inc. (Mapco) have filed separate Requests for Interpretation, which are both addressed in this Interpretation because they raise essentially the same legal issues under the Mandatory Petroleum Price Regulations in similar factual contexts. Each company processes natural gas and is, therefore, a "refiner" as defined in 10 CFR 212.31 and a "gas plant owner" and "gas plant operator" as defined in 10 CFR 212.162. As independent gas processors that do not also refine crude oil, the companies are subject to 10 CFR Part 212, Subpart K in their sales of natural gal liquids (NGL's) and natural gas liquid products (NGLP's). 10 CFR 212.161 (b) (1). The companies have asked a number of closely related questions: Whether the gas processing and marketing entities affiliated with each company are part of the same firm; whether transfers of NGL's by their gas processing to their marketing entities qualify as "first sales" under Subpart K; and whether sales of NGL's and NGLP's by the marketing entities are subject to Part 212, Subpart K, governing gas processors, or Subpart F, governing resellers. If their asserted interpretations were confirmed, Northern and Mapco would be permitted to use the adjusted May 15, 1973, prices provided by 10 CFR 212.164 in lieu of the actual May 15, 1973, weighted average transfer prices charged to their affiliated marketing entities, and the affiliated marketing entities could treat the amount of the adjustment as an increased product cost under the provisions of Subpart F.

Northern is divided into two divisions: The Transmission Division, which operates an extensive pipeline system in the Midwest for delivery of natural gas in interstate commerce for resale; and the Peoples Natural Gas Division, a utility delivering natural gas directly to consumers in a number of states. Northern also owns and operates gas processing plants which extract NGL's from the natural gas streams flowing through Northern's pipeline system and which fractionate those NGL's into natural gas liquid products, such as propane, butane and natural gasoline. Northern owns and sells part of the propane, butane and natural gasoline which it processes. Northern Propane Gas Company (Northern Propane) Northern Gas Products Company (Northern Gas), and United Petroleum Gas Company (United) are wholly owned subsidiaries of Northern. Northern Gas owns interests and operates a number of gas processing plants, parts of whose production of NGL's and NGLP's Northern Gas owns and sells. Northern Propane, which conducts its various business activities under the name of Norgas, buys propane and resells it primarily on the retail level but also on the wholesale level. United, a holding company, wholly owns UPG, Inc. (UPG), which purchases and resells propane, butane, condensate, diesel fuel oil, motor gasoline and other petroleum products. UPG has purchased substantially more than 5 percent of the petroleum products it sells (calculated by volume) from affiliated companies (Northern and Northern Gas). All of the petroleum products purchased by UPG from affiliated companies consist of NGL's and NGLP's produced from processing plants in which Northern and Northern Gas have interests. Northern Propane has purchased substantially more than 5 percent of the petroleum products it sells from UPG. Neither Northern nor any of the Northern subsidiaries refines crude oil.[3]

Mapco is divided into two divisions: the Pipeline Division, a common carrier which operates an extensive pipeline system in the Midwest for delivery of NGLP's in interstate commerce; and the Production Division, which explores for and produces crude oil and natural gas and owns interests in and operates gas processing plants producing NGL's and NGLP's part of which Mapco owns and sells.

The Thermogas Corporations (Thermogas) and MAPCO Products Company (Mapco Products) are wholly owned subsidiaries of Mapco. Thermogas consists of over 100 separate corporations that are jointly managed and buy and resell propane primarily on the retail level but also on the wholesale level. Thermogas purchases approximately 25 percent of its propane supplies from a commonly controlled entity. Mapco Products buys and resells NGL's, ethane, propane, butane, natural gasoline and other petroleum products, of which approximately 25 percent (calculated by volume) are purchased from a commonly controlled entity. Neither Mapco nor any of its subsidiaries refines crude oil.[4]

The parties[5] concede that as a result of their refining NGL's and NGLP's from nat-

[6] As explained by HNG in a conference on May 31, 1978, for purposes of this method of shrinkage calculations, HNG would assume that the average Btu content of gas sold pursuant to Mcf contracts was the same as the average measured Btu content of gas sold pursuant to Btu contracts.

[1] Northern Natural Gas Company filed its Request for Interpretation on behalf of itself, Northern Gas Products Company, Northern Propane Gas Company, and UPG, Inc.

[2] MAPCO, Inc., filed its Request for Interpretation on behalf of itself, The Thermogas Corporations and MAPCO Products Company.

[3] The term "Northern subsidiaries" is used hereafter to refer to Northern Gas, Northern Propane, United and UPG. For purposes of this Interpretation, we have assumed that from January 1, 1975, through October 31, 1978, UPG and Northern Propane each purchased more than 5 percent of the "covered products" (as defined in 10 CFR 212.31) they sold from commonly controlled entities.

[4] The term "Mapco subsidiaries" is used hereafter to refer to Thermogas and Mapco Products. For purposes of this Interpretation, we have assumed that from January 1, 1975, through October 31, 1978, Thermogas and Mapco Products each purchased more than 5 percent of the "covered products" (as defined in 10 CFR 212.31) they sold from commonly controlled entities.

[5] The term "parties" is used hereafter to refer to Mapco, Northern, and their subsidiaries. The parties' requests for interpretation were filed prior to the recent amendment to Subpart K, 43 FR 42984 (September 21, 1978), which substantially revised Subpart K effective November 1, 1978. The effective date of some of these amendments has been suspended, 43 FR 50841 (October 31, 1978). Because the submissions of the

Footnotes continued on next page

ural gas and selling those products, they were subject, at least in part, to 10 CFR Part 212, Subpart K. 10 CFR 212.161(b)(1). Northern contends, however, that each of its corporate entities [6] was a separate firm under Part 212. Mapco also contends that each of its corporate entities was a separate firm, except that all of the jointly managed Thermogas corporations should have been treated as one firm.[7] As a result, they conclude that only those entities that were gas plant owners or operators—Northern, Northern Gas and Mapco—would have been refiners subject to Subpart K with respect to their sales of NGL's and NGLP's. In contrast, they further conclude that those entities that only purchased and resold NGL's and NGLP's—Northern Propane, UPG, Mapco Products and Thermogas—would have been subject to 10 CFR Part 212, Subpart F, for such sales.[8]

If this requested interpretation were not issued and Northern and its subsidiaries [9] on the one hand and Mapco and its subsidiaries [10] on the other hand were each treated as a single "firm," Mapco urges that the DOE recognize a "transfer price" applicable to sales of NGL's and NGLP's from gas processing entities to marketing entities within the same firm. Under those circumstances, the "sale" of NGL's or NGLP's from the gas processing entity to the marketing entity would have been subject to Subpart K and the "resale" of NGLP's by the marketing entity would have been subject to Subpart F, notwithstanding the "5 percent rule" of 10 CFR 212.91, so long as the firm did not refine crude oil.

As we noted above, under either of the interpretations urged by the parties, they would have been able to use the adjusted May 15, 1973, first sale price set forth in 10 CFR 212.164 instead of actual May 15, 1973 weighted average "prices" for transfers of NGL's and NGLP's between their gas processing and marketing entities. This adjustment would then have been reflected in the marketing entities' increased costs of product in inventory ("increased product costs") under 10 CFR 212.93. The parties would also have been able to recover any increased non-product costs of their marketing subsidiaries in the manner provided by Subpart F.

In contrast, if the Northern group and the Mapco group were each considered to be a single firm, each group would have been subject exclusively to Subpart K insofar as its production, purchase, and sales of NGL's and NGLP's were concerned. As a result, the parties could have used their adjusted May 15, 1973 prices only in lieu of actual May 15, 1973 weighted average prices charged in sales of NGL's and NGLP's to unaffiliated entities,[11] their increased product costs would have been calculated as provided under 10 CFR 212.166, and the increased non-product costs which they incurred with respect to the sales of those products would have been subject to the limitations of 10 CFR 212.165.[12]

ISSUES

During the period from January 1, 1975, through October 31, 1978:

(1) Were all of the affiliated entities of the Northern group within the same "firm" and were all of the affiliated entities of the Mapco group within the same "firm" for purposes of determining maximum lawful prices under Subpart K?

(2) Were the marketing subsidiaries of the parties subject to the provisions of 10 CFR Part 212, Subpart F or Subpart K for the purpose of calculating their maximum lawful prices of NGL's and NGLP's?

(3) Did sales of NGL's and NGLP's by the gas processing entities of the parties to their affiliated marketing entities qualify as "first sales" under Subpart K?

(4) Were the parties entitled to use the adjusted May 15, 1973 selling prices of 10 CFR 212.164 in lieu of actual May 15, 1973 weighted average prices for NGL's and NGLP's transferred between gas processing and marketing entities within the Northern or Mapco groups?

(5) If the Northern group and the Mapco group each constituted a single "firm" and were subject exclusively to Subpart K in their sales of NGL's and NGLP's, were they precluded by the provisions of 10 CFR 212.165 from recovering any increased marketing costs for these products, absent exception relief?

INTERPRETATION

I. SUMMARY

For the reasons discussed below, we reach the following conclusions regarding the applicability of Subpart K and Subpart F to the parties from January 1, 1975, through October 31, 1978. Each of the affiliated entities within the Northern group was part of one firm, and each of the affiliated entities within the Mapco group was part of one firm. All entities, including the marketing entities, within these firms were subject exclusively to Subpart K, not Subpart F, with respect to their sales of NGL's and NGLP's to unaffiliated entities, because both firms were refiners and the marketing entities within both groups purchased more than 5 percent of their petroleum products for resale from affiliated entities. Sales of NGL's and NGLP's between affiliated entities within the Northern or Mapco firms cannot have constituted "first sales" under Subpart K since those sales were not transactions with classes of purchaser. The Northern and Mapco firms were entitled to use the adjusted May 15, 1973, prices for NGL's and NGLP's set forth in 10 CFR 212.164 in lieu of their actual May 15, 1973, weighted average sale prices of NGL's and NGLP's only with respect to sales to unaffiliated entities. Absent exception relief, the Northern and Mapco firms were permitted to recover as increased non-product costs all of their increased marketing costs attributable to their sales of NGL's and NGLP's, subject to the limitations on amount which were contained in 10 CFR 212.165.

II. DISCUSSION

A. *The Concept of "Firm".* Although the term "firm" has been used repeatedly in 10 CFR Part 212, Subpart K,[13] it was not expressly defined in that subprt. The term was, however, defined in Part 212, Subpart B, which establishes the meaning of important terms used throughout Part 212.

Section 212.31 provides:[14]

"'Firm' means any association, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any other entity however organized including charitable, educational, or other eleemosynary institutions, and the Federal government including corporations, departments, Federal agencies, and other instrumentalities, and State and local governments. The [DOE] may, in regulations and forms issued in this part, treat as a firm: (1) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls, (2) a parent and its consolidated entities, (3) an unconsolidated entity, or (4) any part of a firm."

The parties contend that the most expansive meaning of "firm" in § 212.31, *i.e.*, a parent and the consolidated and unconsolidated entities which it controls, did not apply to Subpart K, inasmuch as the DOE never expressly incorporated this meaning

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Footnotes continued from last page

parties deal only with the provisions of Subpart K as they existed prior to the recent amendments, this Interpretation deals only with Subpart K as it existed prior to November 1, 1978. Subpart K originally appeared at § 212.141 *et seq.*, and was later redesignated § 212.161 *et seq.*, 39 FR 44407, 44412-14 (December 24, 1974); 40 FR 6200 (February 10, 1975). All references in this Interpretation are to § 212.161 *et seq.*, as in effect through October 31, 1978.

[6] *I.e.*, each of the corporate entities listed in note 1, *supra*.

[7] See n. 2, *supra*.

[8] This Interpretation does not address the question of which supart of 10 CFR Part 212 governs the sale of condensate and other petroleum products by the parties.

[9] The term "Northern group" is used to refer to Northern and the Northern subsidiaries. See n. 3, *supra*.

[10] The term "Mapco group" is used to refer to Mapco and the Mapco subsidiaries. See n. 4, *supra*.

[11] The parties state that the actual May 15, 1973 weighted average transfer prices for NGL's and NGLP's between affiliated entities were lower than the adjusted May 15, 1973 sales prices, so that they would gain an advantage by using the adjusted prices in lieu of the established May 15, 1973 inter-affiliate transfer prices. According to the parties' requested interpretation, the difference between the May 15, 1973 transfer price and the adjusted price of 10 CFR 212.164(a) would have become part of the increased product cost to their affiliated marketing entities, which could then have been passed on to the marketing classes of purchaser. The parties' actual May 15, 1973 weighted average sales prices to unaffiliated entities for NGL's and NGLP's were much higher than the adjusted May 15, 1973 prices, so that the parties could not have benefited by the use of the adjusted prices in lieu of the May 15, 1973 prices to unaffiliated entities.

[12] As the detailed discussion in § II C of this Interpretation demonstrates, absent exception relief, § 212.165 limited recovery of increased non-product costs to .375 cents per gallon for NGL's and .5 cents per gallon for NGLP's. The parties also contend that this provision strictly limited recovery of increased non-product costs to those incurred in the operation of gas processing plants and excluded recovery of any increased marketing costs, which were substantial for both the Mapco and Northern groups.

[13] *E.g.*, 10 CFR 212.161(a), 212.162, 212.164, 212.165, and 212.166.

[14] This section was adopted in 39 FR 1924 (January 15, 1974) and carried forward a similar definition first adopted by the Cost of Living Council in Phase II of the Economic Stabilization Program, 6 CFR 101.2, 37 FR 9457 (May 11, 1972), which was readopted essentially unchanged, along with related definitions, in Phase IV, 6 CFR 150.31, 38 FR 21592 (August 9, 1973).

in the regulations contained in that subpart,[15] as apparently required by the definition's second sentence.

As far as refiners[16] have been concerned, the regulatory history emphasizes that contrary to the parties' unsupported claims,[17] regulations and forms subjected all refiners to the most expansive meaning of "firm," regardless of whether they have been crude oil refiners or gas processors. Under the Economic Stabilization Program, all refiners were subject to that meaning of "firm."[18] With the promulgation of the Mandatory Petroleum Price Regulations, 39 FR 1924 (January 15, 1974), sales of NGL's and NGLP's by all refiners were subject to 10 CFR Part 212, Subpart E, which expressly incorporated this meaning of "firm." Section 212.82 of Subpart E defines a "firm" as: "a parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls." Under this definition, all entities within the Northern and Mapco groups were part of their respective single firms because of the element of common control.

With the promulgation of Subpart K, effective January 1, 1975, 39 FR 44407 (December 24, 1974), sales of NGL's and NGLP's by independent gas processors, *i.e.*, those unaffiliated with a crude oil refiner, became subject exclusively to Subpart K. 10 CFR 212.161(b)(1).[19] In the rulemakings creating and amending Subpart K, there was no indication of any intent to change the meaning of "firm" from what it was in Subpart E, and DOE and its predecessor agencies have never discussed or promulgated a substitute definition.[20] The DOE did not make the "firm" concept for purposes of Subpart K synonymous with "legal entity," as the parties contend, except insofar as the 5 percent rule applies. *See* § II B(2), *infra*.

"Firm" is the most basic concept in the Mandatory Petroleum Price Regulations, as the concept defines the scope of the entities subject to the regulations. Before the maximum lawful selling price that can be charged under Part 212 for a sale of a covered petroleum product can be determined, a determination must first be made of the size and scope of the seller's unit, *i.e.*, "firm," under the price regulations. This requirement applies as much to gas processors under Subpart K as it does to parties subject to other subparts of Part 212.[21] *See, e.g., Enterprise Products, infra*. In view of these considerations, and in view of the fact that gas processors were clearly subject to a well-developed concept of "firm" before Subpart K became effective, a change in the meaning of that term for the purposes of Subpart K alone would have required far more than the speculative basis, *i.e.*, inferring and intent to change from silence, that the parties urge in support of their requested interpretation.

The DOE also implemented the most expansive meaning of "firm" as defined in § 212.31 in the various report forms that gas processors have been required to file under the Mandatory Petroleum Price Regulations. These forms expressly indicated that this meaning of "firm" applied to all refiners, including gas processors.

Paragraph B of the instructions to Form FEO-96,[22] first required to be filed in February 1974, stated:

"Each refiner, as defined in 10 CFR 212.31 must file a Form FEO-96. . . .

"The parent and the consolidated and unconsolidated entities, (if any) which it directly or indirectly controls, taken all together, constitute the 'firm'. . . ."

Form P110-M-1, first required to be filed in April 1976, replaced Form FEO-96. The instructions to Form P110-M-1, paragraph B, also defined "firm" in that manner.[23]

The DOE and its predecessor agencies have generally interpreted the definition of "firm" in the Mandatory Petroleum Price Regulations in the most expansive sense, as set forth in the definition of "firm" in § 212.31, so that a parent firm (including an individual person) and all the entities it directly or indirectly controls are considered to be part of the same firm. *In Enterprise Products Co.*, Interpretation 1975-3, 42 FR 23722 (May 10, 1977), issued on February 12, 1975, the Federal Energy Administration (FEA), a predecessor of the DOE, rejected the arguments of a wholesaler of NGLP's that its sales to two retail dealers were inter-firm transactions. In that case, the owners of the wholesaler owned 8 percent of the stock in one of the retail dealers and 29 percent of the stock in the other retail dealer. The FEA applied the most expansive meaning of "firm" in § 212.31 to the wholesaler and the retail dealers, and treated all of these entities as one combined firm subject to Subpart F, even though that subpart (like Subpart K) did not define that term.[24] In *Tesoro Petroleum Corp.*, Interpretation 1975-32, 42 FR 23743 (May 10, 1977), issued on August 21, 1975, the FEA similarly determined that two refiners were part of the same firm where one refiner had purchased 37 percent of the stock of the second, noting that the expansive scope of a firm for purposes of the whole price control program (absent express exception) had long since been established:

"In a series of rulings during Phase II of the Economic Stabilization Program the major questions concerning inter-corporate control for purposes of price regulations were fully answered and settled. . . . [T]he administrative determination of whether one firm is controlled by another must be a factual and legal determination based upon *possession of the power of control* and not upon the happenstance of exercise of that power." (Emphasis added.)

In *Sohio-BP Oil, Inc.*, Interpretation 1976-3, 42 FR 7926 (February 8, 1977), issued April 20, 1976, the FEA concluded in similar unequivocal terms that Sohio and its wholly owned subsidiary, BP Oil, Inc., were part of the same firm.[25]

"The price rules do not apply to each refinery but to each 'firm.' . . . The price rules

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[15] *E.g.*, Northern's Request, pp. 7-11; Mapco's Request, pp. 11-14.

[16] See discussion of the "refiner" definition, which includes gas processors such as the Mapco and Northern firms, in § II B(1), *infra*.

[17] *E.g.*, Mapco's Request, pp. 11-18.

[18] 39 FR 32718 (September 10, 1974).

[19] Contrary to Northern's argument, § 212.161(b)(1) neither states nor implies that the expansive meaning of "firm" in Subpart E is inapplicable to refiners made subject to Subpart K exclusively. Request, pp. 9-10, 13. This section only makes clear that independent gas processors were no longer to determine maximum lawful prices under the refiner price formula of Subpart E after Subpart K became effective. The scope of the entity subject to the regulations—the "firm" as defined in 10 CFR 212.82—remained the same, as indicated by the repeated use of that term throughout Subpart K.

[20] Subpart K was adopted and amended pursuant to the following rulemakings: 39 FR 32718, § I (September 10, 1974); 39 FR 44407 (December 24, 1974); 40 FR 6200 (February 10, 1975); 40 FR 39850 (August 29, 1975); 40 FR 49105 (October 21, 1975); 41 FR 15330 (April 12, 1976); 41 FR 24110 (June 15, 1976); and 42 FR 29490 (June 9, 1977). *See* n. 5, *supra*.

[21] To have different meanings for "firm" under the various Subparts E, F, and K would be not only contrary to the plain meaning of Part 212, but also contrary to the integrated structure of its interrelated provisions. A party can be characterized as solely a crude oil refiner, solely an independent gas processing refiner, or solely a reseller under the price regulations only after the scope of the party's "firm" has been established. In the case of a major crude oil refiner, for example, it cannot be decided whether the same "firm" is also a gas processor unless the meaning of that term, as used in both Subparts E and K, indicates what entities are included in the firm. Crude oil refiners with gas processing interests are subject both to Subpart K (for their gas processing activities) and Subpart E (for all other refining activities and the computation of maximum lawful prices for sales of NGL's and NGLP's to unrelated entities). Thus, if the same "firm" concept that applied to the rest of Part 212 were not incorporated in Subpart K, it would be impossible to join Subparts E and K for pricing purposes, as directed by 10 CFR 212.161(b)(2). In such a case, one could not determine whether NGL's and NGLP's produced by a particular gas plant were being sold by an independent gas processor (without interests in any crude oil refinery) and thus subject only to Subpart K, or by a crude oil refiner with this and perhaps other gas processing interests and thus subject to Subparts K and E. *See Atlantic Richfield Co.*, Interpretation 1978-61, issued November 7, 1978 (Arco); and *Continental Oil Co.*, Interpretation 1978-29, 43 FR 29529 (July 10, 1978) (Conoco). Northern has furnished no support for its claim (Request, p. 9) that the most expansive meaning of "firm" as set forth in § 212.31 applied to Subpart K only for gas processors that were also crude oil refiners.

[22] The definition of "firm" in this form is discussed in *Tesoro Petroleum Corp.*, 5 FEA ¶ 80,611 (April 19, 1977).

[23] Since Form FEO-96 did not expressly provide for calculations under Subpart K, Form P110-M-1 was required to be filed retroactively by all firms engaged in gas processing. *See* Form P110-M-1, Enclosure #2, 2 CCH Energy Management ¶ 18,406.

[24] On May 10, 1976, the FEA amended 10 CFR 212.92 to define "seller" in the same manner as "firm" is defined in 10 CFR 212.82, except as provided by the 5 percent rule of § 212.91, in order expressly to conform Subpart F to prior Interpretations of that part. 41 FR 19110 (May 10, 1976).

[25] *Accord, e.g., Peerless Distributing Company*, Interpretation 1977-29, 42 FR 46272 (September 15, 1977); *Ball Marketing Enterprise*, Interpretation 1977-18, 42 FR 39960 (August 8, 1977), *appeal denied*, 1 DOE ¶80,238 (April 13, 1978); *Texas City Refining, Inc.*, Interpretation 1977-6, 42 FR 17100 (March 31, 1977), *appeal denied*, 6 FEA ¶80,532 (August 3, 1977); and *Rookwood Oil Terminals, Inc.*, Interpretation 1976-8, 42 FR 7932 (February 8, 1977).

do not apply to each marketing outlet or subsidiary but to each 'firm.' "

Applying this same expansive meaning of "firm" to Northern, Mapco, and their subsidiaries, as indicated by DOE's historical practices and policies discussed above, necessarily supports the conclusion that each parent and all of its wholly owned subsidiaries, *i.e.*, the Northern group and the Mapco group, were part of the same firm for purposes of 10 CFR Part 212. *Sohio-BP, supra.*

The parties' claims that the various entities in the Northern and Mapco groups in fact operate independently of one another, as separate "profit centers," [26] are irrelevant to the determination that all of the subsidiary entities in each group have been subject to the same legal power of control by the parent. As the cases above demonstrate, even where that power of control is less than absolute and may not have been exercised, its existence compels us to treat all of the affiliated entities subject to common control as a single firm, except where hardship or gross inequity has been demonstrated in exception proceedings.

B. SALES OF NGL'S AND NGLP'S BY GAS PROCESSORS

(1) *Refiners.* A "refiner" is defined in 10 CFR 212.31 as follows (emphasis added):

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

Section 212.31 defines "covered products" to include in part "butane, . . . natural gas liquids, natural gasoline, and propane." Therefore, the Northern and Mapco firms have each always been refiners for purposes of Part 212, since they refine and produce NGL's and NGLP's in gas processing plants and own those products prior to their sale. *Mobil Oil Corp.* v. *FEA*, 566 F.2d 87 (TECA 1977); *National Helium Corp.* v. *FEA*, 569 F.2d 1137 (TECA 1977); *McCulloch Gas Processing Corp.*, Interpretation 1974-13, 42 FR 25654 (May 18, 1977), *appeal denied*, 1 FEA ¶20,180 (November 15, 1974); 39 FR 32718; and 39 FR 44407.

Prior to the adoption of Subpart K effective January 1, 1975, the Northern and Mapco firms were subject to Subpart E (and previously to the price control regulations administered by the Cost of Living Council), which governed the sale of NGL's and NGLP's by all refiners, regardless of whether the firms refined those products from crude oil or natural gas.[27] Regulations were promulgated in Subpart K that were specifically designed to govern the sales of NGL's and NGLP's produced from natural gas. Subpart K's applicability and relationship to other subparts is set forth in 10 CFR 212.161:

"(a) *Scope.* This subpart applies to all sales of natural gas liquids and natural gas liquid products, including transfers between affiliated entities, by all firms, including gas plant operators, producers of natural gas, natural gas royalty owners, and refiners except sales by resellers or retailers, which are subject to Subpart F of this part.

"(b) *Relationship to other Subparts.*

"(1) *Gas plant operators.* Refiners that only refine liquid hydrocarbons from oil and gas field gases and do not refine crude oil shall determine their maximum lawful prices pursuant to this Subpart K and are not also subject to Subpart E.

"(2) *Crude oil refiners which are also gas plant operators.* (i) *General.* Refiners that refine liquid hydrocarbons from oil and gas field gases, and also refine crude oil, shall determine their May 15, 1973 selling prices and increased costs for natural gas liquids and for natural gas liquid products produced in gas plants pursuant to this subpart, but shall determine their maximum lawful selling prices pursuant to Subpart E."

As refiners, gas plant operators and owners, [28] the Northern and Mapco firms have been subject to the regulations of Subpart K governing the sale of NGL's and NGLP's.

(2) *Five Percent Rule.* Part 212, Subpart F applies to sales of petroleum products by resellers and retailers as described in 10 CFR 212.91:

"This subpart applies to each sale of a covered product, other than crude oil, by resellers, reseller-retailers, and retailers. For purposes of this subpart, 'reseller' includes any entity of a refiner (other than an entity that operates in Puerto Rico) that is engaged in the business of purchasing and reselling covered products, provided that the entity does not purchase more than 5 percent of such covered products from the refiner including any entities that it directly or indirectly controls and provided further that the entity has consistently and historically exercised the exclusive price authority with respect to sales by the entity."

The marketing subsidiaries of Northern and Mapco cannot generally have been regarded as resellers or reseller-retailers [29] because those subsidiaries were part of firms that were considered under the regulations to be refiners, both before and after the promulgation of Subpart K, as discussed above.[30] Thus, under the plain meaning of § 212.91 these marketing subsidiaries would have been allowed to calculate maximum lawful prices under Subpart F for sales of NGL's only if these subsidiaries purchased less than 5 percent of the covered products they sell from affiliated refiner-entities or from other entities controlled by the refiner, and if these subsidiaries exercised exclusive pricing authority for such sales. The facts Northern and Mapco have presented demonstrate that neither firm met the first of these two requirements, thereby precluding the application of Subpart F to "resales" of NGL's and NGLP's by their marketing subsidiaries.[31] *E.g., Peerless Distributing Co., supra.* Thus, sales by these entities were governed by Subpart K, and not by Subpart F.

(3) *First Sale.* Subpart K governs prices charged for NGL's and NGLP's in the manner described in the general price rule, 10 CFR 212.163:

"(a) *First Sale.* A royalty owner, producer, gas plant owner, gas plant operator or other entity may not charge to (or receive from) any class of purchaser a price in excess of the weighted average price at which natural gas liquids or natural gas liquid products were lawfully priced in *transactions* with the *class of purchaser* concerned on May 15, 1973, except to the extent permitted by this subpart.

"(b) *Net-back sale.* A royalty owner, producer, gas plant owner, gas plant operator, or other entity that transferred natural gas liquids or natural gas liquid products to any *class of purchaser* on May 15, 1973, in a net-back sale shall not charge (or receive) per gallon revenues for such natural gas liquids or natural gas liquid products in excess of the per gallon revenues received in such net-back sales on May 15, 1973, except to the extent that the *first sale* price upon which the net-back amount is determined is permitted to increase above its May 15, 1973 level pursuant to this subpart, and except to the extent that the method for determining the amount of the net-back is changed, provided however, that any change in the method of determining the amount for any net-back shall not constitute an increased product cost or an increased non-product cost." (Emphasis added.)

Analyzing this general price rule in the context of Part 212's definitions of the terms discussed above confirms that Subpart K governed the calculation of a maximum lawful price for NGL's and NGLP's sold by a gas processor to an unaffiliated entity. Prices for intra-firm "sales" of NGL's and NGLP's were not themselves limited by Subpart K (*i.e.*, subject to the first sale price rule of § 212.163) and cannot have been taken into account in calculating maximum lawful prices for sales of such products to unaffiliated entities. The cost computation and passthrough provisions of Subpart K operate automatically to reflect allowable costs incurred by all affiliated entities in the maximum lawful prices which may be charged to unaffiliated entities. §§ 212.163, 212.165, 212.166, and 212.167.

Section 212.163(a) requires that a "first sale" of NGL's or NGLP's relate to a "transaction" with a "class of purchaser." Both of these elements must be present in order to qualify a sale as a "first sale." [32] *Arco* and

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[26] *E.g.*, Northern's Request, pp. 4, 6; Mapco's Request, pp. 7-9. We note the parties have not claimed that Northern and Mapco have failed to exercise control of their subsidiaries in the most fundamental manner—election of their directors who in turn appoint the subsidiaries' executive officers.

[27] 39 FR 32718. *See also* Ruling 1975-6, 40 FR 23272 (May 29, 1975); and Class Exception (Retroactive Application of Subpart K), 2 FEA ¶84,901 (August 29, 1975).

[28] "Gas plant operator" is defined in 10 CFR 212.162 as "any *firm*, including a gas plant owner, which operates a gas plant and keeps the gas plant records." "Gas plant owner" is defined in the same section as "any *firm* with an ownership interest in a gas plant." (Emphasis added.)

[29] *See* § II C, *infra.*

[30] The definitions of "reseller" and "reseller-retailer" in 10 CFR 212.31 expressly exclude refiners.

[31] Mapco's Request, pp. 18-23, claims that its requested interpretation is consistent with Subpart F. No specific language in Subpart F or K, however, declared the 5 percent rule inapplicable to independent gas processor-refiners. As with the definition of "firm" discussed previously, there was also no evidence of any intent to change this basic rule upon the promulgation of Subpart K.

[32] This term is defined in 10 CFR 212.162 as follows:

Footnotes continued on next page

Conoco, supra, n. 21. Neither of the elements is satisfied by the transfer of NGL's and NGLP's between entities within the Northern and Mapco firms. "Transaction" is defined in 10 CFR 212.31 as follows:

"'Transaction' means an arm's-length *sale between unrelated persons which are not members of a controlled group* (as defined in 26 U.S.C. 1563(a)) and is considered to occur at the time and place when a binding contract is entered into between the parties." (Emphasis added.)

The transfers of NGL's and NGLP's within the Northern and Mapco firms did not qualify as transactions because the transfers were made between related entities that were members of the same controlled group. Inherent in the "class of purchaser" definition in § 212.31 is the "firm" concept, so that only a purchaser outside of the seller's firm can be considered part of a "class of purchaser." *Arco* and *Conoco, supra*. The Northern and Mapco subsidiaries did not so qualify in reference to their purchase of NGL's and NGLP's within their respective controlled groups.

Similarly, the adjusted May 15, 1973, prices of Subpart K can be applied only to "first sale *transactions* with a *class of purchaser*." § 212.164(a) (emphasis added). The above analysis of these terms necessarily means as well that the Northern and Mapco firms cannot have used these adjusted prices in lieu of the May 15, 1973, transfer prices within each firm.

(4) *Parties' Arguments.* The parties have submitted a number of arguments and materials [33] in an attempt to show the validity of their requested interpretation. These submissions are contradicted by the plain meaning of the Mandatory Petroleum Price Regulations.

For example, Mapco argues that even if all of its entities were considered part of the same firm, its marketing subsidiaries were not subject to Subpart K with respect to their sales of NGL's and NGLP's, but were subject to Subpart F exclusively. Mapco contends that the transfers of NGL's and NGLP's by its gas processing entities to its marketing entities were the first "transfers between affiliated entities," which were treated as sales under § 212.161(a), and were therefore the "first sales" subject to Subpart K. According to Mapco, such an interpretation would have entitled the marketing entities to calculate maximum lawful prices for their sales of NGL's and NGLP's to unaffiliated entities under Subpart F. Mapco argues that it would also follow as to the intra-firm "sales" that the adjusted May 15, 1973, prices of § 212.164 may have been used instead of actual May 15, 1973, weighted average prices for NGL's and NGLP's transferred from its gas processing to marketing entities, and that this adjustment in § 212.164(a) would have been passed through by the marketing entities as increased costs of product in inventory ("increased product costs") under § 212.93.

Mapco has argued at length that its interpretation necessarily follows from the language in § 212.161(a), quoted in full in § II b(1) above, which states that Subpart K applies to "all sales of natural gas liquids and natural gas liquid products, including transfers between affiliated entities, by all firms. . . ." Mapco argues that this transfer pricing concept is identical to that binding together Subparts D and E of Part 212, whereby an integrated crude oil refiner can establish "transfer prices" for crude oil transferred from its producing to refining entities. Mapco points out that such prices are inserted into Subpart E's refiner price formulae, 10 CFR 212.83, when the crude oil is refined.

The language of § 212.161(a) did not create the transfer pricing concept between Subparts K and F that Mapco advocates. Rather, for gas processors this language merely confirmed that all relevant activities of a gas processing firm with respect to sales of NGL's and NGLP's are within the scope of Subpart K, which sets forth the manner of determining maximum lawful prices for sales by such firms "except sales by resellers or retailers, which are subject to Subpart F of this part." A transfer between affiliated entities did not qualify as a first sale—Removing subsequent sales activity within the firm from the scope of Subpart K—unless the transferee satisfied the terms of Subpart F, i.e., both requirements of the 5 percent rule of § 212.91. Since the entities in the Northern or Mapco group did not qualify under the 5 percent rule, Subpart K applies to these transfers between affiliated entities. In these intra-firm "sales" the Subpart K rules apply not by establishing transfer prices, but rather by reflecting in maximum lawful prices to unaffiliated entities the allowable costs incurred by all affiliated entities. §§ 212.163, 212.165, 212.166, 212.167.

Mapco argues that the term "first sale" in Subpart K is synonymous with the same term in Subpart D.[34] Mapco's argument by analogy to Subpart D ignores the critical differences between the definitions of "first sale" in Subparts D and K and between the fundamental pricing concepts employed by each subpart's regulations. "First sale" is defined in Subpart D, 10 CFR 212.72, as follows:

"'First sale' means the first transfer for value by the producer or royalty owner. *With respect to transfers between affiliated entities, the 'first sale' shall be imputed to occur as if in arms-length transactions.*" (Emphasis added.)

Comparing this definition with the "first sale" definition in Subpart K, 10 CFR 212.162, quoted in note 32 above, shows that the special exception to the transaction concept created by the second sentence of the Subpart D definition of "first sale" is wholly absent from the Subpart K definition which refers to sales to a "class of purchaser." Like Subpart K's general price rule, the definition of "first sale" in Subpart K speaks in terms of transfers to a class of purchaser, not transfers to affiliated entities. Unlike Subpart K or any of the other Part 212 subparts, which regulate prices for a firm's petroleum products on the basis of May 15, 1973, prices plus certain increased costs, Subpart D [35] establishes ceiling prices for each of the various categories of domestic crude oil regardless of whether the producers are integrated with refiners and regardless of their new or increased costs of production since May 15, 1973. If crude oil is sold by a producer to an affiliated refiner, the refiner can generally use prices for domestic crude oil as determined under Subpart D to calculate increased costs, as expressly allowed by the second sentence of the definition of "first sale" contained in § 212.72, quoted above. Increased costs included in this transfer price are inserted in the refiner's cost allocation formulae as increased purchased product cost, which is one method of cost passthrough that conforms to § 212.83(b).[36]

In contrast, transfer pricing as asserted by the parties under Subpart K would occur without the DOE's specific limits on intra-firm prices applicable to crude oil. There have never been any provisions in the DOE regulations establishing a mechanism for transferring (and limiting) intra-firm sales

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"'First sale' means, with respect to natural gas liquids or natural gas liquid products, the first transfer for value to a class of purchaser for which a fixed price per unit of volume is determined."

Likewise, a transfer of NGL's or NGLP's between affiliated entities cannot have been a "net-back sale," also defined in § 212.162, since such transfers did not relate to a "transaction" with a "class of purchaser." The Notice of Final Rule adopting the definitions of "first sale" and "net-back sale" (39 FR 44407, § II) stated:

"'First sale' is used to refer to the first *transaction* with respect to which a specified per unit (*e.g.*, cents-per-gallon) price is determined. 'Net-back sale' is used to refer to *transactions* with respect to which a specified per unit price is not determined, but as to which the transferor of the product is entitled to receive a percentage of the ultimate sales revenues of the product or products involved. These new definitions are to make clear that FEA regulations apply to all *transactions*—both 'first sales' and 'net-back sales.'" (Emphasis added.)

[33] These submissions are as follows: Northern's Request for Interpretation of February 10, 1976; Mapco's Request of December 3, 1976; and Mapco Supplements of April 6, July 7, and October 31, 1977, and January 19, June 22 (two), and July 11, 1978. Mapco has also incorporated by reference into its request its comments of July 29, 1977, and December 8, 1978, on proposed amendments to Subpart K. Northern's arguments are addressed exclusively to the "firm" concept, discussed in § II A above.

[34] Mapco's Request, pp. 23-25; Mapco's July 11, 1978, Supplement, p. 2.

[35] In its present form, Subpart D basically reflects implementation of the crude oil pricing policies of the Energy Policy and Conservation Act, Pub. L. No. 94-163, § 401 (December 22, 1975). For a full discussion of these policies, *see* S. Conf. Rep. No. 94-516, § IV, 94th Cong., 1st Sess. (1975), and 41 FR 4931 (February 3, 1976).

[36] Section 212.83(b) states:

"*Affiliated entities.* For purposes of this section, transactions between affiliated entities may be used to calculate increased costs. Whenever a firm uses a landed cost which is computed by use of its customary accounting procedures, the [DOE] may allocate such costs between the affiliated entities if it determines that such cost allocation is necessary to reflect actual costs of these entities or the [DOE] may disallow any costs which it determines to be in excess of the proper measurement of costs."

This provision works together with Subpart E's definition of "transactions between affiliated entities" in 10 CFR 212.82. Section 212.82 also expressly contemplates an exception to the "firm" concept for the limited purpose of transferring fixed crude oil prices:

"'Transactions between affiliated entities' means all transactions between entities which are part of the same firm and transactions with entities in which the firm has a beneficial interest to the extent of entitlement of covered product by reason of the beneficial interest."

prices for NGL's and NGLP's between Subparts K and F other than the provisions of the 5 percent rule. Reading Section 212.161(a) as authorizing general, unlimited transfer prices would be in any case inappropriate, since the prices which a firm would be permitted to charge in intra-firm sales could be manipulated without regulatory constraint or oversight.[37] There is no basis to imply a mechanism for transferring and limiting intra-firm sales prices for NGL's and NGLP's from the broad language of § 212.161(a). The value of the adjustment under § 212.164 in an inter-affiliate transfer should not turn upon the fortuities of intra-firm decisions as to what entities will show how much profit. For example, the May 15, 1973, transfer price for NGLP's sold by Mapco to its marketing subsidiaries could be lower than the prices negotiated by Mapco and unrelated buyers, with the result that the value of the adjustment of § 212.164 related to such a transfer would be artificially high, and the increased "cost" in the transferee's hands would be artificially high.

This Interpretation is supported by other provisions of Subpart K. For example, Mapco urges that a consequence of its transfer pricing concept would have been the use of the adjusted May 15, 1973, first sale prices of § 212.164 in lieu of the May 15, 1973, transfer prices for NGL's and NGLP's between its affiliated entities. Instead of confirming this view, however, § 212.164 permits a firm to apply its adjusted May 15, 1973, prices only in lieu of those charged "in first sale *transactions* with a *class of purchaser.*"[38] For the reasons previously discussed, Mapco's intra-firm transfers cannot be considered as transactions with a class of purchaser. In addition, Mapco's view that its marketing subsidiaries should use the reseller price rule set forth in §§ 212.92 and 212.93 is inconsistent with the provisions of § 212.166. Section 212.166 specifically provides for the calculation of increased costs for purchased NGL's and NGLP's, and states that that calculation is based upon the difference in prices of product purchased in May 1973 and the current month. If the reselling operations of gas processors were not to be governed by Subpart K, this provision of § 212.166 would not have been necessary.

Mapco asserts that rejecting its arguments for an inter-affiliate "transfer price" between Subparts K and F for NGL's and NGLP's is anomalous and improperly denies Mapco the financial incentive which it would receive from applying the adjusted May 15, 1973, prices at the tailgate of its processing plants, where NGL's and NGLP's are transferred from its gas processing to marketing entities. In support of this argument, Mapco cites a Notice of Proposed Rulemaking under Subpart K, 40 FR 49105, § VIII (October 21, 1975), in which the FEA considered the possibility of varying the adjusted price in accordance with marketing costs such as those incurred for transportation.[39] The FEA, however, expicitly decided not to adopt any variations, 41 FR 24110 (June 15, 1976), stating:

> "VIII. FIRST SALE PRICES FOR NATURAL GAS LIQUID PRODUCTS ACCORDING TO LOCATION OF SALE
>
> A possible amendment to the Subpart K price rules to provide for application of the adjusted May 15, 1973 first sale prices in a manner that would also fully preserve historical geographical price differentials in the maximum lawful prices permitted to be charged for natural gas liquid products has not been adopted. However, with respect to this issue, FEA stated in the October 15 Notice that it would consider such an amendment but would not adopt it absent a convincing showing that an amendment was necessary and feasible. FEA has concluded that such a showing has not been made."

Mapco argues that an interpretation contrary to the one it requests could possibly injure vertically integrated natural gas processors such as itself, by increasing net-back payments from processors to producers. According to Mapco, the industry has traditionally tied net-back payments to the transfer prices between its gas processing and marketing entities. Mapco therefore asserts that an interpretation holding that a "first sale" of NGL's or NGLP's under Subpart K does not occur until the Mapco firm sells the products to an unaffiliated entity could raise the issue of whether net-back payments should be based on such a "first sale" price instead of the lower transfer price.[40]

Even if these assertions were true, they should not affect the meaning of the Mandatory Petroleum Price Regulations, which are designed to serve the private purposes of individual parties only insofar as they are consistent with the regulations' public purposes.[41] In any event, it cannot be stated for certain that rejecting the concept of transfer pricing would have the results Mapco fears in regard to net-back payments. As a general matter, although Subpart K has imposed some limits upon gas processors' net-back obligations, so long as these relevant limitations are followed the manner in which net-back payments are computed is a matter to be resolved by the parties concerned in their best interests. *See McCulloch Gas Processing Corp.*, 1 FEA ¶ 20,659 (September 12, 1974), *modified*, 1 FEA ¶ 20,186 (November 22, 1974); and 42 FR 29490. Mapco's situation in this respect also appears to be indistinguishable from that of crude oil refiners with gas processing interests, which also are subject to the "first sale" provisions of Subpart K. *Arco* and *Conoco, supra.*

Mapco has attempted to distinguish the *Conoco* Interpretation and argues that the DOE's rejection of Conoco's arguments for a "transfer price" at the tailgate of the processing plant does not require that the DOE reach the same result in this Interpretation. We recognize that Mapco, as an independent gas processor, is not in an identical situation to Conoco, which is a crude oil refiner. However, the fundamental definitions and concepts of Subpart K remain applicable both to independent gas processors and to crude oil refiners that are also gas processors, notwithstanding certain special Subpart K provisions that apply only to crude oil refiners. Although the result reached here is consistent with *Conoco*, we have addressed these parties' contentions on their merits.

Mapco has argued[42] that certain provisions of Subpart K, such as those for allocation of increased product costs in § 212.167, cannot reasonably be construed to apply to sales of NGL's and NGLP's by extensive marketing entities of firms like Mapco. For example, Mapco asserts that the provisions of § 212.167 that permit separate gas plant-by-gas plant allocation of increased product costs indicate that Subpart K was intended to apply only to sales of NGL's and NGLP's at the gas plant level. However, Mapco has not provided sufficient factual information that would enable us to make a complete response to issues of this type. Under these circumstances, we have decided not to address these secondary issues in this Interpretation. Mapco may, however, request a further interpretation in a separate proceeding.

Mapco has also claimed[43] that refusal of the DOE to issue the interpretation on transfer pricing that Mapco requests would injure its competitive viability, in violation of the objectives of the Emergency Petroleum Allocation Act (EPAA), *supra*, n. 41. Subpart K represented FEA's attempt reasonably to balance the many and often conflicting objectives of the EPAA as they affected, *inter alia*, natural gas producers and refiners and consumers of NGL's and

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[37] The fact that market forces and net-back arrangements with producers of natural gas may in some instances give Mapco an incentive not to inflate its transfer prices does not support the parties' requested interpretation. These regulations should be interpreted in ways which neither invite nor permit abuse, rather than interpreting the regulations according to the assertions of the parties that their past conduct was "reasonable" under the requested interpretation. To accept the parties' position by implication could condone past abuses of other firms and would place no prospective regulatory barrier to abuse by any firm.

[38] The Notice of Final Rule adopting Subpart K stated (39 FR 44407, § III):

"[T]he FEA has determined that, in calculating the weighted average price at which propane was lawfully priced in *transactions* on May 15, 1973, for use in the price rule, a seller of propane in a first sale *transaction* may use the higher of its actual weighted average selling price per gallon on that date, or 8.5 cents per gallon." (Emphasis added.)

[39] Mapco's January 19, 1978 Supplement. Mapco's interpretation would, in effect, allow the May 15, 1973, adjusted price to increase in an amount equal to all marketing costs and marketing profits by subtracting this amount from the sale price for NGL's and NGLP's for which the adjusted price is substituted. Mapco would allow for such increases, however, only in those cases where an independent gas processor had established separate "entities," such as for refining and marketing or extraction and fractionation, with transfers of NGL's or NGLP's between the entities. Such distinctions would either make the entitlement to the adjustment in § 212.164 turn upon a possible historical fortuity (*i.e.*, the firm's organization in the base period) or would invite the "layering" of reseller and other entities by gas processors to gain an advantage not otherwise available under the regulations. The history of the "firm" concept and the rejection of arguments for transfer pricing emphasize the DOE's intent to preclude discrimination based on legal entities whose number, size and scope are entirely within the control of private parties.

[40] *E.g.*, Mapco's April 6, 1977 Supplement.

[41] *E.g.*, Emergency Petroleum Allocation Act of 1973, as amended, Pub. L. No. 93-159, § 4(b)(1) (November 27, 1973); 15 U.S.C. § 753(b)(1) (1976).

[42] Request, pp. 17-18; April 6, 1977 Supplement, pp. 15-16; and December 8, 1978 Comments, pp. 14-15.

[43] December 8, 1978 Comments, pp. 22-23.

NGLP's. As FEA stated in adopting Subpart K (39 FR 44407, § I): "[T]here is no single ideal solution to the regulation of natural gas liquid prices, and the regulations adopted by the FEA today are a necessary compromise among the conflicting considerations which must be taken into account." If Mapco believes it would suffer a financial hardship or gross inequity as a result of this Interpretation, it should file an Application for Exception with the DOE's Office of Hearings and Appeals.

C. *Marketing Costs.* In support of its arguments that Subpart F must apply to the sale of NGL's and NGLP's by a marketing entity affiliated with a gas processor, Mapco has cited Subpart K, 10 CFR 212.165, as it existed prior to November 1, 1978:

"The first sale price of natural gas liquids may be increased, to reflect non-product cost increases which have been incurred since May 15, 1973, by an amount which is not more than $.00375 per gallon in excess of the amount otherwise permitted to be charged pursuant to the provisions of this subpart. The first sale price of natural gas liquid products may be increased, to reflect non-product cost increases which have been incurred since May 15, 1973, by an amount which, when added to the amount of non-product costs certified as included in prices charged for purchased natural gas liquids is not more than $.005 per gallon in excess of the amount otherwise permitted to be charged pursuant to the provisions of this subpart. Records shall be maintained to show that *the increased non-product costs attributable to gas plant operations*, under customary accounting procedures generally accepted and historically and consistently applied by the firm concerned, are sufficient to justify the amount of the price increase permitted under this section on a dollar-for-dollar passthrough basis." (Emphasis added.)

Mapco argues that the emphasized phrase means that increased non-product costs cannot have been recovered under Subpart K unless they were directly attributable to gas plant operations, *i.e.*, incurred as an expense for the physical operation of a gas processing plant.[44] According to this view, no gas processor could have recovered under Subpart K any non-product cost increases which it incurred for marketing expenses in the sale of NGL's and NGLP's since May 15, 1973.

We do not agree with this narrow reading of § 212.165. The first two sentences of the section permitted a gas processor to recover increased non-product costs for NGL's and NGLP's up to the limits specified.[45] The last sentence merely required that records be kept sufficient to justify the increased non-product costs claimed, which would be, at least in part, directly attributable to gas plant operations. Rather than adopt detailed non-product costs allowance and passthrough criteria in an area which the FEA recognized as involving many parties with differing interests, § 212.165 established a limited amount, inviting exception relief above such limits. The marketing expenses associated with the NGL's and NGLP's produced in Northern's and Mapco's gas plants are costs of doing business which are predicated on the gas plants' manufacture of covered products. The phrase "attributable to gas plant operations" was intended only to distinguish between costs of doing business which were or were not related to sales of NGL's and NGLP's. Contrary to Mapco's suggestion, it did not operate to restrict the meaning of the term "increased non-product costs" for the purpose of limiting the categories of costs recoverable.[46]

This Interpretation of the scope of § 212.165 is consistent with its regulatory history, previous administrative applications of the section and the purpose it served in the structure of the Mandatory Petroleum Price Regulations. 39 FR 44407 (December 24, 1974). The DOE and its predecessor agencies regularly granted exception relief to refiners for non-product cost increases of NGL's and NGLP's substantially in excess of the limitations on amount in § 212.165, on the grounds of gross inequity. *E.g., Farmland Industries*, 3 FEA ¶ 83,080 (January 23, 1976); *Beacon Gasoline Co.*, 2 FEA ¶ 80,708 (October 21, 1975); and *Superior Oil Co.*, 2 FEA ¶ 83,271 (August 29, 1975). Exception relief included an allowance for marketing cost, *e.g., Diamond Shamrock Corp.*, 3 FEA ¶ 83,212 (June 7, 1976), *Sid Richardson Carbon & Gasoline Co.*, 3 FEA ¶ 83,170 (April 23, 1976), and for all other "actual cash expense items," *e.g., Diamond Shamrock Corp.*, 4 FEA ¶ 83,101, n. 1 (September 21, 1976), and *Doric Petroleum, Inc.*, 4 FEA ¶ 83,046 (August 19, 1976).

III. CONCLUSION

For the reasons set forth above, we have determined that the proper application of the DOE's Mandatory Petroleum Price Regulations to the factual situations presented by the parties in their Requests for Interpretation, for the period January 1, 1975, through October 31, 1978, is as follows:

(1) All of the affiliated entities within the Northern group were part of one firm, and all of the affiliated entities within the Mapco group were part of one firm;

(2) All of the entities, including the marketing entities, within these firms were subject exclusively to 10 CFR Part 212, Subpart K with respect to their sales of NGL's and NGLP's to unaffiliated entities;

(3) Sales of NGL's and NGLP's between affiliated entities within the Northern or Mapco firms were not "first sales" subject to the first sale price rules of Subpart K;

(4) The Northern and Mapco firms may not have used the adjusted May 15, 1973, prices of 10 CFR 212.164 in lieu of actual May 15, 1973 weighted average prices for NGL's and NGLP's transferred between gas processing and marketing entities within either firm; and

(5) Absent exception relief the Northern and Mapco firms were permitted to recover as increased non-product costs all of their increased marketing costs attributable to their sales of NGL's and NGLP's, subject to the limitations on amount in 10 CFR 212.165.

APPENDIX B.—*Responses to Petitions for Reconsideration*

Petitioner	Interpretation	Date of Response
Atlantic Richfield Company (ARCO)	ARCO, 1978-54, 43 FR 40208 (September 11, 1978).	Dec. 4
Yellow Cab Company of Philadelphia (Yellow Cab) and Gulf Oil Company-U.S. (Gulf).	Yellow Cab and Gulf, 1978-57, 43 FR 46517 (October 10, 1978).	Dec. 4
True Oil Purchasing Co. (TOPCO)	TOPCO, 1978-43, 43 FR 34434 (August 4, 1978).	Dec. 8
Apco Oil Corporation (APCO)	APCO, 1978-51, 43 FR 40204 (September 11, 1978).	Dec. 18

PETITION FOR RECONSIDERATION OF ATLANTIC RICHFIELD CO. 1978-54

Petitioner: Atlantic Richfield Company.

Date: December 4, 1978.

This is in response to the petition for reconsideration which you submitted on behalf of the Atlantic Richfield Company (ARCO) on October 10, 1978. In that petition, you requested that the DOE reconsider an Interpretation which it issued to ARCO on August 24, 1978. *Atlantic Richfield Company*, Interpretation 1978-54, 43 FR 40208 (September 11, 1978). For the reasons discussed below, I have determined that the petition for reconsideration must be denied.

Interpretations issued by the Office of General Counsel of the Department of Energy (DOE) may be reconsidered only in certain limited circumstances. In these cases, the burden is upon the petitioner to demonstrate that the Interpretation is erroneous in fact or in law, or that the result reached in the Interpretation is arbitrary or capricious. 10 CFR 205.85(f)(3).

In the Interpretation which was issued to ARCO, the DOE determined that exports of "Petrobase 100," a carbon black feedstock oil produced by ARCO, must be deducted from crude oil runs to stills under 10 CFR 211.67(d)(2) since "Petrobase 100" is a "refined petroleum product" within the mean-

[44] Mapco's Request, pp. 14-15; December 8, 1978 Comments, pp. 12-13.

[45] *See* 42 FR 29490, § II B (June 9, 1977).

[46] The FEA's refusal to incorporate into Subpart K detailed provisions covering increased non-product costs, including increased marketing costs, as originally proposed in 39 FR 32718, 32730-31, does not alter the plain meaning of the general provision adopted in § 212.165 allowing the passthrough of all increased non-product costs, up to .5 cents per gallon for NGLP's. Contrary to Mapco's suggestion (n. 44, *supra*), in adopting Subpart K the FEA did not express any intent to preclude gas processors from recovering increased marketing costs under Subpart K, provided that the per-gallon limit on all increased non-product costs was not exceeded. 39 FR 44407, § IV. In so doing, FEA expressly invited applications for exception in cases where the total increased non-product costs exceeded the per-gallon limit.

ing of the Mandatory Petroleum Allocation and Price Regulations. ARCO contended that although carbon black feedstock oil is a by-product of petroleum refining, "Petrobase 100" is not a gas oil and should not be considered a refined petroleum product for purposes of the DOE domestic crude oil allocation (entitlements) program.

In the petition for reconsideration, ARCO argues that the Interpretation is defective because the DOE failed to consider provisions in Part 210, Part 211, and Part 212 which exempt gas oils from the DOE Regulations and, therefore, from the export sales deduction in §211.67(d)(2). However, the fact that gas oils are not subject to allocation or price regulation does not mean that the export sales deduction is inapplicable to them. The function of the export sales deduction is not to allocate refined petroleum products but rather to withhold cost equalization benefits under the entitlements program with respect to products that are sold in the world market at uncontrolled prices. 41 FR 13899 (April 1, 1976). Application of the export sales deduction to a product excluded from allocation and price controls is dictated by the policy underlying the entitlements program. Thus, the results reached in the Interpretation are not arbitrary or capricious.

ARCO further argues that the Interpretation is erroneous and requires reconsideration on the sole ground that the definition of "Petrobase 100" as a refined petroleum product is inconsistent with the industry's practice. As the DOE has stated on numerous occasions, technical or industrial definitions do not supersede the meaning of terms as set forth in the DOE allocation and price regulations. *See, e.g., Navajo Refining Co.; Yates Petroleum Corp.*, 1 DOE ¶80,236 (1978); *Pyramid Corp., Inc.*, 5 FEA ¶83,143 (1977); *accord, Mobil Oil Co. v. FEA*, 566 F. 2d 87 (TECA 1977). Therefore, the Interpretation is not erroneous.

Accordingly, since ARCO has failed to demonstrate that the Interpretation is erroneous in fact or in law, or that the Interpretation is arbitrary or capricious, the petition for reconsideration is hereby denied. The denial of the petition for reconsideration is a final order of the Department of Energy from which ARCO may seek judicial review.

Petition for Reconsideration of Yellow Cab Co. of Philadelphia, Gulf Oil Co.—U.S. 1978-57

Petitioner: Yellow Cab Company of Philadelphia, Gulf Oil Company—U.S.

Date: December 4, 1978.

This is in response to the petition for reconsideration which you submitted on behalf of the Yellow Cab Company of Philadelphia (Yellow Cab) and the Gulf Oil Company—U.S. (Gulf) on October 24, 1978. *Yellow Cab Company of Philadelphia, Gulf Oil Company—U.S.*, Interpretation, 1978-57, 43 FR 46517 (October 10, 1978). For the reasons discussed below, I have determined that the petition for reconsideration must be denied.

Interpretations issued by the Office of General Counsel of the Department of Energy (DOE) may be reconsidered only in certain limited circumstances. In these cases, the burden is upon the petitioner to demonstrate that the Interpretation is erroneous in fact or in law, or that the result reached in the Interpretation was arbitrary or capricious. 10 CFR 205.85(f)(3).

In the Interpretation which was issued to Yellow Cab and Gulf, the DOE determined that Yellow Cab's failure to pay Gulf for the two deliveries of motor gasoline which Gulf made to it on March 29 and 31, 1978, does not permit Gulf to terminate its supplier/purchaser relationship with Yellow Cab. As we noted in the Interpretation, Yellow Cab's failure to meet those payment obligations resulted from an order of a court in a bankruptcy proceeding. Moreover, with the exception of the March 29 and 31 deliveries, Yellow Cab has conformed substantially with the terms of its agreement with Gulf on all other occasions. Gulf is protected in future dealings by Yellow Cab's willingness to pay by certified check, and Gulf may be paid in full or in part under the bankruptcy proceedings. In view of these considerations, the DOE concluded that Yellow Cab and Gulf have not deviated in a substantial manner from their normal credit practices and thus there is no basis under the regulations for the suspension or termination of their supplier/purchaser relationship. 10 CFR 210.62.

Your petition for reconsideration reiterates the arguments presented in the initial interpretation request and raises no new substantive arguments of fact or of law. Accordingly, since Gulf has failed to demonstrate that the Interpretation is erroneous in fact or in law, or that the Interpretation is arbitrary or capricious, the petition for reconsideration is hereby denied. The denial of Gulf's petition for reconsideration is a final order of the Department of Energy from which the petitioner may seek judicial review.

Petition for Reconsideration of True Oil Purchasing Company 1978-43

Petitioner: True Oil Purchasing Company.

Date: December 8, 1978.

This is in response to the petition for reconsideration which you submitted on behalf of the True Oil Purchasing Company (TOPCO) on August 16, 1978. *True Oil Purchasing Company*, Interpretation 1978-43 43 FR 34434 (August 4, 1978). For the reasons discussed below, I have determined that the petition for reconsideration must be denied.

Interpretations issued by the Office of General Counsel of the Department of Energy (DOE) may be reconsidered only in certain limited circumstances. In these cases the burden is upon the petitioner to demonstrate that the result reached in the Interpretation was erroneous in fact or in law, or that the result reached in the Interpretation was arbitrary or capricious. 10 CFR 205.85(f)(3).

In the Interpretation which was issued to TOPCO, the DOE determined that a posted price existed for all grades of crude oil produced in North Dakota (Amoco Price Supplement #7) on September 30, 1975, and that this posting applied to all North Dakota crude oil. The DOE therefore concluded that the highest posted price for Wyoming Sweet crude oil on September 30, 1975, could not be used for any crude oil produced in North Dakota for purposes of establishing an upper tier ceiling price pursuant to § 212.74.

Your petition for reconsideration reiterates the arguments presented in the initial interpretation request and generally raises no new arguments of fact or of law. As the Interpretation indicated, § 212.74(b) clearly states that the upper tier ceiling price for a particular grade of domestic crude oil in a particular field is the highest posted price on September 30, 1975. When a posted price for crude oil in a particular area does not distinguish between grades of crude oil, that one price applies to all grades of crude oil (both sweet and sour) produced in that area. Since a posted price existed for all crude oil produced in North Dakota, both sweet and sour, the regulations do not permit TOPCO to use a different posted price. This conclusion is not based upon the resolution of any factual dispute, as your petition asserts, but is, as we stated in the Interpretation, the correct conclusion of law.

Moreover, TOPCO's contention that the Interpretation is legally defective because it was not given an opportunity to respond to comments submitted to the DOE in connection with this matter is without merit and must be rejected. In the instant case, the Regional Counsel for DOE Region 8, at TOPCO's request, sent a copy of the Request for Interpretation, along with a letter soliciting comments, to a list that TOPCO provided of 16 producers and first purchasers of crude oil from the Williston Basin. Ten replies were received. Only five of the persons who replied addressed the issues raised by TOPCO, and four of these five commenters sent TOPCO a copy of their letters.

As a general rule, the DOE will not accept a comment from a third person in connection with its consideration of a request for interpretation unless the person who requested the Interpretation is afforded an opportunity to respond to that submission. 10 CFR 205.84(a). However, the failure of TOPCO to have received a copy of one of these letters is not significant in this case. The comments contained in that letter merely restated comments that were raised by others and which were provided to TOPCO. Thus, even though TOPCO did not receive a copy of one of the submissions that the DOE received, the firm was afforded an opportunity to respond to all of the comments that were submitted in connection with the issues that were addressed in this proceeding. Moreover, it should be noted that the DOE did not adopt any of the views stated in the third party submissions. The Interpretation, therefore, does not in any way depend for its validity upon the comments submitted.

Accordingly, since TOPCO has failed to demonstrate that the Interpretation is erroneous in fact or in law, or that the Interpretation is arbitrary or capricious, the petition for reconsideration is hereby denied. The denial of TOPCO's petition for reconsideration is a final order of the Department of Energy from which the petitioner may seek judicial review.

Petition for Reconsideration of Apco Oil Corporation 1978-51

Petitioner: Apco Oil Corporation.

Date: December 18, 1978.

This is in response to a Petition for Reconsideration dated September 13, 1978, that you submitted on behalf of the Apco Oil Corporation. In that Petition you requested that I rescind an Interpretation that was issued to Apco by the Department of Energy on August 11, 1978. *Apco Oil Corporation*, Interpretation 1978-51, 43 FR 40204 (September 11, 1978).

Interpretation 1978-51 considered an issue raised by Apco with respect to the "B" factor of the refiner price formula in 10

CFR 212.83(c)(2)(iii)(D), relating to the recovery of increased costs of purchased product. The "B" factor generally requires that any increased costs of the purchased product be computed according to a particular formula (referred to as the "A-type" formula in Interpretation 1978-51) except in those instances in which the refiner did not purchase product of the "i" category concerned in May 1973 or the per-unit cost of the purchased product in May 1973 was unreasonably high. In these cases the "B" factor requires the refiner to compute increased costs of purchased product by an alternate formula (the "Y" formula), which imputes an approximated May 1973 cost by reference to prices charged by the refiner in sales of the product concerned in May 1973. Interpretation 1978-51 held that the "B" factor by its literal terms requires either the use of the "A-type" formula or the "Y" formula, but not both. Because Apco did not purchase motor gasoline (a product of the type "i") in May 1973, Apco was required to use the alternate "Y" formula in order to compute its increased costs of both blending stock and motor gasoline.

In its present Petition, Apco argues that Interpretation 1978-51 is arbitrary and capricious because it violates the dollar-for-dollar passthrough provisions of Section 4(b)(2)(A) of the Emergency Petroleum Allocation Act, as amended. Those provisions require that a firm be permitted to recover fully its increased costs of purchased product. Apco states that unless it is permitted to use the "A-type" formula for the products that it purchased and blended to produce motor gasoline, it will not be permitted to recover the full amount of the increased costs that it incurred in purchasing those blending stocks. Apco notes that where the important purposes to be served by a regulation are at variance with the meaning of the regulation as it appears on its face, the FEA and the DOE have issued interpretations that do not explicitly follow the literal meaning of the regulation. Apco asserts that that approach is applicable here. We have examined these arguments and have concluded that inasmuch as they raise a substantial question of law as to the validity of the Interpretation and that that question appears to have some merit, the Interpretation should be reconsidered.

The Office of Interpretations and Rulings will undertake a thorough review of the Interpretation and the arguments Apco has raised. That Office has already begun its analysis of the Interpretation in light of the material that Apco submitted in connection with its Petition for Reconsideration. If you have any questions concerning this matter, or wish to supplement the Petition, please contact Everard A. Marseglia, Jr., Acting Assistant General Counsel for Interpretations and Rulings, telephone number 633-8624.

[FR Doc. 79-1317 Filed 1-12-79; 8:45 am]

[4910-13-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 16221; Amdt. No. 36-9]

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

Aircraft Noise Measurement and Evaluation; Specifications: Correction to PNLT Corrections; Formula for Ambient Atmosphere Conditions Affecting the Sideline Flight Path

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: On March 2, 1978, the FAA published Amendment 36-9 to the Federal Aviation Regulations (43 FR 8731) in which it adopted procedures and standards for correcting measured noise data when the ambient atmospheric conditions of temperature and humidity do not conform to prescribed reference conditions. Formulas were prescribed for the correction of perceived noise levels for spectral irregularities of tone at any instant of time (PNLT). Under § A36.11(d)(3), of Appendix A to Part 36, the final rule contained inadvertent omissions in the formula to be used in connection with the sideline flight path measured noise data.

This corrective amendment is necessary to properly execute FAA's intended statement of the rule and to prescribe an appropriate correction to the measured noise data when atmospheric conditions do not conform to the prescribed standard reference conditions.

DATES: Effective date: January 15, 1979. Compliance date: Same as amendment 36-9 (April 3, 1978).

FOR FURTHER INFORMATION CONTACT:

Richard Tedrick, Program Management Branch (AEE-220), Environmental Technical Regulatory Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington D.C. 20591; Telephone (202) 755-9027.

SUPPLEMENTARY INFORMATION: The amendment corrects § A36.11(d)(3) of Appendix A to Part 36 of the Federal Aviation Regulations (14 CFR part 36), as amended by Amendment 36-9, effective for noise tests conducted on and after April 3, 1978 (43 FR 8731; march 2, 1978). It corrects the statement of the formula prescribed for corrections to PNLT by adding the term "LX" within the second addend in the formula. As corrected, the formula requires that "LXc," the corrected sideline noise path distance, be subtracted from "LX," the measured sideline noise path distance befor multiplying the resultant difference by the factor "α_{to}," the reference atmospheric absorption rate for sound. The term "LX" was inadvertently omitted in the formula as orginally published in the FEDERAL REGISTER. As published, that formula also contained typographical errors which did not represent the formula intended by the FAA. As published at 43 FR 8748, the formula read:

$$SPLic = SPLi + (\alpha_t - \alpha_{to})LX + \alpha_t(LXc) + 20 \log (LX/LXc).$$

As corrected by this amendment to conform with established accoustical principles for rates of sound absorption due to atmospheric conditions, the formula reads:

$$SPLic = SPLi + (\alpha_t - \alpha_{to})LX + \alpha_{to}(LX - LXc) + 20 \log (LX/LXc).$$

Since this action is necessary to prescribe the originally intended regulatory requirements under Amendment 36-9 and since this action is corrective in nature, I find that notice and public procedure regarding this action are impractical and unnecessary. Further, since it would not be in the public interest or consistent with sound regulatory practice to delay making necessary corrections to the amendment, good cause exists for making it effective in less than 30 days after publication. While this corrective amendment is effective upon its publication, the correction it makes relates back to provisions which previously became effective and which are essential to the evaluation of measured noise data in showing compliance with the requirements of Part 36. Thus, it would not be proper to require compliance with the uncorrected provisions of Amendment 36-9. Thus, this correction applies to affected noise tests conducted on or after April 3, 1978, when Amendment 36-9 became effective.

ADOPTION OF THE AMENDMENT

Accordingly, § A36.11(d)(3) of Appendix A to Part 36 of the Federal Aviation Regulations (14 CFR Part 36) is amended, effective January 15, 1979, by deleting the formula prescribed in that paragraph and substituting for it the formula to read as follows:

$$SPLic = SPLi + (\alpha_t - \alpha_{to})LX + \alpha_{to}(LX - LXc) + 20 \log (LX/LXc).$$

(Secs. 313(a), 601, 603, 611(b), Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423, and 1431(b); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Title I, National Environmental Policy Act of 1969 (42 U.S.C. 4321 et. seq.); and Executive Order 11514, March 5, 1970.)

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

Issued in Washington, D.C., on January 9, 1979.

QUENTIN S. TAYLOR,
Acting Administrator.

[FR Doc. 79-1307 Filed 1-12-79; 8:45 am]

[4910-13-M]

SUBCHAPTER C—AIRCRAFT

[Docket No. 78-NW-28-AD; Amdt. 39-3393]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing Model B-17F and G Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: FAA Airworthiness Directive (AD) 73-20-2 (Amdt. 39-1722; 38 FR 26358), as amended by Amdt. 39-2763, (41 FR 49089), requires inspection of the wing front spar lower chord on Boeing Model B-17 airplanes. The AD is further amended herein to allow an alternate repair and inspection method.

DATES: Effective date January 26, 1979.

ADDRESS: FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108.

FOR FURTHER INFORMATION CONTACT:

Mr. Iven Connally, Engineering and Manufacturing Branch, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767-2516.

SUPPLEMENTARY INFORMATION: AD 73-20-2, as amended through Amdt. 39-2763, requires removal of certain bolts in the front spar lower chord splice plates and inspection of the spar chord for cracks. The AD also requires a repeat inspection interval of 50 flight hours or 12 months, whichever comes first. Since issuance of the latest amendment, an alternate rework and inspection procedure has been developed which provides an equivalent level of safety. The AD is, therefore, further amended to provide for the alternate procedure. Since this amendment imposes no additional burden on any person, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by further amending Airworthiness Directive 73-20-2 (Amdt. 39-1722, 38 FR 26358; as amended by Amdt. 39-2763, 41 FR 49089), as follows:

BOEING: Applies to Model B-17F and G airplanes.

1. Revise paragraph (c) to read:

"(c) After repairs per (b) have been accomplished, reinspect in accordance with (a) at intervals not to exceed 150 hours time-in-service or every 12 months, whichever comes first."

2. Add a new paragraph (d) to read:

"(d) The bolt holes described in paragraph (a) above may be reamed .063 inch oversize for a close tolerance oversize bolt, provided no cracks are detected when the chords are inspected in accordance with paragraph (a) above using the eddy current inspection methods. Any holes reworked with the oversize bolts must be reinspected in accordance with (a) above within 1500 flight hours after such rework. Upon accumulation of 1500 flight hours on the reworked holes, the repeat inspection interval reverts to the interval specified in (c) above."

3. Add a new paragraph (e) to read:

"(e) Any new replacement beam chords must be inspected within 2500 flight hours after installation and thereafter at intervals specified in paragraph (c) above."

This amendment becomes effective January 26, 1979.

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

NOTE.—The FAA has determined that this document involves a regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1973).

Issued in Seattle, Washington, on January 5, 1979.

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

[FR Doc. 79-1277 Filed 1-12-79; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-RM-29]

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

Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment alters the Mohall, North Dakota 700' transition area. The alteration was necessary to provide controlled airspace for aircraft executing the new VOR/DME runway 31, amendment 1, standard instrument approach procedure, developed for the Mohall Municipal Airport, Mohall, North Dakota.

EFFECTIVE DATE: 0901 GMT, February 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Joseph T. Taber/Pruett B. Helm, Operations, Procedures and Airspace Branch, Air Traffic Division, ARM-500, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; telephone (303) 837-3937.

SUPPLEMENTARY INFORMATION:

HISTORY

On November 6, 1978, the FAA published for comment (43 FR 53449) a proposal to alter the Mohall, North Dakota 700' transition area. The only comment received expressed no objection.

RULE

This amendment to subpart G of Part 71 of the Federal Aviation Regulations (FAR's) alters the Mohall, North Dakota 700' transition area. This action is necessary to provide controlled airspace for aircraft executing the new VOR/DME runway 31, amendment 1, standard instrument approach procedure, developed for the Mohall Municipal Airport, Mohall, North Dakota.

DRAFTING INFORMATION

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

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is

amended effective March 13, 1978, as follows:

By amending subpart G 71.181 so as to alter the following transition area (44 FR 442) to read:

MOHALL, N.DAK.

That airspace extending upward from 700 feet above the surface within a 7.5 mile radius of the Mohall Municipal Airport (latitude 48°46'41" N., longitude 101°32'20" W.) and within 2.5 miles each side of the 161° bearing from the Mohall Municipal Airport, extending from the 7.5 mile radius area to 9.5 miles southeast of the airport.

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

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

Issued in Aurora, Colorado on January 2, 1978.

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

[FR Doc. 79-1276 Filed 1-12-79; 8:45 am]

[6750-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 9107]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Harnischfeger Corp., Et Al.

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violation of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires a Brookfield, Wis. manufacturer of lattice-boom cranes and the Northwest Engineering Company, a Green Bay, Wis. competitor, to provide the F.T.C. with evidence that all merger agreements between them have been terminated and return all confidential documents exchanged during negotiations. The order would prohibit the firms from acquiring any part of each other's lattice-boom business until July 31, 1981, without furnishing the Commission with 60 days' notice of such intention. Should the Commission issue a complaint challenging the transaction during this period, the firms would be required to postpone the proposed merger or acquisition until administrative proceedings were concluded.

DATES: Complaint issued March 10, 1978. Decision issued December 8, 1978.[1]

FOR FURTHER INFORMATION CONTACT:

FTC/C, Alfred F. Dougherty, Jr., Washington, D.C., 20580. (202) 523-3601.

SUPPLEMENTARY INFORMATION: On Tuesday, October 3, 1978, there was published in the FEDERAL REGISTER, 43 FR 45593, a proposed consent agreement with analysis In the Matter of Harnischfeger Corporation, a corporation, and Northwest Engineering Company, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart-Acquiring Corporate Stock or Assets: § 13.5 Acquiring corporate stock or assets; 13.5-20 F.T.C. Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; (15 U.S.C. 45, 18))

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-1316 Filed 1-12-79; 8:45 am]

[1] Copies of the Complaint and Decision and Order filed with the original document.

[8010-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15461]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Filing and Reporting Requirements Relating to Institutional Investment Managers

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the amendment of the rule and form governing the reporting requirements of institutional investment managers exercising investment discretion over accounts having in the aggregate more than $100,000,000 in exchange-traded or NASDAQ-quoted equity securities. Under the amendment, as adopted, such managers are required to file a report within 45 days after the end of each calendar year and within 45 days after the last day of the first three calendar quarters of the subsequent year.

EFFECTIVE DATE: February 5, 1979.

FOR FURTHER INFORMATION CONTACT:

W. Scott Cooper, Esq. (202-755-1792), Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the "Commission") today announced the amendment of Securities Exchange Act Rule 13f-1 [17 CFR 240.13f-1] and related Form 13F [17 CFR 249.325], pursuant to Section 13(f) of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq. as amended by Pub. L. No. 94-29 (June 4, 1975)] (the "Exchange Act"). The amendment to the Rule and Form adopted today requires that institutional investment managers, subject to the reporting requirements under the Rule, file a report on a quarterly basis rather than annually as originally adopted on June 15, 1978, and announced in Exchange Act Release No. 14852 [43 FR 26700].

Section 13(f) of the Exchange Act was adopted by Congress as part of the Securities Acts Amendments of 1975. The reporting system required by Section 13(f) is intended to create in the Commission a central repository of historical and current data about the investment activities of institutional investment managers, in order to improve the body of factual data available and to facilitate consideration of the influence and impact of institutional investment managers on the securities markets and the public policy implications of that influence. Section 13(f) empowers the Commission to adopt rules which would create a reporting and disclosure system to collect specific information concerning Section 13(d)(1) [15 U.S.C. 78m(d)(1)][1]

[1] Any equity security of a class which is registered pursuant to Section 12 of the Exchange Act [15 U.S.C. 78*l*], or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in Section 12(g)(2)(G) of the Exchange Act, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.].

equity securities held in accounts over which certain institutional investment managers exercise investment discretion. It gives the Commission broad rulemaking authority to determine the size of the institutions required to file reports, the format and frequency of the reporting requirements, and the information to be disclosed in each report.

The Rule, as adopted on June 15, 1978, required that an institutional investment manager exercising investment discretion with respect to accounts having more than $100,000,000 or more in exchange-traded or NASDAQ-quoted equity securities on the last day of any of the twelve calendar months of a calendar year file annually with the Commission, and, if a bank, with the appropriate banking agency, within 45 days after the last day of such calendar year, five copies of Form 13F. The form required the reporting of the name of the issuer and the title of class, CUSIP number, number of shares or principal amount in the case of convertible debt, and aggregate fair market value of each such equity security held. The form also required information concerning the nature of investment discretion and voting authority possessed.

When the Commission announced the adoption of Rule 13f-1, the Commission solicited comment on the usefulness and practicality of quarterly reporting. The Commission received 124 letters of comment during the comment period which expired on August 31, 1978. In general, the main areas of comment related to the usefulness of the information and the attendant costs.

Many commentators felt quarterly information on the holders of common stock would be invaluable to a trading desk involved in block transactions and would facilitate the function of block trading and enhance the liquidity of the marketplace. A number of commentators pointed out that quarterly reporting would provide a greater basis for comparison shopping among investment managers. Such commentators emphasized that an evaluation of the investment philosophy and policies of a prospective manager is crucial in making an effective comparison and that such an evaluation is dependent upon a periodic examination of a manager's investment decisions as reflected by his holdings and transactions. Both corporations and financial reporting services asserted that quarterly reporting is needed to provide corporate treasurers with current information concerning institutions owning their stock. They pointed out that many stockholders take ownership in nominee or street name, making it difficult to trace such information and making it difficult to secure proxies on important corporate matters.

The comments in opposition to the usefulness of quarterly reporting took issue with the assertions that more frequent reports would be of utility to block traders or enhance market liquidity. Commentators opposed to quarterly reporting also disputed the usefulness of the reports as providing a basis for comparison among different investment managers. In addition, opponents to quarterly reporting believed that information about stock ownership was either currently available or more properly required under the beneficial ownership reporting requirements.

Based upon the estimates of the cost of compliance with the reporting requirements supplied by prospective reporting institutions, it appears that the cost to the institutions is generally low in comparison with the size of the institution which is required to report. The mean of all the estimates submitted to the Commission was $3,000 per report.

Although acknowledging relatively low cost, those commentators opposed to quarterly reporting stated, among other things, that the cost of compliance outweighed the benefit to the public in increasing the frequency of reporting and that as another cost of doing business it would reduce the ability of operations such as bank trust departments to become profitable.

The Commission has concluded that it is in the public interest to require quarterly reporting at this time, because, among other things, the Commission does not perceive any significant obstacles to quarterly reporting nor any undue hardship for reporting institutions. In addition, the Commission believes that the simplicity of the form and the recent issuance of an interpretative release [2] will enhance the likelihood of an effectively functioning system. The utility of the information was evidenced by the large number of commentators who expressed an interest in receiving information from quarterly reports. Finally, if quarterly reporting is not required at this time, such data might be lost altogether thereby creating gaps in the continuous flow of information which may be utilized for future policy decisions.

The amendments to Rule 13f-1 and Form 13F require an institutional investment manager subject to the reporting requirements for a particular calendar year to file Form 13F within 45 days after the last day of such calendar year and within 45 days after the last day of each of the first three calendar quarters in the subsequent calendar year.

[2] Exchange Act Release No. 15292 dated November 2, 1978 [43 FR 52697, November 14, 1978].

Certain Findings

As required by Section 23(a)(2) of the Exchange Act [15 U.S.C. 78w(a)(2)], the Commission has considered the impact which the Rule and Form as amended herein would have on competition. The Commission has found that requiring the filing of Form 13F on a quarterly basis will not significantly burden competition. Furthermore, the Commission has determined that any possible resulting competitive burdens will be outweighed by, and are necessary and appropriate to achieve, the benefits of this information to investors.

As mandated by Section 13(f)(4), in exercising its authority under Section 13(f) the Commission has determined that its action is appropriate in the public interest and for the protection of investors. The Commission finds that the cost of the amendments to the Rule and Form adopted herein are not unreasonable in light of the purposes of the statute.

1. 17 CFR Part 240 is amended by revising paragraph (a) of § 240.13f-1 to read as follows:

§ 240.13f-1 Reporting by institutional investment managers of information with respect to accounts over which they exercise investment discretion.

(a) Every institutional investment manager which exercises investment discretion with respect to accounts holding section 13(f) securities, as defined in paragraph (c) of this section, having an aggregate fair market value on the last trading day of any month of any calendar year of at least $100,000,000 shall file a report on Form 13F [§ 249.325 of this Chapter] with the Commission within 45 days after the last day of such calendar year and within 45 days after the last day of each of the first three calendar quarters of the subsequent calendar year.

* * * * *

2. 17 CFR Part 249 is amended by revising General Instruction C of Form 13F (§ 249.325) as follows:

§ 249.325 Form 13F, report of institutional investment managers pursuant to Section 13(f) of the Securities Exchange Act of 1934.

* * * * *

GENERAL INSTRUCTIONS

* * * * *

C. *Filing of Form 13F.* Five copies of Form 13F shall be filed with the Commission within 45 days after the end of the calendar year 1978 and each calendar year and the first three calendar quarters of each calendar year thereafter. As required by Section 13(f)(4) of the Act, a Manager which is a bank, the deposits of which are insured in accordance with the Federal Deposit Insurance Act, shall file with the appropriate regulatory agency a copy of every report filed with the Commission pursuant to this subsection by or with respect to such bank. The appropriate regulatory agency with which a copy of this report is to be filed for:

* * * * *

3. 17 CFR Part 249 is amended by revising the cover page of Form 13F (§ 249.325) to read as follows:

FORM 13F

INFORMATION REQUIRED OF INSTITUTIONAL INVESTMENT MANAGERS PURSUANT TO SECTION 13(f) OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULES THEREUNDER

* * * * *

Report for the calendar year or Quarter Ended ———— 19——

AUTHORITY; EFFECTIVE DATE

The Commission hereby adopts the amendment of Rule 13f-1 and Form 13F, effective February 5, 1979, pursuant to the authority set forth in Sections 13(f) and 23 of the Exchange Act.

(15 U.S.C. 78m(f) and 78w.)

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 5, 1979.

[FR Doc. 79-1409 Filed 1-12-79; 8:45 am]

[4210-01-M]

Title 24—Housing and Urban Development

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

SUBCHAPTER A—GENERAL

[Docket No. D-79-542]

PART 200—INTRODUCTION

Subpart D—Delegations to Particular Positions

Acting Assistant Secretary for Housing—Federal Housing Commissioner

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of Delegation of Authority.

SUMMARY: The Assistant Secretary for Housing-Federal Housing Commissioner is revising the designation of officials authorized to serve as Acting Assistant Secretary for Housing-Federal Housing Commissioner in the absence of the Assistant Secretary. This revision is necessary to reflect a Departmental reorganizational alignment.

EFFECTIVE DATE: November 13, 1978.

FOR FURTHER INFORMATION CONTACT:

June Sheehan, (202) 755-6623.

SUPPLEMENTARY INFORMATION: This designation supersedes the designation of Acting Assistant Secretary for Housing-Federal Housing Commissioner published at 42 FR 45963, September 13, 1977. Since the amendment involves only internal matters of agency management, it does not require comment or public procedure. Accordingly 24 CFR § 200.51 is amended to read as follows:

§ 200.51 Acting Assistant Secretary for Housing-Federal Housing Commissioner.

(a) *Designation.* The officials appointed to, or designated to serve as Acting during a vacancy in the following positions, are hereby designated to serve as Acting Assistant Secretary for Housing-Acting Federal Housing Commissioner during the absence of the Assistant Secretary for Housing-Federal Housing Commissioner with all the powers, functions, and duties delegated or assigned to the Assistant Secretary for Housing-Federal Housing Commissioner; *Provided,* That no official is authorized to serve as Acting Assistant Secretary for Housing-Acting Federal Housing Commission unless all other officials whose appointed, or designated Acting, position titles precede his in this designation are unable to act by reason of absence:

(1) Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

(2) Deputy Assistant Secretary for Multifamily Housing Programs.

(3) Deputy Assistant Secretary for Public Housing and Indian Programs.

(4) Deputy Assistant Secretary for Single Family Housing and Mortgagee Activities.

(5) Director, Office of Policy and Program Development.

(6) Director, Office of Management.

(b) *Authorization.* Each head of an organizational unit of Housing is authorized to designate an employee under his jurisdiction to serve as Acting during the absence of the head of the unit.

Issued at Washington, D.C., December 11, 1978.

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

[FR Doc. 79-1296 Filed 1-12-79; 8:45 am]

[4210-01-M]

CHAPTER III—GOVERNMENT NATIONAL MORTGAGE ASSOCIATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-79-611]

PART 300—GENERAL

List of Attorneys-in-Fact

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This amendment updates the current list of attorneys-in-fact by amending Paragraph (c) of 24 CFR 300.11. These attorneys-in-fact are authorized to act for the Association by executing documents in its name in conjunction with servicing GNMA's mortgage purchase programs, all as more fully described in Paragraph (a) of 24 CFR 300.11.

EFFECTIVE DATE: February 14, 1979.

ADDRESSES: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410. Telephone: (202) 755-7603.

FOR FURTHER INFORMATION CONTACT:

Mr. William J. Linane, Office of General Counsel, on (202) 755-7186.

SUPPLEMENTARY INFORMATION: Notice and public procedure on this amendment are unnecessary and impracticable because of the large volume of legal documents that must be executed on behalf of the Association.

1. Paragraph (c) of § 300.11 is amended by deleting the following names from the current list of attorneys-in-fact:

Name and Region
H. D. Banks, Atlanta, GA; Sharon Weisbach, Atlanta, GA.

(Sec. 309(d) of the National Housing Act, (12 U.S.C. 1723a(d)); and sec. 7(d) of the Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)))

Issued at Washington, D.C., on December 8, 1978.

JOHN H. DALTON,
President, Government National Mortgage Association.

[FR Doc. 79-1368 Filed 1-12-79; 8:45 am]

[4210-01-M]

[Docket No. R-79-610]

PART 300—GENERAL

List of Attorneys-in-Fact

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This amendment updates the current list of attorneys-in-fact by amending Paragraph (c) of 24 CFR 300.11. These attorneys-in-fact are authorized to act for the Association by executing documents in its name in conjunction with servicing GNMA's mortgage purchase programs, all as more fully described in Paragraph (a) of 24 CFR 300.11.

EFFECTIVE DATE: February 14, 1979.

ADDRESSES: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Telephone: (202) 755-7603.

FOR FURTHER INFORMATION CONTACT:

Mr. William J. Linane, Office of General Counsel, on (202) 755-7186.

SUPPLEMENTARY INFORMATION: Notice and public procedure on this amendment are unnecessary and impracticable because of the large volume of legal documents that must be executed on behalf of the Association.

1. Paragraph (c) of § 300.11 is amended by adding the following name to the current list of attorneys-in-fact:

Name and Region
Richard M. Jaegle, Washington, D.C.

(Sec. 309(d) National Housing Act, (12 U.S.C. 1723a(d)); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)))

Issued at Washington, D.C., on December 8, 1978.

JOHN H. DALTON,
President, Government National Mortgage Association.

[FR Doc. 79-1369 Filed 1-12-79; 8:45 am]

[4210-01-M]

[Docket No. R-79-609]

PART 300—GENERAL

List of Attorneys-in-Fact

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This amendment updates the current list of attorneys-in-fact by amending Paragraph (c) of 24 CFR 300.11. These attorneys-in-fact are authorized to act for the Association by executing documents in its name in conjunction with servicing GNMA's mortgage purchase programs, all as more fully described in Paragraph (a) of 24 CFR 300.11.

EFFECTIVE DATE: February 14, 1979.

ADDRESSES: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Telephone: (202) 755-7603.

FOR FURTHER INFORMATION CONTACT:

Mr. William J. Linane, Office of General Counsel, on (202) 755-4942.

SUPPLEMENTARY INFORMATION: Notice and public procedure on this amendment are unnecessary and impracticable because of the large volume of legal documents that must be executed on behalf of the Association.

1. Paragraph (c) of § 300.11 is amended by deleting the following names from the current list of attorneys-in-fact:

Name	*Region*
Robert E. Airy	Washington, D.C.
Ellen W. Allison	Los Angeles, CA
Thomas A. Barker	Los Angeles, CA
Marcelo J. Bueno, Jr.	Los Angeles, CA
Bennie H. Dixon	Atlanta, GA
H. J. Flewharty	Dallas, TX
B. B. Fincher	Dallas, TX
David L. Floyd	Atlanta, GA
Gregory Gianpetro	Chicago, IL
Ernestine S. Holland	Los Angeles, CA
James C. Kennedy	Dallas, TX
Carroll P. Kisser	Chicago, IL
Mike Kornecki	Chicago, IL
Theresa M. Mastricolo	Philadelphia, PA
Grace G. McKay	Atlanta, GA
James L. McKnight	Los Angeles, CA
Leslie A. Parsons	Atlanta, GA
Max D. Robinson	Dallas, TX
W. G. Smith, Jr.	Dallas, TX
June Y. Yamakawa	Los Angeles, CA

2. Paragraph (c) of § 300.11 is amended by adding the following names in alphabetical sequence to the current list of attorneys-in-fact:

Name	*Region*
Ellen W. Allison	Atlanta, GA
Rosemary M. Brown	Washington, D.C.
Pauletta L. Burge	Dallas, TX
D. Keith Gettmann	Atlanta, GA
Gregory Gianpetro	Philadelphia, PA
Robert R. Glinski	Philadelphia, PA
David G. Hooper	Dallas, TX
J. H. Van House	Atlanta, GA
Patricia M. Langley	Atlanta, GA
Vincent Liott	Philadelphia, PA
Leslie A. Parsons	Los Angeles, CA
Max D. Robinson	St. Louis, MO
June Y. Sage	Los Angeles, CA
James L. Smith	Philadelphia, PA
Angela Talotta	Philadelphia, PA
W. E. Yeager	Atlanta, GA
Harvey W. Young	Philadelphia, PA

(Sec. 309(d), National Housing Act, 12 U.S.C. 1723a(d); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).)

Issued at Washington, D.C., November 15, 1978.

JOHN H. DALTON,
President, Government National Mortgage Association.

[FR Doc. 79-1370 Filed 1-12-79; 8:45 am]

[1505-01-M]

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

[Docket No. R-78-529]

PART 891—REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE AND ALLOCATION OF HOUSING ASSISTANCE FUNDS

Final Rule

Correction

In FR Doc. 78-30628 appearing at page 50638 in the issue for Monday, October 30, 1978, make the following corrections:

(1) On page 50644, in the first column, change the heading, "§ 891.204 Review and comment period." to read, "§ 891.203 Review and comment period."

(2) Also on page 50644, in the third column, in § 891.205(c)(1), in the 10th line, substitute "30" for "3".

[4210-01-M]

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-4039]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Avondale, Maricopa County, Ariz.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Avondale, Maricopa County, Arizona. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Avondale, Maricopa County, Arizona.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Avondale, Maricopa County, Arizona, are available for review at the bulletin board in the City Hall, 525 North Central Avenue, Avondale, Arizona.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Avondale, Maricopa County, Arizona.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Agua Fria River	Broadway Road extension.	934
	Lower Buckeye Road	948
	U.S. 80 (Buckeye Road).	963
	Southern Pacific Railroad.	964
	Van Buren Street	974
	McDowell Road	986

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

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 7, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1107 Filed 1-12-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4092]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Aurora, Kane and DuPage Counties, Ill.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Aurora, Kane and DuPage Counties, Illinois. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Aurora, Kane and DuPage Counties, Illinois.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Aurora, Kane and DuPage Counties, Illinois, are available for review at the City Hall, 44 East Downer Street, Aurora, Illinois.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Aurora, Kane and DuPage Counties, Illinois.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Fox River	Downstream Corporate Limit at Ashland Avenue.	622
	Elgin, Joliet & Eastern R.R..	623
	Burlington Northern R.R. at West Channel.	626
	North Avenue	628
	Burlington Northern R.R..	628
	Convergence of East and West Channel.	629

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Fox River West Channel.	Holbrook Street at West Channel.	629
	Downer Street at West Channel.	630
	Galena Street at West Channel.	630
	Downstream Aurora Dam at West Channel.	630
	Upstream Aurora Dam at West Channel.	635
	New York Street at West Channel.	635
Fox River East Channel.	Benton Street at East Channel.	630
	Fox Street at East Channel.	630
	Main Street at East Channel.	630
	Downstream Aurora Dam at East Channel.	630
	Upstream Aurora Dam at East Channel.	635
	New York Street at East Channel.	635
Fox River	Divergence of East and West Channel.	635
	Confluence of Indian Creek.	636
	Illinois Avenue	636
	Indian Trail Road	637
Indian Creek	Confluence with Fox River.	636
	Chicago Aurora and Elgin R.R..	637
	Private Bridge 100' downstream of Broadway Street.	642
	Broadway Street	645
	Burlington Northern R.R. sidings upstream of Broadway Street.	645
	Burlington Northern R.R. 300' downstream of High Street.	649
	High Street	654
	Wood Street	667
	Ohio Street	672
	Rural Street	684
	Austin Avenue	691
	Farnsworth Avenue	692
	Private Bridge 1,300' upstream of Austin Avenue.	693
	Private Bridge 1,400' upstream of Austin Avenue.	695
	Sheffer Road	699
	Private Bridge 500' downstream of Farnsworth Avenue.	703
	Farnsworth Avenue downstream crossing.	704
	Reckinger Road	706
	Marshall Boulevard	709
	Farnsworth Avenue upstream crossing.	710
	Molitor Road	713
	Confluence of Selmarten Creek.	715
	East-West Tollway	718
	Bilter Road	724
Selmarten Creek	Confluence with Indian Creek.	715
	Seminary Creek Dam	716
	Seminary Road	716
	Upstream Corporate Limits approximately 4,200' upstream of Seminary Road.	716
Waubansee Creek	Downstream Corporate Limits approximately 2,500' downstream of Kautz Road.	672
	Kautz Road	674
	Montgomery Road	675
	Upstream Corporate Limits approximately 160' downstream of Elgin Joliet & Eastern R.R..	683

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

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 7, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1108 Filed 1-12-79; 8:45 am]

[4210-01-M]

[Docket No. FI-3809]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Village of Elk Grove, Cook County, Ill.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Village of Elk Grove, Cook County, Illinois. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Village of Elk Grove, Cook County, Illinois.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of Elk Grove, Cook County, Illinois, are available for review at the Elk Grove Village Hall, 901 Wellington Street, Elk Grove, Illinois.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Village of Elk Grove, Cook County, Illinois.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Salt Creek	Downstream Corporate Limits.	683
	J. F. Kennedy Boulevard.	685
	Upstream Corporate Limits.	687
Elk Grove Boulevard Drainage Ditch.	J. F. Kennedy Boulevard.	684
	Elk Grove Boulevard	684
	Ridge Avenue	684
	Victoria Lane	685
	Crest Avenue	685
	Love Street	685
	Tonne Road	685
Unnamed Creek	Downstream Corporate Limits.	711
	Nerge Road (Downstream).	712
	Nerge Road (Upstream).	716
West Branch of Salt Creek.	Downstream Corporate Limits.	709
	Confluence with Tributary D.	710
	Upstream Corporate Limits.	711
Tributary D of West Branch Salt Creek.	Confluence with West Branch Salt Creek.	710
	Elk Grove Corporate Limits.	722

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

gation of authority to Federal Insurance Administrator, 43 FR 7719).

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1109 Filed 1-12-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4168]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Village of Glenview, Cook County, Ill.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Village of Glenview, Cook County, Illinois. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Village of Glenview, Cook County, Illinois.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of Glenview, Cook County, Illinois, are available for review at the Glenview Village Hall, 1930 Prairie Street, Glenview, Illinois.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Village of Glenview, Cook County, Illinois.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
West Fork North Branch Chicago River.	Downstream Corporate Limits.	624
	Waukegan Road Upstream.	626
	Glenview Road Upstream.	627
	Grove Street Upstream..	627
	East Lake Avenue.....	629
	Confluence with Navy Ditch.	630
	West Lake Avenue Upstream.	631
	Upstream Corporate Limits.	631

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 73 F.R. 7719).

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1110 Filed 1-12-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4369]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Village of Niles, Cook County, Ill.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Village of Niles, Cook County, Illinois. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Village of Niles, Cook County, Illinois.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of Niles, Cook County, Illinois are available for review at the Village Hall, 7601 Milwaukee Avenue, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Village of Niles, Cook County, Illinois.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in

flood-prone areas in accordance with 24 CFR Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
North Branch Chicago River.	Southern Corporate Limit.	609
	Just Upstream of Hartz Road.	613
	Just Upstream of Touhy Avenue.	616
	Corporate Limits at Oakton Street.	619

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

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 8, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-1111 Filed 1-12-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4462]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Village of Washington Park, St. Clair County, Ill.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Village of Washington Park, St. Clair County, Illinois. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Village of Washington Park, St. Clair County, Illinois.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of Washington Park are available for review at the City Hall, 5621 Forest Boulevard, East St. Louis, Illinois.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Village of Washington Park, St. Clair County, Illinois.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Schoenberger Creek.	Downstream corporate limits.	410
	740 feet downstream of Kingshighway.	411
Rainfall Ponding within community.	500 feet north of U.S. Route 50 crossing Louisville and Nashville Railroad.	414
	Intersection of Monk Avenue and 38th Street.	415
	100 feet southeast of intersection of Louisville and Nashville Railroad and Alton and Southern Railroad.	415
	100 feet southwest of intersection of Louisville and Nashville Railroad and Alton and Southern Railroad.	416
	500 feet northwest of Kingshighway crossing Louisville and Nashville Railroad.	417

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

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1112 Filed 1-12-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4494]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Watseka, Iroquois County, Ill.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Watseka, Iroquois County, Illinois. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Watseka, Iroquois County, Illinois.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Watseka, Iroquois County, Illinois, are available for review at the City Hall, Watseka, Illinois.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Watseka, Iroquois County, Illinois.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Iroquois River	At the confluence of Sugar Creek.	624
	At the Upstream Corporate Limits.	624
Sugar Creek	At confluence with Iroquois River.	624
	Lafayette Stream (Upstream).	624
	Corporate Limits (1,700' Upstream of Lafayette Street).	625
	Corporate Limits (5,900' Upstream of Lafayette Street).	628
	Corporate Limits (11,200' Upstream of Lafayette Street).	629
	Corporate Limits (23,500' Upstream of Lafayette Street).	632
	Corporate Limits (26,150' Upstream of Lafayette Street).	632

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

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1113 Filed 1-12-79; 8:45 am]

[4210-01-M]

[Docket No. FI-2473]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

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

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Village of Woodridge, DuPage County, Illinois. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Village of Woodridge, DuPage County, Illinois.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of Woodridge, DuPage County, Illinois, are available for review at the main lobby of the Village Hall, 2900 West 83rd Street, Woodridge, Illinois.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Village of Woodridge, DuPage County, Illinois.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Crabtree Creek	Downstream Corporate Limits.	653
	State Highway 53 (Upstream).	663
	Corporate Limits 660 feet upstream of Highway 53.	669
	Westview Lane (Upstream).	683
	Woodridge Drive (Upstream).	712
Prentiss Creek	State Highway 53 (Upstream).	665
	Downstream Corporate Limits.	665
	Confluence of Unnamed Tributary No. 1.	670
	Confluence of Tributary No. 2.	689
	Upstream Corporate Limits.	690
East Branch DuPage River.	Confluence of Crabtree Creek.	653
	Hobson Road (Upstream).	657
	Upstream Corporate Limits (Extended).	658

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

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1114 Filed 1-12-79; 8:45 am]

[4210-01]

[Docket No. FI-4408]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Albany, Delaware County, Ind.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Albany, Delaware County, Indiana. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Town of Albany, Delaware County, Indiana.

ADDRESS: Maps and other information showing the detailed outlines of the flood prone areas and the final elevations for the Town of Albany are available for review at the Town Hall, Albany, Indiana.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for Town of Albany, Delaware County, Indiana.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood prone areas in accordance with 24 CFR Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Mississinewa River.	Upstream side of Dowden Avenue.	931
	Just upstream of Norfolk and Western Railway.	932
	Confluence with Halfway Creek.	932
Halfway Creek.....	At Water Street.....	932
	At State Street.....	932
	Just upstream of Norfolk and Western Railway.	933
	Just upstream of State Highway 67.	934
	Northern corporate limit.	934

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

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1115 Filed 1-12-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4409]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Eaton, Delaware County, Ind.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Eaton, Delaware County, Indiana. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Eaton, Delaware County, Indiana.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Eaton are available for review at the Town Hall, Town Clerk's Office, Eaton, Indiana.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Eaton, Delaware County, Indiana.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Mississinewa River.	1,880 feet downstream of Conrail.	885
	Upstream side of Romy Street at corporate limit.	889
	1,500 feet upstream of Romy Street.	891
	4,500 feet upstream of Romy Street near intersection of Albany Pike and Pine Street.	894
Swearengen Ditch	Upstream side of Strawboard Road.	890
	Downstream side of Conrail.	891
	Just upstream of Romy Street.	892

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33

FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719)).

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1116 Filed 1-12-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4411]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Urbandale, Polk County, Iowa

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Urbandale, Polk County, Iowa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Urbandale, Polk County, Iowa.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Urbandale, are available for review at the City Hall, 3315 70th Street, Urbandale, Iowa.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Urbandale, Polk County, Iowa.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
North Walnut Creek.	At southern corporate limits of Urbandale.	848
	At confluence of Karen Acres Creek.	849
	900 feet upstream of the confluence of Karen Acres Creek.	850
	200 feet downstream of 86th Street.	860
	75 feet upstream of 86th Street.	865
	1,250 feet downstream of Douglas Avenue.	865
	70 feet downstream of Douglas Avenue.	868
	100 feet upstream of Douglas Avenue.	871
	4,500 feet upstream of Douglas Avenue.	879
	At northern corporate limit.	890

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

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1117 Filed 1-12-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4412]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Windsor Heights, Polk County, Iowa

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Windsor Heights, Polk County, Iowa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Windsor Heights, Polk County, Iowa.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Windsor Heights are available for review at the City Hall, 1133 66th Street, Windsor Heights, Iowa.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Windsor Heights, Polk County, Iowa.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received

from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Walnut Creek	500 feet upstream of Center Street.	825
	150 feet downstream of 73rd Street.	829
North Walnut Creek.	Just upstream of University Avenue.	834
	2,350 feet upstream of University Avenue.	836
	150 feet downstream of College Avenue.	838
	Just upstream of College Avenue.	842
	At northern corporate limits.	847

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

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1118 Filed 1-12-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4373]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Independence, Montgomery County, Kansas

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Independence, Montgomery County, Kansas. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Independence, Montgomery County, Kansas.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Independence are available for review at the City Office, 120 North 6th Street, Independence, Kansas.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Independence, Montgomery County, Kansas.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood prone areas in accordance with 24 CFR Part 1910.

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

Source of flooding	Location	Elevation in feet, (national geodetic vertical datum)
Verdigris River	Southeastern Corporate Limits.	763
	Upstream of Atchison, Topeka & Santa Fe Railroad.	764
	Northeastern Corporate Limits.	764
Rock Creek	Upstream of Second Street.	761
	Upstream of Seventeenth Street.	761
	Southern Corporate Limits.	763
Whiskey Creek	Confluence with Rock Creek.	761
	Upstream of Cherry Street.	765
	Downstream of Main Street.	775
	Upstream of Cottonwood Street.	785
	633 feet Downstream of Circle Street.	793
	Downstream of Oak Street.	796

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

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1119 Filed 1-12-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4495]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of North Newton, Harvey County, Kansas

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of North Newton, Harvey County, Kansas. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of North Newton are available for review at the City Hall, North Newton, Harvey County, Kansas.

ADDRESSES: Maps and other information showing the detailed outlines

of the flood prone areas and the final elevations for the City of North Newton, Kansas.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of North Newton, Harvey County, Kansas.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood prone areas in accordance with 24 CFR Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Sand Creek	Just Upstream of East 24th Street.	1433
	Corporate limits, approximately 400 feet Upstream from East 24th Street.	1435
	Corporate limits, approximately 2,376 feet Downstream from I-135.	1436

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

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1120 Filed 1-12-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4268]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Covington, Kenton County, Kentucky

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Covington, Kenton County, Kentucky. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Covington, Kenton County, Kentucky.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Covington, Kenton County, Kentucky, are available for review at the City Clerk's Office, Covington, Kentucky.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Covington, Kenton County, Kentucky.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Licking River	Confluence with Ohio River.	499
	4th Street Bridge	499
	Wallace Street (extended).	501
	Virginia Avenue (extended).	502
Banklick Creek	Louisville & Nashville Railroad Bridge.	502
	Winton Pike Street	502
	Corporate Limits (Upstream).	503
Ohio River	Corporate Limits (Downstream).	497
	U.S. Interstate 71-75 Bridge.	498
	Court Avenue	498
	Corporate Limits (Upstream).	499

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

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 7, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1121 Filed 1-12-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4185]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of West Newbury, Essex County, Massachusetts

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of West Newbury, Essex County, Massachusetts. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of West Newbury, Essex County, Massachusetts.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of West Newbury are available for review at the Selectmen's Office, West Newbury Town Hall, 419 Main Street, West Newbury, Massachusetts.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of West Newbury, Essex County, Massachusetts.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Artichoke River-Reservoir.	Confluence with Merrimack River.	13
	Rogers Street	14
North Tributary Brook.	At Confluence with Artichoke River-Reservoir.	14
	Upstream of Pikes' Bridge Road.	21
	30 feet Upstream of Garden Street.	36
	290 feet Upstream of Garden Street.	43
	3225 feet Upstream of Garden Street.	50
	5865 feet Upstream of Garden Street (Study Limit).	50
Beaver Brook	Upstream of Middle Street.	70
	1200 feet Downstream from Confluence with Beaver Brook Tributary.	70
	Upstream of Georgetown Road 3220 feet Upstream of Tewksbury Road.	87
	4250 feet Upstream of Tewksbury Road.	94
Merrimack River	Confluence with Artichoke River.	13
	Upstream of Rocks Bridge.	16
	At Southern Corporate Limit of Upstream End.	18

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

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: July 25, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1122 Filed 1-12-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4444]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Township of Atlas, Genesee County, Michigan

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Township of Atlas, Genesee County, Michigan. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Township of Atlas, Genesee County, Michigan.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Township of Atlas, Genesee County, Michigan, are available for review at the Office of the Atlas Township Clerk, Goodrich, Michigan.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Township of Atlas, Genesee County, Michigan.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Kearsley Creek	Just upstream of Jordan Road.	820
	Approximately 320 feet downstream of Atlas Road.	833

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Approximately 130 feet upstream of Atlas Mill Pond Dam.	847

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

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 13, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1123 Filed 1-12-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4446]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Township of Davison, Genesee County, Michigan

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Township of Davison, Genesee County, Michigan. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Township of Davison, Genesee County, Michigan.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Township of Davison are available for review at the Township Hall, Davison, Michigan.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Township of Davison, Genesee County, Michigan.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Black Creek	Mouth at Kearsley Creek.	764
	Just upstream of Irish Road.	768
	2,000 feet downstream of Gale Road.	770
	500 feet upstream of Gale Road.	774
	At west city limit	774
	At east city limit	785
	Just upstream of Grand Trunk Western Railroad.	787
	500 feet downstream of Davison Road.	788
	At Davison Road	790
	At Oak Road	791
Kearsley Creek	At west corporate limit	762
	At Grand Trunk Western Railroad.	763
	200 feet upstream of East Court Street.	766
	1,000 feet upstream of East Court Street.	767
	750 feet upstream of confluence of Phillips Drain.	769
	2,100 feet downstream of Lapeer Road.	772
	400 feet upstream of Lapeer Road.	773
	450 feet downstream of Irish Road.	776
	Just upstream of Irish Road.	777
	850 feet downstream of Lippincott Road.	780
	At Lippincott Road	781
	3,800 feet upstream of Lippincott Road.	783
	5,400 feet upstream of Lippincott Road.	785
	Atlas Road (north of Atherton Road).	791
	2,100 feet upstream of Atlas Road.	792
	3,200 feet downstream of Atherton Road.	795
	800 feet downstream of Atherton Road.	797
	600 feet upstream of Atherton Road.	799
	4,600 feet upstream of Atherton Road.	801
	3,200 feet downstream of Bristol Road.	803
	1,300 feet downstream of Bristol Road.	805
	400 feet upstream of Bristol Road.	806
	4,700 feet upstream of Bristol Road.	808
	3,700 feet downstream of Atlas Road (near Maple Avenue).	810
	200 feet upstream of Atlas Road.	814
	East corporate limit	816
Phillips Drain	Mouth at Kearsley Creek.	768
	900 feet downstream of Lapeer Road.	769
	Just upstream of Lapeer Road.	771
	1,600 feet upstream of Lapeer Road.	772
	1,050 feet downstream of Vassar Road.	776
	At Vassar Road	778

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

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 8, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1124 Filed 1-12-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4427]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Hillsborough, Hillsborough County, New Hampshire

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Hillsborough, Hillsborough County, New Hampshire. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Hillsborough, Hillsborough County, New Hampshire.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Hillsborough are available for review at the Town Office, Hillsborough, New Hampshire.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Hillsborough, Hillsborough County, New Hampshire.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

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

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Contoocook River	Henniker/Hillsboro corporate limits.	554
	Henniker Street	556
	Approximately 800 feet downstream of State Route 149.	560
	Just upstream of State Route 149.	581
	2,640 feet upstream of state Route 149.	590
	Amtrim/Hillsboro corporate limits.	597
Sand Brook	U.S. Route 202	556
	Downstream side of Henniker Road.	556
	Upstream side of Henniker Road.	559
	600 feet upstream of Henniker Road.	570
	Just downstream of unnamed dirt road (1,960 feet upstream of Henniker Road).	613
	Just upstream of unnamed dirt road (2,000 feet upstream of Henniker Road).	619
	Downstream side of unnamed dirt road (640 feet downstream of Gould Pond Road).	619
	Downstream side of Gould Pond Road.	622
	Upstream side of Gould Pond Road.	626
	1,400 feet upstream of Gould Pond Road.	650
	820 feet downstream of Bog Road.	671
	Upstream of Bog Road	674
North Branch Brook	At mouth of North Branch Brook.	597
	Approximately 345 feet upstream of mouth of North Branch Brook.	607
	Approximately 2,380 feet upstream of mouth of North Branch Brook.	637
	Approximately 4,230 feet upstream of mouth of North Branch Brook.	659
	Approximately 1,370 feet downstream of State Route 31.	682
	Approximately 770 feet downstream of State Route 31.	700
	Just downstream of State Route 31.	702
	Approximately 920 feet upstream of State Route 31.	720
	Approximately 1,720 feet upstream of State Route 31.	740
Beards Brook	Confluence with Contoocook River.	595
	Downstream side of old State Route 9.	598
	Upstream side of new State Route 9.	603
	Approximately 1,740 feet upstream of new State Route 9.	620
	Approximately 820 feet downstream of Beards Road.	630
	Approximately 100 feet upstream of Beards Road.	637
	At Shedd Jones Road	645
	Approximately 1,740 feet upstream of Shedd Jones Road.	660
	Approximately 2,670 feet upstream of Shedd Jones Road.	680
	Approximately 3,900 feet upstream of Shedd Jones Road.	700
	Approximately 1,450 feet downstream of Beards Road (second crossing).	720
	Approximately 555 feet downstream of Beards Road (second crossing).	750
	Approximately 50 feet downstream of Beards Road (second crossing).	779
	Upstream of Beards Road (second crossing).	788
	Upstream side of Gleason Falls Road.	797
	Approximately 2,270 feet upstream of Gleason Falls Road.	810
	Approximately 2,900 feet downstream Danforth Corners Road.	818
	Approximately 2,750 feet downstream of Danforth Corners Road.	820
	Upstream side of Danforth Corners Road.	838
	Downstream side of Cooledge Road.	844
	Downstream side of Jones Hill Road.	847
	Upstream side of Jones Hill Road.	852
	Approximately 3,900 feet upstream of Jones Hill Road (just upstream of unnamed road).	857
	Approximately 7,085 feet upstream of Jones Hill Road.	865
Shedd Brook	At mouth of Shedd Brook.	633
	Approximately 2,740 feet upstream of mouth of Shedd Brook.	650
	Approximately 4,400 feet upstream of mouth of Shedd Brook.	680
	Approximately 1,570 feet downstream of Shedd Jones Road.	700
	Approximately 650 feet downstream of Shedd Jones Road.	725
	Upstream side of Shedd Jones Road.	747
	Approximately 1,770 feet upstream of Shedd Jones Road.	770
	Approximately 3,000 feet upstream of Shedd Jones Road.	800
	Approximately 5,330 feet upstream of Shedd Jones Road.	830
	Approximately 7,390 feet upstream of Shedd Jones Road.	852
Black Pond Brook	At mouth of Black Pond Brook.	852
	Downstream side of State Route 31.	935

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Approximately 50 feet upstream of State Route 31.	940
	Approximately 7,200 feet upstream of State Route 31.	950
	Approximately 1,160 feet downstream of corporate limits.	960
	At corporate limits.....	977

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

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: December 12, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-1106 Filed 1-12-79; 8:45 am]

[3810-70-M]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

SUBCHAPTER E—DEFENSE CONTRACTING

PART 166—REPORTING PROCEDURES ON DEFENSE RELATED EMPLOYMENT

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule is the fiscal year 1978 update of the section listing DoD contractors receiving negotiated contract awards of $10,000,000 or more. The regulation is published to comply with the provisions of Section 410, Pub. L. 91-121, November 19, 1969.

EFFECTIVE DATE: September 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Mrs. Cynthia V. Springer, Office of the Director for Information Operations and Reports, Washington Headquarters Services, The Pentagon, Washington, DC 20301. Telephone: (202) 697-3182.

SUPPLEMENTARY INFORMATION: In FR Doc. 70-15846 published in the FEDERAL REGISTER on November 25, 1970 (35 FR 18040) the Office of the Secretary of Defense published a final rule establishing criteria, prescribing procedures, and assigning responsibilities for monitoring the program within the Department of Defense. Subsequently, paragraphs (a) and (d) of § 166.11, which constitute the list of DoD contractors receiving negotiated contract awards for $10 million or more, was updated for fiscal years 1971 (36 FR 18464); 1972 (37 FR 18727); 1973 (38 FR 25990); 1974 (39 FR 32985); 1975 (40 FR 44135); 1976 (41 FR 20466); and 1977 (43 FR 1617).

Accordingly, § 166.11 is revised to read as follows:

§ 166.11 Department of Defense contractors receiving negotiated contract awards of $10,000,000 or more.

Fiscal Year 1978:

A A I Corp.
A L S Electronics Corp.
A M General Corp.
A R O, Inc.
Action Mfg. Co.
Adobe Refining Co.
Aero Corp.
Aerojet General Corp.
Aerospace Corp. The
Airesearch Mfg. Co. of Arizona
Airesearch Mfg. Co. of California
Airlift International Inc.
Alaska Puget United Transportation
Alaska, University of
Ambac Industries, Inc.
Amerada Hess Corp.
American Export Isbrandsten Lines
American Home Products Corp.
American President Lines, Ltd.
American Telephone & Telegraph Co.
Amoco Oil Co.
Amron Corp.
Applied Devices Corp.
Arinc Research Corp.
Ashland Oil, Inc.
Atlantic Richfield Co.
Atlas Processing Co.
Automation Industries, Inc.
AVCO Corp.
AVCO Everett Research Laboratory
Avondale Shipyards, Inc.
Ayer N W ABH International, Inc.
B D M Corp.
Baltimore Gas & Electric Co.
Bates, Ted & Co., Inc.
Bath Iron Works Corp.
Battelle Memorial Institute
Bauer Max Meat Packer
Beech Aircraft Corp.
Bell & Howell Co.
Bendix Corp.
Bernard Clay Systems International, Ltd.
Bethlehem Steel Co.
Bilfinger & Berger Dyckerhoff et al.
Boeing Co.
Boeing Services International, Inc.
Boeing Vertol Co.
Bolt, Beranek & Newman, Inc.
Booz, Allen & Hamilton, Inc.
Borg Warner Corp.
Braswell Shipyards, Inc.
Brooks & Perkins, Inc.
Brunswick Corp.
Bulova Watch Co., Inc.
Bunko Ramo Corp.
Burlington Industries, Inc.
Burroughs Corp.
California, University of
Calspan Corp.
Caltex Oil Products Co.
Campbell Soup Co.
Carolina Power & Light Co.
Central Gulf Lines, Inc.
Chamberlain Mfg. Corp.
Champlin Petroleum Co.
Charles Stark Draper Labs, Inc.
Chesapeake & Potomac Telephone Co.
Chevron U S A, Inc.
Chromalloy American Corp.
Chrysler Corp.
Cincinnati Electronics Corp.
Cities Service Oil Co.
City Public Service Board
Clermont Shipping Co., Inc.
Clinton Shipping Co., Inc.
Coastal States Marketing, Inc.
Coastal States Trading, Inc.
Coloney, Wayne H., Inc.
Colt Industries, Inc.
Communications Satellite Corp.
Computer Sciences Corp.
Comtech Laboratories, Inc.
Conoco International, Inc.
Conrac Corp.
Continental Oil Co.
Control Data Corp.
Cooper Airmotive Co.
Cubic Corp.
Curtiss Wright Corp.
Cutler Hammer, Inc.
Data Design Laboratories
Day & Zimmerman, Inc.
Dayton, University of
De Laval Turbine, Inc.
Delta Refining Co.
Derby & Co., Inc.
Douglas Oil Co. of California
Dynalectron Corp.
E A Industrial Corp.
E G & G, Inc.
E S L, Inc.
E Systems, Inc.
Eastman Kodak Co.
Edgington Oil Co.
Edo Corp.
Electrospace Systems, Inc.
Emerson Electric Co.
Energy Specialists, Inc.
Etowah MFG Co., Inc.
Exxon Corp.
F M C Corp.
Fairchild Camera & Instrument Corp.
Fairchild Industries, Inc.
Farrell Lines, Inc.
Federal Electric Corp.
Felec Services, Inc.
Flinchbaugh Products, Inc.
Florida Power & Light Co.
Ford Aerospace & Communications
G T E Sylvania, Inc.
Garrett Corp.
General Dynamics Corp.
General Electric Co.
General Foods Corp.
General Motors Corp.
General Research Corp.
General Time Corp.
Gentex Corp.
Georgia Tech Research Institute
Getty Oil Co.
Gibbs & Cox, Inc.
Gibraltar Fabrics, Inc.
Gladieux Refinery, Inc.
Global Associates
Gold Pak Meat Co., Inc.
Golden Eagle Refining Co., Inc.
Goodrich B F Co.
Goodyear Aerospace Corp.

Gould, Inc.
Grumman Aerospace Corp.
Guam Oil & Refining Co.,
Gulf Oil Corp.
H R B Singer, Inc.
Hamilton Technology, Inc.
Harris Corp.
Harsco Corp.
Hawaiian Independent Refinery, Inc.
Hayes International Corp.
Hazeltine Corp.
Heckethorn Mfg. Co.
Hercules, Inc.
Hess Oil Virgin Island Corp.
Hewlett Packard Co.
Hoffman Electornics Corp.
Honeywell, Inc.
Honeywell Information Systems, Inc.
Hughes Aircraft Co.
Hunt Oil Co.
ICI Americas, Inc.
IIT Research Institute
ITT Arctic Services
ITT Gilfillan, Inc.
Institute for Defense Analysis
International Business Machine Co.
International Harvester Co.
International Signal & Control Corp.
International Telephone & Telegraph Corp.
Interstate Electronics Corp.
Itek Corp.
Jacksonville Shipyards, Inc.
Jets Services, Inc.
Johns Hopkins University
KDI Precision Products, Inc.
Kaiser Aerospace & Electronics Co.
Kaman Aerospace Corp.
Kennametal, Inc.
Kentron Hawaii, Ltd.
Kollmorgen Corp.
Kraft, Inc.
La Crosse Garment Mfg. Co., Inc.
Lear Siegler, Inc.
Linkabit Corp.
Litton Industries, Inc.
Litton Systems, Inc.
Lockheed Corp.
Lockheed Electronics Co., Inc.
Lockheed Missiles & Space Co., Inc.
Lockheed Shipbuilding Construction
Logicon, Inc.
Loral Corp.
Lykes Bros. Steamship Co., Inc.
Magnavox Co.
Magnavox Government & Industrial Electronics Co.
Maremont Corp.
Marion Corp.
Marquarot Co.
Martin Marietta Aluminum Sales, Inc.
Martin Marietta Corp.
Mason & Hanger Silas Mason Co.
Massachusetts Institute of Technology
Mayer Oscar & Co., Inc.
McDonnell Douglas Corp.
Metz R G Building Co.
Midwest Specialities
Mine Safety Appliances Co.
Mitre Corp.
Mobil Oil Corp.
Monsanto Enviro Chem Systems, Inc.
Motorola, Inc.
National Beef Packing Co.
National Steel & Shipbuilding Co.
Navajo Refining Co.
Nestle Co., Inc.
Newport News Shipbuilding & Dry Dock Co.
Norris Industries, Inc.
North Pole Refining Co.
Northrop Corp.
Northrop Worldwide Aircraft Services, Inc.
Northwest Airlines, Inc.
Okmulgee Refining Co.
Olin Corp.
Oshkosh Motor Truck, Inc.
Paccar, Inc.
Pacific Architects & Engineers, Inc.
Pacific Far East Line, Inc.
Pacific Gas & Electric Co.
Page Airways, Inc.
Pan American World Airways, Inc.
Paragon Corp. of Martinsville
Parker Hannifin Corp.
Parsons Ralph M Co., Inc.
Pennsylvania State University
Pepper Harry & Associates
Perkin Elmer Corp.
Philip Morris, Inc.
Phillips Petroleum Co.
Physics International Co.
Planning Research Corp.
Pneumo Corp.
Powerine Oil Co.
Pride Refining, Inc.
Proctor & Gamble Distributing Co.
Q E D Systems, Inc.
R & D Associates
R C A Alaska Communications, Inc.
R C A Corp.
R C A Global Communications, Inc.
Rand Corp.
Raytheon Co.
Raytheon Service Co.
Reflectone, Inc.
Remington Arms Co.
Reynolds R J Industries, Inc.
Rochester, University of
Rockwell International Corp.
Rhor Industries, Inc.
Rosenblatt M Son, Inc.
S R I International
Sanders Associates, Inc.
Santa Barbara Research Center
Science Applications, Inc.
Sea Land Service, Inc.
Seaboard World Airlines, Inc.
Selma Apparel Corp.
Shell Oil Co.
Sierra Research Corp.
Simplex Wire & Cable Co.
Singer Co.
Southern California, University of
Southern Union Refining Co.
Southwest Truck Body
Southwestern Refining Co., Inc.
Sparton Corp.
Sperry Rand Corp.
Standard Mfg. Co.
Stewart Warner Corp.
Summa Corp.
Sun Chemical Corp.
Sun Co., Inc.
Sun Oil Trading Co.
Sunstrand Corp.
Supreme Beef Co., Inc.
Swift & Co.
System Development Corp.
Systems Consultants, Inc.
Systems Research Laboratories, Inc.
T R W Colorado Electronics, Inc.
T R W, Inc.
Teledyne Brown Engineering
Teledyne C A E
Teledyne Electronics
Teledyne Firth Sterling
Teledyne, Inc.
Teledyne Industries, Inc.
Teletype Corp.
Tesoro Alaskan Petroleum Corp.
Tesoro Petroleum Corp.
Texas Instruments, Inc.
Texas, University of
Textron, Inc.
Thiokol Corp.
Tiger International, Inc.
Todd Shipyards Corp.
Tonkawa Refining Co.
Total Petroleum, Inc.
Tracor, Inc.
Trans International Airlines, Inc.
Union Carbide Corp.
Uniroyal, Inc.
United States & South American Enterprises
United States Lines Co.
United Technologies Corp.
Valley Construction Co.
Value Engineering Co.
Varian Associates
Varo, Inc.
Vi Mil, Inc.
Vought Corp.
Waterman Steamship Corp.
Watkins Johnson Co.
Western Electric Co., Inc.
Western Gear Corp.
Western Union International, Inc.
Western Union Telegraph Co.
Westinghouse Electric Corp.
Whittaker Corp.
Williams Research Corp.
Wilson & Co., Inc.
Winfield Mfg. Co., Inc.
World Airways, Inc.
Xerox Corp.

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

JANUARY 10, 1979.

[FR Doc. 79-1288 Filed 1-12-79; 8:45 am]

[7710-12-M]

Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

Mail Security Regulations—Puerto Rico

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This regulation implements section 3 of the Puerto Rico Federal Relations Act by allowing excise tax officials of the Commonwealth of Puerto Rico to record for tax purposes information appearing on the exterior of certain types of parcels received at any post office in Puerto Rico. The regulation changes the final implementing rule promulgated on April 5, 1978, 43 FR 14314, and repromulgated unchanged on September 13, 1978, 43 FR 40815, which limited the recording of data for tax purposes to incoming insured, certified, or C.O.D. mail parcels received at the San Juan post office.

EFFECTIVE DATE: January 15, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Braun, (202) 245-4620.

SUPPLEMENTARY INFORMATION: On September 21, 1978, the Postal Service published for comment its proposal to revise the regulations as described above. No comments on the proposal were received.

Accordingly, the Postal Service hereby adopts, without change, the following revision of the Postal Service Manual:

Section 115.96 of the Postal Service Manual is revised to read as follows:

.96 *Puerto Rico.* Under 48 U.S.C. 741a, postal employees in any post office in the Commonwealth of Puerto Rico are authorized to permit excise tax collection officials of the Commonwealth to record for tax collection purposes the names and addresses that appear on the exterior of all incoming parcels which appear to contain taxable items, except those sent by registered mail. A postal employee must be present during such recording and no mail may be opened, detained, or delayed for this purpose.

A Post Office Services (Domestic) transmittal letter making these changes in the pages of the Postal Service Manual will be published and will be transmitted to subscribers automatically. These changes will be published in the FEDERAL REGISTER as provided in 39 CFR 111.3.

(39 U.S.C. 401, 403, 404, 411.)

W. ALLEN SANDERS,
Assistant General Counsel.

[FR Doc. 79-1372 Filed 1-12-79; 8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[6450-01-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Part 281]

NATURAL GAS REQUIRED FOR ESSENTIAL AGRICULTURAL USES

Natural Gas Policy Act of 1978; Interstate Pipeline Curtailment Plans

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Natural Gas Policy Act of 1978 (NGPA), in section 401, requires interstate pipeline curtailment plans, to the maximum extent practicable, to protect the requirements of essential agricultural uses. This Notice of Proposed Rulemaking contains a proposed regulation for the implementation of that section from March 9, 1979—October 31, 1979.

DATES: Written comments by January 22, 1979. Public hearings: January 22, 1979—Washington, D.C. at 9:30 a.m.

ADDRESSES: Send comments to Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (Reference Docket No. RM 79-13).

Hearing location: Hearing Room A, 825 North Capitol Street, N.E., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Romulo L. Diaz, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 275-3771, or

Martin A. Burless, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. (202) 275-4349.

SUPPLEMENTARY INFORMATION:

Preamble to the Interim Curtailment Rule

BACKGROUND

Section 401 of the Natural Gas Policy Act of 1978 (NGPA) seeks to assure that natural gas required for essential agricultural uses will not be curtailed unless curtailment is required to protect the needs of enumerated high-priority users.

Section 401(a) provides that not later than 120 days after the date of enactment the Secretary of Energy shall prescribe and make effective a rule which provides that no curtailment plan of an interstate pipeline may provide for curtailment of deliveries of natural gas for any of the enumerated high-priority users. This rule must be enacted by March 9, 1979.

Section 401(c) states that the Secretary of Agriculture shall certify to the Secretary of Energy and to the Federal Energy Regulatory Commission the natural gas requirements for essential agricultural uses in order to meet the requirements of full food and fiber production.

Pursuant to section 403(b) of NGPA and section 402(a)(1)(F) of the Department of Energy Organization Act, the Federal Energy Regulatory Commission is charged with implementing the rules prescribed under section 401 under its authority to establish, review, and enforce curtailments, under the Natural Gas Act. The purpose of this rule is to implement, effective March 9, the Secretary of Energy's rule prescribed under section 401(a).

This interim rule will be effective from March 9, 1979, until October 31, 1979. During this interim period interstate natural gas pipelines will provide relief from curtailment where necessary to high-priority users and essential agricultural users in accordance with a new tariff provision which this rule directs that the pipeline file. This tariff provision is analogous to the existing life and property tariff provision that pipelines have filed pursuant to § 2.78(a)(4) of the Commission's rules of practice and procedure. This emergency relief mechanism has in the past been used to grant relief from curtailment which would have resulted in danger to life, health, and physical property. The Commission drew on this experience in drafting the present rule so that during this interim period interstate pipelines may provide relief from curtailment to high-priority users and essential agricultural uses under a mechanism with which they are familiar, and which they have successfully utilized in the past.

The proposed rule is an interim rule which will only be effective during a brief portion of the winter heating season. The rule will provide relief, when appropriate, during the summer season. The rule will only come into use if there is a threat of curtailment of essential agricultural users or high-priority users. Under the proposed rule, the maximum volume of gas which can be delivered is the lesser of the volumes the user would receive under the presently effective pipeline curtailment plan or its highest volume used during the last 3 years. Both of these measures of use would be based on the comparable curtailment periods as utilized by the interstate pipeline. Thus, they may be calculated on a daily, monthly, seasonal or annual basis.

In general the Commission believes the Congress intended to utilize as the basis of the section 401 curtailment priorities the base period volumes included in the various pipeline curtailment plans adjusted for alternative fuel capability. The proposed permanent rule is based on this concept. However, the proposed interim rule would implicitly rather than explicitly consider alternate fuel use by reducing the requirements of those users who utilized less than their base period volumes to the high volume used during the last 3 calendar years. The Commission believes that it is reasonable to presume that where a user has been curtailed, alternate fuel has been used in place of natural gas. In those situations where curtailment could not be offset and the facility was temporarily closed, the use of a 3 year period permits a calculation that will only reflect shutdowns that took place in all three 3.

The permanent rule for the implementation of section 401 will set forth a mechanism for ascertaining alternate fuel capability on a more direct and analytical basis. Because of the short lead time imposed by section 401 and considering the short period, the Commission has determined that this more detailed evaluation of requirements and alternate fuel capability is infeasible for purposes of interim implementation. To attempt to acquire the necessary data during this period of time would impose an impossible burden on the end users, distributors, pipelines and the Commission. It is the Commission's judgment that the proposed rule is the most practicable

method of implementing section 401 by March 9.

As previously noted, the proposed method of calculating essential agricultural requirements attempts to take account of both natural gas requirements and alternative fuel capabilities in a manner that will be administratively feasible and not unduly burdensome considering the short lead time and the short period in which the rule will be effective. Generally, the volumes of gas attributable to end users under a pipeline curtailment plan are the maximum volumes that would be taken regardless of alternate fuel capability. If base period requirements alone were utilized, with no consideration to alternative fuel capabilities, there would be a danger, in a situation requiring relief under this provision, of energy requirements that can utilize alternate fuels utilizing natural gas even though the alternative fuel would be economically practicable and reasonably available in accordance with the section 401(b) policy. Such a large shift in energy requirements would place demands on the interstate system that could be difficult to meet out of system supply. It would also cause large unexpected disruptions in fuel usage patterns. The periods of time involved are so short that effective planning and adjustments would be difficult. Also, as noted, the permanent rule provides for evaluation of alternative fuel capabilities and the public interest would not be served by short-term shifts on to gas and then off again when the permanent rule is implemented.

The Commission's rule treats high-priority users and essential agricultural users differently with respect to the applicability of the alternative fuel requirement. The statute only applies an alternative fuel test to essential agricultural uses and not to high-priority users. However, the Commission notes that the Department of Energy's proposed rule implementing section 401 would apply the alternative fuel criterion to high-priority users as well. The Commission decided not to follow this practice for the interim rule. In the absence of the data review the data verification committee will provide for the post November 1, 1979 period, the Commission is concerned that treating the two categories in the same fashion might lead to situations endangering life, health or the maintenance of physical property. Such a threat would be contrary to the spirit of this section of NGPA. Additionally, implementation of this procedure under the interim rule might contravene section 605 of the Public Utility Regulatory Policies Act of 1978, the "Savers Keepers Provision."

The Commission is contemplating changes to reflect the changes in its direct purchase program caused by the Natural Gas Policy Act of 1978 and the Public Utilities Regulatory Policies Act of 1978. The rule under consideration would provide a direct purchase program for agricultural users with alternate fuel capability, and for new and expanded uses. The proposal under consideration, if adopted, would insure access to natural gas for all agricultural requirements, both those included in pipeline curtailment plans and those not covered thereby. This rule under consideration would, if adopted, be an important complement to the present proposed rule.

The interim rule requires that all volumes delivered under this provision be used to serve the requirements, calculated in accord with the provision of this rule, of high-priority users and essential agricultural uses. To the extent that this procedure may require a local distribution company to obtain authorization from its state regulatory authority, it is expected to do so prior to requesting a waiver or adjustment of curtailment under this rule. Natural gas delivered under the provisions of this rule are intended to go to those categories of users identified in the statute.

The rule proposes a formula to determine the portion of a local distribution company's high-priority and essential agricultural requirement that the interstate pipeline must satisfy. The rule's purpose is to restate the policy that interstate pipelines are only required to satisfy a fixed share, based on historical contribution to a local distribution company's total supplies, of any local distribution company's additional requirements to serve high-priority users and essential agricultural uses. The formula is as follows:

$$V=(HPR_i-HPS_i)\ \frac{(IPS)}{(LDCS)}$$

V = volume of additional supplies that may be requested of each interstate pipeline supplier

HPR_i = high-priority requirements for current period

HPS_i = high-priority supply for current period

IPS = interstate pipeline supply to local distribution companies in corresponding curtailment period upon which the interstate pipeline's curtailment plan is based

LDCS = total LDC supply in corresponding curtailment period upon which the interstate pipeline's curtailment plan is based.

This provision will insure that additional demand for supplies is not placed on interstate systems that has not been present in the past. Volumes required under this provision will come from the general system supply of the interstate pipeline and thus, the grant of relief under this provision may result in some increase in the level of curtailment on the interstate pipeline's system including increased curtailment of lower priority requirement to the distributor requesting relief under this provision.

Where the increased system curtailments would result in one distributor having to curtail high-priority users or other essential agricultural uses, that distributor will be curtailed to a lesser degree. That distributor's curtailment will be limited to the volumes that can be curtailed without affecting high-priority users or essential agricultural uses.

The Commission has benefited from the consultation with the Department of Agriculture called for under section 401(b). The Commission understands that this consultation process does not necessarily imply that the Department of Agriculture concurs in this rule.

SUMMARY OF THE REGULATION

The regulation implements section 401 of the NGPA on an interim basis for the period March 9–October 31, 1979. This regulation applies to all sales of natural gas by interstate pipelines during this period. It authorizes the granting of relief to high-priority users as defined in the statute and essential agricultural uses as they are certified by the Secretary of Agriculture pursuant to rule.

The rule defines the terms schools and hospitals so that similar institutions are included within those definitions. This obviates the requirement to independently define the term similar institutions.

In determining the requirements of the end-users that can be met under this rule the high-priority user's requirements are limited to those requirements currently included in the interstate natural gas pipeline's effective curtailment plan. Thus, if an interstate pipeline curtails using a past fixed base period, the high-priority user will be entitled to receive those volumes it would be entitled to receive based on that base period. Where an interstate natural gas pipeline curtails on some other basis, that basis will be used to determine the high-priority user's natural gas requirements which may be met under this provision.

As noted earlier, however, the Commission plans to broaden its direct sales program to make it more accessible to meet demands not covered by natural gas pipeline curtailment plans. This program will complement this proposed rule.

In determining actual agricultural use, users will be permitted to receive the lesser of the amount they would be entitled to receive under the interstate pipeline's currently effective curtailment plan or their highest volumes of natural gas purchased during the appropriate curtailment period of 1976, 1977, or 1978. This provision is designed to grant essential agricultur-

al users the maximum volumes possible during this interim period. By going back three years the Commission anticipates that the requirements of essential agricultural uses adjusted for alternative fuel capabilities will be adequately represented during one of those three years. The Commission has determined that this is the most practicable way that essential agricultural requirements can be determined considering the time period. For the permanent rule a more precise mechanism will be proposed. The Commission has considered permitting essential agricultural users to project their requirements over a future period of time but has concluded that cannot be implemented in a practicable manner at least for the interim period.

The only limitations on relief contained in this interim rule are that the end-user be included in the interstate pipeline's currently effective curtailment plan. This excluded agricultural users who may have attached to a local distribution company after the close of a pipeline's base period and who are not considered in the pipeline's curtailment plan. However, as previously noted the contemplated revisions in the direct purchase program may make natural gas available to these end-users.

The proposed tariff provision provided that if upon the request of any direct sale customer or local distribution company the interstate pipeline determines that such customer qualifies for the waiver or adjustment of the level of curtailment in order to meet the needs of high-priority users or essential agricultural uses, the interstate pipeline shall waive or adjust curtailment to permit the volumes required to meet the high-priority user's needs or the essential agricultural user's needs to be supplied. Local distribution companies and direct sale customers are required to notify the interstate pipeline when the projected level of curtailments is such that curtailment of high-priority users or essential agricultural users will result. Where the interstate pipeline can grant requested relief the interstate natural gas pipeline is authorized to do so without prior approval or prior filings with this Commission.

The regulation requires that the interstate pipeline notify the Commission within 48 hours of the commencement of deliveries. The Commission will cause such notice of the waiver or adjustment of curtailment to be published in the FEDERAL REGISTER and will permit complaints to be filed within 45 days of such notice. The purpose of limiting the complaint period to 45 days is to foreclose an unlimited period of potential liability.

Where a request for relief is rejected by an interstate pipeline or the interstate pipeline cannot grant sufficient relief to the end user without resulting in curtailment of other high-priority users or essential agricultural uses the extraordinary relief provision of the Commission's Rules of Practice and Procedure are open to the essential agricultural use of high-priority user.

WRITTEN COMMENT AND PUBLIC HEARING PROCEDURE

Interested persons are invited to submit written comments on this proposal to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. Comments concerning Subpart A of Phase I must be submitted by January 22, 1979, so that a final rule may be promulgated to be effective February 6, 1979.

Each person submitting a comment should include his name and address, identify the notice (Docket No. RM79-13), and give reasons for any recommendations. An original and 14 conformed copies should be filed with the Secretary of the Commission. Comments should indicate the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed.

The Commission intends to hold a public hearing on this proposal. This hearing shall be held on Monday, January 22, 1979, but comments at that time shall be limited to Subpart A of Phase I. The dates and locations of public hearings concerning other parts of the proposal will be announced as soon as practicable.

The public hearing on Subpart A of Phase I will be held on January 22, 1979, at 9:30 a.m., in Hearing Room A, 825 North Capitol Street, NE., Washington, D.C. 20426. Persons interested in participating should contact Kenneth F. Plumb, Secretary, at the Federal Energy Regulatory Commission, (202) 275-4166, by January 18, 1979.

In consideration of the foregoing it is proposed to add a new Part 281, Subpart A, Title 18, Code of Federal Regulations, as set out below.

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

PART 281—NATURAL GAS CURTAILMENT

Subpart A—Interim Curtailment Rule

Sec.

281.101 Purpose.
281.102 Applicability.
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281.105 Waiver.
281.106 Volumes for which waiver may be granted.
281.107 Filing requirements.
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AUTHORITY: Administrative Procedure Act, 5 U.S.C. 553, Natural Gas Act, as amended, (15 U.S.C. 717), Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 Fed. Reg. 46267, Energy Supply and Environmental Coordination Act, 15 U.S.C. 791), Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350, Federal Energy Administration Act, (15 U.S.C. 761), Public Utility Regulatory Polices Act of 1978, Pub. L. 95-617.

Subpart A—Interim Curtailment Rule

§ 281.101 Purpose.

The purpose of this subpart is to implement, on an interim basis, section 401 of the NGPA in order to provide that for the period March 9, 1979, through October 31, 1979, the curtailment plans of interstate pipelines protect, to the maximum extent practicable, deliveries of natural gas for essential agricultural uses and for high-priority uses.

§ 281.102 Applicability.

This subpart applies to sales of natural gas by an interstate pipeline during the period March 9, 1979, through October 31, 1979, if the pipeline is curtailing its sales of natural gas to high-priority or essential agricultural users.

§ 281.13 Definitions.

(a) *NGPA definitions.* Terms defined in the NGPA shall have the same meaning for purposes of this subpart as they have under the NGPA, unless further defined in this subpart.

(b) *Subpart A definitions.* For purposes of this subpart:

(1) "NGPA" means the Natural Gas Policy Act of 1978.

(2) "School" means a facility, the primary function of which is delivering instruction to regularly enrolled students in attendance at such facility. Facilities used for both educational and noneducational activities are not included under this definition unless the latter activities are merely incidental to the delivery of instruction.

(3) "Hospital" means a facility, the primary function of which is delivering medical care to patients who remain at the facility. Outpatient clinics or doctors' offices are not included in this definition. Nursing homes and convalescent homes are included in this definition.

(4) "Essential agricultural use" means any use of natural gas which is certified by the Secretary of Agriculture under 7 CFR 2900.3 as an "essential agricultural use" under section 401(c) of the NGPA.

(5) "Essential agricultural user" means a person who uses natural gas for an essential agricultural use and who is entitled to receive natural gas, directly or indirectly, from the inter-

state pipeline under its currently effective curtailment plan.

(6) "High-priority use" means any use of natural gas:

(i) in a residence;

(ii) in a commercial establishment in amounts of less than 50 Mcf on a peak day;

(iii) in a school or hospital; or

(iv) by any person who is designated by the Secretary of Energy as a "high-priority user" under 10 CFR 580.2 (c)(iv).

(7) "High-priority requirements" for a curtailment period from a particular interstate pipeline means the maximum volume the high-priority user or local distribution company on behalf of the high-priority user would be entitled to purchase for high-priority use under the interstate pipeline's currently effective curtailment plan but not including volumes a high-priority user may receive solely by operation of this subpart or volumes obtained under § 2.79.

(8) "High-priority user" means a person who uses natural gas for high-priority uses.

(9) "Essential agricultural requirements" for a curtailment period from a particular interstate pipeline means the lesser of:

(i) The highest metered volume of natural gas purchased from an interstate pipeline either under a direct sale contract or under a contract between the local distribution company and the interstate pipeline in the corresponding period of calendar year 1976, 1977, or 1978 and consumed for an essential agricultural use but excluding any volumes received solely through operation of this subpart or volumes obtained under § 2.79; or

(ii) the maximum volume the essential agricultural user or local distribution company on behalf of the essential agricultural user would be entitled to purchase for essential agricultural use under the interstate pipeline's currently effective curtailment plan but excluding any volumes received solely through operation of this subpart or volumes obtained under § 2.79.

(10) "Curtailment period" means the curtailment period, e.g., daily, monthly, seasonal, or annual used by the interstate pipeline in its curtailment plan.

§ 281.104 Interim rule.

Each interstate pipeline shall file tariff sheets which provide for waiver in accordance with § 281.105 of the otherwise applicable provisions of its curtailment plan, if necessary, to supply essential agricultural uses or high-priority uses. The tariff sheets shall be filed not later than February 6, 1979, with a proposed effective date of March 9, 1979, and shall meet the terms and conditions in this subpart.

§ 281.105 Waiver.

(a)(1) Subject to paragraph (a)(2) of this section, interstate pipelines shall waive or adjust the effective level of curtailment for its local distribution company customers and direct sale customers which have submitted to the interstate pipeline high-priority requirements or essential agricultural requirements in the manner prescribed and determined in accordance with paragraph (b) of this section.

(2) If an interstate pipeline's own records contain information which directly conflicts with the statements made under oath under paragraph (b) of this section, the pipeline shall not waive or adjust its currently effective level of curtailment for such local distribution company customer or direct sale customer.

(b) The local distribution company customer or direct sale customer shall demonstrate qualification for waiver by submitting, under oath, the following information to their interstate pipeline suppliers:

(1) The volume of natural gas, calculated in accordance with the provisions of this rule, that each of its high-priority users and essential agricultural users estimates will be necessary for its high-priority requirements and essential agricultural requirements during the curtailment period, except that the local distribution company may aggregate the high-priority requirements for residential and small commercial customers who use less than 50 Mcf on a peak day.

(2) A statement from the local distribution company and each high-priority user, except residential and small commercial customers who use less than 50 Mcf on a peak day, and essential agricultural user that the volumes specified in paragraph (b)(1) of this section will be used solely for high-priority uses or essential agricultural uses.

(3) The volume of natural gas for which waiver is requested is calculated as the sum of the volumes in paragraph (b)(1) of this section less the estimated supplies available to serve essential agricultural use and high-priority use, absent waiver.

(4) If a local distribution company customer or a direct sale customer has more than one source of natural gas supply it shall prorate the volume for which waiver may be requested from its interstate pipeline supplier by multiplying the volume calculated under paragraph (b)(3) of this section by the ratio that each interstate pipeline supplied for the corresponding period on which the interstate pipeline's currently effective curtailment plan is based to the total supply of the local distribution company or direct sale customer in the corresponding curtailment period. The calculation and the volume so prorated to each interstate pipeline supplier shall be submitted to the particular interstate pipeline supplier from whom waiver is requested.

§ 281.106 Volumes for which waiver may be granted.

(a) Subject to the conditions in paragraph (b), when a customer qualifies for waiver, the interstate pipeline supplier shall deliver, from its system supply, the additional volumes specified in § 281.105(b).

(b)(1) If a local distribution company customer or direct sale customer notifies the interstate pipeline that because of the level of curtailment resulting from the granting of a waiver for deliveries to other essential agricultural users, the local distribution company will curtail a high-priority user or another essential agricultural user, or a direct sale customer will be unable to meet its high-priority requirements or essential agricultural requirements, such local distribution company customer or direct sale customer shall be exempt from the adjusted level of curtailment to the extent necessary to meet high-priority requirements or essential agricultural requirements.

(2) If a local distribution company customer or direct sale customer notifies the interstate pipeline that, because of the level of curtailment resulting from waiver for deliveries to other high-priority users, the local distribution company will curtail other high-priority users, or a direct sale customer will be unable to meet its high-priority requirements, such local distribution company customer or direct sale customer shall be exempt from the adjusted level of curtailment to the extent necessary to meet such high-priority requirements.

§ 281.107 Filing requirements.

Each interstate pipeline which makes deliveries of natural gas under § 281.106 shall file a statement with the Commission indicating the direct sale customer or local distribution company customer and its high-priority users and essential agricultural users and the volumes on a customer and end-user basis to which deliveries are made under § 281.106. The filing shall be made within 48 hours of the commencement of deliveries and shall include a copy of the information submitted by the local distribution company or direct sale customer under § 281.105(b).

§ 291.108 Notice, complaint, remedy.

(a) *Notice.* The Commission shall publish in the FEDERAL REGISTER notice of all waivers made under this subpart.

(b) *Complaint.* Any person aggrieved by any action taken pursuant to the

provisions of this rule may file, within 45 days of notice, a complaint pursuant to § 1.6 of this chapter.

(c) *Remedy.* If the Commission determines that a willful and knowing violation of these regulations took place it shall take whatever action it deems appropriate in the circumstances. Such action may include, among others, payback in kind or in dollars by the person benefiting from the waiver.

§ 281.109 Extraordinary relief.

If an interstate pipeline rejects a request for waiver under § 281.105 or if the deliveries made pursuant to a waiver under § 281.106 are inadequate to forestall an emergency situation, the local distribution company customer or direct sale customer may file a request for relief from curtailment under § 1.7. The request shall contain the information required in § 2.78(b).

[FR Doc. 79-1367 Filed 1-12-79; 8:45 am]

[7710-12-M]

POSTAL SERVICE

[39 CFR Part 111]

AMERICAN SAMOA

Mail Security Regulations

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize postal officials in American Samoa to cooperate with territorial customs officials of the Government of American Samoa by permitting them to examine the exterior of mail entering American Samoa which may contain dutiable or prohibited articles and to open, without a search warrant or the consent of the sender or addressee, such incoming suspected mail as the Postal Service has authority to open without a search warrant or consent. This would extend to territorial customs officials of American Samoa the same cooperation which is authorized to be given by postal employees in Guam to territorial customs officials of the Government of Guam, and by postal employees in the U.S. Virgin Islands to officials of the U.S. Customs Service in the Virgin Islands, under existing postal regulations.

EFFECTIVE DATE: Comments must be received on or before February 14, 1979.

ADDRESS: Written comments should be directed to the Assistant General Counsel, Special Projects, U.S. Postal Service, 475 L'Enfant Plaza West, S.W., Washington, D.C. 20260. Copies of all written comments received will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, outside room 9000, 475 L'Enfant Plaza West, S.W., Washington, D.C. 20260.

FOR FURTHER INFORMATION CONTACT:

Charles R. Braun (202) 245-4620.

SUPPLEMENTARY INFORMATION: In 1977 the Postal Service proposed a comprehensive revision of its mail security regulations which, with expressly stated exceptions, generally prohibited mail opening, detention, or delay, or the disclosure of information concerning mail in postal custody. The proposed revision did not specially mention the territory of American Samoa, and therefore prohibited postal officials in American Samoa from cooperating in any special way with territorial customs officials with respect to mail in postal custody. 42 FR 18754-18758 (1977). No comment on the proposed regulations was received from the Government of American Samoa. The Department of Interior, which is the Federal executive agency to which the President's statutory authority for the local government of American Samoa is assigned,[1] did not mention American Samoa in its comments on the proposal.

In 1978 the proposed regulations were adopted and repromulgated without any change affecting American Samoa, 43 FR 14308-14314; 40812-40815 (1978).

The Government of American Samoa has asked the Postal Service to modify its mail security regulations so as to permit customs inspection of mail entering American Samoa. The principal arguments made by that Government in support of its request are that American Samoa is outside the jurisdiction and protection of U.S. customs laws and the U.S. Customs Service; that under existing postal regulations other U.S. territories "are either protected by U.S. customs or their own customs * * *"; that without such a modification the people of American Samoa would suffer "serious hardship" because their government would be deprived of an important source of revenue; and because the enforcement of local laws forbidding the importation of firearms, dangerous drugs, and diseased materials potentially injurious to the island's ecology would be frustrated. Existing postal regulations permit customs officials in Guam and the Virgin Islands to examine all incoming mail, and to open, without a search warrant or the consent of the sender or the addressee, all incoming mail which is reasonably believed to contain dutiable or prohibited articles and which is not sealed against inspection. Postal Service Manual 115.91(b), 115.94, 43 FR 14313-14314; 40814-40815.

Federal postal laws apply to American Samoa to the same extent as to Guam and the Virgin Islands. 39 U.S.C. 403(a)(1970). The Postal Service has concluded that there is no reasonable basis in law or policy to withold from territorial customs officials of American Samoa the same cooperation which the Postal Service affords under current regulations to territorial customs officials of the Government of Guam and to U.S. customs officials in the U.S. Virgin Islands. *See,* 9 Op. Solic. P.O. Dep't No. 200 at 249 (1948); 42 FR 18755-18756 (1977) (paragraph (f), encaptioned *"Territorial Cooperation"*). No comments in opposition to these provisions have been received before or after their adoption.

Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendment of the Postal Service Manual:

Part 115 of the Postal Service Manual is amended by adding a new section 115.97 as follows:

.98 *Customs inspection in American Samoa.* Pago Pago postal employees may permit designated American Samoa customs officials without a search warrant, to open, inspect, and read the contents of unsealed mail, and to examine the exterior (but not open or read the contents) of sealed mail, which originates outside the Territory of American Samoa and is addressed for delivery within the Territory of American Samoa. Upon the request of American Samoa customs officials, postal employees in the Pago Pago post office may ask the addressee of sealed mail which American Samoa customs reasonably suspects of containing dutiable or prohibited matter to authorize American Samoa customs officials to open and inspect the contents of the sealed mail, or to appear at the post office to accept delivery of the sealed mail in the presence of an American Samoa customs official.

An appropriate amendment of 39 C.F.R. 111.3 to reflect this change will be published if the proposal is adopted.

(39 U.S.C. 401, 403, 404, 411, 3623(d)).

W. ALLEN SANDERS,
Assistant General Counsel.

[FR Doc. 79-1371 Filed 1-12-79; 8:45 am]

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[1] 48 U.S.C. 1661(c) (1970); Exec. Order No. 10,264, June 29, 1951, 16 FR 6419, 48 U.S.C. 1662 note (1970).

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 65]

[FRL 1037-3]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Approval of an Administrative Order Issued by the Connecticut Department of Environmental Protection to Westerly Ready-Mixed Concrete Co., Inc.

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Connecticut Department of Environmental Protection to Westerly Ready-Mixed Concrete Co., Inc. The order requires the company to bring air emissions from its asphalt batching plant in Pawcatuck, Connecticut into compliance with certain regulations contained in the federally-approved Connecticut State Implementation Plan (SIP) by July 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before February 14, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region, Rm. 2103, J.F.K. Federal Building, Boston, MA 02203. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Attorney Michael Gurchin at 617-223-5061 or engineer Steven Fradkoff at 617-223-5610, both at the following address: U.S. Environmental Protection Agency, JFK Federal Building, Boston, MA 02203.

SUPPLEMENTARY INFORMATION: The Westerly Ready-Mixed Concrete Co., Inc. operates an asphalt batching plant at Pawcatuck, Connecticut. The order under consideration addresses emissions from equipment at the facility, with state registration numbers 035 and 027, which are subject to section 19-508-5(e) of the Connecticut regulations for the abatement of air pollution. The regulation governs testing of emissions from all sources, and is part of the federally-approved Connecticut State Implementation Plan. The order requires final compliance with the regulation by July 1, 1979 through shutting down and subsequently restarting the plant with improved scrubbers. In addition, Westerly Ready-Mixed Concrete Co., Inc. must submit stack test emission and progress reports to the Connecticut Department of Environmental Protection by July 15, 1979.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Connecticut SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

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

Dated: December 20, 1978.

WILLIAM R. ADAMS, JR.
Regional Administrator,
Region I.

[FR Doc. 79-1270 Filed 1-12-79; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 1037-4; Docket No. DCO-78-49]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Approval of Delayed Compliance Order Issued by the North Carolina Environmental Management Commission to Morganton Dyeing and Finishing Corp.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a delayed compliance order issued by the North Carolina Environmental Management Commission to Morganton Dyeing and Finishing Corp. in Morganton, North Carolina. The delayed compliance order requires Morganton Dyeing and Finishing Corp. to bring air emissions from the three (3) Tenter frames in Morganton, North Carolina, into compliance with an applicable regulation contained in the North Carolina State Implementation Plan (SIP) by January 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with the provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before February 14, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Floyd Ledbetter, U.S. Environmental

Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30308, Telephone Number: (404) 881-4298.

SUPPLEMENTARY INFORMATION: Morganton Dyeing and Finishing Corp. operates a textile finishing plant in Morganton, Burke County, North Carolina. The order under consideration addresses emissions from the three (3) tenter frames, which are subject to the North Carolina Administrative Code (NCAC), Title 15, Chapter 2D, Section .0521. This regulation limits the visible emissions from process operations, and is part of the federally-approved North Carolina State Implementation Plan. The order requires compliance with the regulations by January 1, 1979, through the implementation of the following schedule for the construction or installation of control equipment:

(1) Begin reconstruction of precipitator housing and installation of replacement parts on or before September 15, 1978.

(2) Complete reconstruction and achieve compliance with 15 NCAC 2D.0521 "Control of Visible Emissions" on or before January 1, 1979.

The source has consented to the terms of the order and has agreed to meet the order's increments during the period of this informal rulemaking. As an interim limit, the visible emissions from the three (3) units shall not exceed sixty percent opacity (60%) averaged over any 1 hour period, prior to the attainment of the last milestone.

Because this order has been issued to a major source of particulate matter emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before becoming effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection. EPA has tentatively determined that the order satisfies these requirements.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the North Carolina SIP. Compliance with the proposed order will not exempt the company from complying with applicable requirements contained in any subsequent revisions to the SIP which are approved by EPA.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER, the Agency's final action on the order in 40 CFR Part. 65.

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

Dated: January 8, 1979.

JOHN A. LITTLE,
Acting Regional Administrator, Region IV.

[FR Doc. 79-1269 Filed 1-12-79; 8:45 am]

[6820-96-M]

GENERAL SERVICES ADMINISTRATION

Federal Property Resources Service

[41 CFR Part 101-47]

DISPOSAL OF PROPERTY FOR EDUCATIONAL AND PUBLIC HEALTH PURPOSES EXTENSION OF COMMENT PERIOD

AGENCY: General Services Administration.

ACTION: Extension of comment date for proposed rule.

SUMMARY: On January 2, 1979, at 44 FR 70, the General Services Administration published a proposed rule governing the disposal of surplus real property for educational and public health use to require that all such conveyances and notices of no objections be subject to perpetual use restrictions. This document extends the date for receipt of comments from February 1, 1979, to February 16, 1979.

DATE: Comments must be received on or before February 16, 1979.

FOR FURTHER INFORMATION CONTACT:

James H. Pitts, Office of Real Property, Special Programs Division (202-566-0003).

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

Dated: January 10, 1979.

WILLIAM R. CAMPBELL, JR.,
Acting Commissioner, Federal Property Resources Service.

[FR Doc. 79-1311 Filed 1-12-79; 8:45 am]

[4110-35-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

[42 CFR Part 476]

PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

Confidentiality and Disclosure of Professional Standards Review Organization (PSRO) Information

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Proposed rule.

SUMMARY: These regulations would govern the acquisition, protection and disclosure of information obtained or generated by Professional Standards Review Organizations (PSROs). The PSRO statute (Title XI, Part B of the Social Security Act) authorizes PSROs to acquire information necessary to fulfill their duties and functions. Section 1166 of the Act places limits on the disclosure of PSRO information and establishes penalties for unauthorized disclosure. These regulations are intended to assure that PSROs have access to the necessary information, that confidential information is adequately safeguarded, and that the information may be used as effectively as possible.

DATES: Consideration will be given to written comments or suggestions received on or before March 16, 1979. When commenting, please refer to HSQ-37-P. Agencies and organizations are requested to submit their comments in duplicate.

Comments will be available for public inspection, beginning approximately 2 weeks after publication, in Rm. 5231, Switzer Building, 330 C Street, SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (telephone 202/245-0950).

ADDRESS: Address comments to: Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, P.O. Box 2372, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Kathryn Moss, 202/245-2196.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Professional Standards Review Organizations (PSROs) are established under Title XI, Part B of the Social Security Act (the Act) to carry out professional standards review of the health care services funded under Titles V, XVIII and XIX (Maternal and Child Health, Medicare, and Medicaid programs, respectively) of the Act. PSROs are responsible for determining that those services are medical-

ly necessary and at the appropriate level of care, and that the quality of these services meets professionally recognized standards.

To carry out their responsibilities, PSROs are dependent on information acquired from other sources or developed in the conduct of review. Information is acquired from the medical records of patients and from other records maintained by health care institutions, practitioners and claims payers. Information generated by the PSRO includes medical necessity determinations and PSRO evaluations of the quality and appropriateness of health care services. PSROs use the information to develop and review profiles (patterns of utilization and practice), for audits of medical care and to transmit PSRO determinations to organizations responsible for making payment under the Act.

It is evident that much of the information acquired by PSROs, especially from medical records, is sensitive or personal, and should be treated as confidential information. Furthermore, to preserve the integrity of the peer review process in which peers work together to improve health care services, it is critical that certain information be held in confidence. On the other hand, disclosure of PSRO information for claims payment purposes, to assist others who can benefit from access to PSRO information and to ensure accountability of the PSROs is of equal importance.

Statutory Basis

The PSRO statute recognizes both the need to protect information and the need to disclose information. Section 1166 of the Act states that all PSRO information shall be held in confidence and not disclosed except as necessary for the purposes of the PSRO statute, the purposes of health planning and fraud or abuse investigations, or as the Secretary shall provide in regulations assuring adequate protection of the rights and interests of patients, health care practitioners, or providers of health care. This proposed rule is the culmination of an extensive effort to meet the legislated mandate.

History

In 1976, initial policies on the confidentiality of PSRO information were issued. Additions and modifications to these policies were distributed in 1976. An interim regulation was published on January 16, 1978 (43 FR 2282) providing for disclosure of information that was public prior to receipt by the PSRO and for disclosure of summary statistics from the Uniform Hospital Discharge Data Set (UHDDS) (the multi-purpose, basic data set containing information on hospital discharges, approved by the Department for use in Federal health programs). Specifications for this proposal were widely distributed for comment in April 1977. Comments received in response to the Notice of Proposed Rulemaking for the interim regulation and on the specifications for this proposal have been of great assistance. In addition, the advice of experts in the field of health data and confidentiality, existing legislation on privacy and disclosure of information, the Report of the Privacy Protection Study Commission mandated to examine issues relating to personal privacy, and other Federal policies and regulations contributed to the development of this proposal. Plaintiff in a recent lawsuit, *Public Citizen Health Research Group* v. *Dept. of H.E.W., et al.* (U.S.D.C. for D.C., C.A. No. 77-2093) is seeking disclosure, under the Federal Freedom of Information Act (FFIA), of a substantial amount of PSRO information which identifies physicians and hospitals. In the event of a final court ruling that PSROs are subject to the FFIA and that PSRO data cannot be witheld from disclosure under the exemptions of the FFIA, substantial revision of these proposed HEW regulations would be required. However, there has been no court order to disclose any information at this time and final resolution of the matter is expected to take some time. Therefore, we believe it is appropriate to issue these proposed rules at this time.

Scope

The proposal attempts to deal, in a comprehensive manner, with all information acquired or generated by PSROs for review purposes and with information concerning contracts and agreements between PSROs and other entities. PSROs may use their own discretion in disclosing financial and administrative information which is not addressed in the regulation. We do not believe that Congress intended to restrict the disclosure of PSRO information which does not directly relate to the review activities.

Due to the dependence of PSROs on information from other sources, these proposed rules address the acquisition of information by PSROs. Procedures for maintaining the security of information are also included. The acquisition and data security aspects of the proposal are fairly straightforward.

The disclosure sections of the proposal are more complicated. For disclosure purposes, information has been categorized as confidential or nonconfidential. Nonconfidential information encompasses the criteria and procedures used by PSROs to conduct review, previously public information, certain administrative information, and statistical information, including statistics on the utilization and patient population of individual institutions and groups of practitioners.

Medical Care Evaluation studies from which all person or institution identifiers have been deleted or information describing a study are considered non-confidential. Confidential information includes information in which an individual person can be identified, Medical Care Evaluation Study information with identifiers, sanction reports and the deliberations of PSRO reviewers.

Information on individuals can be presented in a number of ways:

1. Information on an individual which clearly identifies the individual by name,
2. Information which is uniquely coded to a particular individual, e.g., a social security number,
3. Information on individuals from which identifiers have been deleted, e.g., removal of a name or identifying number from a report,
4. Information which implicitly identifies an individual, (e.g., statistics on orthopedic surgery in a hospital where there is only one orthopedic surgeon).

Any of these types of presentation would be considered confidential information if the identity of an individual could be discerned or inferred by the user of the information. Sanction reports noting PSRO findings of violations of obligations on practitioners and on institutions are confidential. The deliberations of the PSRO, including reviewer notes, minutes of meetings and any other records of discussions and judgements involving review matters are also classified as confidential.

Major Provisions and Issues

1. Basic rule. PSRO information is to be held in confidence and not disclosed under the law unless the disclosure is necessary to carry out the purposes of the PSRO statute or provided for by regulation. Hence, the basic rule provides for disclosure without regulation if the intended use of the information coincides with the purposes of the PSRO statute. The purposes of the PSRO statute, in our view, are to assure the medical necessity, appropriate level of care and quality of health care paid for under the Social Security Act. Any other extension of the disclosure provisions would require regulatory or statutory amendment.

2. Access to medical records. There has been some resistance by health care providers and practitioners to providing medical records to PSROs. Section 1155(b) of the Act gives PSROs authority to access pertinent records of health care practitioners and providers. The proposal not only provides for such access, but under

certain circumstances PSROs can more efficiently and effectively carry out their responsibilities if copies of records are available. We share the concern of health care institutions and practitioners that health records be carefully protected, but believe that PSROs, as organizations of health care professionals, can be trusted to protect them properly. At the same time, to assure that the provision of records does not impose an undue burden on the provider, the proposal specifies that copies of records shall be required only when it is not feasible for the PSRO to access the records onsite. The same rules would apply to Medicare and Medicaid claims payers that monitor PSROs. Thus, when onsite access of records is not feasible, copies of records would be provided to the monitors.

3. Access by the Secretary and State Medicaid Agencies. Concern has been expressed by PSROs and the health community about the access and use of PSRO information by State and Federal agencies. However, many of these agencies believe that PSRO information will be invaluable to them in fulfilling their respective responsibilities. The proposal attempts to resolve this issue by providing the Secretary with complete access to PSRO information, but specifying procedures for access and redisclosure of information by the Secretary. Information related to the responsibilities of States to assure appropriate expenditure of funds for health care and services funded by the State would be available to State agencies, but redisclosure of the information would be restricted. This approach to government access to PSRO information is intended to assure that State and Federal agencies have access to the information they need for effective administration and management of their responsibilitaies while preserving the integrity of confidential information.

4. Requirements for maintaining confidentiality. To assure that PSRO information is handled responsibly, the proposal contains provisions for maintaining the security of PSRO information. Due to the criminal penalties for unauthorized disclosure of PSRO information, persons handling the information must be made aware of their responsibilities and of the risk of penalty. Procedures are required for maintaining logs of access to confidential information and for coding the identity of patients, practitioners and institutions on documents containing confidential information.

5. Procedures for disclosure. Provisions are included requiring PSROs to notify patients, practitioners and institutions about disclosures of information pertaining to them. To reduce the burden on PSROs for meeting requests for previously published information, PSROs are required only to release this information in the form in which it is readily available. In general, PSROs may charge a reasonable fee for providing requested information.

6. Disclosure of non-confidential information. The proposal requires PSROs to fulfill all requests for non-confidential information regardless of the source of the request. PSROs may also disclose this information at their option, to anyone who they believe would be interested in the information. We are aware of some objections to treating statistical information on institutions as non-confidential information. However, organizations are not generally accorded the same right to privacy as individuals and we believe that the benefits to be gained by sharing this information outweigh the potential disadvantages. Organizations such as health planning agencies and rate setting commissions are dependent on institutional information to carry out their responsibilities. Because these organizations are required to publicly disclose all information in their possession, they would be unable to protect the information.

The disclosure of non-confidential information serves the purpose of meeting the needs of others for health information and also provides for a degree of public accountability. By disclosing contractual documents, agreements, and minutes of meetings (except when confidential information is involved), the public can be informed of PSRO activities. The disclosure of the norms, criteria, and standards provides an opportunity for the public to be aware of the professional standards utilized in the review process.

7. Disclosure of confidential information. The disclosure of all confidential information is restricted in this proposal. Medical Care Evaluation studies, with identifiers, are shared only with practitioners or institutions identified in the study and with accreditation and certification bodies. PSRO summaries and conclusions, based on confidential studies, which do not identify patients, practitioners or institutions may be shared with governmental agencies involved with assuring quality of care. In addition, PSROs may disclose their interpretation and generalizations on the quality of care of individual institutions to these governmental agencies. PSRO deliberations are not to be disclosed outside the PSRO, although the reasons for PSRO decisions may be shared. The purpose of these protections is to ensure frank discussion and documentation of the detailed findings of professional standards review and to create an environment in which those best suited to judge professional services (professional peers) are free to explore potential problems in depth without fear of unwarranted liability or litigation. Many States have, by statute, protected this type of information from disclosure or subpoena.

Provisions are made for some disclosure of information, including profiles, on individuals. Individuals may have access to their own records. Governmental agencies (including fraud or abuse agencies), licensing bodies, and researchers may have limited access to identifying information. These disclosures are intended to provide for the sharing of information with those who have a significant need for the information to carry out their recognized responsibilities or to avoid duplication in the collection and processing of information. Information on individuals is specifically protected by statute from subpoena or discovery proceedings in civil actions. (See section 1166(d) of the Act) Consideration was given to prohibiting disclosure in criminal actions. However, this raises some difficult issues that require further exploration. We would particularly appreciate comment on this matter.

It is important to recognize that certain information in the possession of the PSRO is information which other governmental agencies are also authorized to acquire. For this type of information, the PSRO not only uses the information for its own purposes, but also serves as a vehicle to provide the information to other authorized users. The primary example of this type of information is the Uniform Hospital Data Set (UHDDS). The data elements of the UHDDS collected on each hospital discharge are:

1. Person Identification
2. Date of Birth
3. Sex
4. Race
5. Residence
6. Hospital Identification
7. Admission Date and Hour
8. Discharge Date
9. Attending Physician
10. Operating Physician
11. Diagnoses
12. Procedures, e.g., Surgical Operation
13. Disposition of Patient
14. Expected Principal Source of Payment

This information is collected by the PSRO from hospital records and is used by the PSRO to examine hospital utilization patterns and patterns of medical practice in the PSRO area. Other authorized users of the UHDDS information are claims payers, such as the Medicare Fiscal Intermediaries and State Medicaid agencies, who need the information to assure the appropriate payment of claims under the Federal health care funding programs. Because the UHDDS is multipurpose data, the PSRO is merely serving as a "pass-through" to transfer the infor-

mation from the hospital to the claims payers.

The provisions on the disclosure of information on individuals reflect a concern for personal privacy. There is widespread agreement that the privacy of patients is of highest priority. Although it is recognized that patient privacy is eroded by the acquisition of information by PSROs, the benefit to be gained from assuring that health care and services are medically necessary, appropriate and of acceptable quality justifies the acquisition. PSROs may collect patient information only if it is relevant and appropriate to their responsibilities.

The protection of the privacy of health care practitioners is less generally accepted. However, we believe that to make information on individual practitioners generally available would severely inhibit the effectiveness of the peer review process an discourage participation in PSRO activities.

8. Limitations on redisclosure. It is apparent that the confidentiality of PSRO information cannot be maintained if PSROs are required to share information without some limits on redisclosure by the recipient. The issue is complicated by the fact that some recipients of PSRO information may be subject to freedom of information laws or other statutory requirements for disclosure of information. The Department has concluded that regulatory restrictions must be placed on the redisclosure of confidential PSRO information. Information which does not fall in this category can be freely disclosed by the recipient.

9. Public notice of PSRO information systems. Under this proposal a PSRO would be required to place a public notice in newspapers of the existence of its data system and the types of information acquired by the PSRO. In addition, each patient, practitioner and institution must be informed of the system and the procedures whereby they may obtain access to information on themselves. These provisions are in keeping with recognized information system practices and are recommended by experts concerned with assuring that individuals are aware of information collected about them.

10. Optional disclosure of confidential information. We are reviewing, but have not proposed, a regulatory provision giving PSROs discretionary authority to disclose information, identifying practitioners and providers but not individual patients, concerning patterns of practice and MCE studies. The purpose would be to make this information available to consumers and others concerned about local health care problems.

In addition to the disclosures PSROs are required to make under section 116(b) of the Act, they do have authority under section 1166(a) to disclose information, without specific regulatory authority, in order to carry out the purposes of the PSRO statute. The proposal under review would give PSROs discretion to disclose for any purpose but would establish criteria and guidelines for the PSRO to use in exercising this discretion. Furthermore, if the PSRO decided to disclose some of this information on a particular practitioner or provider, it could not refuse to disclose other countervailing information about the same practitioner or provider. We specifically invite comments and suggestions this on issue, including comments and suggestions for criteria which would achieve the goal of allowing PSROs to determine the circumstances under which the disclosure of information would further PSRO purposes.

42 CFR Part 476 is proposed to be revised to read as follows:

PART 476—CONFIDENTIALITY AND DISCLOSURE OF PROFESSIONAL STANDARDS REVIEW ORGANIZATION (PSRO) INFORMATION

Subpart A—General Provisions

Sec.
476.1 Scope and applicability
476.2 Definitions
476.3 General rules.
476.4 PSRO access to records and information.
476.5 Procedures for PSRO disclosure.
476.6 Limitations on redisclosure.
476.7 Penalities for unauthorized disclosure.
476.8 Applicability of other statutes.
476.9 Applicability to councils.

Subpart B—PSRO Responsibilities

476.11 Requirements for maintaining confidentiality.
476.12 Public notice of PSRO information system.

Subpart C—Disclosure of Nonconfidential Information

476.21 PSRO criteria and procedures.
476.22 Public information acquired by the PSRO.
476.23 Statistical information.
476.24 Medical Care Evaluation (MCE) study information without identifiers.
476.25 Medicare provider number.

Subpart D—Disclosure of Confidential Information

476.31 Disclosure to patients or their representatives.
476.32 Disclosure to practitioners, reviewers and institutions.
476.33 Disclosure necessary to perform review responsibilities.
476.34 Disclosure to claims payment agencies.
476.35 Disclosure to investigative and prosecutional agencies.
476.36 Disclosure for other specified purposes.
476.37 Disclosure of PSRO deliberations.
476.38 Disclosure of MCE study information and sanction reports.
476.39 PSRO involvement in shared health data systems.

AUTHORITY: Secs. 1102, 1152(d)(2), 1155(a)(4), 1155(b)(3), 1155(f)(1)(B), 1162(c)(2), 1165, and 1166 of the Social Security Act; (42 U.S.C. 1302, 1320C-1, 4, 11, 14, and 15).

Subpart A—General Provisions

§ 476.1 Scope and applicability.

This part establishes rules for preserving confidentiality and disclosing information collected or generated by a PSRO (or the review component of a delegated institution) in performing its responsibilities under the Act. These regulations also govern the acquisition of information necessary for review and monitoring, and the acquisition of PSRO information by the Secretary.

§ 476.2 Definitions.

As used in this part:

"Act" means the Social Security Act.

"Confidential information" means:

(1) Identifying information;

(2) Sanction reports and recommendations;

(3) Medical Care Evaluation study information which identifies patients, practitioners or institutions;

(4) PSRO deliberations;

(5) Any other PSRO information which contains information specified in paragraphs (1) through (4) of this section.

"Council" means the Statewide PSRO Council.

"Delegated institution" means an institution to which the PSRO has delegated review responsibility in accordance with Section 1155(c) of the Act.

"Federal program patient" means a person who receives medical care and services for which payment may be made (in whole or in part) under the Act.

"Health care services" means a service or item for which payment may be made (in whole or in part) under the Act.

"Identifying information" means PSRO information in which the identity of an individual patient, practitioner or reviewer can be discerned or inferred by the user of the information.

"Institution" means an organization involved in the delivery of health care services or items for which payment may be made (in whole or in part) under the Act.

"MCE study information" means all documentation of a Medical Care Evaluation study or medical audit including study findings, analyses and recommendations.

"Practitioner" means a physician or other health care professional meeting all applicable State or Federal require-

ments for the practice of the profession.

"PSRO deliberations" means discussions or communications (within a PSRO, or within a Council or between a PSRO and a Council) regarding PSRO review responsibilities, appeals from PSRO determinations, and sanctions resulting from PSRO determinations, in which the opinions or judgement of or about a particular individual can be discerned.

"PSRO information" means data or information collected, acquired or generated in the exercise of a PSRO's duties and functions under Title XI, Part B of the Act.

"PSRO review system" means the PSRO and those organizations and individuals directly responsible for providing medical care or for assuring, reviewing, and making determinations with respect to the medical necessity, appropriate level of care, and quality of health care services that may be reimbursed under the Medicare, Medicaid, or Maternal and Child Health and Crippled Children's programs. The system includes:

(1) The PSRO and its officers, members and employees;

(2) Health care institutions and practitioners; and

(3) PSRO reviewers and supporting staff.

"Reviewer" means a review coordinator, physician, or other person authorized to perform PSRO review functions.

"Sanction report" means a PSRO report documenting its determination that a practitioner or institution has failed to meet certain statutory requirements (Section 1160 of the Act) in furnishing health care services or in documenting them, and recommending appropriate action.

"Secretary" means the Secretary of the Department of Health, Education, and Welfare, or any other person to whom he has delegated the pertinent authority.

"Shared health data system" means an agency or other entity specifically authorized under State or Federal law or utilized by a component of the review system to provide data to the PSRO to conduct, or arrange for, the collection, processing and dessemination of data on health care services.

"Statistical information" means aggregated information which does not contain confidential information.

§ 476.3 General rules.

(a) *Statutory requirements.* PSRO information shal be held in confidence and shall not be disclosed unless specifically permitted or required under this part or to carry out the purposes of Title XI, Part B of the Act.

(b) *Disclosure to the Secretary.* All PSRO information shall be disclosed to the Secretary in the manner and form required by the Secretary except that:

(1) Identifying information will be available only

(i) At the PSRO office or delegate institution;

(ii) In the form of records or reports on hearings, appeals, or sanction; or

(iii) As required by the Secretary to assist in the investigation of fraud or abuse in Medicare or Medicaid.

(2) MCE study information with identifiers of patients, practitioners or institutions will be available to the Secretary only at the PSRO office or delegate institution.

(c) *Access to medical records for monitoring of PSROs.* A person, organization or agency authorized by the Secretary or by Federal statute to monitor a PSRO shall have access to Federal program patients' medical records maintained by institutions or health care practitioners. The monitor may, for good cause, as provided in guidelines issued by the Secretary, required copies of the records.

§ 476.4 PSRO access to records and information.

(a) *Records and information of institutions and practitioners.* (1) A PSRO is authorized to have access to and obtain any records and information pertinent to the health care services rendered to Federal program patients, or patients whose eligibility for Federal programs is pending, held by any institution or practitioner in the PSRO area. The PSRO may require the institution or practitioner to provide copies of such records or information to the PSRO.

(2) A PSRO may have access to, and obtain information from, the records of other patients if authorized by the institution or practitioner.

(3) A PSRO shall notify institutions and practitioners that copies of patient medical records, or portions thereof, may be shared with claims payment agencies (See § 476.34).

(b) *Records and information of claims payment agencies.* A PSRO is authorized to have access to, and require copies of, any records or information held by any organization or agency responsible for paying claims under the Medicare, Medicaid or Maternal and Child Health and Crippled Children's programs which the PSRO determines to be necessary to carry out PSRO review responsibilities.

(c) *Information collected for PSRO purposes.* (1) Institutions and other entities shall disclose identifying information collected by them for PSRO purposes to the PSRO.

(2) Information collected or generated by institutions or practitioners to carry out MCE studies shall be disclosed to the PSRO.

(d) *Limitation on data collection.* a PSRO or any agent, organization, or institution acting on its behalf as a collector of information on the health care furnished to Federal program patients shall collect only that information which is necessary to accomplish the purposes of Title XI, Part B of the Act.

§ 476.5 Procedures for PSRO disclosure.

(a) *PSRO guidance.* A PSRO may provide a statement of comment, analysis, or interpretation to guide the recipient in using information disclosed under this part.

(b) *Fees.* A PSRO may charge a fee to cover the cost of providing information authorized under these regulations unless the fee is specifically exempted in these regulations or by the Secretary. These fees shall not exceed the amount necessary to recover the cost to the PSRO for providing the information.

(c) *Format for disclosure of public information.* A PSRO is required to disclose public information (Subpart C, § 476.22) only in the form in which it is acquired by the PSRO or in the form in which it is maintained for PSRO use.

(d) *Notification of the disclosure of nonconfidential information.* At least 15 calendar days before disclosure of nonconfidential information (Subpart C), the PSRO shall notify an identified institution of its intent to disclose information about the institution which is not routinely prepared for PSRO use and provide the institution with a copy of the information. The identified institution may submit comments to the PSRO which shall be attached to the information if received before disclosure or forwarded separately if received later.

(e) *Notification of the disclosure of confidential information.* (1) A PSRO shall notify the physicians who have treated a patient of a request for disclosure to the patient or patient representative (Subpart D, § 476.31). The physician shall be notified at least 14 calendar days before the PSRO fulfills the request for disclosure.

(2) A PSRO shall notify a practitioner or institution of the PSRO's intent to disclose identifying information on a practitioner or institution to a licensing or investigative agency (Subpart D, § 476.35 and § 476.36). The physician or institution shall be notified and provided a copy of the information to be disclosed at least 15 calendar days before the PSRO discloses the identifying information. Comments submitted by the practitioner or institution to the PSRO shall be forwarded with the information. This notification requirement does not apply if the investigative agency speci-

fies that the information is related to a potential prosecutable offense.

(3) The PSRO shall attach a notice to each authorized disclosure of confidential PSRO information informing the receiver of the limitations on redisclosure and of statutory penalties for unauthorized disclosure of confidential information.

§ 476.6 Limitations on redisclosure.

Persons or organizations that obtain confidential PSRO information shall not further disclose the information to any other person or organization except:

(a) As directed by the PSRO to carry out a disclosure permitted or required under a particular provision of this part;

(b) As directed by the Secretary to carry out specific responsibilities of the Secretary under the Act;

(c) As necessary for a Council to carry out Council responsibilities for hearings and appeals under section 1159 of the Act or sanctions under section 1160 of the Act;

(d) If the health care and services provided to an individual patient are reimbursed from more than one source, the sources may exchange confidential information as necessary for the payment of claims;

(e) If the information is acquired by the PSRO from another source and the receiver of the information is authorized under its own authorities to acquire the information directly from the source, the receiver may disclose the information in accordance with its own rules;

(f) As necessary for the General Accounting Office to carry out audit responsibilities;

(g) A patient or a practitioner may disclose information pertaining to him;

(h) An institution may disclose information pertaining to itself; or

(i) A fraud or abuse agency recognized by the Secretary may disclose information as necessary in a judicial, administrative or other formal legal proceeding resulting from an investigation conducted by the agency.

§ 476.7 Penalties for unauthorized disclosure.

(a) *General Rule.* Under section 1166(c) of the Act, any person is prohibited form disclosing information acquired by any PSRO in the exercise of its duties and functions unless the disclosure is necessary to carry out the purposes of title XI, part B of the Act or is authorized by the regulations of this part. A person who make an unauthorized disclosure shall, upon conviction, be fined no more than $1,000, and imprisoned for no more than six months, or both fined and imprisoned, and shall pay the costs of prosecution.

(b) *Exceptions.* If a health planning agency recognized by the Secretary receives aggregate statistical data from a PSRO in accordance with subpart C of this part, it may disclose that information and is not subject to the penalties in paragraph (a) of this section.

§ 476.8 Applicability of other statutes.

The Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1175) and the Comprehensive Alcohol Abuse and Alcoholism Prevention Treatment and Rehabilitation Act of 1970 (42 U.S.C. 4582) provide for the confidentiality of patients' records generated and maintained in connection with any drug or alcohol abuse prevention function conducted, regulated, or assisted by the Federal government. The implementing regulations of this Act, at 42 CFR Part 2, are applicable to PSRO information.

§ 476.9 Applicability to Councils.

The provisions of this part which apply to a PSRO apply equally to a Council.

Subpart B—PSRO Responsibilities

§ 476.11 Requirements for maintaining confidentiality.

(a) *Responsibilities of PSRO officers and employees.* Each PSRO shall instruct its officers and employees and health care institution employees participating in PSRO activities of their responsibility to maintain the confidentiality of information and of the legal penalites which may be imposed for unauthorized disclosure of any PSRO information.

(b) *Responsible individual within the PSRO.* The PSRO shall assign to a single individual the responsibility for maintaining the confidentiality of information within the PSRO review system, in accordance with this part. That individual shall notify the Secretary of any violations of these regulations which comes to his attention.

(c) *Training requirements.* The PSRO shall provide a continuing program to train participants of the PSRO review system in handling confidential information.

(d) *Authorized access.* No individual participating in the PSRO review system on a routine or ongoing basis shall be authorized access to confidential PSRO information unless that individual:

(1) Is undergoing or has completed a training program in the handling of such information in accordance with paragraph (c) of this section or has received comparable training from another source; and

(2) Has signed a statement indicating that he

(i) Recognizes his responsiblity to hold the information in confidence, and

(ii) Is aware of the legal penalities for unauthorized disclosure.

(e) *Use of logs.* Each PSRO shall establish procedures for the handling of confidential information within the PSRO review system. At a minimum, the PSRO and each delegated institution shall maintain a log indicating removal of any confidential information and any cross-reference indices from the premises of the PSRO or delegated institution.

(f) *Codification of person identifiers.* The PSRO shall assure that identification of individual patients, health care practitioners, and PSRO reviewers on PSRO generated reports and forms, and the identification of individual health care institutions on Medical Care Evaluation studies is in coded form. Index files containing the cross-reference of codes to names of patients, practitioners, institutions and PSRO reviewers shall be maintained in a secure manner within the PSRO review system.

(g) *Purging of personal identifiers.* (1) The PSRO shall purge, or arrange for purging, computerized and non-computerized files of all personal identifiers as soon as it is determined by the Secretary that those identifiers are no longer necessary for the development of profiles or for the PSRO purposes.

(2) Confidential information generated from computer files and maintained in hard copy shall be destroyed when the PSRO determines that the maintenance of hard copy is no longer necessary to serve the specific purpose for which it was generated.

(3) The rules in paragraphs (g) (1) and (2) of this section do not apply to PSRO information used for other than PSRO purposes, stored in a shared health data system.

(h) *Data system procedures.* The PSRO shall be responsible for assuring that organizations and consultants providing data services to the PSRO have established procedures for maintaining the confidentiality of PSRO information in accordance with requirements defined by the PSRO and consistent with procedures established under this part.

§ 476.12 Public Notice of PSRO information system.

(a) *Notice in newspaper.* Within 90 calendar days after initiating review activities, and periodically thereafter, the PSRO shall publish a notice in a local newspaper of general circulation in the PSRO area specifying:

(1) The title and address of the person responsible for the information system;

(2) The types of information that will be collected and maintained;

(3) The general rules governing disclosure of PSRO information; and

(4) The procedures whereby patients, practitioners, and institutions may obtain access to information about themselves.

(b) *Notice to individuals and institutions under review.* The PSRO shall establish and implement procedures, in accordance with guidelines issued by the Department, to individually notify patients, practitioners, and institutions of the information contained in the public notice required by paragraph (a) of this section.

Subpart C—Disclosure of Nonconfidential Information

§ 476.21 PSRO criteria and procedures

(a) *Disclosure of norms, criteria or standards.* A PSRO shall disclose, upon request, the norms, criteria and standards it uses for initial screening of cases, in the conduct of MCE studies, and for other review activities.

(b) *Disclosure of contractual documents.* (1) Winning applications for grants from the Secretary, and proposals for contracts or subcontracts under those grants, shall be disclosed by the PSRO to any person or organization within 30 calendar days of a request.

(2) Grants made to a PSRO by the Secretary, and contracts or subcontracts between the PSRO and a person or organization, shall be disclosed by the PSRO to any person or organization upon request.

(c) *Disclosure of administrative procedures documents.* Copies of documents describing administrative procedures, including Memoranda of Understanding, agreed to between the PSRO and institutions or between a PSRO and the Medicare intermediary, Medicare carrier, or Medicaid fiscal agent, shall be disclosed by the PSRO to any person or organization upon request.

(d) *Disclosure of routine Federal reports.* Financial information contained in routine reports submitted to the Secretary shall be disclosed upon request to any person.

(e) *Disclosure of records of meetings.* Summaries of the proceedings of all regular and other meetings on the governing body and general membership shall be made available upon request, except for those portions of the summaries involving PSRO deliberations. Those portions are confidential information and are subject to the provisions of Subpart D.

§ 476.22 Public information acquired by the PSRO.

(a) *Required disclosure.* A PSRO shall comply with a request for specific information in its possession, if:

(1) The information had been disclosed to the public prior to the request, by any individual or entity other than the PSRO or its employees, members or directors; and

(2) The disclosure of the information is not prohibited by Federal or State law.

(b) *Optional disclosure.* A PSRO may, on its own initiative, provide the information specified in paragraph (a) of this section to any person whom it determines may have an interest in such information.

§ 476.23 Statistical information.

(a) *Disclosure of routine information.* A PSRO shall disclose statistical information routinely compiled for PSRO use, without charge, if the request reasonably identifies the specific information.

(b) *Disclosure of non-routine information.* A PSRO shall disclose statistical information that is not routinely compiled for PSRO use to federal and State agencies and other parties if the request is in writing and reasonably identifies the specific information desired.

(c) *Optional disclosure of statistical information.* A PSRO may, on its own initiative, provide the information specified in paragraphs (a) and (b) of this section any person whom it determines may have an interest in such information.

§ 476.24 Medical Care Evaluation (MCE) study information without identifiers.

(a) *Study without identifiers.* A PSRO shall disclose to the Secretary and to any interested party, upon request, any Medical Care Evaluation study information, maintained for PSRO purposes, from which the identification of patients, practitioners and institutions has been deleted. The PSRO may disclose this information without request.

(b) *MCE study characteristics.* The PSRO shall disclose information describing the characteristics of a MCE study, including study design and methodology, to persons or organizations requesting the information.

§ 476.25 Medicare provider number.

A PSRO shall use the identification number assigned by the Medicare program on information submitted to the Secretary.

Subpart D—Disclosure of Confidential Information

§ 476.31 Disclosure to patients or their representatives

(a) *Type of information.* A PSRO shall disclose patient identifying information to the identified patient if:

(1) The patient requests the information in writing and

(2) The request includes the designation of a patient representative.

(b) *Manner of disclosure.* (1) The PSRO shall disclose the patient information directly to the patient unless knowledge of the information would be likely to harm the patient.

(2) If knowledge of the information is likely to harm the patient, the PSRO shall disclose the information to the representative of the patient.

(3) If the patient is mentally, physically or legally unable to designate a representative, the PSRO shall disclose the information to a person whom the PSRO determines is related to or responsible for the patient, upon the request of this person.

(4) The PSRO shall make disclosure within 20 calendar days of receipt of a request.

(c) *Verfication and amendment of records.* (1) A PSRO shall verify the accuracy of patient information and shall permit a patient to request amendment of a record pertaining to him.

(2) If the PSRO agrees with the request for amendment, the PSRO shall correct the patient record.

(3) If the PSRO disagrees with the request for amendment, a notation of the request and the reasons for refusal shall be included in the patient record and attached to any disclosure of the record.

§ 476.32 Disclosure to practitioners, reviewers or institutions.

(a) *Disclosure to the identified individual or institutions.* A PSRO shall disclose, to particular practitioners, reviewers and institutions, identifying information about themselves upon request, and may disclose it to them without request.

(b) *Disclosure to others.* (1) A PSRO shall disclose to an institution, upon request, identifying information on a practitioner or reviewer to the extent that the information displays practice or performance patterns of the practitioner or reviewer in that institution.

(2) A PSRO may disclose to any person, agency or organization, identifyng information on a particular practitioner or reviewer with the consent of that practitioner or reviewer.

(c) *Verification and amendment of identifying information.* (1) A PSRO shall verify the accuracy of identifying information concerning practitioners, reviewers, and institutions and shall permit the individual or institution to request an amendment of a record pertaining to the requestee.

(2) If the PSRO agrees with the request for amendment, the PSRO shall correct the pertinent records.

(3) If the PSRO disagrees with the request for amendment, a notation of the request and the reasons for refusal shall be included in the pertinent

record and attached to any disclosure of the record.

§ 476.33 Disclosure necessary to perform review responsibilities.

(a) *Disclosure to conduct review.* The PSRO shall disclose, or arrange for disclosure, of identifying information to individuals and institutions within the review system if necessary to fulfill their particular duties and functions under Title XI, part B of the Act.

(b) *Disclosure to consultants and subcontractors.* The PSRO shall disclose to consultants or subcontractors the identifying information that they need to provide specified services to the PSRO.

(c) *Disclosure to Statewide PSRO Councils.* The PSRO shall disclose to the Council the identifying information the Council requires for appeals (Section 1159 of the Act) and sanctions (Sections 1157 and 1160 of the Act).

(d) *Disclosure to other PSROs.* The PSRO shall disclose, to other PSROs, identifying information on patients and practitioners who are also subject to review by the other PSRO.

§ 476.34 Disclosure to claims payment agencies.

(a) *Required disclosure.* A PSRO shall disclose identify information that relates to, or is necessary for, payment of claims to claims payment agencies for Medicare, Medicaid, Maternal and Child Health and Crippled Children as follows:

(1) The PSRO shall disclose review determinations and claims forms for health care services provided in the manner and form agreed to by the PSRO and the claims payment agency.

(2) The PSRO shall disclose, upon request, copies of medical records acquired from practitioners or institutions for review purposes.

(3) The PSRO shall disclose identifying information about a particular patient or practitioner if:

(i) The request identifies the particular patient or practitioner by name or code number, and

(ii) The PSRO and the claims payer, or the Secretary if the PSRO and the claims payer cannot agree, determine that the information is necessary for the administration of the Medicare, Medicaid, or Maternal and Child Health program.

(4) The PSRO shall disclose, at the request of the claims payer, identifying information aggregated by the PSRO on individual patients and practitioners if:

(i) The information is available from multipurpose data which the claims payer has been authorized by the Secretary to acquire, and

(ii) The information is pertinent to health care services reimbursable by the payer.

(b) *Optional disclosure.* The PSRO is authorized to disclose, without a specific request, identifying information on patients and practitioners to the claims payer if the PSRO or the Secretary determines that the PSRO is the most appropriate source of information and that:

(1) The disclosure is appropriate for monitoring of the PSRO; or

(2) The disclosure is necessary for the administration of a particular Federally-funded program.

(c) *Uniform disclosure in States with two or more PSROs.* In States with two or more PSROs, the Secretary may require all PSROs in the State to provide identifying information in a uniform manner to the agency responsible for the Medicaid or Maternal and Child Health and Crippled Children's programs.

§ 476.35 Disclosure to investigative and prosecutional agencies.

(a) *Required disclosure.* The PSRO shall disclose, upon written request verifying active investigation of a particular practitioner or institution, to governmental agencies recognized by the Secretary as responsible for the identification, investigation and prosecution of cases or patterns of fraud and abuse in the Medicare and Medicaid programs, identifying information, including PSRO medical necessity determinations, that describes or displays incidents or patterns of the practice or performance of a particular practitioner or institution.

(b) *Optional disclusure.* The PSRO may provide the information specified in paragraph (a) of this section without request.

§ 476.36 Disclosure for other specified purposes.

(a) *Disclosure to licensing bodies.* (1) A PRSO shall disclose, upon request, to State or Federal licensing bodies responsible for the professional licensure of a particular practitioner, identifying information, including PSRO medical necessity determinations, that displays the practice or performance patterns of that practitioner.

(2) A PRSO shall disclose, upon request, to State or Federal licensing bodies responsible for the licensure of a particular institution, identifying information, including PSRO medical necessity determinations, that displays or describes the practice or performance patterns of particular practitioners in that institution.

(3) A PRSO may provide the identifying information specified in paragraph (a)(1) and (a)(2) of this section to the State or Federal licensing body without request.

(b) *Disclosure to State and local Public Health officials.* A PSRO shall disclose identifying information to State and local public health officials, whenever the PSRO determines that the disclosure of such information is necessary to protect against an imminent danger to individual or public health.

(c) *Disclosure to the courts.* (1) No patient record in the possession of a PSRO, Council or the National Professional Standards Review Council shall be subject to subpoena or discovery proceedings in a civil action.

(2) No practitioner record in the possession of a PSRO, Council, or the National Professional Standards Review Council shall be subject to subpoena or discovery proceedings in a civil action unless:

(i) It is necessary to the defense of the PSRO, its members or employees, or

(ii) The Secretary determines it is necessary for the prosecution of cases involving fraud or abuse of the Medicare or Medicaid programs.

(3) At the request of the PSRO, members or employees of the PSRO may testify at judicial proceedings involving cases of fraud or abuse.

(d) *Disclosure to Medical Review Boards.* A PSRO shall disclose, upon written request, to Medical Review Boards established under the End Stage Renal Disease (ESRD) program (section 226 of the Social Security Act), identifying information that describes or displays the practice and performance patterns of particular practitioners providing services funded under the ESRD program.

(e) *Disclosure to the General Accounting Office.* A PSRO shall disclose identifying information to representatives of the General Accounting Office only at the PSRO office or at a delegate institution. The General Accounting Office representatives may remove identifying information from the site if it is necessary for conduct of the current investigation.

(f) *Disclosure to researchers or statistical agencies.* A PSRO may disclose identifying information for a governmental or non-governmental health service, biomedical or epidemiological research or statistical project only if:

(1) The PSRO determines that information in identifiable form is necessary to accomplish the research or statistical purpose for which use or disclosure is to be made; and

(2) The researcher agrees in writing:

(i) To use the information solely for the project for which it is provided; and

(ii) Not to redisclose the information in any form permitting direct or indirect identification of an individual.

(g) *Disclosure of PSRO interpretations on the quality of health care.* A PSRO may disclose PSRO interpreta-

tions and generalizations on the quality of health care available or provided, based on confidential information, identifiable to a particular institution to:

(1) The Council in its State;

(2) Federal and State agencies responsible for the administration of the Medicare, Medicaid, Maternal and Child Health, or Crippled Children's programs; or

(3) Governmental agencies responsible for improving the quality or delivery of health care and services.

§ 476.37 Disclosure of PRSO deliberations.

(a) *PSRO deliberations.* A PSRO shall not disclose its deliberations except to:

(1) The Secretary at the PSRO office or at a delegate institution; or

(2) The Secretary and the Statewide PSRO Council, to the extent that the deliberations are incorporated in sanction and appeals reports.

(b) *PSRO decisions.* A PSRO may disclose to those who may have access to PSRO information under other provisions of this part, the reasons for PSRO decisions pertaining to that information provided that the opinions or judgments of a particular individual cannot be discerned.

§ 476.38 Disclosure of MCE study information and sanction reports.

(a) *MCE study information with identifiers of patients, practitioners or institutions.* (1) A PSRO shall disclose MCE study information with identifiers to authorized personnel from the General Accounting Office, or to representatives of authorized accreditation or certification bodies. The disclosure shall be only at the PSRO or at a delegate institution.

(2) A PSRO shall disclose MCE study information with identifiers to an institution or practitioner, if the information is directly related to health care services furnished by the institution or practitioner.

(3) A PSRO may disclose MCE study information with identifiers to all institutions or practitioners involved in a particular MCE study.

(4) A particular institution or group of practitioners may disclose MCE study information if the information relates to health care services they provided.

(5) No MCE study information with identifiers shall be subject to subpoena or discovery proceedings in a civil action.

(b) *MCE study conclusions or summaries.* A PSRO shall, upon request, and may, without a request, disclose its conclusions or summaries, based on confidential information from a particular MCE study, without identifiers to:

(1) The Council in its State;

(2) Federal and State agencies responsible for the administration of the Medicare, Medicaid, Maternal and Child Health, or Crippled Children's programs; and

(3) Other Governmental agencies responsible for improving the quality or delivery of health care and services.

(c) *Sanction reports and Council recommendations on sanctions.* (1) In States with a Council:

(i) The PSRO shall disclose sanction reports to the Council in its State.

(ii) The Council shall disclose the PSRO sanction report and the Council recommendations to the Secretary.

(2) In States without a Council, the PSRO shall disclose sanction reports directly to the Secretary.

(3) The PSRO or the Council shall, upon request, and may without request, disclose sanction reports and Council recomendations to:

(i) State and Federal licensing bodies responsible for the professional licensure of the institution or practitioner;

(ii) State and Federal agencies recognized by the Secretary as responsible for identification, investigation or prosecution of cases of fraud or abuse in the Medicare and Medicaid programs in accordance with § 476.35 and

(iii) Institution and practitioner certification and accreditation bodies recognized by the Secretary.

(4) The Secretary will maintain the confidentiality of sanction reports he receives or records of sanction determinations he makes until he makes a decision to sanction or not to sanction.

(5) The Secretary shall disclose sanctions determinations in accordance with Part 474 of the chapter.

(6) Once the secretary makes a decision, the bodies and agencies described in paragraph (c)(3)(i-iii) of this section may disclose documents relating to that sanction in accordance with the disclosure rules of those bodies and agencies.

§ 476.39 PSRO involvement in shared health data systems.

(a) *Information collected by a PSRO.* Except as prohibited in paragraph (b) of this section, identifying information collected by a PSRO may be processed and stored by a cooperative health statistics system established under Section 306(c)(1), of the Public Health Service Act (42 U.S.C. 242k), or other State or Federally authorized shared data system.

(b) *PSRO participation.* A PSRO may not participate in a Cooperative Health Statistics System or other shared health data system if the disclosure rules of the system would prevent the PSRO from complying with the rules of this part.

(c) *Disclosure of PSRO information obtained by a shared health data system.* Identifying information specified in paragraph (a) of this section shall not be disclosed by the shared health data system unless:

(1) The source from which the PSRO acquired the information consents to or requests disclosure, or

(2) The PSRO requests the disclosure of the information to carry out a disclosure permitted under a particular provision of this part.

(Secs. 1102, 1152(d)(2), 1155(a)(4), 1155(b)(3), 1155(f)(1)(B), 1162(c)(2), 1165, and 1166 of the Social Security Act (42 U.S.C. 1302, 1320C-1, 4, 11, 14, and 15).)

(Catalog of Federal Domestic Assistance Program Nos. 13.714 Medical Assistance Program; 13.773 Medicare—Hospital Insurance; 13.774 Medicare—Supplementary Medical Insurance.)

Dated: October 31, 1978.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

Approved: January 2, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 79-1295 Filed 1-12-79; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-02-M]

UNITED STATES DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

HOP MARKETING ADVISORY BOARD

Renewal

Notice is hereby given that the Hop Marketing Advisory Board is being renewed for an additional period of 2 years under provisions of the Federal Advisory Committee Act [86 Stat. 770].

The purpose of the Board is to advise the Hop Administrative Committee under Federal Marketing Order No. 991 concerning marketing policy and other operational matters as the Committee requests.

This Board represents handlers of hops. Representation for most is based on the quantities of hops handlers; and one representative is for extractors.

Information about this Board may be obtained from Mr. Allan E. Henry, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Boise Cascade Building, Suite 805, 1600 S.W. Fourth Avenue, Portland, Oregon 97201. Telephone: 503-221-2724.

Authority for this Board will expire 1/8/81 unless it is determined that continuance is in the public interest.

This notice is given in compliance with Pub. L. 92-463.

Dated: January 9, 1979.

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

[FR Doc. 79-1286 Filed 1-12-79; 8:45 am]

[3410-16-M]

Soil Conservation Service

MOUNT HOPE WATERSHED, KANSAS

Intent to Not File an Environmental Impact Statement for Deauthorization of Funding of the Mount Hope Watershed

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for deauthorization of funding of the Mount Hope Watershed, Reno and Sedgwick Counties, Kansas.

The environmental assessment of this federally-assisted action indicates that project deauthorization will not cause significant local, regional, or national impacts on the human environment. As a result of these findings, Mr. Robert K. Griffin, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this deauthorization.

Project deauthorization involves not constructing any of the planned four floodwater retarding dams or 6.53 miles of channel work. Woodland amounting to nine acres will not be removed due to the project. Four thousand eight hundred and seventy acres of flood plain will continue to flood. Estimated project costs would have exceeded benefits.

Approximately 78 percent of the watershed is adequately treated. Remaining land treatment will be installed under the going program.

The basic data developed during the environmental assessment is on file and may be reviewed by interested parties at the Soil Conservation Service, 760 South Broadway, Salina, Kansas 67401, 913-825-9535. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. Copies of the Environmental impact appraisal are available upon request.

No administrative action on implementation of the proposal will be taken until March 16, 1979.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Pub. L. 83-566, 16 USC 1001-1008.)

Dated: January 5, 1979.

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service, U.S. Department of Agriculture.

[FR Doc. 79-1281 Filed 1-12-79; 8:45 am]

[3510-13-M]

DEPARTMENT OF COMMERCE

National Bureau of Standards

[COMM REQ 294 & 315]

SIMPLIFIED PRACTICE RECOMMENDATION ACTION OF WITHDRAWAL

In accordance with § 10.12 of the Department's "Procedures for the Development of Voluntary Product Standards" (15 CFR Part 10), notice is hereby given of the withdrawal of Simplified Practice Recommendation R 3-60, "Metal Lath (Expanded and Sheet) and Metal Plastering Accessories."

It has been determined that this standard is technically inadequate and that revision would serve no useful purpose because the subject matter of R 3-60 is adequately covered by the American Society for Testing and Materials' standard ASTM C 847-77, "Standard Specification for Metal Lath" and the American National Standard Institute's standard ANSI A42.4-1967, "Specifications for Interior Lathing and Furring." This action is taken in furtherance of the Department's announced intentions as set forth in the public notice appearing in the FEDERAL REGISTER of December 1, 1978 (43 FR 56255), to withdraw this standard.

The effective date for the withdrawal of this standard will be on March 16, 1979. This withdrawal action terminates the authority to refer to this standard as a voluntary standard developed under the Department of Commerce procedures.

Dated: January 9, 1979.

ERNEST AMBLER,
Director.

[FR Doc. 79-1280 Filed 1-12-79; 8:45 am]

[3510-13-M]

[COMM REQ 294 and 315]

VOLUNTARY PRODUCT STANDARD ACTION OF WITHDRAWAL

In accordance with § 10.12 of the Department's "Procedures for the Development of Voluntary Product Standards" (15 CFR Part 10), notice is hereby given of the withdrawal of Voluntary Product Standard PS 16-69,

"Types and sizes of forms for One-Way Concrete Joist Construction."

This withdrawl action is being taken for the reason that PS 16-69 is adequately covered by the American National Standards Institute standard ANSI A48.1-1978, "Types and Sizes of Forms for One-Way Concrete Joist Construction," and duplication is inappropriate and not in the public interest. This action is taken in furtherance of the Department's announced intentions as set forth in the public notice appearing in the FEDERAL REGISTER of November 29, 1978 (43 FR 55812) to withdraw this standard.

The effective date for the withdrawal of this standard will be on March 16, 1979. This withdrawal action terminates the authority to refer to this standard as a voluntary standard developed under the Department of Commerce procedures.

Dated: January 9, 1979.

ERNEST AMBLER,
Director.

[FR Doc. 79-1279 Filed 1-12-79; 8:45 am]

[3510-04-M]

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents & Trademarks, Washington, D.C. 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications can be purchased from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $4.00 ($8.00 outside North American Continent). Requests for copies of patent applications must include the Patent-Application number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF COMMERCE, National Technical Information Service Office of Gov't. Inventions & Patents, Springfield, Va. 22161.

Patent application 950,943: Improved Method and Apparatus for Detecting Clear Air Turbulences; filed Oct. 13, 1978.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, 1900 Half Street, SW, Washington, D.C. 20324.

Patent Application 921,140: Electronic Tripod Technique; filed June 30, 1978.

Patent 4,090,446: Controlled Depth of Burial Penetrator; filed Feb. 2, 1977; patented May 23, 1979; not available NTIS.

Patent 4,091,279: Method and Means for Equalizing the Sensitivity of a Multi-Element Sensor Array; filed Mar. 23, 1976; patented May 23, 1978; not available NTIS.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217.

Patent application 882,285: Passive Optical Rangefinder-Sextant; filed Feb. 28, 1978.

Patent Application 908,185: Scanner; filed May 22, 1978.

Patent Application 922,401: Dual Pyroelectric Vidicon Infrared Camera; filed July 6, 1978.

Patent 4,053,867: Acoustic Hologram Reconstructor Using Surface Acoustic Wave Devices; filed Dec. 22, 1975; patented Oct. 11, 1977; not available NTIS.

Patent 4,077,326: Impulse Compensated Continuous Rod Warhead; filed Mar. 19, 1970; patented Mar. 7, 1978; not available NTIS.

Patent 4,090,449: Method for Synchronizing Point Detonating Arming with Controlled Variable Time Detonating Arming in Military Fuzes; filed Jan. 19, 1970; patented May 23, 1978; not available NTIS.

[FR Doc. 79-1283 Filed 1-12-79; 8:45 am]

[3510-11-M]

United States Travel Service

TRAVEL ADVISORY BOARD

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel Advisory Board of the U.S. Department of Commerce will meet on February 27, 1979, at 9 a.m., in Room 4833 of the Main Commerce Building, 14th & Constitution Avenue, N.W., Washington, D.C. 20230.

Established in July, 1968, the Travel Advisory Board consists of senior representatives of 15 U.S. travel industry segments who are appointed by the Secretary of Commerce.

Members advise the Secretary of Commerce and Assistant Secretary of Commerce for Tourism on policies and programs designed to accomplish the purpose of the International Travel Act of 1961, as amended, and the Act of July 19, 1940, as amended. A detailed agenda for the meeting will be published in the FEDERAL REGISTER in advance of the meeting.

A limited number of seats will be available to observers from the public and the press. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Sue Barbour, Travel Advisory Board Liaison Officer, the United States Travel Service, Room 1860, U.S. Department of Commerce, Washington, D.C. 20230 (telephone 202-377-4752), will respond to public requests for information about the meeting.

FABIAN CHAVEZ, JR.,
Assistant Secretary for Tourism, U.S. Department of Commerce.

[FR Doc. 79-1320 Filed 1-12-79; 8:45 am]

[6355-01-M]

CONSUMER PRODUCT SAFETY COMMISSION

GEORGE GOTTESMAN

Provisional Acceptance of Consent Agreement

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of Consent Agreement.

SUMMARY: The Commission has provisionally accepted a consent agreement containing a cease and desist order offered by George Gottesman, doing business as Paramount Bedding Company, Portland, Oregon 97201, in which he agrees to conduct prototype and production flammability testing of his mattresses, to establish production units and randomly select mattresses therefrom for testing, and to maintain records as required by the Flammable Fabrics Act and regulations. If finally accepted, this consent agreement will settle allegations of the Commission staff that Gottesman has violated provisions of the Flammable Fabrics Act.

DATE: Written comments on the provisionally accepted consent agreement must be received by the Commission by January 30, 1979.

ADDRESSES: Written comments should be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Copies of the agreement may be seen in, or obtained from, the Office of the Secretary, Consumer Product

Safety Commission, 3d Floor, 1111 18th Street NW., Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT:

George E. Hill, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. Phone 301-492-6632.

Dated: January 10, 1979.

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

[FR Doc. 79-1292 Filed 1-12-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM79-3]

NATURAL GAS POLICY ACT OF 1978

Receipt of Report of Determination Process

JANUARY 10, 1979.

Pursuant to section 18 CFR 174.105 of the Federal Energy Regulatory Commission's Regulations, a jurisdictional agency may file a report with the Commission, describing the method by which such agency will made certain determinations in accordance with sections 102, 103, 107, and 108 of the Natural Gas Policy Act of 1978.

Reports in conformance with 18 CFR 274.105 have been received by the Commission from the following jurisdictional agencies:

Agency and Date

State of New Mexico Energy and Minerals Department, Oil Conservation Division, November 29, 1978.
State of Louisiana Department of Conservation, November 29, 1978.
Railroad Commission of Texas, November 30, 1978.
West Virginia Department of Mines, Oil and Gas Division, November 30, 1978.
Alabama State Oil and Gas Board, November 30, 1978.
State Oil and Gas Board of Mississippi, November 30, 1978.
Kansas State Corporation Commission Conservation Division, November 30, 1978.
State of Michigan, Department of Natural Resources; Geological Survey Division, December 1, 1978.
State of California Department of Conservation Division of Oil and Gas, December 4, 1978.
Commonwealth of Virginia, Department of Labor and Industry, Division of Mines and Quarries, December 4, 1978.
State of Wyoming Office of Oil and Gas Conservation Commission, December 4, 1978.
State of Colorado Department of Natural Resources, December 5, 1978.
State of Ohio Department of Natural Resources Division of Oil and Gas, December 6, 1978.
State of Arizona, Oil and Gas Conservation Commission, December 14, 1978.
State of Nebraska Oil and Gas Conservation Commission, December 15, 1978.
State of Tennessee, Oil and Gas Board, December 19, 1978.
State of Indiana Department of Natural Resources, December 26, 1978.
State of Pennsylvania, Department of Environmental Resources, Division of Oil and Gas, December 26, 1978.
State of North Dakota, Geological Survey, January 4, 1979.

Copies of these reports are available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

KENNETH F. PLUM,
Secretary.

[FR Doc. 79-1326 Filed 1-12-79; 8:45]

[6450-01-M]

NATURAL GAS POLICY ACT OF 1978

Determination by a Jurisdictional Agency

JANUARY 10, 1979.

On January 8, 1979, the Federal Energy Regulatory Commission received notice from The State Oil and Gas Board of Mississippi of a determination pursuant to 18 CFR 274.104(a) and Section 102 of the Natural Gas Policy Act of 1978 applicable to:

API Well Number: 23-063-20226, Operator: Victor P. Smith Drilling, Inc., Well Name: Wood Well No. 2, Field: West Rodney Field, County: Jefferson County, Purchaser: Locust Ridge Gas Company, Volume: 434 MCFD.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before January 30, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-1327 Filed 1-12-79; 8:45 am]

[6450-01-M]

Federal Energy Regulatory Commission

[Docket No. RP72-142, RP76-135 and RP78-76]

CITIES SERVICE GAS CO.

Proposed Changes in FERC Gas Tariff

JANUARY 4, 1979.

Take notice that Cities Service Gas Company (Cities Service) on December 22, 1978, tendered for filing Revised Third Revised Sheet No. 6 to its FERC Gas Tariff, Original Volume No. 1. Cities Service states that pursuant to the Purchased Gas Adjustment in Article 21 of its FERC Gas Tariff, it proposes to increase its rates effective January 23, 1979, to reflect:

(1) An increase in the Cumulative Rate Adjustment due to increases in Cities Service's natural gas supplier rates, including increased rates attributable to the Natural Gas Policy Act of 1978 (NGPA);

(2) An increased Surcharge Adjustment to amortize the Deferred Purchased Cost Account balance and to pass through estimated increases in purchased gas costs directly attributable to the NGPA and for the period December 1, 1978 through January 22, 1979;

(3) A negative Advance Payment Rate Adjustment of 0.91¢ per Mcf;

(4) An increase in the GRI funding unit to 0.35¢ per Mcf.

Cities Service states that copies of its filing were served on all jurisdictional customers, interested state commissions and all parties to the proceedings in Docket Nos. RP72-142 and RP76-135.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 or 1.10 of the Commission's Rules of Practice and Procedure (18 C.F.R. 1.8 or 1.10). All such petitions or protests should be filed on or before January 19, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-1328 Filed 1-12-79; 8:45 am]

[6450-01-M]

[Project No. 553]

CITY OF SEATTLE, WASHINGTON

Application for New Major License

JANUARY 8, 1979.

Take notice that on September 29, 1977, an application for a new major license was filed by the City of Seattle, Washington, for the Skagit River Project No. 553. The original license for the project expired on October 28, 1977. The project is located on the Skagit River in Snohomish, Skagit, and Whatcom Counties, Washington, near the towns of Diablo, Newhalem, Marblemount, and Rockport, Washington, and the province of British Columbia, Canada. The project affects lands of the United States within the Ross Lake National Recreation Area, North Cascades National Park, and the Mount Baker National Forest. Correspondence regarding the application should be sent to: Mr. Gordon F. Vickery, Department of Lighting, City of Seattle, 1015 Third Avenue, Seattle, Washington 98104.

According to the application, the Skagit River Project No. 553, with an installed capacity of 789,700 kW, principally consists of three developments:

(A) Gorge Dam, consists of: (1) a 300-foot high concrete arch and gravity section dam constructed to elevation 880 feet above sea level with a gravity spillway section; (2) a reservoir having a gross storage capacity of 8,500 acre-feet at normal surface elevation 875 feet; (3) a new intake structure; (4) a power tunnel about 2 miles long, leading to three penstocks; (5) a surge tank; (6) a powerhouse containing two 24,000 kW, one 29,700 kW, and one 60,000 kW, generating units; (7) a switching station; and (8) appurtenant facilities.

(B) Diablo, located immediately upstream of Gorge Reservor, consists of: (1) a concrete arch dam, 389 feet high with a spillway section at each end of the dam surmounted by tainter gates; (2) a 4-mile long reservoir with a useable capacity of 60,000 acre-feet and a gross capacity of 90,000 acre-feet at a spillway elevation of 1,200 feet; (3) an intake structure; (4) a concrete lined power tunnel about 2,200 feet long, and two steel penstocks, extending from the dam to the powerhouse; (5) a surge tank; (6) a powerhouse containing two 60,000 kW generating units; (7) a transmission line extending from the powerhouse to the Gorge plant; (8) the Diablo transmission line; and (9) appurtenant facilities.

(C) Ross, located immediately upstream of Diablo Reservoir, consists of: (1) a concrete arch dam about 425 feet high impounding a 500,000 acre-foot capacity reservoir at normal full pool elevation of 1,500 feet. The Applicant has received approval from the Commission to redevelop Ross Dam so that this development would consist of: (1) a concrete arch dam about 661 feet high known as High Ross Dam, to be constructed to elevation of 1,704.5 feet; (2) a reservoir having a gross capacity of 3,456,000 acre-feet and a useable capacity of 1,052,000 acre-feet, at a normal full pool elevation of 1,725 feet; (3) control gates in the spillway sections; (4) two power tunnels extending downstream from the intake works to a power plant; (5) a powerhouse containing four 133,000 kW generating units; (6) a 230-kV double circuit transmission line extending from the Ross power plant to Bothell Substation; (7) a transmission line extending from the Ross plant to the Diablo plant; and (8) appurtenant facilities.

The Applicant maintains recreational facilities within the project boundary consisting of 27 picnic tables, 358 individual camping sites, 5 boat launch lanes, and 80 miles of trail within two miles of the project boundary. The Applicant proposes the development of 12 boat-in campgrounds at Diablo Lake, which would include: (1) permanent docks, tent sites, sealed vault toilets, picnic tables and fireplaces; (2) marina facilities at Thunder Arm, comprising 4 permanent docks and a dredged access; (3) an access road from State Route 20 to the Diablo Dam; and (4) the Gorge Creek Overlook, comprising parking areas, pedestrian bridges, trails and viewing points.

The Applicant uses the energy developed by the project to serve the needs of its customers located in and near the City of Seattle, Washington.

A separate proceeding (designated Docket No. EL78-36) is being conducted to address the issue of the effect of the project's flow regime on the Skagit River's fishery resources. Public notice of that proceeding was issued on September 7, 1978.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before March 9, 1979. The Commission's address is: 825 N. Capitol Street, N.E., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-1329 Filed 1-12-79; 8:45 am]

[6450-01-M]

[Docket No. CP75-233]

CONSOLIDATED GAS SUPPLY CORP. AND TEXAS GAS TRANSMISSION CORP.

Petition To Amend

JANUARY 3, 1979.

Take notice that on December 18, 1978, Consolidated Gas Supply Corporation (CGS), 445 West Main Street, Clarksburg, West Virginia 26301, and Texas Gas Transmission Corporation (TGT), 3800 Frederica Street, Owensboro, Kentucky 42301 (Petitioners) filed in Docket No. CP75-233 a petition to amend the order of the FPC issued in the instant docket on July 2, 1975, pursuant to Section 7(c) of the Natural Gas Act to add an additional point of exchange between Petitioners, all as more fully set forth in the petition on file with the Commission and open to public inspection.[1]

Petitioners state that they agreed on November 20, 1978, to add a point of exchange between them so as to permit either party to deliver volumes of natural gas to others at the interconnection of the system of CGS with the facilities of Columbia Gulf Transmission Company and TGT in Acadia Parish, Louisiana. Accordingly, Petitioners request that the order issued in the instant docket on July 2, 1975, be amended to reflect this change. It is indicated that the additional exchange point would assist Petitioners in fulfilling their system obligations and would provide added flexibility of operation and continuity of service.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 23, 1979, 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

[1] This proceeding was commenced before the FPC. By joint regulation on October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-1330 Filed 1-12-79; 8:45 am]

[6450-01-M]

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND DENYING REQUESTS FOR LIMITED TERM CERTIFICATES AND GRANTING PETITION TO INTERVENE

JANUARY 2, 1979.

In the matter of Delhi Gas Pipeline Corporation (CP77-523), Northern Natural Gas Company (CP77-649), Panhandle Eastern Pipe Line Company (CP77-652), Columbia Gas Transmission Corporation and Columbia Gulf Transmission Corporation (CP77-657), Northern Natural Gas Company (CP78-480), Panhandle Eastern Pipe Line Company and Trunkline Gas Company (CP78-511),

On July 25, 1977, Delhi Gas Pipeline Corporation (Delhi) filed in Docket No. CP77-523 an application for a limited-term certificate with pre-granted abandonment pursuant to Section 2.70 of the Commission's [1] Regulations under the Natural Gas Act (18 CFR 2.70). In this application Delhi proposes to sell to Columbia Gas Transmission Corporation (Columbia Gas) up to 60,000 Mcf of gas per day at a rate of $2.25 per MMBtu for all sales made on and subsequent to November 1, 1978 (pre-November 1, 1978, rates were set at $2.21 per MMBtu under Columbia Gas' purchase gas contract with Delhi). Under the terms of Delhi's gas purchase contract with Columbia Gas this limited-term sale will terminate on November 1, 1979.

Delhi asserts in its application that Columbia Gas has advised that it requires these limited-term volumes to offset the gas supply shortage on its system which will prevent it from meeting a substantial part of its firm requirements. Delhi stresses that Columbia Gas' projected curtailment for the period of this limited-term purchase demonstrates that it needs these additional volumes in order to provide reliable and adequate service for its high priority customers and for the purpose of making adequate injection volumes available for its extensive storage system.

Delhi also asserts in its application that the natural gas it proposes to sell to Columbia Gas is available as a result of certain of its recent gas purchase agreements, because the natural gas deliverable under these agreements has not as yet been dedicated to any of its intrastate customers. Delhi further states that it is anticipated that it will dedicate the gas it currently desires to sell to Columbia Gas under a limited-term certificate to one of its intrastate customers by November 1, 1979, or shortly thereafter. Delhi notes that it has heretofore made sales of such undedicated gas in both the interstate and intrastate markets.

Delhi further notes that the price of $2.25 per MMBtu is based on an average replacement cost of gas of $2.05 per MMBtu [2] plus twenty cents per MMBtu that Delhi charges for gathering, treating, compressing and for return on its facilities. Further, as of November 1, 1978, Delhi has the right to have the price redetermined to equal the average of the highest price being paid by Delhi to a producer for gas in the West Texas Area or Gulf Coast Area. [3]

The point of delivery for this limited term sale will be at the existing interconnection of Delhi's facilities and Northern Natural Gas Company's (Northern) facilities located in Section 57 Block OW, H & GN Survey, Pecos County, Texas. The limited term volumes will be delivered at this point by Delhi to Northern for the account of Columbia Gas. No additional facilities will have to be constructed by Delhi or Northern to effectuate the delivery of the gas at this point.

Delhi notes in its application that its sales of natural gas are restricted to intrastate operations and except for the deliveries that it may make as a result of its application in this proceeding, pursuant to Section 2.70, its operations will be wholly intrastate in nature. It, therefore, requests that certain conditions be incorporated into any limited-term certificate issued to it by the Commission pursuant to its request in Docket No. CP77-523. Delhi expressly requests that the Commission waive its accounting and reporting requirements and that the non-jurisdictional status of its independent producers and other suppliers as well as its own facilities and operations remain unaffected during the term of any limited-term certificate issued to it herein. It further requests that the limited-term certificate be made subject to the rates as noted herein or the higher rates that may be redetermined effective November 1, 1978, in accordance with Delhi's contract with Columbia Gas.

Our decision herein to deny Delhi's certificate application on the merits is based on an application of the three-part test spelled out in Opinion No. 699-B [4] to the facts in this case. [5] Briefly, the three criteria employed in considering applications for limited-term certificates are: (1) is the price to be charged reasonable (is it the lowest price at which the gas can be obtained for the interstate market); (2) does the purchasing interstate pipeline need the gas; and (3) is the gas available only for the limited period for which certification is sought. All three of these criteria must be met before a limited-term certificate can be issued. Because the third criterion has not in our view been satisfied, we will deny Delhi's request for a limited-term certificate. [6] We are also of the belief that a strong showing has not been made as to the emergency situation underlying the need for these specific volumes, i.e., 60,000 Mcf per day until November 1979 on behalf of Columbia Gas. We shall discuss the price criterion herein in the context of Section 2.70 even though there is no need to render a determination with respect to Delhi's application on the basis of price.

Delhi's proposed pre and post November 1, 1978, prices of $2.01 and $2.05 per MMBtu (excluding transportation) are within the highest range of intrastate prices published by the FPC at the time the contract was executed (July 19, 1977). Prices for the first quarter of 1977, reflecting the average of the highest prices for the Texas Gulf Coast and West Texas area were 225.75 cents per Mcf and were published on May 17, 1977. [7] Hence, there

[1] This proceeding was commenced before the Federal Power Commission (FPC). The term "Commission" when used with respect to action taken prior to October 1, 1977, refers to the FPC; when used otherwise, it refers to the FERC.

[2] This price was computed on the basis of an average replacement cost of $2.045 in the West Texas Area and $2.10 in the Gulf Coast Area of Texas.

[3] West Texas Area takes in Texas Railroad Districts 7-C and 8 and the Gulf Coast Area takes in Texas Railroad Districts 2, 3 and 4.

[4] Opinion No. 699-B Just and Reasonable Rates for Sales of Natural Gas From Wells Commenced On or After January 1, 1973, and New Dedications of Natural Gas to Interstate Commerce on or After January 1, 1973, — FPC —, Docket No. R-389-B, issued September 9, 1974.

[5] Without determining whether Delhi is an "intrastate pipeline" as defined by Section 2(16) of the Natural Gas Policy Act of 1978 (NGPA), we note that while *sales* by intrastate pipelines will eventually come within the purview of Section 311(b) of the NGPA, implementing regulations therefore are not yet in effect. In the interim, as we have previously determined (see "Interim Regulations Implementing the Natural Gas Policy Act of 1978", Docket No. RM79-3, issued December 1, 1978, mimeo pp. 141-42), sales of the type proposed here will be governed under the emergency program established under the Natural Gas Act, which includes Section 2.70 of the Regulations.

[6] See, generally, Harkins Co., *et al.*, Docket Nos. CI77-721, *et al.*, order issued December 2, 1977, denying limited term certification under Section 2.70 to a producer, and order denying rehearing, issued February 21, 1978.

[7] See Commission Staff Report on Intrastate Natural Gas Prices of FPC Jurisdictional Natural Gas Companies selling more than one million Mcf per year in Interstate

Footnotes continued on next page

is no doubt that the aforementioned prices fall within the *highest* range of intrastate prices published by the FPC. However, of equal or even greater significance is the existence in Delhi's gas purchase contract of a provision which calls for an indefinite rate redetermination as of November 1, 1978. As of the latter date, Delhi has the right to have the price redetermined to equal the average of the highest price being paid by Delhi for gas to a producer located in the West Texas or Gulf Coast Areas. In the event a redetermination provided for under the contract is made the price payable to Delhi would be such redetermined price.

One of the three criteria that must be established under the Opinion No. 699-B doctrine is whether the price is reasonable, i.e., the lowest price at which the gas can be obtained for the interstate market. Redetermination provisions of this nature might contravene the pricing criterion that must be satisfied in order to meet the requisites set forth in Opinion 699-B. The existence of this type of a provision, contrary to assuring that the gas supply made available to the interstate market is at the lowest reasonable price, continually upgrades the price of the gas so that the interstate purchaser is required to match the highest prices at which gas is being sold. This provision applies even though contracts upon which the redetermined price is predicated antedate this particular contract by several years.

We need not make any determination on this price issue, however, because it is our opinion that Delhi failed in its application to satisfy the third criterion that must be met in order to qualify for a limited-term certificate under Opinion 699-B. It must be established that the gas supply will be available for the limited period of time that it is being made available to the interstate market. The rationale underlying the limited availability criterion is that suppliers of gas should not commit their supplies to the interstate market on a short-term basis for the purpose of being in a position to subsequently resell their gas again at higher prices.

The availability of this gas clearly appears to be the outgrowth of Delhi's intrastate customers inability to absorb such volumes. The requested term of the proposed sale (November 1, 1977 to November 1, 1979) has not been shown to be related to the specific needs of Delhi's markets.

It is evidently anticipated that this gas will eventually be purchased by Delhi's own customers. However, no showing has been made disclosing the existence of a specific market for this gas at the conclusion of the term of the instant purchase gas contract. Hence, Delhi has failed to show that the requirement of limited-term availability can be satisfied.[8]

We have reviewed Delhi's proposed sale to Columbia Gas in the context of Section 2.70 and the standards prescribed thereunder in Opinion No. 699-B, and have determined that the proposed sale cannot be approved under the Section 2.70. We shall therefore also deny those portions of other applications being considered herein that only appertain to the implementation of the Delhi's request for authorization to make a limited-term sale in Docket No. CP77-523.[9]

Northern and Columbia Gas/Gulf in Docket Nos. CP77-649 and CP77-657 respectively, also contemplate an exchange arrangement that will enable Northern to obtain certain volumes of its offshore Louisiana gas without the implementation of the exchange of the volumes purchased by Columbia Gas from Delhi and delivered by the latter company in Pecos County, Texas, as requested in Docket No. CP77-523. Under this alternative arrangement, Columbia Gulf will receive for Columbia Gas' account Northern's gas available at Erath, Louisiana, and Columbia Gas will cause Columbia Gulf to deliver equivalent volumes to Trunkline for Northern's Account at a point of interconnection constructed by Northern between the facilities of Columbia Gulf and Trunkline near Egan, Louisiana. The aforementioned exchange between Columbia Gas/Gulf and Northern is on a gas for gas basis and no monetary consideration is involved in the exchange agreement.

Panhandle and Trunkline Gas Company (Panhandle/Trunkline) in their joint application in Docket No. CP78-511 request permission to transport this gas for Northern's Account from the Egan point of interconnection to Trunkline's mainline compressor station at Longview, Louisiana. This gas will enter Trunkline's mainline at that point and be transported by Trunkline to the point of interconnection between the facilities of Panhandle and Trunkline in Douglas County, Illinois. Panhandle is to redeliver this gas to Northern at the point of interconnection between their respective facilities in Kiowa County, Kansas.

Trunkline's facilities extending eastward from its mainline compressor station at Longville in addition to being interconnected with the facilities of Columbia Gulf at Egan, Louisiana, are also interconnected with the facilities of Tennessee Gas Pipeline Company (Tennessee) in Jefferson Davis Parish, Louisiana (Kinder) and the facilities of Columbia Gulf in Saint Mary's Parish, Louisiana (Centerville). Authorization has been issued or is pending to permit the delivery of offshore natural gas to Trunkline; for the account of Northern at these receipt points on Trunkline's facilities.[10]

Panhandle/Trunkline in Docket Nos. CP78-511 seek authorization to transport the gas that Trunkline receives at the latter three delivery points for the account of Northern to its Longville Compressor Station. Panhandle/Trunkline have been authorized by the Commission to deliver offshore gas for Northern's account under an arrangement which contemplates the transportation of such volumes by Trunkline from Longville to the point of interconnection with Panhandle's facilities in Douglas County, Illinois, and the redelivery of equivalent volumes by Panhandle to Northern at the point of interconnection of their respective facilities in Kiowa County, Kansas.[11] Panhandle/Trunk-

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Commerce. Prices for the second quarter of 1977, reflecting the average of the highest prices for the Texas Gulf Coast and West Texas Areas, were $2.10 per Mcf and were published on August 25, 1977.

[8] In addition, Columbia Gas has not fully demonstrated that its system is currently confronted with an emergency of sufficient magnitude to warrant the utilization of Section 2.70.

[9] The 60,000 Mcf per day sold to Columbia Gas by Delhi would be delivered to Columbia Gas by a series of transportation and exchanges for which authorization is requested herein by Northern in Docket No. CP77-649, Panhandle Eastern Pipe Line Company (Panhandle) in Docket No. CP77-652 and Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia Gas/Gulf) in Docket No. CP77-657. The 60,000 Mcf per day to be delivered by Delhi to Northern in Pecos County, Texas, could be redelivered to Columbia Gas under two separate but related methods: (a) direct transportation of up to 28,000 Mcf per day by Northern to Panhandle at Mullinville, Kansas, and redelivery of such volumes by Panhandle to Columbia Gas at Lucas, Ohio, and (b) an exchange of up to 32,000 Mcf per day in which Northern would cause delivery of equivalent volumes of off-shore gas to Columbia Gulf for the account of Columbia Gas at Erath and Egan, Louisiana. To the extent that Northern makes offshore gas available in excess of 32,000 Mcf per day, redeliveries to Panhandle would be correspondingly reduced. Panhandle's application in Docket No. CP77-652 shall be denied in its entirety due to the fact that it relates *solely* to the transportation of volumes involved in the proposed limited-term sale by Delhi to Columbia Gas for which Delhi has requested authorization in Docket No. CP77-523 and which request we will deny herein.

[10] See related petitions to amend involving Columbia Gulf and Tennessee respectively in Docket Nos. CP68-245 (presently pending), and CP77-21 in which a permanent certificate was issued on October 12, 1978.

[11] See order issued in *Trunkline Gas Company, and Panhandle Eastern Pipeline Company, et al.*, in Docket Nos. CP77-11, *et al.*, issued on August 29, 1977, as amended, by an order Granting Rehearing in *Trunkline Gas Company and Panhandle Eastern Pipeline Company* in Docket No. CP77-17 issued on October 28, 1977.

line in their application in Docket No. CP78-511 seek authorization to transport up to a maximum of 15,000 Mcf/day of Northern's offshore gas from the above noted three points of receipt on the facilities of Trunkline in southern Louisiana to its Longville compressor station in that state. Under an agreement dated June 19, 1978, between these pipelines volumes of up to 15,000 Mcf/day were to be transported between the latter receipt points and Longville for a period of five years from the date of first delivery. This agreement also afforded Northern the option of reducing this volume by 50 percent during the 6th and subsequent years in which gas continues to flow thereunder. Northern also agreed therein to sell to Panhandle up to 20 percent of such volumes.

Northern will pay Panhandle/Trunkline a monthly charge of $19,080 subject to adjustment based on firm transportation for Northern of 12,000 Mcf per day between the Egan and Kinder points of receipt and Trunkline's Longville Compressor Station. An upward or downward adjustment of 5.22¢ per Mcf will be applied to any deficiency or excess in quantities taken. The rates are derived from Trunkline's transmission system unit cost of service per 100 miles as proposed in Docket No. RP78-11. The latter per 100 miles cost is used to determine the cost on a per miles basis of the transportation between the Kinder and Egan receipt points and Longville in which only Trunkline facilities are invloved.[12]

In view of the fact that Trunkline's facilities between Centerville and Kinder are operating at full capacity, it must utilize the capacity available to it in a pipeline owned by Tennessee (Tennessee's Muskrat Line) that also extends from Centerville to Trunkline's Kinder compressor station in order to deliver these additional volumes to Longville. Trunkline, of course, will be required to pay Tennessee the increased charges stemming from this additional flow-through. It has been agreed that these charges shall consist of the additional commodity charges attributable to each additional Mcf of gas as required under Tennessee's currently effective tariff filed in Docket No. RP77-62 that Trunkline must pay for additional deliveries from its Kinder and Egan receipt points under this arrangement.[13] This charge represents the actual increased cost that will be incurred by Trunkline as a result of the flow of these volumes. Trunkline will only charge Northern this amount since the gas received at the Kinder and Egan receipt points is not transported the full distance from Centerville.[14] These charges are subject to increase or decrease depending upon rate changes resulting from rate proceedings invloving the various pipelines which are involved in this transportation. The monthly charges herein are geared to and should be modified to be made consistent with the final determinations in the pending Tennessee rate proceeding in Docket No. RP77-62 (Revised).

As partial consideration for the above-described transportation of this gas for Northern's account by Panhandle and Trunkline, Northern has agreed to sell Panhandle up to 20 percent of the volume received by Trunkline at the above-noted delivery poins. In consideration for the transportation of this 20 percent of the Northern gas that it can purchase under the June 19, 1978, agreement, Panhandle will pay Trunkline a monthly charge of $20,280 based on a firm transportation quantity of 3,000 Mcf/day during the five year period after the date of first delivery. In the sixth and subsequent years of the arrangement Panhandle shall have the option to reduce its volumes to not less than 50 percent of the initial volumes, and upward and downward adjustments of 22.21¢/Mcf will be applied to any deviation from said 3,000 Mcf/d in the quantities taken. The proposed charges cover the transportation of 3,000 Mcf from the point of receipt all the way to Douglas County, Illinois.[15]

The June 19, 1978, transportation agreement between Panhandle, Trunkline and Northern provides for the transportation of certain of Northern's offshore production and for the sale of 20 percent of such production to Panhandle.[16] Northern in its application filed in Docket No. CP78-480 requests that the Commission issue it a certificate of public convenience and necessity under Section 7 of the Natural Gas Act authorizing it to sell 20 percent of its East Cameron Block 335 and South Marsh Island Block 143 offshore Louisiana purchases approximately 3,000 Mcf, to Panhandle for resale in interstate commerce. The gas is to be sold to Panhandle on a monthly cost of service basis, which cost represents Northern's cost of gas at the point of delivery to Trunkline. The estimated average cost-of-service per Mcf for the first year of operation is $1.76 for East Cameron Block 335 production and $1.91 for South Marsh Island Block 143 production. The option afforded to Panhandle to purchase up to 20 percent of the volumes delivered to Trunkline, for Northern's account, is in partial consideration for the transportation of Northern's Block 335 and Block 143 gas as herein described. The Commission will authorize Northern to make this sale to Panhandle subject to its approval of the Exxon sale to Northern in Docket No. CI77-518 and the Cabot sale to Northern in Docket No. CI78-395.

The Commission will grant and deny the various requests in the applications filed in the above-styled proceedings as herein indicated and as hereinafter ordered and conditioned.

After due notice by publication in the FEDERAL REGISTER in Docket No. CP77-523 on August 18, 1977, in 42 FR 41449, Columbia Gas filed a petition to intervene in support of this application. No protests or petitions to intervene in opposition to any of the appli-

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[12] Trunkline's cost per 100 miles is 2.34¢ per Mcf. The unit charge for this transportation of 53.5 miles based on this cost per 100 miles (Trunkline's current transportation cost as reflected in Docket No. RP78-11) is 1.25¢ per Mcf.

[13] Tennessee's commodity charge for the transportation of this gas to Trunkline is 3.97¢ per Mcf based on Tennessee's transmission rates in Docket No. RP77-62. (1.25¢ per Mcf plus 3.97¢ per Mcf = 5.22¢ per Mcf.) (5.22¢ x 365/12 = $1.59.) (12,000 x $1.59 = $19,080.)

[14] Centerville is also one of the receipt points through which gas can be delivered to Longville for Northern's account. However, it is anticipated that this gas will have to flow the full distance from Centerville to Kinder. The receipt of gas at this point by Trunkline shall be on a best efforts basis and shall only be delivered at Trunkline's option by displacement. An extra 0.62¢ will be charged to Northern for each Mcf taken at the Centerville delivery point. The latter charge represents the demand component of the latter Tennessee rate on a unit basis. Northern will be required to pay the full charge of the transportation of any volumes under this arrangement received at Centerville, i.e., both the commodity and demand component provided for in the Tennessee rate.

[15] Trunkline's charges for the gas it delivers to Longville for Panhandle are identical to what it charges Northern. Trunkline's charges Panhandle for delivery of these volumes from Longville to Douglas County, Illinois are also predicated on this 2.34¢ per Mcf transportation rate. This charge represents the 100 miles current cost on Trunkline's system for such transportation of an Mcf of natural gas used in docket No. RP78-11.

[16] Northern's offshore supplies subject to the above-noted transportation agreement consist of the 40 percent of the production it purchases from Exxon Corporation in East Cameron Block 335 and the purchase by Northern from Cabot Corporation of that producer's interest in South Marsh Island Block 143, offshore Louisiana. The Commission has issued a temporary certificate to Exxon in Docket No. CI77-518 for the sale of the East Cameron Block 335 gas to Northern. Cabot has pending before the Commission at Docket No. CI78-395 an application for the sale of its South Marsh Island Block 143 gas to Northern. Sea Robin Pipeline Company will transport Northern's Block 335 gas and Block 143 gas onshore and deliver such gas to Columbia Gulf for Northern's account at its Northern's terminus near Erath, Louisiana. The offshore transportation of this gas by Sea Robin was approved in Docket No. CP76-428.

cations in the above-styled proceeding have been filed.[17]

At a hearing held on December 20, 1978, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications and petitions as supplemented and amended, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record.

The Commission finds: (1) Applicants, Panhandle, Trunkline, Northern Columbia Gas and Columbia Gulf are natural gas companies within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The application of Delhi in Docket No. CP77-523 for a limited-term certificate with pregranted abandonment filed pursuant to Section 2.70 of the Commission's Regulation, and the corresponding application filed by Panhandle in Docket No. CP77-652 should be denied for the reasons more fully discussed in this order.

(3) The transportation and/or exchange of natural gas as hereinbefore described between Northern in Docket No. CP77-649 and in the joint applications filed by Columbia Gas/Columbia Gulf and Panhandle/Trunkline in Docket Nos. CP77-657 and CP78-511, respectively, will be made in interstate commerce subject to the jurisdiction of the Commission and is subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The sale of natural gas by Northern to Panhandle in Docket No. CP78-480 will be made in interstate commerce subject to the jurisdiction of the Commission and is subject to the requirements of subsection (c) and (e) of Section 7 of the Natural Gas Act.

(5) Applicants Northern, Panhandle, Trunkline, Columbia Gas and Columbia Gulf are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) The transportation and/or exchange of natural gas as hereinbefore described between Northern in Docket No. CP77-649 and in the joint application filed by Columbia Gas and Columbia Gulf and Panhandle/Trunkline in Docket Nos. CP77-657 and CP78-511 respectively and the sale by Northern to Panhandle in Docket No. CP78-480, all subject to the jurisdiction of the Commission, are required by the pulic convenience and necessity and certificates therefore should be issued as hereinafter ordered and conditioned.

(7) Participation by Columbia Gas in Docket No. CP77-523 may be in the public interest.

The Commission orders: (A) Certificates of public convenience and necessity are issued to Applicants, Northern Natural Gas Company in Docket No. CP77-649; Columbia Gas Transmission Corporation and Columbia Gulf Transmission Corporation in Docket No. CP77-657 and Panhandle Eastern Pipe Line Company and Trunkline Gas Company in Docket No. CP78-511 to transport, exchange and redeliver gas as more fully described in their applications filed in these proceedings and as set forth in the body of this order as hereinafter ordered and conditioned:

(1) The certificates issued to Northern in Docket No. CP77-649 and Columbia Gas/Gulf in Docket No. CP77-657 are limited to the services that are not related to the proposed Delhi sale.

(B) The applications filed for limited-term certificates by Delhi Gas Pipeline Corporation in Docket No. CP77-523 and Panhandle Eastern Pipe Line Company in Docket No. CP77-652 are denied as are the Delhi related aspects of Docket Nos. CP77-649 and CP77-657.

(C) A certificate of public convenience and necessity is issued to Northern Natural Gas Company in Docket No. CP78-480 to sell natural gas to Panhandle Eastern Pipe Line Company as more fully described in its application filed in this proceeding and as hereinafter ordered and conditioned.

(D) The monthly charges authorized in the certificate of public convenience and necessity issued to Panhandle Eastern Pipe Line Company and Trunkline Gas Company in Docket No. CP78-511 in ordering paragraph (A) of this order will be subject to change (increase or decrease) pursuant to any related rate changes resulting from rate proceedings involving Trunkline Gas Company or Tennessee Gas Pipeline Company.

(E) The certificate of public convenience and necessity issued to Northern Natural Gas Company in Docket No. CP78-480 will be conditioned upon:

(1) The issuance of certificates of public convenience and necessity in the producer proceedings entitled Exxon Corporation in Docket No. CI77-518 and Cabot Corporation in Docket No. CI78-395 authorizing Northern to purchase the offshore supplies underlying the application filed herein in Docket No. CP78-480.

(F) The certificates issued by ordering paragraph (A) and (C) above and the rights granted thereunder are conditioned upon Applicant's compliance with all of the Commission's Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in Part 154 and in paragraph (a) and (e) of Section 157.20 of such Regulation.

(G) Columbia Gas is permitted to intervene in Docket No. CP77-523 subject to the Rules and Regulations of the Commission: *Provided, however,* that participation of such intervener shall be limited to matters affecting asserted rights and interests as specifically set forth in its petition to intervene; and *Provided, further,* that the admission of such intervener shall not be construed as recognition by the Commission that it might be aggrieved because of any order of the Commission entered in this proceeding.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-1331 Filed 1-12-79; 8:45 am]

[17] Notice of each application in the above-styled proceedings was afforded by publication in the FEDERAL REGISTER as follows:

Docket No.	Notice issue date	Citation FR	
CP77-523	Aug. 8, 1977	Pub. Fed. Reg. 42 FR 41449	Aug. 17, 1977
CP77-652	Oct. 17, 1977	Pub. Fed. Reg. 42 FR 56360	Oct. 25, 1977
CP77-657	Oct. 17, 1977	Pub. Fed. Reg. 42 FR 56355	Oct. 25, 1977
CP78-480	Aug. 25, 1978	Pub. Fed. Reg. 43 FR 38902	Aug. 31, 1978
CP78-511	Sept. 21, 1978	Pub. Fed. Reg. 43 FR 45458	Oct. 2, 1978

[6450-01-M]

[Docket No. RP72-134]

EASTERN SHORE NATURAL GAS CO.

Adjustments to Rates and Charges

JANUARY 8, 1979.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore) on December 26, 1978, tendered for filing the following revised tariff sheets:

To be effective January 1, 1979: Eighth Revised Sheets No. 5 and No. 6 superseding, Seventh Revised Sheets No. 5 and No. 6, Eighth Revised Sheets No. 10, No. 11 and No. 12.

Eastern Shore requests waiver of the 30 days notice requirement pursuant to Section 154.51 of the Commission's Regulations. The revised tariff sheets track a similar filing by Eastern Shore's sole supplier Transcontinental Gas Pipe Line Company (Transco).

Copies of this filing have been mailed to each of the Company's jurisdictional customers and to interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 15, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-1332 Filed 1-12-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-98]

INTERSTATE POWER CO.

Filing

JANUARY 8, 1979.

Take notice that Interstate Power Company on December 7, 1978, tendered for filing a contract supplement dated November 16, 1978 for Contracts Nos. 14-06-600-1557 and 14-06-477.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 15, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-1333 Filed 1-12-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-112]

JERSEY CENTRAL POWER & LIGHT CO.

Proposed Rate Change

JANUARY 3, 1979.

Take notice that on December 18, 1978, Jersey Central Power & Light Company (Jersey Central) tendered for filing increased tariff rates for all-requirements service to Allegheny Electric Cooperative, Inc., and to the Boroughs of Butler, Lavallette, Madison, Pemberton and Seaside Heights, New Jersey.

Jersey Central states that the increase amounts to $2,130,047, based on calendar year 1979. The reason for the increase, according to Jersey Central, is increased costs and the addition to rate base of its share of the Three Mile Island No. 2 nuclear generating unit.

Jersey Central requests an effective date of February 17, 1979.

Any person desiring to be heard or to make any protest with reference to said filing should on or before January 19, 1979, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., 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 participate as party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The documents filed by Jersey Central Power & Light Company are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-1334 Filed 1-12-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-19]

MOUNTAIN FUEL SUPPLY CO.

Tariff Sheet Filing

JANUARY 8, 1979.

Take notice that on December 18, 1978, Mountain Fuel Supply Company (Mountain Fuel) filed First Revised Sheet No. 60 of its FERC Gas Tariff Original Volume No. 1, Mountain Fuel states that the revised tariff sheet provides for an increase in the transportation rate charged from 4¢ per Mcf to 13.1¢ per Mcf at 14.65 psia to Colorado Interstate Gas Company (CIG) for the transportation of CIG's share of the gas produced in the Fox/Spearhead Ranch area of Converse County, Wyoming. The proposed effective date is January 1, 1979. Mountain Fuel requests waiver of the 30 days notice requirements pursuant to Section 154.51 of the Commission's Rules and Regulations.

Copies of the filing have been served upon the only effected customer, Colorado Interstate Gas Company, and are available for public inspection at the general office of Mountain Fuel Supply Company, 180 East First South, Salt Lake City, Utah.

Any person desiring to be heard and to make any protest with reference to said filing should on or before January 15, 1979, 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, 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 must file petitions to intervene in accordance with the Commission's Rules. Mountain Fuel's tariff filing is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-1335 Filed 1-12-79; 8:45 am]

[6450-01-M]

[Docket No. RP78-50]

NORTHWEST PIPELINE CORP.

Notice of Change in Rates

JANUARY 8, 1979.

Take notice that on December 14, 1978, Northwest Pipeline Corporation ("Northwest") tendered for filing a notice of change in rates for service rendered under its Rate Schedule SGS-1, pursuant to Commission Order dated October 2, 1978. Such order directed Northwest to eliminate the costs related to the expansion of the Jackson Prairie Storage Project if said costs were not approved by October 1, 1978.

The change in rates are reflected on Second Substitute Twentieth Revised Sheet No. 10, tendered herewith, and reduce Northwest's "Demand" and "Demand Credit Amount" rates from 66.76¢ per therm to 66.33¢ per therm. Schedules supporting the rate reduction are included in the instant filing.

Northwest requests that the Commission waive the notice requirement of Section 154.22 of its Regulations in order to allow the tendered tariff sheets to become effective October 1,

1978, the date authorized by the Commission in its October 2, 1978, Order mentioned above.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 15, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-1336 Filed 1-12-79; 8:45 am]

[6450-01-M]

[Docket No. RP73-36 (PGA 79-1) (DCA79-1)]

PANHANDLE EASTERN PIPE LINE CO.

Change in Tariff

JANUARY 8, 1979.

Take notice that on December 21, 1978, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following Substitute Revised Tariff Sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Twenty-Seventh Revised Sheet No. 3-A.

First Substitute Fourth Revised Sheet No. 3-B.

An effective date of February 1, 1979 is proposed.

On December 14, 1978, Panhandle filed with the Commission a PGA rate adjustment pursuant to Section 154.38(d)(4)(x) of the Commission's Regulations and in accordance with the General Terms and Conditions of Panhandle's FERC Gas Tariff, Original Volume No. 1. This filing, among other changes, reflected a rate adjustment pursuant to Section 18.4 of the General Terms and Conditions, such adjustment reflecting a Pipeline Supplier rate increase. Rate Schedules and rates that consist of a one part rate as well as the Excess-Deficiency Charge of the two-part rate schedules, were not adjusted to include their appropriate portion of the demand cost change under this Section 18.4 adjustment.

Therefore, Panhandle submits these substitute revised tariff sheets to properly reflect the demand cost change under Section 18.4 for one part Rate Schedules and rates.

Panhandle states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 15, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-1337 Filed 1-12-79; 8:45 am]

[6450-1-M]

[Docket No. ER77-402]

PHILADELPHIA ELECTRIC CO.

Extension of Time

JANUARY 2, 1979

On December 22, 1978, the Borough of Lansdale and Philadelphia Electric Company filed a joint motion for an extension of time to file briefs on exceptions to the initial decision issued in this proceeding on November 13, 1978. The motion states that these two parties are believed close to an agreement which would obviate the need for briefs. The motion also states that Staff does not oppose the request.

Upon consideration, notice is hereby given that the time for filing briefs on exceptions is extended to and including January 26, 1979. Briefs opposing exceptions shall be filed February 15, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-1338 Filed 1-12-79; 8:45 am]

[6450-01-M]

[Docket No. ER78-513]

PUBLIC SERVICE CO. OF INDIANA, INC.

Compliance Filing

JANUARY 8, 1979

Take notice that Public Service Company of Indiana, Inc. (PSI) by letter dated October 24, 1978, pursuant to ordering paragraph (G) of the Commission's "Order Accepting Rates for Filing, Rejecting Rate for Filing, Waiving Notice, Suspending Rate Increases, Granting Summary Disposition and Granting Interventions" issued August 25, 1978, in the above docket, filed in compliance with such Commission Order revised tariffs. PSI states that as support of required rate level of such revised tariffs, PSI also files Revised Cost of Service Data in the form of revised Statement N, Statement P, and rate comparisons for all jurisdictional customers showing the effect of the application of the revised tariffs to the customer's billing determinants for Period II, for the twelve-month period prior to the proposed effective date and for the twelve-month period following the proposed effective date.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 15, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-1339 Filed 1-12-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-18]

SOUTHERN NATURAL GAS CO.

Petition

JANUARY 8, 1979.

Take notice that on December 14, 1978, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. RP79-18 a petition pursuant to Section 4 and Section 16 of the Natural Gas Act and Section 1.7 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure requesting that the Commission issue such orders and grant such waivers of its rules and regulations as are necessary to permit Southern to retain in its rate base for a period of five years from March 20, 1979, certain advance payments made to Canadian Occidental of California, Inc. (Can-Oxy), all as more fully set forth in the petition of file with the

Commission and open to public inspection.

Southern states that pursuant to two advance payment agreements with Can-Oxy, dated March 20, 1974, it advanced $7,000,000 to Can-Oxy in consideration for the commitment by Can-Oxy of its interest in natural gas reserves in South Pass Block 78, offshore Louisiana. Because of unusual and unforeseen circumstances beyond the control of either Southern or Can-Oxy, deliveries of gas from South Block 78 cannot commence within the requisite five year period from the date the advance payments were made. Since a platform is now in place, drilling is in progress, and it is expected that a pipeline will be constructed to attach the South Pass Block 78 reserves by late 1979, Southern has filed a petition requesting authorization from the Commission to retain in account 166 for a period of five years from March 20, 1979, the expended portion of the $7,000,000 of advance payments it made to Can-Oxy.

Southern states further that it, Can-Oxy, and Oxy Petroleum, Inc. (Oxy-Petroleum), an affiliate of Can-Oxy, have reached certain agreements which are contingent upon the granting of the relief requested and which will significantly benefit the public interest. First, Can-Oxy will pay back immediately all portions of the advance payments which are unexpended on March 20, 1979, and will pay back the then remaining outstanding advance payments over a five-year period commencing with such date, regardless of whether or not deliveries have commenced on such date. The repayment of the outstanding advances in sixty consecutive equal monthly installments substantially accelerates the repayment schedule in the advance payments agreements and thereby shorten the time said advances are included in Southern's rate base. Second, Oxy-Petroleum will commit for sale to Southern, subject to the provisions of this Louisiana State Lease covering a portion of the reserves, its interest in the South Pass Block 57 and 58 gas reserves. Such additional dedication will very substantially increase Southern's commitment in the four-block area composed of South Pass Blocks 57, 58, 77, and 78.

Any person desiring to be heard or to make protest with reference to said petition should on or before January 15, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-1340 Filed 1-12-79; 8:45 am]

[6450-01-M]

[Docket No. RP72-99]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Order Interpreting Proposed Settlement, Requesting Comments and Setting Oral Argument

JANUARY 4, 1979.

I. SUMMARY

Transcontinental Gas Pipe Line Corporation (Transco) has submitted an Offer of Settlement of most but not all of the pending issues concerning a curtailment plan for that system. The settlement is supported by some of the parties but opposed by others.

The settlement addresses, among other matters, the remand by the U.S. Court of Appeals, D.C. Circuit,[1] of the permanent curtailment plan promulgated by the Federal Power Commission (FPC) for Transco's system in October, 1976.[2] The Court, in its decision, converted the permanent plan to an interim one[3] and directed that the actual current impact on end-use at the burner-tip be considered in the "implementation of curtailment plan for the Transco system."[4] The Court's decision also requires that the issue of compensation be considered on its merits based on an adequate record.[5] The settlement offer would, if accepted by interested parties and the Commission, supersede the remanded interim plan.[6]

Transco filed the settlement offer following extended negotiations with the parties. Rather than signing a settlement agreement, the parties indicated their position on the offer by submittal of initial and reply comments. Several of the parties attached considerable importance in their comments to that portion of the settlement (Article VIII) which indicates how the settlement is intended to operate in conjunction with the Natural Gas Policy Act of 1978 (NGPA). Some parties opposed the settlement because others did not fully endorse Article VIII.

This order sets forth the Commission's interpretation of Article VIII and discusses application of the settlement to the NGPA. This information was not available to the parties in their negotiations. The Commission believes it appropriate therefore in the unusual circumstances of this case, given the evolving nature of the subject matter and the views we express thereon, to afford the parties an opportunity to give us their current position on the settlement as construed and interpreted herein.[7] Those comments—which we hope will reflect the parties' serious consideration of the settlement offer as a long-term solution to Transco's curtailment matters—will be filed by January 11, 1979. The Commission expects to act expeditiously thereafter.

II. SUMMARY OF SETTLEMENT

We here summarize the settlement in some detail as background for our later discussion of it.

A. The settlement proposes to settle virtually all curtailment controversies on Transco's system—past, present and for some time into the future. Compensation is an exception. That issue is largely reserved for hearing.[8]

B. Under the settlement Transco would take various supply actions designed to assure that specific volumes of gas are available to its customers this winter as well as for the 1978-1979 annual period.[9] The settlement is to be effective as of November 1, 1978.

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[1] *State of North Carolina* v. *F.E.R.C.*, Nos. 76-2102, *et al.* (D.C. Cir. July 13, 1978). All references herein are to the Court's July 13 slip opinion without renumbering of footnotes to reflect the one added (footnote 20, p. 21) by the *per curiam* order issued August 29, 1978.

[2] *Transcontinental Gas Pipe Line Corporation*, Docket No. RP72-99, Opinion No. 778 (October 8, 1976) and Opinion 778-A (December 8, 1976).

[3] *State of North Carolina* at 31.

[4] *Id.* at 26.

[5] *Id.* at 31.

[6] The October 31, 1978 Offer of Settlement deals only with allocations. The issue of compensation is reserved for hearing.

[7] Transco is to provide additional information on supplies by January 9, 1979 (*infra*, p. 19) so that the parties may also consider it in their January 11, 1979 comments.

[8] Article VII of the Settlement Agreement. Article VIII also excludes an earlier appeal relating to compensation, *Transcontinental Gas Pipe Line Corporation, et al.* v. *F.E.R.C.* No. 74-2036 (D.C. Circuit).

[9] Transco's Answer and attached Affidavit of November 22, 1978 emphasize that different levels of supply (for the larger customers) will pertain as between the settlement offer and under the existing Opinion 778 plan, if it is continued.

The Affidavit of H. J. Miller, Jr. states at page 2:

"5. As requested by the Staff, the following data show a comparison between the quantities (Mdt's) available for sale to the CD, and ACQ and firm direct customers extrapolated from the Form 16 filed October 2, 1978 and those contained in the offer of settlement.

In order to arrive at the above comparison, the October "(Affidavit, p. 2) The source of additional supplies for this winter is "banked" gas which Transco would have to repay next summer. This amounts to ap-

Footnotes continued on next page

	October 2, 1978 Form 16	Proposed Settlement	Difference
1978-79 Winter Period	258,125	268,035	9,910
1978-79 Annual Period	631,997	*638,440	4,443

*(sic) (Should be 636,440).

C. Transco's small volume customers would in the first year receive the same entitlements as under the Opinion 778 plan. Article VI of the settlement states that the members of this class of customers will be permitted and are encouraged to transfer entitlements among themselves on a temporary basis during the first year to accommodate varying needs within that group. Aggregate volumes are adequate to accommodate these transfers. However, if voluntary adjustments betweeen members of this class are not successful in protecting high priority needs of these small volume customers, Transco reserves the right to file tariff revisions necessary in its view to accomplish it. If supplies subsequently exceed 680 MMdt, the proposed tariff provides for further adjustment of small volume entitlements based on specified standards.

D. The key to the proposed plan is the supply level pertaining to the large volume customers. This is evident from Article II, "Term of Agreement", which provides:

> This Agreement shall become effective on November 1, 1978 and shall continue in force and effect through October 31, 1979 (the "first curtailment year") and from year to year thereafter so long as Transco's projections of annual volumes available for sale to CD, ACQ and firm direct customers in years subsequent to the first curtailment year are equal to or in excess of 636,440 Mdt. At such time as Transco projects a lower annual volume for any year subsequent to the first curtailment year, Transco shall forthwith move that the Commission convene a conference among all parties to this Docket No. RP72-99 for the purpose of discussion of the appropriate curtailment plan for Transco's system for such subsequent year or years. Transco shall thereupon file such modified curtailment plan as may be agreed upon by the parties or, in the absence of such agreement such other plan as Transco in its judgment believes is just and reasonable. It is understood that any plan which Transco may file other than a plan agreed upon by the parties shall be governed by the provisions of Sections 4 and 5 of the Natural Gas Act.

Amounts in excess of 636 MMdt are allocated in accordance with specified factors with differing factors specified between 636 MMdt and 720 MMdt and above the 720 MMdt benchmark. (Tariff sheets No. 223-224, 230-231).

E. Article VIII of the Settlement is the provision which attempts to merge past, present and, to the extent possible, future controversies into the proposed plan. This last category, dealing with prospective rights of customers and the parties under the NGPA, has been a stumbling block. Article VIII provides in essence that the revised allocations specified in the settlement anticipate and include revisions which might occur under the NGPA when implemented.[10] The lack of full concurrence with this provision by some parties [11] has caused others [12] to object to the settlement. The balance of this order consists primarily of a discussion of how the Commission envisions the settlement working in relation to future actions under the NGPA. The Commission takes this unusual step in keeping with its policy of encouraging settlements and because the effect of the NGPA is a major issue among the parties in the settlement process.[13]

III. Article VIII of Settlement

A. Background

Brooklyn Union Gas Company (Brooklyn Union) stated in its initial comments that it considered Article VIII to be of vital importance in achieving stability for all customers on the Transco system. The Company emphasized the necessity for agreement by all *the parties* to this provision. Article VIII distinguishes between the obligations of *parties* and representations made by *customers* of Transco. As will be made clear, we believe Brooklyn Union's principal concerns should be over the representation of the customers. Because of the importance of this Article, we set it out in full.

> Article VIII
>
> Resolution of pending issues and satisfaction of high priority requirements
>
> The *parties* hereto agree that, except for the compensation questions reserved in Article VII hereof and in the pending appeal in *Transcontinental Gas Pipe Line Corporation, et al.* v. *F.E.R.C.*, No. 742036 in the United States Court of Appeals for the District of Columbia Circuit, all pending curtailment issues on Transco's system in Docket No. RP7299, whether related to the court remand referred to in Article I hereof or related to outstanding Commission orders concerning issues not resolved by Opinion Nos. 778 and 778-A, shall be deemed to be resolved by this Agreement in a manner consistent with the Natural Gas Act and the Natural Gas Policy Act of 1978. In addition, all *customers* presently expect that, during the effectiveness of this Agreement, adequate supplies from Transco and other sources, including but not limited to emergency gas supplies, will permit service to all high priority consumers. Therefore, while this Agreement remains in effect under the terms of Article II hereof, the *parties* agree that no modifications of the

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proximately 4,000 Mdt which would be retained in storage under the Opinion 778 plan. 6,265 Mdt is obtained based on the assumption that "normally anticipated producer outages" do not occur. The affidavit further states:

"In the event that the above possibilities of additional gas do not yield sufficient quantities to make up for the difference between the Form 16 and settlement allotments, Transco would acquire the necessary gas under FERC's emergency rules to satisfy the deficiency. Should it be necessary for Transco to purchase emergency supplies, there is an abundance of such supplies available from intrastate sources." (p. 2).

Article V of the Settlement Agreement provides that "the Commission is requested to provide assurance to Transco and the other parties that if, and only if, emergency gas volumes are required to be obtained under the Natural Gas Act in order that Transco will be enabled to protect the annual period entitlements and winter season allotments for the first curtailment year Transco will be permitted to obtain such emergency gas volumes." The Staff opposed this provision on the grounds it impermissibly sought advance approval of the rate treatment of emergency purchases. However, Transco in its November 22, 1978 Answer advised that the section was intended to deal only with *eligibility* for purchase of such supplies and noted that this concern would effectively become moot if we adopted the then existing proposed regulations on this subject. These regulations were, in essence, adopted and will apply for a limited term. It is therefore unnecessary for us to consider the waiver requested in Article V.

[10] The revisions also contemplate some adjustments potentially flowing from the remand in *State of North Carolina.*

[11] These include the State of North Carolina and the North Carolina Utilities Commission (filing jointly); The City of Danville, Virginia; North Carolina Natural Gas Corporation; Piedmont Natural Gas Company, Inc.; and Public Service Company of North Carolina, Inc. In addition, Elizabethtown Gas Company and Philadelphia Gas Works oppose the settlement outright.

[12] Brooklyn Union Gas Company, Public Service Electric and Gas Company and Pennsylvania Gas and Water Company.

[13] At the same time, the Commission emphasizes that it makes no present judgment as to the merits of the proposed settlement as interpreted herein.

curtailment plan embodied in this Agreement and, except for emergency relief as defined in Section 13.3 of the General Terms and Conditions of Transco's FERC Gas Tariff, no relief from the effect of the curtailment plan embodied in this Agreement shall be sought either under 2.78(b) of the Commission's General Policy and Interpretations promulgated under the Natural Gas Act or under Title IV of the Natural Gas Policy Act of 1978. (Emphasis ours).

In sum, this provision has two components. It is intended to wipe the slate clean of all pending curtailment matters except those identified pertaining to compensation. The matters resolved by this part of Article VIII basically pertain to the Opinion 778 plan. The second aspect of this Article relates to the proposed plan and future conduct relating to it. In this latter area, the comments indicate that at least one basic purpose of the provision is to assure that the distribution companies who have received substantial additional gas under the settlement would not be able at a later date to submit requests for allocations under the NGPA which were intended to be covered by the settlement. Avoidance of a double recovery is Article VIII's aim.

The distinction made in Article VIII between parties and customers takes on significance when assessing the comments received on the proposed settlement. It appears to us that the customers about which Brooklyn Union is perhaps rightly concerned have responded in a manner consistent with the provision which states that to the extent dependent on the settlement, supplies received would be adequate to serve all high priority requirements—including those recognized under the NGPA. For example, North Carolina Natural indicated in its initial comments that the volumes allocated under the settlement agreement would be sufficient and that by utilizing its full storage capacity, it "should be able to serve under normal weather conditions its essential firm markets for both the winter periods and the annual periods, including the Farmers Chemical Association nitrogen fertilizer facility at Tunis, North Carolina.[14] On the other hand, Farmers Chemical, a party to the curtailment proceeding but not a directly-served customer of Transco, states that while it has no objection to the allocations, it is not waiving rights under the NGPA, including the right to have Transco's allocations to conform with the new law.[15] But Farmers Chemical's assertion as to reservation of right under the NGPA is immaterial since its supplier, North Carolina Natural, has indicated that it will have adequate supplies to meet Farmers Chemical's requirements.

[14]Initial Comments, North Carolina Natural Corporation, November 13, 1978, at 1.

[15]Comments of Farmers Chemical Association, Inc., November 13, 1978, at 1.

North Carolina Natural, Public Service Company of North Carolina and Piedmont, however, do express a reservation about one aspect of Article VIII. Fundamentally, they note that the proposed plan could become a *de facto* permanent plan if Transco's future supplies continue as projected. They urge a limit on the time during which the plan would be impervious to change based on the NGPA. In addition, they suggest that it should not serve as a bar if circumstances arise which were not reasonably foreseeable. But all state, in essence, that it is not their desire that Article VIII be abolished or that its basic intent be distorted. Piedmont, for example, states that it "agrees that the allocations in the Settlement Agreement should be considered permanent except in the event of circumstances not presently reasonably foreseeable."[16] We think that these are reasonable, responsible requests. We believe our interpretation of Article VIII and its relation to the NGPA adequately recognizes these concerns without sacrificing the benefits of certainty and stability which would otherwise accrue under the settlement.

One party who is not a customer—the State of North Carolina and the North Carolina Utilities Commission (filing jointly)—takes exception to Article VIII. This exception is mitigated somewhat by the statement that North Carolina is unable to waive for the *indefinite future*, whatever rights may be granted to it by the new statutes (referring to NGPA). We respect North Carolina's views as a representative of the ultimate consumer in the State of North Carolina. We are not certain, however, that North Carolina's reservation is material in a light of the comments by distributors in the State of North Carolina who, as customers of Transco, offer representations more nearly in compliance with the spirit of Article VIII.[17]

[16]Initial Comments of Piedmont Natural Gas Company, Inc., November 13, 1978, at 1.

[17]There *may* be an exception. The sole entity, who is both a customer and a party, to register unqualified opposition to Article VIII is the City of Danville, Virginia. Danville in *its initial comments* stated: "Danville supports the settlement plan with the following qualifications. The allocated volumes are not sufficient to serve the City's high priority markets, but at least the allocations are better than under the Opinion 778 plan. We cannot possibly agree, as Article VIII requires, to waive any right of the City has under law, *i.e.*, the Natural Gas Policy Act of 1978." (Comments of the City of Danville, Virginia, filed November 14, 1978, at p. 4.) Transco, by reply, states that "The winter and annual allocations to the City of Danville in the first year, when combined with the available supplies of gas under FPC Order No. 533 and FERC Order No. 2 will provide more than enough gas for Danville to serve its residential and commercial customers and industrial customers utilizing natural gas for feedstock, process and plant protection purposes." Transco, (Miller Affidavit at p. 3.) Danville received 2,697 Mdt in 1977-1978. Under Opinion 778, in 1978-1979, they would receive 3,170 Mdt; under the settlement they will receive 4,167 Mdt. It is thus clear Danville will receive a significant increase under the settlement relative to its size. The question of possible additional allocations may be moot since Danville in Reply Comments filed November 24, 1978 states:

"Apparently some parties were concerned that Danville's reservation about Article VIII indicated acceptance of the curtailment plan's volumes, along with an intent to see additional volumes because of rights under the [NGPA]. In clarification, Danville's reservation on Article VIII simply means that the Commission cannot be prohibited by a settlement agreement among Transco's customers from carrying out its responsibilities under the Natural Gas Act, the [NGPA] or any other law.

". . . Danville continues to support the settlement agreement as a long-term plan. . . ." (Reply Comments, pp. 1-2)

The views of another party—also not a customer—are pertinent. The New York Public Service Commission, by reply comments supporting the settlement, states:

> We recognize that a number of parties otherwise supporting or not objecting to the Transco proposal have raised questions or caveats with respect to Article VIII. Since New York supports the Article as a necessary and integral part of any settlement, we wish to set forth our views thereon. We do not read Article VIII as binding upon the Commission in the envent it determines that regulations adopted pursuant to Section 401-403 of the NGPA require modifications to an effective curtailment plan. We do understand Article VIII to reflect the understanding of the parties that the Transco plan was drafted in the light of the provisions of the NGPA and that accordingly they will not initiate action to upset the plan on grounds that they might be entitled to additional gas from Transco under such general regulations as may be prescribed under the new Act. We can understand that, as indicated in the Piedmont comments, circumstances not presently reasonably foreseeable might arise during the period in which the settlement is in operation which might justify a petition to reopen the proceeding. But there obviously is no settlement if those parties securing significant immediate benefits in terms of additional gas could within a year or so demand more on the basis of the regulations adopted pursuant to the NGPA. (Comments p. 2-3)

We believe the standards set forth below for dealing with NGPA requests post-settlement are generally consistent with the views expressed by the New York Public Service Commission.

B. ARTICLE VIII AND NGPA

We start with the fundamental assumption that, as between the parties, the waiver of rights provision of Article VIII may be given effect.[18] As to its

[18]Some elements of Article VIII are analogous to provisions which have previously been approved by this Commission. For example, the settlement in *Southern Natural*,

Footnotes continued on next page

application to this agency, we make clear at this point that we would not be bound by Article VIII, if (and to the extent) we are in the future presented with the situation where performance of our statutory duties (under either the Natural Gas Act or the National Energy Act) is found to conflict with this provision. Most, if not all the parties, appear to recognize that this must be the case.

The NGPA and other legislative initiatives constituting the National Energy Act are newly enacted and their full effect cannot be reasonably foreseen at this time. In the curtailment area, the relevant provisions of the NGPA are contained in Sections 401 and 402. Implementation of Section 402 (industrial process gas) will require substantial end use information which is not now uniformly available on an updated basis. It thus is not of immediate concern.

Implementation of Section 401, however, must be accomplished to the maximum extent practicable not later than 120 days [19] after the date of enactment of the NGPA. At that time, it will be necessary to consider whether the then existing curtailment plans of interstate pipelines can adequately protect essential agricultural users from curtailment. Under these circumstances, we cannot now say whether the deliveries under the subject settlement would meet all the ultimate requirements of Section 401. However, it would be the Commission's intent to fully consider the impact on this settlement in implementing Section 401 for Transco's customers. In other words, we would attempt to maintain the integrity of the settlement to the extent reasonable under the circumstances. [20]

For example, in the case of a customer [21] who indicated acquiescence in Article VIII but later sought modification based on the NGPA, such a request would be examined, assuming it complied with the basic provisions of the NGPA such as Title IV, to determine whether a double recovery was being sought by the customer. [22] In this instance, a customer's representation by comments submitted in this proceeding would be measured against those contained in the application. A full explanation of any discrepancies would be required.

We believe the views we have expressed are consistent with NGPA requirements. That Act will, of course, affect curtailment plans. However, it does not require that adjustments be blindly made, but rather "to the maximum extent practicable." [23] The settlement proposal is consistent with this concept to the extent it anticipates requirements under the NGPA (as best they can be foreseen at this time) and provides for modification of the existing Opinion No. 778 plan at this time.

IV. Further Comments

As an aid to the parties in considering the settlement in light of the Commission's interpretation of Article VIII, the following comments on various aspects of the proposed settlements are presented.

A

This settlement contains a simple and certain method for allocating supplies. Some parties would receive less gas under the settlement than they would at the lower levels which would pertain in the upcoming year for the Opinion 778 plan, but no one would receive less gas under the settlement than he received last year under the Opinion 778 plan (on an annual basis). [24]

Our assessment of the comments on the proposed settlement leads us to conclude that no one who would be aggrieved by the revised allocations applicable under the settlement agreement objects unconditionally to the allocation feature of the proposed plan. Rather, those who do object (and who may be technically aggrieved) object principally on the basis that the deal struck—revised allocations in exchange for the certainty and stability of a true settlement,—is being jeopardized by comments of other parties. Brooklyn Union's and Public Service Electric and Gas Company's (PSEG) objections appear premised on this basis.

The objections of PSEG and Brooklyn Union, [25] surfaced fully only in their reply comments. Their basic view appears to be that the settlement, because of comments submitted by various parties—particularly those questioning Article VIII providing for waivers under the NGPA-would not provide a viable long-term solution to Transco's curtailment controversies. Rather, further extended litigation could be expected. We have addressed these concerns in our construction of Article VIII and the statement of our intent, as best we are able to render it at this time, of how requests under the NGPA would be dealt with in light of the settlement. We hope our treatment of that matter will remove the objection of these two parties. [26]

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Opinion No. 5, Opinion And Order Approving Settlement Describing Permanent Curtailment Plan, Docket No. RP74-6 *et al.* (November 17, 1977) approved a provision which provides that plan may not be contested for a period of two years. (Slip Op. at 22).

[19] Proposed regulations dealing with § 401 will issue very shortly.

[20] At the same time, proponents of Article VIII must recognize that the settlement would not be considered to be inviolate. In the past, the FPC and this Commission have attempted to recognize unique load characteristics, customer blend and operating requirements of individual pipelines in the formulation of curtailment plans. In promulgating rules for the implementation of Title IV of the NGPA, the Commission will continue to adhere to that policy. Indeed, Section 502(c) of the NGPA contemplates such exceptions to our rules "as may be necessary to prevent special hardship, inequity, or on an unfair distribution of burdens."

[21] We assume ultimate consumers who are neither parties nor customers would not be directly affected by the provision. It does not bar such rights as they may have under the NGPA, but rather appears to re-direct them, at least in the first instance, to the distributor-customer.

[22] Transco's Answer also includes this pertinent statement: "If the Commission should approve the settlement embodied in the offer, it would be the intent of Transco to strive to protect the integrity of this settlement, including the provisions of Article VIII, based upon circumstances existing at the present time and reasonably foreseeable for the future. While we would not expect the Commission to attempt to waive any of its statutory responsibilities and while it is always possible that unforeseen changed circumstances could intervene Transco would expect that any provate party and any state and local governmental body would have an extremely heavy burden of persuasion if such party accepts the present fruits of the settlement and later attempts to overcome any essential feature of the settlement." (*Id.* p. 3-4) The standard announced above in the text of this order should not necessarily be equated with that of "an extremely heavy burden of persuasion." However, the Commission would accommodate the settlement solution where possible.

[23] NGPA §§ 401-402. *See also*, H. R. Rep. No. 95-1752, 95th Cong., 2d Sess. 112-115 (October 19, 1978).

[24] Miller affidavit attached to Transco Answer, November 22, 1978 at p. 2. This affidavit also states at p. 1:

"2. The "Offer of Settlement . . . . was developed as a means of allocating the available supplies on the Transco system for the next several years in a manner which protects actual high priority markets on the system without the necessity of a lengthy data collection and hearing process. One indication that the settlement will actually protect the high priority markets on the system is the fact that, as a result of a recent survey of its customers, Transco has determined that, barring some unforseen extraordinary circumstance, the allocation procedures set forth in the settlement will enable all of its distribution customers to serve their high priority markets without the necessity of those customers acquiring emergency supplies for this coming winter. The responses of the customers in this regard have been specifically conditioned upon approval of the settlement . . . ."

[25] Pennsylvania Gas and Water Company, in reply comments of November 22, 1978, voices essentially the same concerns. However, that Company, somewhat like Elizabethtown, would not appear to be aggrieved since it would receive the same volume in 1978-1979 under both plans.

[26] We preceive concern over the integrity of the settlement to be Brooklyn Union and PSEG's principal concern based on analysis

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In contrast to PSEG and Brooklyn Union, Elizabethtown Gas Company (Elizabethtown) and Philadelphia Gas Works (PGW) opposed the settlement from the start. Their objections appear to be for entirely opposite reasons.

Elizabethtown apparently objects to this settlement only because it does not provide for curtailment on a pro rata basis. Public Service Company of North Carolina, Inc.'s reply comments place this objection in context.

> [T]he fact [is] that the *Settlement has no material adverse impact upon Elizabethtown.* Elizabethtown's central contention, for example, is that curtailment on the Transco system should be carried out, to the extent possible, on a proportionate basis.

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of their reply comments. We do not think that allocations under the proposed plan are the problem since neither party opposed the plan in their initial comments. Rather, both emphasized the need for substantial support of the settlement by the parties. Their complaint as to the allocations arose only in their reply comments. Even then, only Brooklyn Union addresses the proposed plan in detail. We know that both Brooklyn Union and PSEG would receive more gas under the settlement than they received last year and, in PSEG's case, more than was expected as recently as April of this year. Neither has made more than a vague representation that the amounts allocated would not be enough to cover their high priority needs. Moreover, Brooklyn Union in its assertion that the adverse impact on it of the proposed settlement compared with the opinion 778 plan would be approximately $14 million has assumed in its comparison that the higher level of supply under the settlement plan would also apply to the Opinion 778 plan (Brooklyn Union reply at 9). At the lower levels of supply which would pertain under the 778 plan (at least for the next year) if it were to continue, the adverse impact on Brooklyn Union would be significantly reduced to something on the order of $5 million (assuming *arguendo* a $2.50 per Dt value for replacement gas). We consider even that figure to be speculative depending on Brooklyn Union's total *pipeline* supplies. The comparison should not have been of 75,712 Mdt (under 778) versus 70,028 Mdt (under the settlement), but rather 72640 (under the existing 778 plan) versus the 70,028 Mdt they would receive under the settlement. (*See* appendix B to Elizabethtown's Initial Comments and Miller Affidavit attached to Transco Answer at p. 2). In terms of Brooklyn Union comments on volumes that would be received by other parties, one item is of interest. Brooklyn Union's comments, p. 10, show the volumes that North Carolina Natural, Piedmont and PSNC would receive. The column entitled excess allocation (5) includes 5,610 Mdt for North Carolina Natural. Objection on this point appears totally to ignore the fact that Farmers Chemical which presumably would be entitled to substantially increased supplies under the NGPA is served by North Carolina Natural. Moreover, North Carolina Natural noted that contrary to PGW's suggestion, that hey in fact have advised Transco of possible need for emergency supplies. However, a review of the Elizabethtown's own proffered "Statement of Thomas F. Withka" and attached Appendices shows that (1) for the 1978-79 annual period, Elizabethtown's proportionate allocations is an insignificant 118 Mdt (0.7%) greater than under the Settlement (Appendix B) and (2) for the 1979-80 annual period, Elizabethtown's proportionate allocation is *178 Mdt less than under the Settlement* Appendix C). Thus, Elizabethtown would be in a generally better position as to the allocation of volumes if the settlement were accepted. (PSNC reply comments, pp. 4-5.)

It appears, therefore, that Elizabethtown would not be aggrieved by the settlement. *Philadephia Gas Works* v. *FPC et al.*, 557 F.2d 840 (D.C. Cir. 1977).

Unlike Elizabethtown, PGW is a leading proponent of the end-use concept embodied in the Opinion 778 plan. Under the proposed settlement, PGW would receive 39,186 Mdt in 1978-1979; under the Opinion 778 plan, 40,809 Mdt. However, PGW's basic point appears to be that the settlement should be rejected because its adoption would be contrary to the remand in *State of North Carolina* which requires reexamination (rather than abandonment) of the Opinion 778 plan. We cannot agree that we are limited solely to consideration of the existing plan.[27] Moreover, assuming a return to hearings for that purpose, it is uncertain how well PGW would fare. The Court observed that in accordance with the October 1976 tariff filing, PGW was a "favored" customer who also has access to other pipelines supplies (besides Transco's).[28] The Court's remand, of course, would require that we consider whether adjustments should be made in that circumstance based on an examination to determine whether,

> . . . without the shift effected in the name of end use by the 778 plan, any of the five favored customers would have insufficient *pipeline* gas to serve high-priority uses which could be served by the disfavored customer absent the transfer. (Slip Op. 24, emphasis added).

Transco, in its reply comments, provides the following information which would appear to effectively negate PGW's opposition to the settlement.

> With respect to Philadelphia Gas Works, staunch and consistent advocate of the Opinion No. 778 plan despite the fact that it has been remanded by the Court of Appeals, (footnote omitted) no contention is made by PGW that the basic allocations provided by the settlements will not permit PGW to serve fully its markets without resort to emergency gas. Indeed, as shown by the attached statement by Mr. Miller, PGW would be receiving this winter from its *pipeline* sources substantially more gas than it received last year and it is Mr. Miller's opinion that PGW will be able to serve its markets under the offer of settlement without acquiring emergency gas.[29] (Transco Answer at page 2, emphasis ours).

PGW also argues that the impact assessment requirement of *State of North Carolina* has not been met. Considerable information has been submitted which addresses this concern (e.g., EIA Form 50 material provided by the staff and the comments of the parties on the proposed settlement). However, additional information as to the impact of the proposed plan on end-use is desirable. *Accordingly, we are directing that each of Transco's customers file an affidavit with the Commission on this subject by January 11, 1979.* What we desire, given the brief time period allowed, is each customer's best available assessment of the plan's impact. We do not specify a rigid format. However, each affidavit must include a discussion of the distributor's ability to serve its residential, commercial and industrial customers as a result of deliveries contemplated under the settlement through October 31, 1979. Impacts such as potential shut-down of industrial facilities should also be noted.

B

Transco's affidavit attached to its November 22 Answer states that different levels of supply would be applicable to the existing Opinion 778 plan and the proposed settlement. A comparison was provided for both plans for the 1978-1979 Winter Period as well as to the 1978-1979 Annual Period.[30]

Brooklyn Union by telegram of December 18, 1978 stated it has been advised by Transco "that Transco's supply available for market this winter will increase by approximately eleven billion cubic feet over the supply previously projected to be available in Transco's September Form 16." Brooklyn Union urges that this matter is material to full consideration of the settlement.

The Commission desires to have the matter of available supplies clarified. Accordingly, Transco is directed to file a statement of its current supply situation by January 9, 1979. If that evaluation differs from that contained in Transco's November 22 statement, the reasons for and the significance of those changes—as to both the existing

[27] *See, Michigan Consolidated Gas Co.* v. *FPC*, 283 F. 2d 204, 224 (D.C. Cir. 1960).

[28] *State of North Carolina* at 24.

[29] PGW's other pipeline supplier, Texas Eastern, Delivered 33,563 Mdt to PGW in the period September 1, 1977 to August 31, 1978. Texas Eastern projects deliveries to PGW for the same period in 1978-1979 of 34,056 Mdt. (Form 16, filed October 16, 1978).

[30] Statement of H. J. Miller, Jr., Concerning Offer of Settlement in Docket No. RP72-99 at p.2.

Opinion 778 plan and the settlement plan—shall be discussed in detail.[31]

C

We now ask the parties, in light of our construction and interpretation of the settlement and other comments herein, to provide their present view on the proposed settlement.[32] The parties shall advise us of their conclusions in this regard (including consideration of Transco's January 9, 1979 submittal dealing with supplies) by January 11, 1979. Oral argument will then be heard, *Friday, January 12, 1979.*[33] We expect to act on the settlement expeditiously thereafter.

The Commission Orders: (A) Transco shall submit the information on supplies discussed in Section IV B of this order by January 9, 1979.

(B) All parties wishing to file comments on the settlement as construed and interpreted in the body of this order and the information on supplies provided by Transco shall have until January 11, 1979 to do so.

(C) Each customer shall file the affidavit on end-use impact described in the text of the order at page 18 by January 11, 1979.

(D) Oral argument in this proceeding shall be held in Hearing Room A, 825 North Capitol Street, N.E., Washington, D.C. at 1:30 p.m. on January 12, 1979. Requests to participate in the oral argument shall be filed with the Secretary on or before close of business January 10, 1979.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-1341 Filed 1-12-79; 8:45 am]

[31] Transco's affidavit, *supra*, fn. n. 30, states that the settlement proposal "was developed as a means of allocating the available supplies on the Transco system for the next several years. . . ." (*Id.*, p. 1). Article II of the settlement establishes a base of 636 MMdt for CD, ACQ and firm direct customers and provides for continuation of the plan from year-to-year assuming availability of at least this base amount. Volumes in excess of 636 MMdt are allocated in accordance with specified factors. (Tariff sheets, p. 223-224; 230-231). Under these circumstances, information on Transco's near-term supply situation (*e.g.*, 1979-1982) would aid our evaluation of the settlement. Accordingly, Transco's submittal should encompass such information to the extent reasonably available at this time.

[32] Unlike the requirement applicable to each customer for filing an affidavit on end-use impact (*supra*, p. 18), it is not mandatory that all parties file comments on this order.

[33] Parties having similar positions on the settlement should consolidate their positions and make a collective appearance through the use of a single spokesman. We reserve the right to limit participation in the oral argument to avoid repetitive presentations.

[6450-01-M]

[Docket No. ER79-109]

VIRGINIA ELECTRIC & POWER CO.

Tendered Revised Contract Supplement

JANUARY 3, 1979

Take notice that on December 15, 1978, Virginia Electric and Power Company (VEPCO) tendered for filing a new supplement to the contract between VEPCO and Virginia Electric Cooperative. VEPCO states that the new contract supplement is for a new delivery point which has been requested by the Cooperative and designated Greenwood Delivery Point.

Delivery Point: Greenwood. Proposed FERC No. 87-32.

VEPCO requests that the Commission allow the Greenwood Delivery Point Supplement to become effective on the date the facilities are connected with the understanding that VEPCO will notify the Commission of the effective date.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1979, 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 protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-1342 Filed 1-12-79; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[Program Requirements Memorandum PRM No. 79-2; FRL 1037-6]

GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

Royalties for Use of or for Rights in Patents; Final Program Policy Issuance

INTRODUCTION

To assure national uniformity in program implementation and to provide policy direction in integrating the various complex requirements of the Federal water pollution control program EPA headquarters periodically issues policy and operational guidance documents to the EPA Regional Offices and others involved in the grants program.

A Program Requirements Memorandum conveys basic program policy. The specific provisions of a Program Requirements Memorandum will not be available in existing regulations or in other EPA policy documents.

The Environmental Protection Agency encourages the development of new products, apparatus and processes that will reduce the cost of construction, operation and maintenance of wastewater treatment works. Toward this end, it is necessary to clarify existing policy and procedures regarding the payment of royalties in the construction grants program.

Generally, Federal participation in the payment of a royalty is an allowable cost. There are, however, certain technical, legal and financial judgments that the grantee must make prior to paying such costs or charges. The grantee must determine the applicability of the technology to their project, their legal obligation to pay any royalty or license fee, and then ascertain the reasonableness of the cost or charge.

This is a notice that Program Requirements Memorandum PRM No. 79-2 was issued to EPA's Regional Administrators on November 13, 1978. The contents of that Program Requirements Memorandum are included with this notice.

THOMAS C. JORLING,
Assistant Administrator for Water and Waste Management.

PURPOSE

This memorandum sets forth Agency policy and procedures concerning the allowable cost associated with the procurement of the right to use, or the rights in, a patented product, apparatus or process which is necessary for the proper performance of a construction grant agreement or subagreement thereto.

DISCUSSION

Questions have been raised about the allowability of royalties for the use of or for rights in patents. Royalties are itemized costs or charges in the nature of patent royalties, license fees, patent or license amortization costs, or the like. Such royalties are paid to a patent licensor either by the grantee or by a contractor, who in turn separately charges the grantee for this actual cost.

This memorandum addresses the payment of royalties during the construction of the waste treatment works, as distinguished from the grantee's periodic payment of royalties for the right to operate under a patent. Periodic payments are operating costs and are not within the purview of this

memorandum. Any part of a license fee, beyond a mere royalty, which can be attributed to services rendered by the licensor is also beyond the purview of this memorandum.

There are at least two occasions when the grantee may be obligated to pay a royalty for the use of or for rights in patents:

1. The treatment works design includes a patented product, apparatus, or process, or

2. A patented product, apparatus or process may be necessary for the proper performance of a subagreement to a construction grant.

POLICY

Royalties for the use of or for rights in patents are allowable costs within the limits of the principles and procedures contained herein.

IMPLEMENTATION

1. The grantee shall report to the EPA Project Officer, with copies for the EPA Regional Counsel, the following information, if applicable, for each item of royalty in excess of $1,000 which the grantee will be obligated to pay as an actual cost:

a. Name and address of licensor;

b. Date of license agreement;

c. Patent Numbers;

d. Brief description, including any part or model numbers of each contract product, apparatus, or process for which the separate royalty is payable;

e. Percentage or dollar rate or royalty per unit or other method of determining the royalty;

f. Unit price of contract items;

g. Number of units;

h. Total dollar amount of royalties; and

i. Current license agreements.

2. Prior to selecting a patented product, apparatus, or process for the treatment works, on which an item of royalty must be paid, the grantee must consider:

a. The necessity and reasonableness of the royalty.

b. The royalty in any cost-effective analysis and as an evaluation factor in any bid analysis;

c. The use of performance type specifications for competitive procurement of a royalty-free product, apparatus or process; and

d. The use of Step 3 bid alternatives to each proposed patented product, apparatus, or process on which a royalty must be paid.

3. The grantee shall obtain and submit to the EPA Project Officer, with copies for the EPA Regional Counsel, as soon as the patented product, apparatus or process, on which a royalty must be paid, has been proposed in the facilities plan or design, a copy of the proposed license agreement.

4. Royalties on a patent necessary for the proper performance of the grant agreement or any subagreement thereto and applicable to grant products, apparatus or processes, are allowable unless:

a. The Federal government has title to the patent or a royalty fee license with the right to sub-license the grantee;

b. The patent has been adjudicated to be invalid, or has been administratively determined to be invalid by an Agency of the Federal government;

c. The patent or license agreement is considered to be unenforceable by the grantee or an Agency of the Federal government;

d. The patent either has expired or will expire prior to the incurrence, by the grantee, of any possible infringement liability;

e. The grantee has received from a patent attorney, an opinion that the patent is either not infringed or invalid.

5. The grantee shall determine whether any of the circumstances of paragraph 4 above exist. The grantee may also be advised by EPA to make a study of the validity, infringement or other aspects relating to the enforceability of the patent. All costs incurred by the grantee in making the required determinations and studies will be allowable, provided that prior approval of the anticipated costs has been received from the EPA Project Officer, with the advice of the EPA Regional Counsel.

Written reports of such determinations and studies shall be submitted to the EPA Project Officer, with copies for the EPA Regional Counsel.

6. If the implementation of the facilities plan would obligate the grantee to the payment of royalties for the use of or rights in patents in excess of $5,000, the grantee's public hearing, held in accordance with 40 CFR 35.917-5, shall include a discussion of the proposed or selected patented product, apparatus or process, and afford concerned commercial interests adequate opportunity to express their views.

7. Special care should be exercised by the grantee in determining reasonableness of the royalties where they may have been arrived at as a result of less than arm's length bargaining; e.g.:

a. Royalties to be paid to persons, including corporations, affiliated with the party requiring payments of such royalty or license fee;

b. Royalties to be paid to unaffiliated parties, including corporations, under an agreement between the person requiring payment and the patent licensor which was entered into in contemplation that the EPA grant or grantee's contract would be awarded; or

c. Royalties to be paid under an agreement between the person requiring payment and the patent licensor which was entered into after the award of the grant by EPA or the contract by the grantee.

8. In any case involving a patent formerly owned by the grantee's contractor, the amount of royalty allowed will not exceed the cost which would have been allowed had the contractor retained title thereto.

9. The royalty shall not exceed the lowest rate at which the licensor has offered or licensed a public or private entity.

10. When negotiating the royalty, the grantee should consider the technical and financial risk that they must assume and the future commercial benefits that may accrue to the licensor as a result of the grantee's utilization of the patent.

11. EPA payment will normally not be made on a royalty until Step 3. Certain exceptions should be allowed when the use of a patented product, apparatus, or process is necessary for the proper performance of the grant agreement, or a subagreement, during Step 1 or 2. The grantee's license or other agreement whereby the grantee was obligated to pay a royalty, must be submitted with the request for EPA payment. If the grantee's payment is made to a licensee, a copy of that licensee's agreement with its licensor must be submitted with the request for EPA payment.

Dated: November 13, 1978.

JOHN T. RHETT,
Deputy Assistant Administrator, Water Program Operations.

FRANCES E. PHILLIPS,
Associate General Counsel, Grants, Contracts and General Administration.

[FR Doc. 79-1267 Filed 1-12-79; 8:45 am]

[6560-01-M]

[FRL 1037-5; OPP-30000/14B]

REBUTTABLE PRESUMPTION AGAINST REGISTRATION OF PESTICIDE PRODUCTS CONTAINING PRONAMIDE

Determination and Availability of Position Document

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

ACTION: Notice of Determination and Availability of Position Document on Pronamide.

SUMMARY: On May 20, 1977, the EPA published in the FEDERAL REGISTER (42 FR 25906) a notice of rebuttable presumption against registration

(RPAR) of pesticide products containing pronamide, a pesticide used primarily on lettuce and alfalfa. Registrants and other interested persons were provided the opportunity to submit data and information to rebut the presumption. After reviewing the rebuttals the EPA has determined that the cancer risk announced in the pronamide RPAR has not been rebutted, and that the uses of pronamide pose a risk of cancer to certain exposed groups. The Agency has also reviewed information relating to the benefits of these uses, and has determined that there is a significant benefit from the use of pronamide on lettuce, that there are less significant benefits from alfalfa, and that the benefits of small volume uses such as berries, turf, sugarbeet seed, and woody ornamentals are unquantifiable. However, after considering the risks in relation to benefits, the Agency has determined that these risks may be reduced by modifying the terms and conditions of registration and it will reregister all uses of pronamide provided that registrants amend the terms and conditions of registration, lower the lettuce tolerance, and provide monitoring reports of pronamide residues in milk at 5 year intervals concurrent with reregistration.

DATE: Comments must be received on or before February 14, 1979.

ADDRESS COMMENTS TO: Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M St., S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Richard Troast, Project Manager, Special Pesticide Review Division, Office of Pesticide Programs (TS-791), Room 447, East Tower, EPA (202/755-8050).

SUPPLEMENTARY INFORMATION: The Notice of Determination and the Pronamide Position Document set forth in detail the reasons for the regulatory actions being proposed. As required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, copies of this Notice of Determination and the Position Document are being transmitted to the Secretary of Agriculture and the Scientific Advisory Panel for comment; these documents are also being provided to the affected registrants and applicants for registration. Other interested persons may receive a copy of the Position Document by contacting Richard Troast, Project Manager, at the address given.

Anyone may comment on the proposed actions. All comments should be sent to the Federal Register Section at the EPA Headquarters address given. Copies of the comments should be submitted to facilitate the work of the Agency and others interested in inspecting the comments. The comments should bear the identifying notation OPP-30000/14B.

I. Introduction

On May 20, 1977, the Environmental Protection Agency issued a notice of rebuttable presumption against registration and continued registration ("RPAR") of pesticide products containing pronamide (42 FR 25906), thereby initiating the Agency's public review of the risks and benefits of the registered uses of pronamide, and the uses for which applications for registration are pending. This notice constitutes the Agency's Notice of Determination ("Notice") pursuant to 40 CFR 162.11(a)(5), terminating the pronamide RPAR.

In broad summary, the Agency has determined that the cancer risk presumption announced in the pronamide RPAR has not been rebutted, and that the cancer risk that pronamide poses to certain exposed groups is of sufficient concern to require the Agency to consider whether offsetting economic, social or environmental benefits exist. The Agency has considered benefits information, including that submitted by registrants, interested persons and the United States Department of Agriculture, and has analyzed the economic, social and environmental benefits of the uses of pronamide. The Agency has weighed risks and benefits together, in order to determine whether the risks of each pronamide use are warranted by the benefits of the use. In weighing risks and benefits, the agency considered what risk reductions could be achieved, and how risk reduction measures would affect the benefits of the use.

The Agency has determined that the risks of all uses of pronamide are greater than the social, economic and environmental benefits of these uses, unless risk reductions are accomplished by modifications in the terms of conditions of registration, as described below. The Agency has further determined that these modifications in the terms or conditions of registration accomplish significant risk reductions, and that these risk reductions can be achieved without significant impacts on the benefits of the uses. In addition, the Agency has decided to revise the pronamide tolerance on lettuce to 1 ppm, and to require registrants for alfalfa uses to monitor pronamide residues in milk in order to permit the agency to monitor exposure to persons ingesting food products which may contain pronamide residues.

The remainder of this Notice and the accompanying Position Document set forth in detail the Agency's analysis of comments submitted during the rebuttal phase of the pronamide RPAR, and the Agency's reasons and factual bases for the regulatory actions it is initiating. The Notice is organized into four sections. Section I is this introduction. Section II, titled "Legal Background", sets forth a general discussion of the regulatory framework within which this action is taken. Section III sets forth the Agency's determinations concluding the pronamide RPAR and initiating the regulatory actions which flow from these determinations; Section III and the accompanying Position Document set forth the basis for these determinations. Section IV, titled "Procedural Matters", provides a brief discussion of the procedures which will be followed in implementing the reguatory actions which the Agency is initiating in this Notice.

II. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act, as amended ("FIFRA"), a manufacturer must demonstrate that the pesticide satisfies the statutory standard for registration. That standard requires (among other things) that the pesticide perform its intended function without causing "unreasonable adverse effects" on the environment (Section 3(c)(5)).

"Unreasonable adverse effects on the environment" is defined to mean "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide" (FIFRA, Section 2(bb)). In effect, this standard requires a finding that the benefits of each use of the pesticide exceed the risks of use, when the pesticide is used in accordance with commonly recognized practice. The burden of proving that a pesticide satisfies the registration standard continues as long as the registration remains in effect. Under Section 6 of FIFRA, the Administrator is required to cancel the registration of a pesticide or modify the terms and conditions of registration whenever he determines that the pesticide no longer satisfies the statutory standard for registration.[1]

[1] Another part of the statutory standard for registration is that the pesticide must satisfy the labeling requirements of FIFRA. These requirements are set out in the statutory definition of "misbranded" (FIFRA Section 2(q)). Among other things, this section provides that a pesticide is misbranded if "the labeling * * * does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with

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The Agency created the RPAR process to facilitate the identification of pesticide uses which may not satisfy the statutory standard for registration and to provide a structure for the gathering and evaluation of information about the risks and benefits of these uses. The structure permits public participation at major points in the evaluation process.

The RPAR process is set forth at 40 CFR 162.11. This section provides that a rebuttable presumption shall arise if a pesticide meets or exceeds any of the risk criteria set out in the regulations. After an RPAR is issued, registrants and other interested persons are invited to review the data upon which the presumption is based and to submit data and information to rebut the presumption. Respondents may rebut the presumption of risk by showing that the Agency's initial determination of risk was in error, or by showing that use of the pesticide is not likely to result in any significant exposure to man or the animal or plant of concern with regard to the adverse effect in question.[2] Further, in addition to submitting evidence to rebut the risk presumption, respondents may submit evidence as to whether the economic, social and environmental benefits of the use of the pesticide subject to the presumption outweight the risk of use.

The regulations require the Agency to conclude an RPAR by issuing a Notice of Determination. In that Notice, the Agency is required to state and explain its position on the question whether the risk presumption has been rebutted. If the Agency determines that the presumption is not rebutted, it will then consider information relating to the social, economic and environmental costs and benefits which registrants and other interested persons submitted to the Agency, and any other benefits information known to the Agency. If the Agency determines that the risks of a pesticide use appear to outweigh its benefits, the RPAR process will conclude with a notice of intent to cancel or deny registration, pursuant to FIFRA Section 6(b)(1) or Section 3(c)(6). If, on the other hand, the Agency determines that benefits appear to outweigh the risks, the Agency may issue a notice of intent to hold a hearing as authorized by Section 6(b)(2) of FIFRA to determine whether the registration should be canceled or applications for registration denied. The regulations further provide that the Agency may withdraw a notice of intent to hold a hearing on whether registration should be canceled or denied if there is insufficient public interest.

In determining whether the use of a pesticide poses risks which are greater than benefits, the Agency considers modifications to the terms and conditions of registration which can reduce risks, and the impacts of such modifications in the terms or conditions of registration on the benefits of the use. Among the risk reduction measures short of cancellation which are available to the Agency are requiring changes in the directions for use on the pesticide's labeling, and classifying the pesticide for "restricted use" pursuant to FIFRA Section 3(d).

The statute requires the Agency to submit notices issued pursuant to Section 6 to the Secretary of Agriculture for comment and to provide the Secretary of Agriculture with an analysis of the impact of the proposed action on the agricultural economy [Section 6(b)]. The Agency is required to submit these documents to the Secretary at least 60 days before making the notice effective by sending it to registrants or making it public. The Secretary of Agriculture is required to comment in writing within 30 days of receiving the notice, and the Agency is required to publish the Secretary's comment and the Administrator's response with publication of the notice. The statute also requires the Administrator to submit Section 6 notices to a Scientific Advisory Panel for comment on the impact of the proposed action on health and the environment, at the same time and under the same procedures as those described above for review by the Secretary of Agriculture [Section 25(d)].

Although not required to do so under the statute, the Agency has decided that it is consistent with the general theme of the RPAR process and the Agency's overall policy of open decisionmaking to afford an opportunity to comment on the bases for the proposed action to registrants and other interested persons, during the time that the proposed action is under review by the Secretary of Agriculture and the Scientific Advisory Panel. Accordingly, appropriate steps will be taken to make copies of the Position Document available to registrants and other interested persons at the time the decision documents are transmitted for formal external review, through publication of a notice of availability in the FEDERAL REGISTER, and by other means. Registrants and other interested persons will be allowed the same period of time to comment—thirty days—that the statute provides for receipt of comments from the Secretary of Agriculture and the Scientific Advisory Panel.

After complying with these external review requirements and accomplishing any changes in the contemplated action which are deemed appropriate as a result of any comments received, the Agency will proceed to implement the desired regulatory action by sending and making public a notice of intent to cancel under FIFRA Section 6(b)(1) or a notice of intent to hold a hearing under FIFRA Secion 6(b)(2), as appropriate. Registrants and other interested persons have 30 days to request a hearing, in the case of notices of intent to cancel under FIFRA Section 6(b)(1). In the event a hearing is not requested and any changes in the terms and conditions of registration directed in the cancellation notice are not accepted, the cancellation action announced in the notice of intent will take effect automatically at the end of the thirty day notice period. If a hearing is requested, it will be governed by the Agency's Rules of Practice for hearings under FIFRA Section 6 [40 CFR Part 164]; the cancellation action will not become effective except pursuant to an order of the Administrator at the conclusion of the hearing. Rules governing participation in and the conduct of hearings under FIFRA Section 6(b)(2) are also set forth in 40 CFR Part 164. As noted earlier, the Agency may withdraw such a notice prior to the commencement of a hearing, upon appropriate findings,

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any * * * (restriction) imposed under section 3(d) * * * are adequate to protect health and the environments." The Agency can require changes to the directions for use of a pesticide in most circumstances either by finding that the pesticide is misbranded if the labeling is not changed, or by finding that the pesticide would cause unreasonable adverse effects on the environment, unless labeling changes are made which accomplish risk reductions.

[2] 40 CFR 162.11(a)(4) provides that registrants and applicants may rebut a presumption against registration by sustaining the burden of proving: "(1) in the case of a pesticide which meet or exceeds the criteria for risk set forth in paragraphs (a)(3)(i) or (iii) that when considered with the formulation, packaging, method of use, and proposed restrictions on and directions for use and widespread and commonly recognized practices of use, the anticipated exposure to an applicator or user and to local, regional or national populations of nontarget organisms in not likely to result in any significant acute adverse effects; or (ii) in the case of a pesticide which meets or exceeds the criteria for risk set forth in paragraph (a)(3)(ii) that when considered with proposed restrictions on use and widespread and commonly recognized practices of use, the pesticide will not concentrate, persist or accrue to levels in man or the environment likely to result in any significant chronic adverse effects; or (iii) that the determination by the Agency that the pesticide meets or exceeds any of the criteria for risk was in error. A primary purpose of the RPAR process is to screen for appropriate action those pesticide uses which pose risks which are of sufficient concern to require the Agency to consider whether offsetting benefits justify the risks. Accordingly, the Agency's approach to rebuttal determinations concentrates on whether the risk concerns which are central to each RPAR proceeding have in fact been answered.

III. Determination and Initiation of Regulatory Action

The Agency has considered information on the risks associated with the uses of pronamide, including information submitted by registrants and other interested persons in rebuttal to the pronamide RPAR. The Agency has also considered information on the social, economic and environmental benefits of the uses of pronamide subject to the RPAR, including benefits information submitted by registrants and other interested persons in conjunction with their rebuttal submissions, and information submitted by the United States Department of Agriculture. The Agency's assessment of the risks and benefits of the uses of pronamide subject to this RPAR, its conclusions and determinations whether any uses of pronamide pose unreasonable adverse effects on the environment, and its determinations whether modifications in terms or conditions of registration reduce risks sufficiently to eliminate any unreasonable adverse effects, are set forth in detail in the Position Document accompanying this Notice. This Position Document is hereby adopted by the Agency as its statement of reasons for the determinations and actions announced in this Notice, and as its analysis of the impacts of the proposed regulatory actions on the agricultural economy. For the reasons summarized below and developed in detail in the Position Document, the Determinations of the Agency with respect to pronamide are as follows:

A. Determinations on Risks

The pronamide RPAR was based on laboratory studies showing that pronamide induced oncogenic effects in experimental mammalian species. As developed fully in the Position Document, the Agency has determined that these studies provide a reliable basis for concluding that pronamide induces oncogenic effects in experimental mammalian species, and that under the Agency's Interim Cancer Assessment Guidelines, these laboratory studies provide substantial evidence that pronamide poses a cancer risk to man. The Agency further has determined that human exposure may result from the uses of pronamide and that these uses therefore pose a cancer risk to man of sufficient magnitude to require the Agency to determine whether the uses of pronamide offer offsetting social, economic or environmental benefits. The Agency has identified pesticide applicators and users as the key populations at risk with respect to pronamide. The risk to persons ingesting pronamide-treated food products is smaller.

B. Determinations on Benefits

The uses of pronamide which are subject to this RPAR may be grouped into three categories: lettuce uses, alfalfa uses, and other uses. The other uses include pronamide use on blueberries and other cane fruits, woody ornamentals, turf and sugarbeet seed.

The Agency depended on a team of agricultural specialists from the U.S. Department of Agriculture to evaluate usage data and make economic estimates based on that data. The Agency used the U.S. Department of Agriculture data and the rebuttal data to prepare a Preliminary Assessment of Benefits (July 1978).

1. *Lettuce*

Pronamide is used on approximately 55% of the total lettuce production of California and Arizona, an area that grows 80-90% of the total U.S. lettuce production.

Although several other pesticides are registered for use in lettuce, pronamide is the herbicide of choice in the Santa Maria Valley and Salinas Valley areas of California. Pronamide is used because it is easy to apply and controls a larger variety of weeds than any of its alternatives.

2. *Alfalfa*

Pronamide is used to control broadleaf weeds and grasses in alfalfa grown for hay and seed. It is used on 0.3% of the alfalfa-hay acreage primarily in Wisconsin, Ohio, and Indiana because it is the only registered pesticide that controls quackgrass in these areas. It is used on 10.2% of the alfalfa-seed acreage and 1.5% of the alfalfa hay acreage in Oregon, Washington, and Idaho because growers must certify that alfalfa is free of downy brome in order to export this crop.

3. *Other Uses*

The data currently available to the Agency is inadequate to quantitate the benefits of the lesser volume uses of pronamide. The available information indicates that pronamide has major use on some berry fruits and minor uses on other minor crops such as sugarbeet seeds because of the weed spectrum that this pesticide controls. For these other uses, substitutes are generally as available as pronamides and under certain conditions, these substitutes are as effective as pronamide as weed control agents.

C. Determinations of Unreasonable Adverse Effects

For the reasons set forth in detail in Position Document 3, the Agency has made the following unreasonable adverse effect determinations about the uses of pronamide:

The Agency has determined that the risks arising from continuing the lettuce, alfalfa and other uses of pronamide are greater than the social, economic, and environmental benefits of these uses, unless risk reductions are accomplished by modifications in the terms and conditions of registration as described in the following section.

The Agency has further determined that these modifications in the terms and conditions of registration accomplish significant risk reductions, and that these risk reductions can be achieved without significant impacts on the benefits of the uses. Accordingly, the Agency has determined that, unless these changes in the terms or conditions of registration are accomplished, the uses of pronamide will generally cause unreasonable adverse effects on the environment, when used in accordance with widespread and commonly recognized practice, and that the labeling of pronamide pesticide products will not comply with the provisions of FIFRA.

D. Other Determinations

The Agency has determined that registrants and applicants for registration of pronamide products for alfalfa uses must develop and submit to the Agency market basket analyses of pronamide residues in milk every 5 years. The Agency will use these data for the purpose of refining its risk and benefit assessments on the use of pronamide on alfalfa; these data will also be used to reassess its conclusion that the use of pronamide on alfalfa, in accordance with the Agency's proposed modifications to the terms or conditions of registration, does not cause unreasonable adverse effects on the environment.[5]

E. Initiation of Regulatory Actions

Based upon the determinations summarized above and developed in detail in the Position Document, the Agency is initating the following regulatory action, and this document shall constitute its Notice of Intention to initiate this action:

Cancellation and denial of registrations of pronamide products for all uses unless registrants or applicants for registration modify the terms or conditions of registration as follows: [6]

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[5] For the Agency's authority to require registrants to conduct studies relevant to assessing the risks and benefits of a pesticide, and to report the results thereof to the Agency, see 40 CFR 162.8(d)(1) and FIFRA Section 6(b)(1).

[6] FIFRA 6(b)(1) provides that the Administrator may initiate proceedings to cancel a registration or *change* its use classification, where the Administrator finds that the pesticide does not satisfy the statutory standard for registration. However, the registered pronamide products subject to this RPAR have not yet been initially classified. Ac-

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a. Classification of pronamide products for all uses for restricted use, for use only by or under the direct supervision of certified applicators.

b. Modification of the labeling of all pronamide products formulated as a wettable powder to include the following:

(i) The following statements must appear on the labels of all pesticide products containing Pronamide:

HAND SPRAYING PROHIBITED

RESTRICTED USE PESTICIED

For retail sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the certified applicator's certification.

(ii). The following statements must appear on the labels of pesticide products containing pronamide formulated as a wettable powder.

GENERAL PRECAUTIONS

A. Take special care to avoid getting pronamide in eyes, on skin or on clothing.

B. Require the following items of clothing when applying pronamide:

1. Long sleeved, one piece protective outergarment (overalls or jumpsuit)
2. Hat with brim
3. Heavy duty fabric work gloves

HANDLING PRECAUTIONS

A. This product is in water soluble bag. Do not break open the bag prior to use. Do not use in quantities smaller than one full bag. If a bag is leaking, use extreme care in handling. Do not get in eyes, on skin or on clothing.

The following packaging requirements must be used for all wettable powder formulations.

A. All wettable powder formulations are to be packaged in water soluble bags.

B. Water soluble bags are not to contain less than one pound of 50% material (0.5 lb. A.I.) per bag.

C. Minimum labeling to appear on the water soluble bag shall include the product name, EPA Registration No. and the words "Caution: Keep out of reach of children".

In addition to these actions, at the appropriate time the agency will initiate actions to (1) require the milk monitoring studies referenced above and (2) revise the lettuce tolerance to 1 ppm. These actions are not being initiated by this notice, but instead will be initiated by correspondence from the Office of Pesticide Programs to affected pronamide registrants and applicants for registration, and by FEDERAL REGISTER Notice.

IV. PROCEDURAL MATTERS

As discussed above in Section II of this Notice, the Agency's decision to initiate the regulatory actions described in Section III must be referred for review by the Secretary of Agriculture and the Scientific Advisory Panel. The transmittal of the Agency's decision to satisfy these external review requirements will occur shortly. As further indicate above, the Agency also will offer registrants and other interested persons an opportunity to comment on the bases for the Agency's action by making copies of the Position Document available upon request. Registrants and other interested persons will be given the same period of time to submit comments—thirty days that the statute provides for comments from the Secretary of Agriculture and the Scientific Advisory Panel.

After completion of these review procedures, the Agency will consider the comments received and publish an analysis of them, together with any changes in the regulaory actions announced in this Notice which it determines are appropriate. Until this final review phase is concluded in this manner, it is not necessary for registrants or other interested persons to request a hearing to contest any regulatory actions resulting from the conclusion of this RPAR.

Dated: January 6, 1979.

STEVEN D. JELLINEK,
Assistant Administrator for Toxic Substances.

[FR Doc. 79-1268 Filed 1-12-79; 8:45 am]

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cordingly, any classification action with respect to these products in an *initial* classification, and not a *change* in classification. Initial classification generally does not give rise to a right to review the classification decision in an adjudicatory hearing. (See *Preamble to Optional Procedures for Classification of Pesticide Uses by Regulation*, 42 FR 5782, 5784 (Feb. 9, 1978). However, in view of the fact that the Agency is proposing other changes to the terms or conditions of the registration (e.g., labeling changes) for registered pronamide products, which are reviewable in adjudicatory hearings, the Agency has determined that it is appropriate to exercise its discretion to fashion procedures in excess of minimum statutory requirements, and to permit the question of whether pronamide products should be initially classified for restricted use and its use limited to certified applicators to be reviewed in any such adjudicatory hearing as well.

[6560-01-M]

[FRL 1037-8]

RECEIPT OF ENVIRONMENTAL IMPACT STATEMENTS

President Carter's Reorganization Plan No. 1 (see President's Message of July 15, 1977) transferred certain functions from the Council on Environmental Quality (CEQ) to the Environmental Protection Agency (EPA). Some of these functions relate to operational duties associated with the administrative aspects of the environmental impact statement (EIS) process. In Memorandum of Agreement No. 1 entered into between CEQ and EPA, dated March 29, 1978, it was agreed that EPA would be the official recipient of EIS's and would publish the availability of each EIS received on a weekly basis. This is the duty formerly carried out by CEQ pursuant to § 1500.11(c) of the CEQ Guidelines.

Review periods for draft and final EIS will be computed as follows: The 45 day review period for draft EIS's will be computed from the Friday following the week which is being reported; the 30 day wait period for final EIS's will be computed from the date of receipt of the EIS by EPA and commenting parties.

The following is a list of environmental impact statements received by the Environmental Protection Agency from January 2, 1979 through January 5, 1979; the date of submission of comments on draft EIS's as computed from January 12, 1979 is February 26, 1979.

Copies of individual statements are available for review from the originating agency. Back copies are also available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

Dated: January 10, 1979.

PETER L. COOK,
Acting Director, Office of Federal Activities.

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, coordinator, Environmental Quality Activities, U.S. Department of Agriculture, Room 359A, Washington, D.C. 20250 (202) 447-3965.

FOREST SERVICE

Final

John Day Unit Plan, Malheur and Umatilla National Forest, Grant County, Oreg., January 5: Proposed is a land use plan for some 586,489 acres of national forest land in John Day River and Middle Fork of the John Day River drainages, Malheur and Umatilla National Forests. Land use area include wilderness, recreation, wilderness study, botanical and scenic areas, and resource management. (USDA-FS-R6-FES(ADM)-76-3.) Comments made by: EPA, DOI, DOC, NOAA, USDA, State and local agencies, groups and individuals. (EIS Order No. 90024.)

The following EIS will be available from USDA for distribution on January 17, 1979. Therefore, it has been agreed that the Review period for this final EIS will end on February 28, 1979.

Rare II, Roadless Area Review and Evaluation, several counties, January 4: this statement recommends the following designa-

tions for the 62,036,904 acres of roadless national forest system land: 1) 15,088,838 acres of national wilderness preservation system, 2) 36,151,558 acres of non-wilderness use, and 3) 10,796,508 acres for further planning category for all uses. The 20 area documents concern: North Dakota; Washington; Oregon; Colorado; Montana; Alaska; California; New Mexico; Utah; Idaho; Wyoming; Arizona; Nevada; the Midland States; Southern Appalachian and Atlantic Coast States; Northern Appalachian and New England States; the Lake States; the Central Plains; the Gulf Coast States and Puerto Rico; and the Ozark and Quachita Highlands States. Comments made by: DRBC, DOC, DOI, DOT, EPA, ORBC, USDA, COE, State agencies, groups and businesses. (EIS Order No. 90030.)

Sam Houston Unit, Sam Houston National Forest, Montgomery, Walker, and San Jacinto Counties, Tex., January 3: This proposed action involves the implementation of a ten-year management plan for the Sam Houston Unit. This unit includes the entire Sam Houston National Forest, comprising 158,654.88 acres in Montgomery, Walker and San Jacinto Counties Texas. Major actions include timber harvest and site preparation; increased diversity of wildlife habitat with emphasis on three squirrels; road construction and reconstruction; mineral leasing; and establishment of special management areas. (USDA-FS-F8-FES (ADM) 08-13-78-01.) Comments made by: EPA, USDA, AHP, DOI, DOT, State and local agencies, groups, individuals, and businesses. (EIS Order No. 90013.)

Final Supplement

King Planning Unit, Klamath National Forest, Siskiyou County, Calif., January 5: This statement supplements a final EIS filed in April 1977, concerning the management of the King Planning Unit, Klamath National Forest, Siskiyou County, California. This supplement provides additional information about two of the five alternative plans for management of the 49,000 acres involved, and evaluates more completely the roadless and wilderness characteristics of roadless lands within the planning unit. (USDA-FS-R5-FES (ADM) 05-05-76-3-(S).) (EPA Order No. 90029.)

U.S. Army Corps of Engineers

Contact: Dr. C. Grant Ash, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue, S.W., Washington, D.C. 20314, (202) 693-6795.

Draft

Oakland Outer Harbor Navigation Improvements, Alameda County, Calif., January 3: Proposed are deep-draft navigation improvements for Oakland Outer Harbor, California. These improvements consist of deepening the existing channel and widening the channel to provide (a) a channel width of 1,100 feet at the entrance to the outer harbor, (b) a channel width of 800 feet adjacent berth E at the outer harbor dogleg, and (c) relocating the existing turning basin 3,000 feet westward and expanding its width from 950 feet to 1,800 feet. The COE filed a draft EIS, #60886, dated 6-14-76, which is replaced by this revised draft. (San Francisco District.) (EIS Order No. 90014.)

Brazos Island Harbor, Channel Improvement, Cameron County, Tex., January 2: Proposed is the enlargement of the turning basin, main channel, and entrance channel, of Brazos Island Harbor located in Cameron County, Texas. The main channel would be deepened to 42 feet for a distance of approximately 14.8 miles. The turning basin would also be deepened to 42 feet and widened, with widths ranging from 325 to 400 feet. The entrance channel will be widened to 400 feet and deepened to 44 feet. Minimum health and safety measures are proposed for the jetty area. Recreational facilities are also included as part of the proposal. The COE filed a draft EIS, #70915, dated 7-27-77, which is replaced by this revised draft. (Galveston District.) (EIS Order No. 90000.)

Draft

Borg-Warner Plastics Plant, Saveston, Permit, Ralls County, Mo., January 2: The proposed action is a request made by Borg-Warner Chemicals for permits from the corps to construct a barge docking facility with a wastewater outfall pipe along the Mississippi River as part of a chemical plant to be built at Saverton, Ralls County, Missouri. The facility will produce 150 million pounds per year of acrylonitrile, butadiene, styrene (ABS) plastic. Raw materials for this facility will be shipped into the plant by barge, rail and truck. The proposed plant will be constructed on a 305 acre site. (Rock Island District.) (EPA Order No. 90002.)

Yakima/Union Gap Flood Damage Reduction, Yakima County, Wash., January 2: Proposed is a flood damage reduction plan for the Yakima-Union Gap in Yakima County, Washington. The plan will involve the improvement of 9 miles of existing right and left bank levees along the Yakima River. The project also includes construction of new levees and flood control structures below the WA-24 bridge which involves a 2.7 mile left bank levee and a 1.1 mile right bank levee. One-half mile of bank protection for I-82 and two control structures for culverts to protect the city of Union Gap would also be included. (Seattle District.) (EIS Order No. 90009.)

Final

Moline, Illinois, Local Flood Protection, Rock Island County, Ill., January 2: Proposed is a flood protection plan for the city of Moline in Rock Island County, Illinois. The plan will provide protection for 390 acres of commercial, industrial, public and residential lands within the city. The project area is divided into two units. Reach a will consist of a levee and flood wall system from the western city limits to 34th street, and an improved, higher levee on Sylvan Island. Reach C will involve the construction of a floodwall and levee from 48th street to the eastern city limits. Both reaches will involve the raising of and modification to existing sewer lines, railroads, and streets. (Rock Island District.) Comments made by: AHP, USDA, DOC, HUD, DOI, DOT, EPA, State and local agencies, individuals and businesses. (EIS Order No. 90001.)

Missouri River Bank Stabilization, Navigation, several counties, January 2: Proposed is the completion of construction and navigation structures for the Missouri River in the States of Iowa, Kansas, Missouri, and Nebraska. The project would achieve the authorized design channel configuration and continuation of maintenance of the Missouri River Bank Stabilization and Navigation Project. The project area will extend from the mouth of the river to Sioux City, Iowa. A distance of 734.8 miles, and under current authorization provide a continuous 9-foot navigation channel, 300-feet wide. Development of non-resevoir recreation areas are included in the project. (Omaha District.) Comments made by: AHP, DOI, HEW, HUD, EPA, FPC, USDA, USCG, State and local agencies, groups, individuals, and businesses. (EIS Order No. 9003.)

Westhaven Cove, Basin Expansion, Grays Harbor, Grays Harbor County, Wash., January 4: The proposed action of this statement concerns the expansion of the small boat basin in Westhaven Cove, Grays Harbor, Grays Harbor County, Washington. Some actions involved include: 1) Removal of a 350 foot extension of breakwater, 2) construction of a 865 foot extension to breakwater, and a 200 foot spur breakwater, 3) dredging a new entrance channel, access channel, and turning basin, 4) use of 5.5 acres of intertidal wetlands and two confined upland sites to dispose and stockpile dredging material, and (5) slope protection. (Seattle District.) Comments made by: FPA, CGD, DOC, DOT, HUD, USDA, HEW, AHP, State and local agencies, groups, individuals, and businesses. (EIS Order No. 90023.)

Draft Supplement

Grand Isle and Vicinity, Beach Erosion, Jefferson County, La., January 2: This statement supplements a final EIS filed in September 1976 concerning beach erosion and hurricane protection for grand Isle and Vicinity located in Jefferson Parish, Louisiana. The project will consist of a 2,600-foot stone jetty at Caminada Pass to stabilize the western end of Grand Isle and a sandfill dune and berm extending approximately 7.5 miles along the Island's Gulf Shore. Sandfill for the dune and berm will be dredged from nearshore bottoms. Five alternatives are considered. (New orleans District.) (EIS Order No. 90005.)

Coos Bay, Charleston Breakwater Extension, Coos County, Oreg., January 5: This statement supplements a final EIS filed in November 1976 concerning the operation and maintenance of Coos Bay, Coos County, Oregon. The coe proposed to: 1) Construct an 800-foot breakwater extension north from the end of the present breakwater paralleling channel alinement; 2) raise the top elevation of the existing breakwater; and 3) construct a 400-foot long groin on the east side of the Charleston Channel, if later determined necessary to control channel Shoaling. (Portland District.) (EIS Order No. 90031.)

Final Supplement

Tulsa Urban Renewal Authority, River Parks Project, Tulsa County, Okla., January 5: This EIS supplements a final filed in December 1976 which concerned the issuance of an Army permit to the Tulsa Urban Renewal Authority. In April of 1978 this permit was transferred to the River Parks Authority which is now applying for revision of the permit. The revision, if approved, would allow the construction of a low water weir which was discussed on a conceptual basis in the final EIS. The proposed structure would be located on the Arkansas River in Tulsa County, Oklahoma. (Tulsa District.) Comments made by: USDA,

HUD, DOI, DOT, EPA, State and local agencies, businesses. (EPA Order No. 81379.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Assistant Secretary for Environmental Affairs, Department of Commerce, Washington, D.C. 20230 (202) 377-4335

ECONOMIC DEVELOPMENT ADMINISTRATION

Draft

Port of Camas-Washougal Industrial Park, expansion, Clark County, Wash., January 5: Proposed is the expansion of the existing port of Camas-Washougal Industrial Park, located in the city of Washougal, Clark County, Washington. The principal objective is to foster economic development by increasing industrial employment and diversifying the economic base of Washougal and southern Clark County. Land adjacent to the existing industrial park will be prepared for occupancy by small and medium-sized industrial firms. (EIS Order No. 90026.)

The Department of Commerce has been granted a waiver of 15 days of the review period on the following final EIS. Therefore, the review period will end on January 18, 1979.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Final

Halibut off the coast of Alaska, fishery management plan, several counties, Alaska, January 1: The proposed action is the fishery management plan which addresses the hook and line fisheries for Halibut off the coast of Alaska. The specific goals for the Halibut resource are: (1) to rebuild the halibut resource to a level of abundance which will provide long term optimal yield, and (2) to provide for a viable halibut setline fishery for United States fishermen. Comments made by: Groups, individuals and business. (EIS Order No. 90018.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Edward Cox, Solid Waste Information Office, Environmental Protection Agency, 26 West St. Clair, Cincinnati, Ohio 45260.

The review period for the following statement has been extended to March 16, 1979.

Draft

Resource Conservation and Recovery Act, subtitle C, regulatory, January 1: Proposed is the implementation of subtitle C of the Resource Conservation and Recovery Act of 1976. Subtitle C provides EPA with the authority to regulate the generation, transportation, treatment, storage, and disposal of hazardous waste in a manner that protects human health and the environment. RCRA also authorizes States to implement their own program for the management of hazardous waste if it is, at a minimum, equivalent to the Federal regulations. Compliance with the proposed regulations is mandatory; noncompliance is subject to penalty of law. (EIS Order NO. 90019.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755-6308.

Draft

Independence Village East, Columbus, Franklin County, Ohio, January 1: Proposed is the issuance of HUD home mortgage insurance for Independence Village East subdivision located in Columbus, Franklin County, Ohio. The project area will encompass approximately 260 acres and will consist of approximately 162 duplexes, 766 multi-family, and 766 single family units. (HUD-ROS-EIS-76-01 (D). (EIS Order No. 90022.)

Final

Makakilo subdivision development, Ewa, Oahu, Honolulu, Hawaii, January 2: Proposed is the private development of a primarily residential community on 607 acres at Makakilo, Ewa, Oahu, in Honolulu County, Hawaii, with an ultimate projected population of about 12,000. The development consists of 3,693 housing units including single family, townhouses and garden apartments on 378 acres, recreational facilities occupying 22 acres, 6 acres for schools and the balance in unimproved open space and rights of way. (HUD-R09-EIS-78-4F.) Comments made by: USDA, USN, DOT, EPA, DOC, AHP, USAF, DOD, USA, GSA, VA, State and local agencies, groups and businesses. (EIS Order No. 90006.)

Final

Northwest Park subdivision, Harris County, Tex., January 3:, The proposed action is the application by Rosslyn Road, Incorporated for mortgage insurance for the development of the Northwest Park subdivision, located in the northwest portion of Harris County, Texas. When completed, the proposed subdivision, which encompasses approximately 457 acres, is expected to consist of approximately 1,007 dwelling units. (HUD-R06-EIS-78-44F.) Comments made by: AHP, DOT, EPA, COE, USDA, DOI, State, and local agencies. (EIS Order No. 90015.)

Section 104 (H)

The following are community development block grant statements prepared and circulated directly by applicants pursuant to section 104 (H) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local executive. Copies are not available from HUD.

Final

CBD redevelopment, Los Angeles, Los Angeles County, Calif., January 3: Proposed is the development of the Los Angeles City Central business district, Los Angeles County, California. The project intends the rehabilitation of existing deteriorated structures, improvement of the local street system; expansion of park, recreation and public facilities; development of new commercial and industrial facilities; and expansion of low and moderate income, elderly, and other housing in the downtown area. Alternatives include: (1) No project, (2) reduction/elimination of proposed housing development, (3) restriction/elimination of all new commercial developments, and (4) elimination of peripheral parking proposals. Comments made by: DOT, EPA, State and local agencies. (EIS Order No. 90011.)

North Hollywood redevelopment project, Los Angeles County, Calif., January 1: Proposed is the redevelopment of North Hollywood located in Los Angeles City, Los Angeles County, California. Features of the project include: (1) Rehabilitation of existing deteriorated residential and commercial structures, (2) new residential and commercial development, (3) development of community facilities, (4) open space development, and (5) improvement of the local street system. Four alternatives are considered which include: (1) No project, (2) delay in the project, (3) change of project, and (4) change in design of project. Comments made by: DOI, EPA, and local agencies. (EIS Order No. 90012.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Bldg., Department of the Interior, Washington, D.C. 20240, 202-343-3891.

BUREAU OF RECLAMATION

Draft

Salt-Gila Aqueduct and Transmission System, Maricopa and Pinal Counties, Ariz., January 4: Proposed is the construction and operation of the Salt-Gila aqueduct and associated electrical transmission system in Maricopa and Pinal Counties, Ariz. The aqueduct would convey Colorado River water from the terminus of the Granite Reef aqueduct to the beginning of the Tucson aqueduct. Water would enter the aqueduct at the Salt-Gila pumping plant forebay, be raised 74 feet and would flow by gravity through the open, concrete-lined canal for 58 miles to service areas. (DES-79-1.) (EPA Order No. 90021.)

GEOLOGICAL SURVEY

Draft

Colstrip Project, Rosebud County, Mont., January 5: Proposed is the granting of right-of-way easements across Federal lands for the transmission system and loan guarantees for two REA cooperatives contemplating participation in the Colstrip project located in Rosebud County, Mont. The project, proposed by four companies, consists of two 700-MW coal-fired electric generating units; continued development of coal resources; a water supply system; and two single-circuit 500 kV transmission lines. (DES-79-2.) (EPA Order No. 90027.)

U.S. NUCLEAR REGULATORY COMMISSION

Contact: Mr. Richard E. Cunningham, Director (Mail 3960SS), Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301-427-4152.

Sweetwater Uranium Project, Operation, Sweetwater County, Wyo., January 4. Proposed is the issuance of a source material license to the Minerals Exploration Company (MEC) for the construction and operation of the proposed Sweetwater uranium mill with a nominal capacity of 3,000 tons per day of uranium ore. As part of the proposal, the applicant proposes to construct a heap leaching and resin ion-exchange facility to extract uranium from low-grade ores and mine water. The heap leach will not be authorized for operation until MEC has developed an environmentally acceptable reclamation plan for the tailings. (NUREG-0505.) Comments made by: AHP, DOE, HUD, USDA, DOI, EPA, DOT, State agencies, groups, individuals, and businesses. (EIS Order No. 90020.)

NUCLEAR REGULATORY COMMISSION

Contact: Mr. Voss A. Moore, Assistant Director for Environmental Projects, P-518, Washington, D.C. 20555, 301-492-8446.

Final

Watts Bar Nuclear Plant, Units 1 and 2, operation, Rhea County, Tenn., January 2: The proposed action is the issuance of operating licenses to the Tennessee Valley Authority (TVA) for the startup and operation of the Watts Bar Nuclear Plant Units 1 and 2 on the west shore of Chickamauga Reservoir in Rhea County, 8 miles southeast of Spring City, Tenn. Each unit will employ a pressurized water reactor to produce up to 341 MWt for a total of 6,822 thermal megawatts. This heat will be used to produce steam to drive steam turbines providing 2,340 MW net of electrical power capacity. The units will be cooled by cooling towers drawing makeup water from Chickamauga Reservoir. (NUREG-0498). Comments made by: USDA, DOE, DOC, DOI, TVA, EPA, State and local agencies, groups and individuals. (EIS Order No. 90004.)

STATE DEPARTMENT

Contact: Mr. Cameron Sanders, Office of Environmental Affairs, Department of State, Washington, D.C. 20520, 202-632-9169.

Draft

Narcotics Control in Mexico, Herbicide Use, Foreign, January 3: Proposed and examined is the continuation of the joint U.S. Government-Government of Mexico program which utilizes herbicides to eradicate opium poppy (2, 4-D) and marihuana (paraquat) crops. The statement addresses Mexican narcotics eradication and control projects including the use of herbicides. It presents drug traffic and drug consumer profiles and estimates the extent of contamination of heroin and marihuana in the United States along with associated health effects. (EIS Order No. 90010.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, 202-426-4357.

FEDERAL HIGHWAY ADMINISTRATION

Draft

I-97, Baltimore/Annapolis Corridor Study, Anne Arundel County, Md., January 2: Proposed is the construction of I-97 and possibly other major improvements to the existing highway network, between Annapolis and the Baltimore Beltway in Anne Arundel County, Md. The statement explores several feasible alternative highway networks in the area to determine the proper location of I-97. Other major highway facilities which will be required to serve in this development are evaluated and may include possible improvements both in existing and new locations. (FHWA-MD-EIS-78-02-D). (EIS Order No. 90008.)

Final

3rd Street, Southeast Mandan, Improvement, Morton County, N. Dak., January 3: The proposed project is located in southeast Mandan, Morton County, N. Dak. The purpose of the proposed improvement is to construct a street from ND-1806 easterly to Memorial Highway. The length of the project varies from 6,000 to 6,600 feet depending upon which alternative is selected. The project consists of the purchase of right-of-way and the construction of a street between the two aforementioned highways. (FHWA-ND-EIS-78-01F). Comments made by: USCG, CUE, DOI, HEW, USDA, State and local agencies. (EIS Order No. 90016.)

N. & S. TIGARD INTERCHANGES, PACIFIC HWY.—I-5

Clackamas, Multnomah, Washington, Counties, Oreg., January 1: The proposed action calls for the widening of 1.44 miles of existing four lane freeway to six lanes, completing the six-lane freeway from Salem to Portland. Two safety features are proposed in addition: Reconstruction of Hines Interchange and construction of an exclusive truck bypass lane. The bypass lane would join an existing shoulder which would be converted to an exclusive truck climbing lane. Three alternatives are currently under consideration, each having its respective impact. (FHWA-OR-EIS-76-04-F). Comments made by: EPA, USDA, DOI, State and local agencies, groups, individuals, and businesses. (EIS Order No. 90007.)

URBAN MASS TRANSPORTATION ADMINISTRATION

Final

Pittsburgh Light Rail Transit Reconstruction, Allegheny County, Pa., January 3: The proposal of this statement concerns the reconstruction of portions of 22.5 miles of a trolly system currently in operation in the South Hills Corridor, Pittsburgh, Allegheny County, Pa. This project includes complete reconstruction of 10.5 miles of the system including the Mt. Lebanon via Beechview Trolly Line and a section of the Shannon-Library and Shannon-Drake Lines south of Castle Shannon, rehabilitation of power and communications systems on the other 12 miles of the system, and construction of a new downtown Pittsburgh distribution system. (UTMA-PA-03-0012). Comments made by: AHP, COE, ICC, DOI, EPA, State and local agencies, groups, individuals, and businesses. (EIS Order No. 90017.)

INFORMATION REPORT

The EPA has received the following report which provides supplemental information on proposals which have fulfilled the NEPA process. Copies of the report are available from the originating agency upon request.

U.S. ARMY, CORPS OF ENGINEERS

Contact: Dr. C. Grant AsH, Office of Environmental Policy, Attn: DARN-CWR-P, Office of the Chief of Engineers, Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20310, 202-693-6795. EPA No. 90025, Date Rec'd., 1-5-79, Title Supplemental Data-Paintsville Lake Project, Kentucky, (Huntington District).

OFFICIAL CORRECTION

The Department of Housing and Urban Development notified EPA regarding an EIS which was sent to EPA for official filing and not received by EPA. The draft EIS was distributed to the public on or before December 20, 1978. Therefore, EPA has established the review period for the Draft EIS listed below to end on February 3, 1979.

Herbert C. Huber Subdivision, Wayne Township Montgomery County, Ohio, January 5: Proposed is the issuance of HUD home mortgage issuance for the Wayne Township located in Montgomery County, Ohio. The development will encompass approximately 643.6 acres and when completed will include 2,038 single-family detached housing units. Land within the development has been set aside for schools, open space, and a fire station. (HUD-R05-EIS-78-08-CD)). (EIS Order No. 90028.)

[FR Doc. 79-1008 Filed 1-12-79; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

AGREEMENTS FILED

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10423; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, by February 5, 1979. Comments should include facts and arguments concerning the approval, modification or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

AGREEMENT NO. 134-40.

FILING PARTY: C. J. Smith, Chairman, Gulf/Mediterranean Ports Conference, Suite 927 Whitney Building, New Orleans, Louisiana 70130.

SUMMARY: Agreement No. 134-40 would amend the self-policing provisions of the Gulf/Mediterranean Ports Conference to conform to the require-

ments of the Commission's new self-policing rules as contained in revised General Order 7 (Part 528 of Title 46 C.F.R.).

AGREEMENT NO. 2744-41.

FILING PARTY: Seymour H. Kligler, Esquire, Brauner Baron Rosenzweig Kligler & Sparber, 120 Broadway, New York, New York 10005.

SUMMARY: Agreement No. 2744-41 modifies the basic agreement of the Atlantic and Gulf/West Coast of South America Conference to conform to the requirements of General Order 7, revised.

AGREEMENT NO. 3868-26.

FILING PARTY: Seymour H. Kligler, Esquire, Brauner Baron Rosenzweig Kligler & Sparber, Attorneys at Law, 120 Broadway, New York, New York 10005.

SUMMARY: Agreement No. 3868-26 would amend the self-policing provisions of the Atlantic and Gulf/Panama Canal Zone, Colon and Panama City Conference to conform to the requirements of the Commission's new self-policing rules as contained in revised General Order 7 (Part 528 of Title 46 C.F.R.).

AGREEMENTS NOS. 5680-29 and 6060-24.

FILING PARTY: R. Frederic Fisher, Esq., Lillick, McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

SUMMARY: Agreements Nos. 5680-29 and 6060-24 are identical and would modify the basic agreements of the Pacific/Indonesian Conference and the Pacific/Straits Conference to reflect the following, viz: (i) that each Conference might vote to "open" its rates with respect to any commodity, thus permitting each line to quote its own rates with respect to that commodity; and (ii) that credit to any shipper or consignee could be advanced by any line but only to the extent permitted by the rules and provisions of the conferences' tariffs.

AGREEMENT NO. 7590-27.

FILING PARTY: Seymour H. Kligler, Esquire, 120 Broadway, New York, New York 10005.

SUMMARY: Agreement No. 7590-27 modifies the basic agreement of the East Coast Columbia Conference to conform to the requirements of General Order 7, revised.

AGREEMENTS NOS. 7680-38 and 9420-8.

FILING PARTY: John K. Cunningham, Chairman, American West African Freight Conference, 67 Broad Street, New York, New York 10004.

SUMMARY: Agreements Nos. 7680-38 and 9240-8 would amend the self-policing provisions of the American West African Freight Conference and the United States Great Lakes and St. Lawrence River Ports/West Africa Rate Agreement, respectively, to conform to the requirements of the Commission's new self-policing rules as contained in revised General Order 7 (Part 528 of Title 46 C.F.R.).

AGREEMENTS NOS. 7690-17, 8040-11, 8050-11, 8054-17, 8558-8, 8650-10 and 9502-12.

FILING PARTY: William L. Hamm, Chairman, The India, Pakistan, Bangladesh, Ceylon, and Burma Outward Freight Conference, 25 Broadway, New York, New York 10004.

SUMMARY: Agreements Nos. 7690-17, 8040-11. 8050-11, 8054-17, 8558-8, 8650-10 and 9502-12 would amend the self-policing provisions of The India, Pakistan, Bangladesh, Ceylon & Burma Outward Freight Conference; West Coast of India and Pakistan/U.S.A. Conference; Ceylon/U.S.A. Conference; South and East Africa/U.S.A. Conference; Red Sea and Gulf of Aden/U.S. Atlantic and Gulf Rate Agreement No. 8558; Calcutta, East Coast of India and Bangladesh/U.S.A. Conference; and United States/South and East Africa Conference, respectively, to conform to the requirements of the Commission's new self-policing rules as embodied in revised General Order 7 (46 CFR, Part 528, effective January 1, 1979). In addition, each Agreement would increase to $50,000.00 (from differing amounts depending upon the particular Agreement involved) the amount of security each party shall deposit as a guarantee of faithful performance of obligations under the Agreement and of prompt payment of any penalties against the party under the Agreement.

AGREEMENT NO. 7890-15.

FILING PARTY: Seymour H. Kligler, Esquire, Brauner Baron Rosenzweig Kligler & Sparber, 120 Broadway, New York, New York 10005.

SUMMARY: Agreement No. 7890-15 modifies the basic agreement of the West Coast South America Northbound Conference to conform to the requirements of General Order 7, revised.

AGREEMENT NO. 8300-15.

FILING PARTY: Seymour H. Kligler, Esquire, Brauner Baron Rosenzweig Kligler & Sparber, 120 Broadway, New York, New York 10005.

SUMMARY: Agreement No. 8300-15 modifies the basic agreement of the Atlantic and Gulf/West Coast of Central America and Mexico Conference to conform to the requirements of General Order 7, revised.

AGREEMENT NO. 8493-10.

FILING PARTY: R. Frederic Fisher, Esq., Lillick McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

SUMMARY: Agreement No. 8493-10 would amend Article 2 of the Trans-Pacific American Flag Berth Operators Agreement by adding the following additional language at the end of said article:

> Credit for payment of charges due under tariffs issued pursuant to this Article 2 may be extended by the parties only as permitted by and in accordance with rules and provisions and related bonding requirements (including rules and provisions in any standard credit agreement or indemnity bond forms) set forth in such tariffs. No credit shall be extended by any party to any shipper or consignee that the Secretary of the Association or his designate has advised the parties in writing is delinquent in the payment of freight charges to any party under tariffs filed pursuant to this Agreement.

AGREEMENT NO. 8900-10.

FILING PARTY: Marc J. Fink, Esq., Billig, Sher & Jones, P. C., Suite 300, 2033 K Street, N.W., Washington, D.C. 20006.

SUMMARY: Agreement No. 8900-10 would amend various articles of the "8900" Lines Rate Agreement for the purpose of (1) bringing the agreement's self-policing provisions into conformity with the requirements of the Commission's new self-policing rules as embodied in revised General Order 7 (Part 528 of Title 46 CFR); (2) providing that any line applying for readmission to membership within 24 months of its withdrawal is exempt from the payment of the admission fee; (3) precluding any party or agent thereof from chartering space on a non-member line's vessel operating in the agreement trade or soliciting cargo on such a vessel except where no other suitable agents are available; and (4) providing that each party to the agreement shall deposit and maintain, as a financial guarantee of faithful performance of obligations thereunder and of prompt payment of any fines or judgments rendered against it, the sum of $50,000 in United States currency, or Government bonds, or an irrevocable letter of credit, or a surety bond.

AGREEMENT NO. 9427-6.

FILING PARTY: Patricia E. Byrne, Esquire, Suite 727, 17 Battery Place, New York, New York 10004.

SUMMARY: Agreement No. 9427-6 modifies the Germany-North Atlantic Ports Rate Agreement to conform with recent revisions to the Commission's General Order 7.

AGREEMENT NO. 9510-5.

FILING PARTY: Alan F. Wohlstetter, Esq., Denning & Wohlstetter, 1700 K Street, N.W., Washington, D.C. 20006.

Summary: Agreement No. 9510-5 would amend the self-policing provisions of the Household Goods Forwarders Association of America Rate Agreement to conform to the requirements of the Commission's new self-policing rules as embodied in revised General Order 7 (46 CFR, Part 528, effective January 1, 1979).

AGREEMENT NO. 9552-4.

FILING PARTY: Patricia E. Byrne, Esquire, Suite 727, 17 Battery Place, New York, New York 10004.

SUMMARY: Agreement No. 9552-4 modifies the North Atlantic/West Europe Rate Agreement to conform with recent revisions of the Commission's General Order 7.

AGREEMENT NO. 9615-28.

FILING PARTY: Stanley O. Sher, Esquire, Billig, Sher & Jones, P. C., Suite 300, 2033 K Street, N.W., Washington, D.C. 20006.

SUMMARY: Agreement No. 9615-28 modifies the Iberian/U.S. North Atlantic Westbound Freight Conference Agreement to conform with recent revisions to the Commission's General Order 7.

AGREEMENT NO. 9648-A-13.

FILING PARTY: Paul B. Thornquist, Executive Administrator, Inter-American Freight Conference, 17 Battery Place, New York, New York 10004.

SUMMARY: Agreement No. 9648-A-13 modifies the basic agreement of the Inter-American Freight Conference (1) to conform to the requirements of General Order 7, revised, and (2) to clarify the matter of security deposits.

AGREEMENTS NOS. 9831-3, 6200-21 and 10268-3.

FILING PARTY: Marc J. Fink, Esq., Billig, Sher & Jones, P. C., Suite 300, 2033 K Street, N.W., Washington, D.C. 20006.

SUMMARY: Agreements Nos. 9831-3, 6200-21, and 10268-3 would amend the self-policing provisions of the New Zealand Rate Agreement, the U.S. Atlantic & Gulf/Australia-New Zealand and Australia-Eastern U.S.A. Shipping Conferences, respectively, to conform to the requirements of the Commission's new self-policing rules as contained in revised General Order 7 (Part 528 of Title 46 CFR).

AGREEMENT NO. 9968-2.

FILING PARTY: Paul B. Thornquist, Executive Administrator, Inter-American Freight Conference, 17 Battery Place, New York, New York 10004.

SUMMARY: Agreement No. 9968-2 modifies the basic agreement of the Inter-American Freight Conference-Puerto Rico and U.S. Virgin Islands Area to conform to the requirements of General Order 7, revised.

AGREEMENT NO. 10012-4.

FILING PARTY: F. Conger Fawcett, Esq., Graham & James, One Maritime Plaza, San Francisco, California 94111.

SUMMARY: Agreement No. 10012-4 would amend the self-policing provisions of the Australia-Pacific Coast Rate Agreement to provide for the appointment of one or more officers or employees of said agreement to serve as the policing authority in accordance with terms and conditions set forth therein. Agreement No. 10012-4 is designed to conform to the requirements of Part 528, 46 CFR (General Order 7, Revised) in all respects other than that which pertains to the requisite independent policing authority.

AGREEMENT NO. 10122-3.

FILING PARTY: Jose Vicente Valdez, CONFERENCIA INTERAMERICANA DE FLETES, Buenos Aires, Argentina.

SUMMARY: Agreement No. 10122-3 modifies the basic agreement of the Inter-American Freight Conference Area River Plate/Pto Rico and U.S. Virgin Is./River Plate to conform to the requirements of General Order 7, revised.

AGREEMENT NO. 10261-5.

FILING PARTY: Marc J. Fink, Esquire, Billig, Sher & Jones, P.C., 2033 K Street, N.W., Washington, D.C. 20006.

SUMMARY: Agreement No. 10261-5 modifies the basic agreement of the U.S. South Atlantic/Spanish, Portuguese, Moroccan and Mediterranean Rate Agreement to conform to the requirements of General Order 7, revised.

AGREEMENT NO. T-3759.

FILING PARTY: Lynne Feldman, Esquire, Deputy City Attorney II, Office of the City Attorney, City of Richmond, California 94804.

SUMMARY: Agreement No. T-3759, between the City of Richmond, Surplus Property Authority of the City of Richmond (City) and Canal Industrial Park, Inc., (CIP), provides that CIP shall have the use of certain lease areas, certain nonexclusive preferential assignment areas, and certain exclusive assignment areas at Shipyard Three, Richmond, California, for a period of approximately ten years. The assignment areas shall be used for the docking and mooring of vessels and for the loading, unloading, receipt, handling, storage, transporting and delivery of cargo; and the lease areas shall be used for office space and the repair, assembling and processing of automobiles for delivery and processing storage. As rental for the leased area consisting of approximately 12.24 acres, CIP will pay $5,182 per month. CIP must meet an annual performance requirement of $675,000 minimum in gross revenues under the Port of Richmond Tariff No. 1 (based on a three-year moving average) with the City reciving 73 percent of said minimum revenues and CIP retaining 27 percent; as the amount of gross revenues increase, CIP retains a proportionately greater percentage up to 50 percent of revenues in excess of one million dollars. Included with the filing of Agreement No. T-3759 is a Compromise Settlement and Mutual Release Agreement between the City of Richmond and two of its agencies, on the one hand, and CIP and several of its affiliates, on the other hand.

AGREEMENT NO. T-3076-1.

FILING PARTY: Mr. Leslie E. Still, Jr., Senior Deputy City Attorney, Harbor Branch Office, Harbor Administration Building, P.O. Box 570, Long Beach, California 90801.

SUMMARY: Agreement No. T-3076-1, between City of Long Beach and Baker Commodities, Inc., modifies the parties' basic agreement which provides for the six year lease of certain premises and pipeline rights for the operation of a liquid bulk terminal for the receipt, handling, loading, unloading, storage, processing, delivery and disposition of tallow, vegetable oils, molasses and other related bulk liquid merchandise. The purpose of this modification is to increase the size of the premises by 5,364 square feet to encompass two new storage tanks and to increase the rental for the leased premises.

By Order of the Federal Maritime Commission.

Dated: January 10, 1979.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 79-1310 Filed 1-12-79; 8:45 am]

[6730-01-M]

PETITION TO ALLOW OFFICERS OR EMPLOYEES OF A RATE-FIXING AGREEMENT TO SERVE AS THE POLICING AUTHORITY

Filing

Pursuant to section 528.3(b)(3) of Part 528, 46 CFR (General Order 7, Revised) petitions for exemption have been filed on behalf of the following rate-fixing agreements to allow agreement personnel to perform the self-policing functions in lieu of an independent policing authority; viz:

Mediterranean North Pacific Coast Freight Conference, Agreement No. 8090.
Puerto Rican Section of the Med-Gulf Conference, Agreement No. 9522.
Australia-Eastern U.S.A. Shipping Conference, Agreement No. 10268.

Interested parties may inspect and obtain a copy of each of the petitions at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 11101, and at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Comments on each petition may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, by February 5, 1979 in which this notice appears. Comments should include facts and arguments concerning the request for an exemption.

By order of the Federal Maritime Commission.

Dated: January 9, 1979.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 79-1308 Filed 1-12-79; 8:45 am]

[6730-01-M]

PETITION TO ALLOW OFFICERS OR EMPLOYEES OF A RATE-FIXING AGREEMENT TO SERVE AS THE POLICING AUTHORITY

Pursuant to section 528.3(b)(3) of 46 CFR, Part 528 (General Order 7, Revised) a petition for exemption has been filed on behalf of the Household Goods Forwarders Association of America Rate Agreement (Agreement No. 9510) to allow the President thereof to perform the self-policing functions of the Rate Agreement in lieu of an independent policing authority.

Interested parties may inspect and obtain a copy of the petition at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 11101, and at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Comments on the petition may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within *20* days after the date of the FEDERAL REGISTER in which this notice appears. Comments should include facts and arguments concerning the request for an exemption.

By order of the Federal Maritime Commission.

Dated: January 9, 1979.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 79-1309 Filed 1-12-79; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

AMERICAN NATIONAL BANCORP., INC.

Formation of Bank Holding Company

American National Bancorp., Inc., South Bend, Indiana, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of American Affiliates, Inc., and thereby to control 80 percent or more of American National Bank and Trust Company of South Bend, a subsidiary of American Affiliates, Inc., both of South Bend, Indiana. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than February 9, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 9, 1979.

GRIFFITH L. GARWOOD,
Deputy Secretary
of the Board.

[FR Doc. 79-1302 Filed 1-12-79; 8:45 am]

[6210-01-M]

FIRST BANCORPORATION OF HOLDENVILLE, INC.

Formation of Bank Holding Company

First Bancorporation of Holdenville, Inc., Holdenville, Oklahoma, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of The First National Bank and Trust Company of Holdenville, Holdenville, Oklahoma. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

First Bancorporation of Holdenville, Inc., Holdenville, Oklahoma, has also applied, pursuant to § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR § 225.4(b)(2)), for permission to acquire voting shares of First Holdenville Business Trust, Holdenville, Oklahoma. Notice of the application was published on October 26, 1978, in *Holdenville Daily News*, a newspaper circulated in Holdenville, Oklahoma.

Applicant states that the proposed subsidiary would through its wholly owned subsidiary, First Holdenville Insurance Agency, Inc., Holdenville, Oklahoma, act as agent or broker with respect to credit life and accident and health insurance directly related to extensions of credit by its proposed banking subsidiary. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than February 9, 1979.

Board of Governors of the Federal Reserve System, January 9, 1979.

GRIFFITH L. GARWOOD,
Deputy Secretary
of the Board.

[FR Doc. 79-1303 Filed 1-12-79; 8:45 am]

[6210-01-M]

SG BANCSHARES, INC.

Formation of Bank Holding Company

SG Bancshares, Inc., Okeene, Oklahoma, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of State Guaranty Bank, Okeene, Oklahoma. The factors that are considered in acting on the application are set forth

in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 6, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 8, 1979.

GRIFFITH L. GARWOOD,
Deputy Secretary
of the Board.

[FR Doc. 79-1304 Filed 1-12-79; 8:45 am]

[6210-01-M]

TRUST CO. OF GEORGIA

Acquisition of Bank

Trust Company of Georgia, Atlanta, Georgia, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 80 per cent or more of the voting shares of Trust Company Bank of Gwinnett County, the proposed successor by merger to Gwinnett Commercial Bank, Lawrenceville, Georgia. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 8, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 8, 1979.

GRIFFITH L. GARWOOD,
Deputy Secretary
of the Board.

[FR Doc. 79-1305 Filed 1-12-79; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

SEMIANNUAL AGENDA OF REPORTS AND REGULATIONS

AGENCY: Federal Trade Commission.

ACTION: Notice of Semiannual Agenda.

SUMMARY: The following agenda of reports and regulations is published voluntarily by the Federal Trade Commission in connection with Executive Order 12044, issued by the President on March 24, 1978. The agenda has been divided into four categories:

(A) The general subject matter of reports expected to be made public within the next six months.

(B) The general subject matter of internal rules of operating procedures upon which the Commission is expected to take action within the next six months.

(C) A list of investigations that are expected to result within the next six months in recommendations to the Commission for proposed rules or reports.

(D) A list of rules already proposed by the Commission with target dates for completion of significant steps in their development.

Each item on the list includes the name and telephone number of a person to contact for further information.

It should be noted that these lists are based on projections at the time of this publication of the subject matter and timing of future Commission action. Discovery of new information, changes in circumstances or personnel and changes in the law may alter the projected dates of matters listed in this document. All matters are subject to review and approval by the Commission.

FOR FURTHER INFORMATION CONTACT:

Office of Policy Planning, Federal Trade Commission, Washington, D.C. 20580, (202) 523-1447. For information about any specific item on the agenda, call or write the "contact person" indicated.

A. REPORTS EXPECTED TO BE MADE PUBLIC

1. *The Development and Structure of the U.S. Electric Lamp Industry.*

This report is an industry study of electric lamp manufacturing. It discusses the technology of lamp production, and investigates market structure, business conduct, economic performance, and their interrelationships in the industry.

2. *Brand Performance in the Cigarette Industry and the Advantage of Early Entry.*

This report examines the importance of rank and timing of "entry" on subsequent brand "success" in consumer product submarkets.

3. *Grocery Retailing Concentration in Metropolitan Areas, Economic Census Years, 1954-1972.*

This is a statistical report describing changing patterns of seller concentration in food retailing within individual urban markets over the period 1954-1972.

4. *Consumer Reaction to Government Provision of Information: the Impact of Health information on Nicotine and Tobacco Consumption.*

This report is an econometric study of the impact of health warning information on the cigarette smoking behavior of individuals.

5. *Economic Structure and Behavior in the Natural Gas Production Industry.*

This study describes concentration in natural gas reserves and production (both onshore and offshore) in 1974 and in selected earlier years. It also describes the impact of outer continental shelf joing ventures on concentration measures, as well as the motivations for joint ventures. Finally, it analyses the evidence that nonproducing shut in leases were a result of monopolistic behavior.

6. *Analysis of the Ban on Intra-Major Joint Ventures in OCS Petroleum Lease Sales.*

This study analyzes the impact of the Department of the Interior ban on joint ventures on the outer continental shelf by the largest oil companies. It compares the number of bids, size of partners and concentration in bidding and in the winning bids before and after the joint venture took place. It also considers the probable effect of changing the definition of which firms are included in the joint venture ban.

7. *Competition in the Nuclear Fuel Industry.*

This study describes the structure of the nuclear fuel industry including concentration in production, reserves, acreage, and drilling. It also lists mergers and acquisitions, joint ventures, new entry, and the significance of reserves and production accounted for by oil and gas companies. It briefly describes such other topics as economies of scale and vertical integration, recent uranium price increases, government price guarantee, foreign sources of uranium, and the breeder reactor.

8. *Professional Advertising: An Empirical Study of the Relationship Between Advertising and the Price and Quality of Optometric Services.*

This study empirically investigates the question of whether the price and quality of professional services are associated with advertising and commercial practice. It focuses on optometry, a licensed profession for which considerable variation among the states concerning restrictions on advertising and professional practice has existed for some time.

Contact person for the preceding eight reports: P. David Qualls, (202) 254-7750, Bureau of Economics.

9. *Fair Debt Collection Practices Act* (15 U.S.C. 1692).

Publication of Annual Report to Congress setting forth the Commission's enforcement experience under the Act.

Contact Person: Alan Reffkin, (202) 724-1187, Bureau of Consumer Protection.

10. *Unavailability of Advertised Specials* (16 CFR 424).

A report examining the impact of the Commission's trade regulation rule governing retail food store advertising and marketing practices.

Contact Person: Ken Bernhardt, (202) 724-1878, Bureau of Consumer Protection.

11. *Warranties* (15 U.S.C. 2301).

A report gathering base line data with which to examine the impact of regulations issued under the Magnuson-Moss Warranty Act.

Contact Person: Ken Bernhardt, (202) 724-1878, Bureau of Consumer Protection.

12. *Antitrust Implications of Voluntary Agreements Among Oil Producers to formulate Plans for the International Allocation of Oil in the Event of Emergency Supply Disruptions.*

A semiannual report to Congress and to the President pursuant to Section 252 of the Energy Policy and Conservation Act, Pub. L. No. 94-163, § 252(i), 89 Stat. 871, 895 (1975).

Contact Person: Ronald B. Rowe, (202) 724-1441, Bureau of Competition.

13. *Cigarettes.*

Annual Report to Congress on Marketing and advertising of cigarette companies for 1978.

Contact Person: Jane Dalkart, (202) 724-1499, Bureau of Consumer Protection.

14. *Cigarettes.*

Report on the results of testing cigarettes for tar, nicotine, carbon monoxide levels.

Contact Person: Jane Dalkart, (202) 724-1499, Bureau of Consumer Protection.

B. Internal Rules or Procedures Upon Which the Commission Is Expected To Take Action

1. *Restrictions on practice before the Commission by former members and employees.*

The Commission is expected to publish final rules specifying the period of time during which former members and employees will be required to seek permission prior to representing a client before the agency. The rule which had previously been published for comment, will also clarify the standards that the Commission uses to decide whether, in a given matter, participation by a former member or employee would be proper.

Contact Person: Jack Schwartz, (202) 523-3615, Office of General Counsel.

2. *Standards of Conduct for Attorneys Practicing Before the Commission.*

The Commission is expected to publish for comment a proposed amendment to its rules that will clarify the standards of ethical conduct expected of lawyers who practice before the Commission and will set out in more detail the procedure to be followed when there is an allegation that a lawyer has not conformed to those standards.

Contact Person: Oliver J. Trytell, (202) 523-3442, Office of General Counsel.

3. *Procedures for Requesting Confidential Treatment of Information Submitted to the Commission.*

The Commission is expected to publish final rules which will announce procedures for persons requested or required to submit information to the Commission to obtain confidential treatment of that information. This proposal has previously been published for comment.

Contact Person: Barry Rubin, (202) 523-3520, Office of General Counsel.

4. *Fair Debt Collection Practices Act* (15 U.S.C. 1962)—*State Exemptions.*

The Commission is expected to publish proposed rules specifying exemptions for classes of debt collection practices within any state that meets the statutory requirements.

Contact Person: Alan Reffkin, (202) 724-1187, Bureau of Consumer Protection.

C. Investigations Which May Result in a Recommendation to the Commission for a Rule or Report

1. *Blue Shield.*

An investigation of the extent to which physicians influence or control the conduct of Blue Shield plans, especially with respect to reimbursement of physicians, and the extent to which such influence or control may impede the ability of Blue Shield plans to hold down reimbursement levels and costs generally.

Contact Person: Walter T. Winslow, (202) 724-1341, Bureau of Competition.

2. *Written Warranties.*

An investigation of warranty advertising, the form of warranty titles and text, the disclosure of warranty terms and delayed warranty service performance.

Contact Person: Rachel Miller, (202) 523-0425, Bureau of Consumer Protection.

3. *Eyeglasses II.*

An investigation of private and state restrictions on ownership of and operations of opthalmic good dispensaries.

Contact Person: Christine Latsey, (202) 523-3432, Bureau of Consumer Protection.

4. *Dental Laboratories Investigation.*

An investigation of restrictions on the ability of denture laboratories to provide dental care directly to the public.

Contact Person: Ann Grover, (415) 556-1270, San Francisco Regional Office.

5. *Recycled Oil for Use as a Burner Fuel.*

An investigation to determine how to encourage the recycling of used oil as a burner fuel by measuring whether the used oil is substantially equivalent to new oil.

Contact Person: Carthon Aldhizer, (202) 724-1491, Bureau of Consumer Protection.

6. *Insurance Cost Disclosure.*

This report examines: (1) the extent to which consumers lack adequate cost information to comparison shop for whole life insurance; and (2) the adequacy of various proposed cost disclosure systems.

Contact Person: David Fix, (202) 523-3812, Bureau of Consumer Protection.

7. *Arbitration.*

A report on the use of arbitration to resolve consumer disputes.

Contact Person: John O'Brien, (212) 264-1207, New York Regional Office.

8. *Cigarettes.*

An investigation of the advertising practices of cigarette companies.

Contact Person: Jane Dalkart, (202) 724-1499, Bureau of Consumer Protection.

9. *Test Preparation Services.*

A report on the effects of coaching on standardized admission examinations.

Contact Person: Harry Garfield II, (617) 223-6621, Boston Regional Office.

10. *Buying Clubs.*

A report examining consumer problems connected with the sale of memberships in buying clubs.

Contact Person: Alan Krause, (312) 353-5546, Chicago Regional Office.

11. *Public Accounting Profession.*

An investigation of private and state restrictions on advertising, solicitation and delivery of services by accountants.

Contact Person: John M. Peterson, (312) 353-8522, Chicago Regional Office.

D. TARGET DATES FOR THE DEVELOPMENT OF RULES ALREADY PROPOSED

1. *Used Motor Vehicle Sales* (41 FR 1089; Jan. 6, 1976).

End of post record comment period on or before February 14, 1979. Oral presentation, before the Commission during May 1979, if determined necessary by the Commission. Commission consideration of the rule on or before June 30, 1979.

Contact Person: Bernard J. Phillips, (202) 523-1642, Bureau of Consumer Protection.

2. *Reasonable Duties Under a Full Warranty* (42 FR 39223; Aug. 3, 1977).

Commission consideration of the rule on or before June 30, 1979.

Contact Person: Jeffrey M. Karp, (202) 523-1753, Bureau of Consumer Protection.

3. *Funeral Industry Practices* (40 FR 39901; Aug. 29, 1975).

Oral presentation if determined necessary by the Commission, and Commission consideration of the rule on or before February 28, 1979.

Contact Person: Michael Rodemeyer, (202) 523-1753, Bureau of Consumer Protection.

4. *Food Advertising (Phase I)* (39 FR 39842 Nov. 11, 1974); (41 FR 8980; Mar. 19, 1976).

End of post record comment period on or before January 29, 1979. Oral presentation, before the Commission during May 1979, if determined necessary by the Commission. Commission consideration of the rule on or before June 15, 1979.

Contact Person: Judith A. Neibrief, (202) 724-1496, Bureau of Consumer Protection.

5. *Food Advertising (Phase II)* (39 FR 39842; Nov. 11, 1974); (41 FR 8980; Mar. 19, 1976).

Commission consideration of staff recommendations to publish a revised proposed rule during January, 1979.

Contact Person: Judith A. Neibrief, (202) 724-1496, Bureau of Consumer Protection.

6. *Over-the-Counter Drugs* (41 FR 39768; Sept. 16, 1976).

Publication of staff report on or before March 1, 1979. End of post record comment period on or before May 1, 1979.

Contact Person: Joel Brewer, (202) 724-1530, Bureau of Consumer Protection.

7. *Advertising for Over-the-Counter Antacids* (41 FR 14534; Apr. 16, 1976).

Public hearings end on or before January 31, 1979. Rebuttal ends on or before March 31, 1979.

Contact Person: Joel Brewer, (202) 724-1530, Bureau of Consumer Protection.

8. *Hearing Aid Industry* (40 FR 26646; Jan. 24, 1975).

End of post record comment period on or before February 19, 1979. Oral presentation before the Commission during June 1979 if determined necessary by the Commission. Commission consideration of the rule on or before July 15, 1979.

Contact Person: Robert Patterson, (202) 724-1497, Bureau of Consumer Protection.

9. *Credit Practices* (40 FR 16347; Apr. 11, 1974).

Publication of staff report on or before April 15, 1979. End of post record comment period on or before June 15, 1979.

Contact Person: David H. Williams, (202) 724-1100, Bureau of Consumer Protection.

10. *Amendment to Preservation of Consumers' Claims and Defenses* (40 FR 53530; Nov. 18, 1975).

End of post record comment period on or before January 24, 1979. Oral presentation before the Commission during April 1979 if determined necessary by the Commission. Commission consideration of the amendment on or before April 30, 1979.

Contact Person: Sarah Jane Hughes, (202) 724-1567, Bureau of Consumer Protection.

11. *Children's Television Advertising* (43 FR 17967; Apr. 27, 1978).

Commencement of legislative hearings in San Francisco on January 15, 1979. Continuation of legislative hearings in Washington, D.C. on March 5, 1979. Designation of disputed issues by the Commission on or before June 30, 1979.

Contact Person: Katherine Mazzaferri, (202) 724-1499, Bureau of Consumer Protection.

12. *Labeling and Advertising of Residential Thermal Insulation Materials* (42 FR 59678; Nov. 18, 1977).

Commission consideration of rule on or before February 28, 1979.

Contact Person: Paul J. Petruccelli, (202) 724-1508, Bureau of Consumer Protection.

13. *Health Spas* (40 FR 34615; Aug. 18, 1975.)

Publication of Presiding Officer's report on or before May 1, 1979.

Contact Person: John Crowley, (212) 264-7150, New York Regional Office.

14. *Disclosure Requirements and Prohibitions Concerning the Flammability of Plastics* (39 FR 28292; Aug. 6, 1974).

Commission consideration of whether to terminate this proceeding on or before March 30, 1979.

Contact Person: Kent C. Howerton, (202) 724-1514, Bureau of Consumer Protection.

15. *Appliance Labeling* (43 FR 21806; July 21, 1978).

Publication of staff report on or before February 28, 1979. End of post record comment period on or before March 28, 1979. Oral presentation, before the Commission during June 1979, if determined necessary by the Commission. Commission consideration of the rule on or before July 15, 1979.

Contact Person: Andrew Wolf, (202) 724-1453, Bureau of Consumer Protection.

16. *Amendments to the Care Labeling of Textile Wearing Apparel* (41 FR 3747; Jan. 26, 1976).

Oral presentation before the Commission during February 1979, if determined necessary by the Commission. Commission consideration of the rule on or before March 15, 1979.

Contact Person: Earl Johnson, (202) 724-1362, Bureau of Consumer Protection.

17. *Octane Posting* (43 FR 34028; Sept. 22, 1978).

End of post record comment period on or before January 29, 1979. Oral presentation before the Commission during February 1979 if determined necessary by the Commission. Commission consideration of the rule on or before February 28, 1979.

Contact Person: James Mills, (202) 724-1967, Bureau of Consumer Protection.

18. *Standards and Certification* (43 FR 57269; Dec. 7, 1978).

Written comment period ends March 16, 1979. Public hearings commencing on April 30, 1979 in San Francisco on or before May 21, 1979 in Washington, D.C.

Contact Person: Robert J. Schroeder, (202) 523-3936, Bureau of Consumer Protection.

19. *Mobile Home Sales and Service* (40 FR 28334; May 29, 1975).

Publication of Presiding Officer's report on or before April 30, 1979.

Contact Person: Pamela Stuart, (202) 523-3933, Bureau of Consumer Protection.

20. *Amendment to Games of Chance in Food Retailing and Gasoline Industries* (43 FR 48654; Oct. 19, 1978).

Publication of staff report on or before April 15, 1979. Publication of Presiding Officer's report on or before June 1, 1979. End of post record comment period on or before July 1, 1979.

Contact Person: Noble F. Jones, (216) 552-4207, Cleveland Regional Office.

21. *Advertising and Labeling of Protein Supplements* (40 FR 41144; Sept. 5, 1975); (41 FR 22593; June 4, 1976).

Publication of staff report on or before April 1, 1979. End of post record comment period on or before June 1, 1979.

Contact Person: Karen Chandler, (414) 556-1270, San Francisco Regional Office.

By the Commission dated December 29, 1978.

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-1414 Filed 1-12-79; 8:45 am]

[1610-01-M]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was accepted by the Regulatory Reports Review Staff, GAO, on January 10, 1979. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FTC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before February 2, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

FEDERAL TRADE COMMISSION

The FTC requests an extension without change clearance of the Annual Line of Business, Form LB, through December 31, 1979. The LB Program has been undertaken as part of the FTC's mandate under Section 6 of the Federal Trade Commission Act to gather and compile information concerning the organization, business, conduct, practices, and management of corporations engaged in commerce in the United States. The FTC estimates that the form will be sent to 475 companies selected from among the 1,000 largest in the manufacturing sector and that an average of 960 hours will be required per respondent.

NORMAN F. HEYL,
Regulatory Reports, Review Officer.

[FR Doc. 79-1294 Filed 1-12-79; 8:45 am]

[6820-23-M]

GENERAL SERVICES ADMINISTRATION

REGIONAL PUBLIC ADVISORY PANEL ON ARCHITECTURAL AND ENGINEERING SERVICES

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Regional Public Advisory Panel on Architectural and Engineering Services, Region 3, on January 30, 1979, from 8:30 a.m. to 4:14 p.m., in Room 2636 of the GSA Regional Office Building, Seventh and D Streets, SW, Washington, D.C. The meeting will be devoted to the initial stage of the process for screening and evaluating prospective architect-engineer firms to furnish professional services required in connection with development of Design Services for Repair and Alteration of General and Special Purpose Office Space for the Department of Energy in the Forrestal Building, Washington, D.C. (GS-03B-88627/99015). The meeting will be open to the public.

WALTER V. KALLAUR,
Regional Administrator.

[FR Doc. 79-1312 Filed 1-12-79; 8:45 am]

[4110-02-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

NATIONAL ADIVSORY COUNCIL ON EXTENSION AND CONTINUING EDUCATION

Meeting

AGENCY: National Advisory Council on Extension and Continuing Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Advisory Council on Extension and Continuing Education. It also describes the functions of the Council. Notice of meetings is required under the Federal Advisory Committee Act (5 U.S.C. Appendix 1, 10(a)(2)). This document is intended to notify the general public of their opportunity to attend the meeting.

DATE: Meeting: February 5-6, 1979.

ADDRESS: The Washington Hotel, Fifteenth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT:

William G. Shannon, Executive Director, National Advisory Council on Extension and Continuing Education, 425 Thirteenth Street, N.W.; Suite 529, Washington, D.C. 20004. Telephone: (202)376-8888.

The National Advisory Council on Extension and Continuing Education is authorized under Pub. L. 89-329. The Council is required to report annually to the President, the Congress, the Secretary of HEW, and the Commissioner of Education in the preparation of general regulations and with respect to policy matters arising in the administration of Part A of Title I (HEA) including policies and procedures governing the approval of State plans under Section 105; and to advise the Assistant Secretary of HEW on Part B (Lifelong Learning activities) of the title. The Council is required to review the administration and effectiveness of all Federally supported extension and continuing education programs.

The meetings of the Council are open to the public. However, because of limited space, those interested in attending any meeting are asked to call the Council's office beforehand. Available seats will be assigned on a first-come basis.

The purpose of the meeting of the Executive Committee is to consider issues recommended by the Council for priority consideration and other future activities of the Council. The agenda will include consideration of:

a. Appropriate responses to Congressional requests for policy recommendations and legislative changes concerning the Higher Education Act,

b. a special report for The White House and The Congress.

c. Council committee progress reports, and

d. the proposed agenda for the Council's April meeting.

The meeting will begin on February 5, 1979 at 6:30 p.m., recessing at 9:00 p.m. It will be resumed on February 6

at 9:00 a.m. and adjourn around 5:00 p.m.

All records of the Council proceedings are available for public inspection at the Council's staff office, located at 425 Thirteenth street, N.W.; Suite 529, Washington, D.C.

Dated: January 9, 1979.

WILLIAM G. SHANNON,
Executive Director.

[FR Doc. 79-1298 Filed 1-12-79; 8:45 am]

[4110-12-M]

Office of the Secretary

SECRETARY'S ADVISORY COMMITTEE ON THE RIGHTS AND RESPONSIBILITIES OF WOMEN

Meeting

The Secretary's Advisory Committee on the Rights and Responsibilities of Women, which is established to provide advice to the Secretary of Health, Education, and Welfare on the impact of the policies, programs, and activities of the Department on the status of women, will hold its Health Task Force meeting on Thursday, February 1, 1979 from 9:30 a.m. to 5:00 p.m., and on Friday, February 2, 1979 from 9:30 a.m. to 3:00 p.m. The meetings will be held in Room 303-A, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. The agenda will include briefings on Departmental programs and policies relating to women's health issues.

Further information on the Committee may be obtained from: Susan C. Lubick, Executive Secretary, telephone 202-245-8454. These meetings are open to the public.

Dated: January 5, 1979.

SUSAN C. LUBICK,
Executive Secretary, Secretary's Advisory Committee on the rights and Responsibilities of Women.

[FR Doc. 79-1285 Filed 1-12-79; 8:45 am]

[4110-12-M]

PRESIDENT'S COMMITTEE ON MENTAL RETARDATION

Change of Meeting Place

The President's Committee on Mental Retardation (43 FR 61016, Dec. 29, 1978) will meet on Wednesday, January 17, 1979, from 9 a.m. to 12 noon, Thursday, January 18, 1979, from 9 a.m. to 5 p.m., at the Disabled American Veterans Building, First Floor Conference Room, 807 Maine Avenue SW., Washington, D.C., and on Friday, January 18, 1979, from 9 a.m. to 4 p.m., in Conference Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C.

Dated: January 8, 1979.

FRED J. KRAUSE,
Executive Director, President's Committee on Mental Retardation.

[FR Doc. 79-1461 Filed 1-12-79; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[Docket No. NFD-657; FDAA-568-DR]

KENTUCKY

Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of major disaster declaration for the Commonwealth of Kentucky (FDAA-568-DR), dated December 12, 1978.

DATED: December 31, 1978.

FOR FURTHER INFORMATION CONTACT:

A. C. Reid, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410 (202/634-7825).

NOTICE: The Notice of major disaster for the Commonwealth of Kentucky dated December 12, 1978, and amended on December 17 and 20, 1978, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 12, 1978.

The County Of: Larue.

Federal assistance extended under this designation may be made available pursuant to Sections 404 and 407 through 413 of Pub. L. 93-288, and Small Business Administration disaster loan assistance, and Farmers Home Administration emergency loan assistance.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

WILLIAM H. WILCOX,
Administrator, Federal Disaster Assistance Administration.

[FR Doc. 79-1284 Filed 1-12-79; 8:45 am]

[4310-55-M]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

ENDANGERED SPECIES PERMIT

Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for an amendment to PRT 2-1609 to take ten additional sea otters as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and importing of Marine Mammals (50 CFR Part 18).

1. Applicant: Dr. G. L. Kooyman, Physiological Research Laboratory, Scripps Institution of Oceanography, University of California, San Diego, La Jolla, California 92093.

2. Type of Permit: Scientific research.

3. Name and Number of Animals: Sea otters (Enhydra lutris)—10.

4. Type of Activity: To take by capture.

5. Location of Activity: Prince William Sound, Alaska.

6. Period of Activity: To December 31, 1979.

The purpose of this application *is to provide an additional 5 sea otters for oilling experimentation so that 5 may have depth recorders attached for a maximum of 3 days and 5 for attaching radio transmitters for a maximum of 2 weeks. It has been determined that the two types of instruments cannot be attached to the same animals. The remaining five additional sea otters will be utilized only if females with pups are captured and must be released without being utilized in the research.*

Concurrent with the publication of this notice in the FEDERAL REGISTER the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

The application has been assigned file number PRT 2-1609. Written data or views, or requests for copies of the complete application or for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of

such hearing is at the discretion of the Director.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the United States Fish and Wildlife Service.

Documents submitted in connection with the above application are available for review during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia.

Dated: January 9, 1979.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 79-1321 Filed 1-12-79; 8:45 am]

[4310-55-M]

ENDANGERED SPECIES PERMIT

Receipt of Application

Applicant: Clifford M. Anderson, Box 136, Woodinville, Washington 98072.

The applicant requests a permit to take (capture) American peregrine falcons (*Falco peregrinus anatum*) for banding and radio tagging for research.

Humane care and treatment has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-3486. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this application. Please refer to the file number when submitting comments.

Dated: January 5, 1979.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-1322 Filed 1-12-79; 8:45 am]

[4310-55-M]

ENDANGERED SPECIES PERMIT

Notice of Receipt of Application

Applicant: John B. Holt, Jr., 858 Johnson Street, N. Andover, Massachusetts 01845.

The applicant requests a permit to take (capture) bald eagles (*Haliaeetus leucocephalus*) for banding in Michigan, Wisconsin, and Ohio and to salvage same for scientific research.

Humane care and treatment has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-3601. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this application. Please refer to the file number when submitting comments.

Dated: January 4, 1979.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-1323 Filed 1-12-79; 8:45 am]

[4310-55-M]

ENDANGERED SPECIES PERMIT

Notice of Receipt of Application

Applicant: Sergej Postupalsky, Dept. of Wildlife Ecology, University of Wisconsin, Madison, Wisconsin 53706.

The applicant requests a permit to take (capture) bald eagles (*Haliaeetus leucocephalus*) in Michigan, Wisconsin, and Ohio for banding and to salvage same.

Humane care and treatment has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-3592. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before February 14, 1979. Please refer to the file number when submitting comments.

Dated: January 4, 1979.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-1325 Filed 1-12-79; 8:45 am]

[4310-55-M]

THREATENED SPECIES PERMIT

Notice of Receipt of Application

Applicant: Indianapolis Zoo,
3120 East 30th Street,
Indianapolis, Indiana 46218.

The applicant wishes to apply for a Captive-Self Sustaining Population permit authorizing the purchase and sale in interstate commerce, for the purpose of propogation, of tigers (*Panthera tigris*) listed in 50 CFR 17.11 as [T(C/P)]. Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-3617. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before February 14, 1979. Please refer to the file number when submitting comments.

Dated: January 5, 1979.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-1324 Filed 1-12-79; 8:45 am]

[4310-31-M]

Geological Survey

OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF (OCS)

Proposed Requirements for Verifying the Structural Integrity of OCS Platforms

AGENCY: Geological Survey, U.S. Department of the Interior.

ACTION: Proposed Geological Survey Standard.

SUMMARY: The comment period for the draft document entitled "Requirements for Verifying the Structural Integrity of OCS Platforms" and its associated appendices and commentary is extended to March 1, 1979.

Several requests have been received to extend the January 30, 1979, due date for written comments on the draft document announced in the FEDERAL REGISTER on December 5, 1978 (Vol. 43, No. 234, FR 56945).

In consideration of these requests, the Geological Survey hereby extends the comment period to March 1, 1979.

Dated: January 4, 1979.

W. A. RADLINSKI,
Acting Director.

[FR Doc. 79-1289 Filed 1-12-79; 8:45 am]

[8230-01-M]

INTERNATIONAL COMMUNICATION AGENCY

TREATY OF FRIENDSHIP AND COOPERATION BETWEEN THE U.S. AND SPAIN

Cooperative Research Grants—1979/80

The US-Spanish Joint Committee for Educational and Cultural Affairs (Supplementary Agreement n° 4 of the Treaty of Friendship and Cooperation between the United States of America and Spain) announces the application period for Cooperative Research Grants found below for the academic year 1979/80.

The applicable norms are as follows:

FIRST—Scope and nature of the grants. Applications will be considered to subsidize cooperative research projects between U.S. and Spanish Institutions in the humanities, arts, psychology, anthropology, social sciences, political sciences, law, economic sciences, education sciences, and the communication sciences, under the direction of a Spanish principal researcher and a U.S. principal researcher.

The Cooperative Research Grant application should be prepared by means of direct contact between the Spanish principal researcher and the U.S. principal researcher. The Spanish principal researcher is responsible for the cooperative project proposal in Spanish that is to be carried out by the Spanish institution. In like manner, the U.S. principal researcher will present in English the cooperative project proposal that is to be carried out by the U.S. institution. The Joint Administrative Staff (The Secretaria Ejecutiva) of the U.S.-Spanish Joint Committee will communicate all matters pertaining to the cooperative project exclusively through the Spanish principal researcher.

SECOND—Institutions that may apply. The following non-profit Spanish institutions, in collaboration with their cooperating U.S. institutions, may apply:

a) Centers or institutions which pertain to ministerial departments.

b) Public incorporated bodies.

c) Institutions, departments, centers, sections and other research units integrated into public incorporated bodies.

d) University institutes, departments and chairs, and any other university entity.

e) Local public municipalities pertaining to cities or regions.

f) Other institutions and foundations of a public or private nature that are legally registered with the state as non-profit organizations.

The joint applications for this type of grant will always be presented by the Spanish institution.

THIRD—Amount, nature and duration of the grants. The amounts of the grant will be those which are approved based on budgets applied for by the Spanish institution and the U.S. institution. The Spanish budget will be paid to the Spanish institution and the U.S. budget to the U.S. institution.

The norman duration of these grants will be for twelve months to take place beginning 1 September 1979 through 31 August 1980. This period of time refers exclusively to those grants which are here announced. However, should the nature of the cooperative project be such that a greater length of time is needed (maximum of three years from the beginning date of the grant) each cooperative project will have the opportunity to request renewal by submitting a renewal application on a year to year basis. Approval of the renewal application will be based on the favorable review of reports to be submitted at the end of each yearly grant period.

FOURTH—Preparation and presentation of the applications. The applications must be submitted by March 1, 1979. The application forms may be obtained from the Secretaria Ejecutiva del Comité Conjunto Hispano-norteamericano para Asuntos Educativos y Culturales, calle Cartagena, 83-85, 3°, Madrid-28, Spain; telephone 255-08-00 extensions 135 and 221.

FIFTH—Filling out the applications. The applications, an orginal and six copies, will consist of the following parts:

A. Cover Page: The information that must be included in the cover page is the following: project title, total amount being applied for in dollars, proposed initiation date of the project and total duration of project in months (maximum 12 months).

In addition the following information is required:

a) For each subproposal (Spanish-subproposal and U.S. subproposal): amount being applied for in dollars, name of the principal researcher, National Identification Number for Spaniards and Social Security Number for Americans, the name of the actual center where each subproject will be carried out, address of the center and the name of the institution to which the center pertains.

(b) Name of the ministry to which the Spanish institution pertains (if applicable).

(c) For each subproposal: Academic title of the principal researcher, signature and date of signature, and telephone number. Name of the principal researcher's immediate superior, his or her position, signature of approval of subproposal and date of signature. Name and title of the individual who legally represents the institution, his or her title, signature of approval of subproposal and date of signature.

B. Text of the Spanish institution's subproposal (in Spanish):

(a) Summary (about 200 words).

(b) Common objectives, interests, and advantages sought through the cooperation.

(c) Research plan of the Spanish institution.

(d) Means available (personnel and facilities).

(e) Bibliography on the subject.

(f) Principal researcher's Curriculum Vitae.

(g) Budget.

The budget, prepared jointly by the U.S. and Spanish institutions, will consist of two separate columns in which will be shown the amounts applied for by the Spanish institutions, and will include the following parts:

(1) Salaries and wages (In the Spanish institution's budget people permanently employed on a full time basis and whose names appear on the permanent payroll of the Spanish institution cannot be included under salaries and wages).

(2) Inventoriable material.

(3) Expendable material.

(4) Travel.

(5) Other costs.

(6) Total cost in dollars.

The above described budget for the Spanish institution should be attached to the Spanish institution's subproposal.

C. Text of the U.S. institution subproposal (in English):

(a) Summary (about 200 words).

(b) Common objectives, interests, and advantages sought through the cooperation.

(c) Research plan of the U.S. institution.

(d) Means available (personnel and facilities).

(e) Bibliography on the subject.

(f) Principal researcher's Curriculum Vitae.

(g) Budget.

Instructions regarding the budget are the same as found above in Part B, item g, sub-items(1)-(6), In addition, the U.S. institution's subproposal should contain a translation in English of the Spanish institution's detailed budget.

Neither the Spanish nor the U.S. institutions are allowed to include indirect costs of any type in their respective budgets. In addition, neither the Spanish nor U.S. institutions are allowed to include Social Security nor other fringe benefits in the budget item entitled "Salaries and wages."

D. Budget Summary.

SIXTH—Place to submit applications. The applications must be submitted to the Secretary of the Comité Conjunto Hispano-Norteamericano para Asuntos Educativos y Culturales at the previously mentioned address of the Secretaría Ejecutiva of said committee.

SEVENTH—Selection procedure. That portion of the cooperative project to be carried out in Spain will be evaluated by the Comisión Asesora de Investigación Científica y Técnica which is obligated to request reports from each of the ministries involved. The Comisión Asesora will recommend the awards to be granted under Cooperative Research Grants to the US-Spanish Joint Committee for Educational and Cultural Affairs who will then study the recommendations for its final decision and the publication of the grants awarded in the *Boletín Oficial del Estado.* That portion of the cooperative project to be carried out in the United States of America will be submitted for the evaluation process as is seen fit by the U.S. side of the US-Spanish Joint Committee for Educational and Cultural Affairs.

The US-Spanish Joint Committee for Educational and Cultural Affairs will study all proposals of the cooperating institutions for its final decision. In order for a grant to be awarded a favorable evaluation of both the Spanish and U.S. subproposals is required.

EIGHTH—Obligatory reports regarding the progress of the cooperative projects will be submitted in triplicate to the Comisión Asesora through the Secretary of the US-Spanish Joint Committee for Educational and Cultural Affairs. These reports will be submitted by the Spanish and U.S. principal researchers. The reports will be evaluated by the previously mentioned Comisión Asesora and then will be presented to the US-Spanish Joint Committee for its final decision. The principal researchers will receive detailed information regarding the submission of these reports.

JOHN E. REINHARDT,
Director, International Communication Agency.

[FR Doc. 79-1271 Filed 1-12-79; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[AA1921-193]

BICYCLE TIRES AND TUBES FROM THE REPUBLIC OF KOREA

Notice of Investigation and Hearing

Having received advice from the Department of the Treasury on December 26, 1978, that bicycle tires and tubes from the Republic of Korea, are being, or are likely to be sold at less than fair value, the United States International Trade Commission, on January 9, 1979, instituted investigation No. AA1921-193 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. For the purposes of its determination concerning sales at less than fair value, the Treasury Department defined "bicycle tires and tubes" as pneumatic bicycle tires and tubes therefor of rubber or plastics, whether such tires and tubes are sold as units or separately, as provided for in TSUS items 772.48 and 772.57.

Hearing. A public hearing in connection with the investigation will be held in Washington, D.C., beginning at 10 a.m., e.s.t., on Thursday, February 8, 1979, in the Hearing Room, U.S. International Trade Commission Building, 701 E Street, NW. All persons shall have the right to appear by counsel or in person, to present evidence, and to be heard. Requests to appear at the public hearing, or to intervene under the provisions of section 201(d) of the Antidumping Act, 1921, shall be filed with the Secretary of the Commission, in writing, not later than noon, Thursday, February 1, 1979.

Issued: January 10, 1979.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 79-1348 Filed 1-12-79; 8:45 am]

[7020-02-M]

[Investigation No. 337—TA-49]

CERTAIN ATTACHE CASES

Notice of Commission Hearing on the Presiding Officer's Recommendation, and on Relief, Bonding and the Public Interest

Recommendation of "no violation" issued

In connection with the United States International Trade Commission's investigation, under section 337 of the Tariff Act of 1930, of alleged unfair methods of competition and unfair acts in the importation and sale of certain attache cases in the United States, the presiding officer recommended on December 8, 1978, that the Commission determine that there is no violation of section 337. The presiding officer certified the record to the Commission for its consideration. Copies of the presiding officer's recommendation may be obtained by interested persons by contacting the office of the Secretary to the Commission, 701 E Street, N.W., Washington, D.C. 20436, telephone (202) 523-0161.

Commission hearing scheduled

The Commission will hold a hearing beginning at 10:00 a.m., e.s.t., on Thursday, February 1, 1979, in the Commission's Hearing Room (Room 331), 701 E Street, N.W., Washington, D.C. 20436, for two purposes. First, the Commission will hear oral argument on the presiding officer's recommendation that there is no violation of section 337 of the Tariff Act of 1930. Second, the Commission will receive oral presentations concerning appropriate relief, bonding, and the public interest in the event that the Commission determines that there is a violation of section 337. These matters are being heard on the same day in order to facilitate the completion of this investigation within time limits under law and to minimize the burden of this hearing upon the parties to the investigation. The procedure for each portion of the hearing follows.

Oral argument on presiding officer's recommendation

A party to the Commission's investigation or an interested agency desiring to present to the Commission an oral argument concerning the presiding officer's recommendation will be limited to no more than 30 minutes. A party or interested agency may reserve 10 of its 30 minutes for rebuttal. The oral arguments will be held in this order: complainant, respondents, interested agencies, and Commission investigative staff. Rebuttals will be held in this order: respondents, complainant, interested agencies, and Commission investigative staff.

Oral presentations on relief, bonding, and the public interest

Following the oral arguments on the presiding officer's recommendation, a party to the investigation, an interested agency, a public-interest group, or any interested member of the public may make an oral presentation on relief, bonding, and the public interest.

1. *Relief.* If the Commission finds a violation of section 337, it may issue (1) an order which could result in the exclusion from entry of certain attache cases into the United States or (2) an order which could result in requiring respondents to cease and desist from alleged unfair methods of competition or unfair acts in the importation and sale of these attache cases.

2. *Bonding.* If the Commission finds a violaion of section 337 and orders some form of relief, such relief would not become final for a 60-day period, during which the President would consider the Commission's report. During this period the attache cases would be

entitled to enter the United States under a bond determined by the Commission and prescribed by the Secretary of the Treasury.

3. *The public interest.* If the Commission finds a violation of section 337 and orders some form of relief, it must consider the effect of that relief upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States, and (4) U.S. consumers.

Those making an oral presentation will be limited to no more than 15 minutes. Each participant will be permitted an additional 5 minutes for summation after all presentations have been made. Participants with similar interests may be required to share time. The order of oral presentations will be as follows: complainant, respondents, interested agencies, public-interest groups, other interested members of the public, and Commission investigative staff. Summations will follow the same order.

How to participate in the hearing

Any person desiring to appear at the Commission's hearing must file a written request to appear with the Secretary to the U.S. International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436, no later than the close of business (5:15 P.M., e.s.t.) on January 30, 1979. Such written request must indicate whether such person wishes to present an oral argument concerning the presiding officer's recommendation or an oral presentation concerning relief, bonding, and the public interest, or both. While only parties to the Commission's investigation, interested agencies, and the Commission investigative staff may present an oral argument concerning the presiding officer's recommendation, public-interest groups and other interested members of the public are encouraged to make an oral presentation concerning the public interest.

Written submissions to the Commission

The Commission requests that all written submissions be filed no later than the close of business (5:15 p.m., e.s.t.) on February 12, 1979.

1. *Briefs on the presiding officer's recommendation.* Parties to the Commission's investigation, interested agencies, and the Commission investigative staff are encouraged to file briefs concerning exceptions to the presiding officer's recommendation. Briefs must be served on all parties of record to the Commission's investigation on or before the date they are filed with the Secretary. Statements made in briefs should be supported by references to the record. Persons with the same positions are encouraged to consolidate their briefs, if possible.

2. *Written comments and information concerning relief, bonding, and the public interest.* Parties to the Commission's investigation, interested agencies, public-interest groups, and any other interested members of the public are encouraged to file written comments and information concerning relief, bonding, and the public interest. These written submissions will be very useful to the Commission if it determines that there is a violation of section 337 and that relief should be granted.

Additional information

The original and 19 true copies of all written submissions must be filed with the Secretary to the Commission. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request *in camera* treatment. Such request should be directed to the Chairman of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. The Commission will either accept such submission in confidence or return it. All nonconfidential written submissions will be open to public inspection at the Secretary's Office.

Notice of the Commission's investigation was published in the FEDERAL REGISTER of March 7, 1978 (43 FR 9379).

Issued: January 10, 1979.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 79-1349 Filed 1-12-79; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

UNITED STATES CIRCUIT JUDGE NOMINATING COMMISSION FIRST CIRCUIT PANEL

Meeting

The First Circuit Panel of the United States Circuit Judge Nominating Commission, Chairperson: Florence Rubin, will meet on February 3rd and February 23rd and 24th, 1979, at the Federal Courthouse, Post Office Square, Boston, Massachusetts at 9:30 a.m. These meetings will be closed to the public pursuant to Pub. L. 92-463, Section 10(D) as amended. (CF 5 U.S.C. 552b (c) (6).)

JOSEPH A. SANCHES,
Advisory Committee, Management Officer.

JANUARY 9, 1979.

[FR Doc. 79-1299 Filed 1-12-79; 8:45 am]

[7510-01-M]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NASA Notice 78-12]

AVAILABLE FLIGHT-QUALIFIED EQUIPMENT AND FLIGHT-QUALIFIABLE EQUIPMENT

Intent To Formulate a Computer Data Bank

The objective of this program is to provide NASA Headquarters, its field installations, the aerospace industry, and the academic community with a current listing of available flight-qualified and flight-qualifiable equipment. The listing will serve as a means of informing interested users of the availability of such equipment. The information will be provided through a time-sharing computer system.

At the present time, a current listing of standard equipment has been established on an information services network time-sharing system. As a supplement to the standard equipment listing, the NASA Headquarters Office of the Chief Engineer, Systems Engineering Division, plans to embark on a one-year pilot program to test the utility of a similar listing for available flight-qualified and flight-qualifiable equipment.

The list shall include but shall distinguish between the following two classes of items of equipment: (1) items launched or flight-qualified within the last two years; and (2) items that are considered to be flight-qualifiable because the items are under contract for their design, development or manufacture, with a projected launch date.

An item is considered flight-qualified if it has successfully passed all U.S. Government, or commercial customer-specified qualification tests considered by them as necessary to obtain satisfactory operation for the intended mission. A commercial customer for this purpose is the end user organization procuring the satellite systems or subsystems from the manufacturer (e.g., COMSAT, INTELSAT, SBS, WU, etc.).

Manufacturers of space equipment are invited to participate throughout the full one—year term of the pilot program which will end December 1979. Further information may be obtained by contacting NASA Headquarters, Office of the Chief Engineer, Systems Engineering Division (Code DL-2), Washington, D.C. 20546, area code (202) 755-3040.

A. M. LOVELACE,
Acting Administrator.

JANUARY 8, 1979.

[FR Doc. 79-1293 Filed 1-12-79; 8:45 am]

[7537-01-M]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

THEATRE ADVISORY PANEL

Meeting

Pursuant to Section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theatre Advisory Panel to the National Council on the Arts will be held February 3, 1979, from 9:00 a.m. to 5:00 p.m., and February 4, 1979, from 9:00 a.m. to 5:00 p.m., in room 1422, Columbia Plaza Office Building, 2401 E Street, N.W., Washington, D.C.

A portion of this meeting will be open to the public on February 3, 1979, from 9:00 a.m. to 5:00 p.m., and February 4, 1979, from 12:00 p.m. to 5:00 p.m. The topic of discussion will be policy and guidelines.

The remaining sessions of this meeting on February 4, 1979, from 9:00 a.m. to 12:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

JANUARY 8, 1979.

[FR Doc. 79-1300 Filed 1-12-79; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

ABNORMAL OCCURRENCE REPORT

Fourteenth Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of Section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission has published and issued the fourteenth periodic report to Congress on abnormal occurrences (NUREG-0090, Vol. 1, No. 3). The release date in January 10, 1979.

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the FEDERAL REGISTER (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

The fourteenth report to Congress is for the third quarter of 1978. The report identifies the occurrences or events that the Commission determined were significant and the remedial action that was undertaken. The report indicates that the following incidents or events were determined by the Commission to be significant and reportable:

(a) There was one abnormal occurrence at the 70 nuclear powerplants licensed to operate. The event involved a degraded primary coolant boundary in a boiling water reactor.

(b) There were no abnormal occurrences at fuel cycle facilities (other than nuclear powerplants).

(c) There were no abnormal occurrences at other licensee facilities.

(d) There were two abnormal occurrences reported by the Agreement States. One involved an overexposure of a radiographer's assistant. The second involved the theft of two radiography devices.

The incidents involved temporary reductions in margins of safety normally provided.

The fourteenth report to the Congress also contains updating information on abnormal occurrences reported in previous reports.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street, N.W., Washington, D.C. or at any of the 130 local Public Document Rooms throughout the country. The report, designated NUREG-0090, Vol. 1, No. 3, may be purchased from the National Technical Information Service, Springfield, Virginia 22161, at $4.50 a copy on or about January 24, 1979.

Dated at Washington, D.C. this 5th day of January, 1979

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 79-1274 Filed 1-12-79; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

URBAN IMPACT REVIEW

Proposed Amendment to OMB Circular No. A-95

AGENCY: Office of Management and Budget.

ACTION: Proposed Amendment.

SUMMARY: The proposed amendment modified OMB Circular A-95 (revised January 2, 1976, and published in Part IV of the FEDERAL REGISTER of January 13, 1976 (41 FR 2052-2065)). It encourages clearinghouses to evaluate the urban impact of projects proposed for Federal assistance as part of the A-95 review process. Such analysis, if undertaken, will help determine the potential significant positive or negative impacts on communities of federally assisted projects and provide an opportunity for clearinghouses to work with applicants to minimize potential adverse impacts prior to submission of applications to Federal agencies.

DATES: Comments must be received on or before March 20, 1979.

ADDRESS: Mail comments to: Thomas F. Snyder, Intergovernmental Affairs Division, Office of Management and Budget, Room 5235, New Executive Office Building, Washington, D.C. 20503. Phone: 202-395-6911.

SUPPLEMENTARY INFORMATION: On March 27, 1978, the President announced a National Urban Policy. It called for a partnership among all levels of government, the private sector, neighborhood and volunteer organizations, and individual citizens to work together to conserve America's communities. Copies of *The President's National Urban Policy Report* have been sent to all clearinghouses. As part of the implementation of this policy, an Executive Order was issued, requiring Federal agencies to identify the urban impact of proposed Federal policy and program initiatives on cities, counties and other communities.

The Executive Order does not, however, require analysis of beneficial or negative impacts of individual federally assisted projects or applications for assistance. Although a Federal program may be generally supportive of urban communities, an individual project receiving assistance under that program may have adverse impacts. By incorporating urban impact reviews into the existing A-95 review and comment system, the effects of individual applications for Federal assistance on economic, social and environmental

well being of urban communities and their residents can be assessed.

WILLIAM R. FEEZLE,
Acting Deputy Associate Director for Intergovernmental Affairs.

Attachment.

PROPOSED AMENDMENT

Attachment A—Circular No. A-95 Revised, Part I: Project Notification and Review System, Section 5. Subject matter of comments and recommendations.

Add: j. The extent to which the project creates a significant impact on central cities, older suburban cities and other communities within the jurisdiction of the clearinghouse, including the relative impacts the project may have on one type of place as compared to others. Such assessments should consider the relationship of the proposed project to factors such as:

(1) Economic revitalization objectives, particularly those related to distressed communities, and efforts to prevent additional areas from becoming distressed;

(2) Business location and level of economic activity;

(3) Expansion of jobs for minorities and the unemployed;

(4) Expansion of housing choices for disadvantaged and minorities;

(5) Efforts to strengthen the fiscal condition and tax base of urban communities, particularly distressed communities;

(6) Conservation and revitalization of neighborhoods, particularly blighted neighborhoods; and

(7) Improvement of urban physical, cultural and aesthetic environments through protection of park, recreation, historic and cultural resources and development of mass transit opportunities.

[FR Doc. 79-856 Filed 1-12-79; 8:45 am]

[8010-10-M]

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 20872; 70-5388]

EASTERN UTILITIES ASSOCIATES, ET AL.

Proposed Extension of Bank Borrowing by Subsidiary Company

In the matter of Eastern Utilities Associates, P.O. Box 2333, Boston, Massachusetts 02107; Blackstone Valley Electric Company, P.O. Box 1111, Lincoln, Rhode Island 02865; Brockton Edison Company, 36 Main Street, Brockton, Massachusetts 02403; Fall River Electric Light Company, 85 North Main Street, Fall River, Massachusetts, 02722; Montaup Electric Company, P.O. Box 391, Fall River, Massachusetts 02722.

Notice is hereby given that Eastern Utilities Associates ("EUA"), a registered holding company, and its electric utility subsidiary companies, Blackstone Valley Electric Company ("Blackstone"), Brockton Edison Company ("Brockton"), Fall River Electric Light Company ("Fall River") and Montaup Electric Company ("Montaup"), have filed a post-effective amendment to their application-declaration, as previously filed and amended in this proceeding with this Commission designating Sections 6(a), 7, 9(a), 10, 12(b), 12(c), and 12(f) of the Act and Rules 43(a) and 45(a) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as further amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

The transactions dealt with by the original application have, insofar as hereto relevant, been duly authorized and consummated. The post-effective amendment deals only with a proposed extension of the maturity of a bank loan of Blackstone's, which was one of the original series of transactions.

As a part of its reorganization program, Blackstone has been authorized in this proceeding (order dated February 19, 1975, HCAR No. 18817) to borrow $25,000,000 from the Chase Manhattan Bank, N.A. ("Chase"). Blackstone originally issued Chase its note in that amount, maturing on February 16, 1976, and bearing interest at 115% of the prime rate in effect at Chase from time to time. By orders dated February 12, 1976, February 8, 1977, and January 17, 1978 (HCAR Nos. 19386, 19880 and 20388) Blackstone was authorized to extend the maturity of the note, in each instance for approximately one year. The note now matures on February 1, 1979. The note is secured by a second mortgage on certain properties of Blackstone, said second mortgage being subject, among other encumbrances, to the prior lien of Blackstone's Indenture of Mortgage and Deed of Trust dated as of November 1, 1943. No compensating balance is required in connection with this borrowing.

Proceeds of the loan have been used by Blackstone to reduce open account advances to Blackstone from EUA. EUA applied the funds so received to reduce its short-term borrowings.

By post-effective amendment filed in this proceeding, it is now proposed that the term of the Chase note be further extended to mature on or about January 28, 1980. The interest rate will continue to be the prime as defined. No compensating balance will be required in connection with the extension of the Chase loan. Assuming a prime rate at Chase of 11.75%, the effective interest cost of the note, as revised and extended, would be 14.09%. It is stated that Blackstone had originally intended to convert that Chase note into a longer term secured obligation, but that restrictions on consoldiated capitalization ratios, contained in EUA's bond indenture, make it impossible at the present time to extend the Chase note for more than one year.

It is stated that the Public Utilities Commission of the State of Rhode Island has jurisdiction over the proposed extension of the Chase loan to Blackstone and that no other state Commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction. Any fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment.

Notice is further given that any interested person may, not later than January 29, 1979, request in writing that a hearing be held on this matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as further 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 applicants-declarants EUA and Blackstone at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as further amended by said post-effective amendment, or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-1392 Filed 1-12-79; 8:45 am]

[8010-01-M]

[Release No. 20875; 70-6250]

GEORGIA POWER CO.

Proposed Issuance and Sale of First Mortgage Bonds and Preferred Stock at Competitive Bidding

Notice is hereby given that Georgia Power Company ("Georgia"), 270 Peachtree Street, N.W., Atlanta, Georgia 30302, an electric utility subisidary of The Southern Company, a registered holding company, has filed an application with this Commission puruant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

Georgia proposes to issue and sell up to $225,000,000 aggregate principal amount of its first mortgage bonds ("new bonds"). Of such amount, it is proposed that up to $100,000,000 principal amount of new bonds will be issued in February 1979 and up to $125,000,000 principal amount of new bonds will be issued in April 1979, but in either case not later than August 1979. It is intended that each series of new bonds will have a term of not less than five nor more than 30 years and will be sold at competitive bidding for the best price obtainable, but for a price to Georgia of not less than 98% not more than 101¾% of the principal amount thereof, plus accrued interest. The new bonds will be issued under the Indenture dated as of March 1, 1941, between Georgia and Chemical Bank, as Trustee, as heretofore supplemented by various indentures supplemental thereto, and as to be further supplemented by a Supplemental Indenture to be dated as of February 1, 1979, in the case of the $100,000,000 principal amount of new bonds and April 1, 1979, in the case of the $125,000,000 principal amount of new bonds.

It is stated that it is difficult to determine, under present bond market conditions, whether it would be more advantageous to Georgia to sell the new bonds with a 30-year term or some shorter term and that it is in the public interest for Georgia to be afforded the necessary flexibility to adjust its financing program to developments in the markets for long-term debt securities when and as they occur in order to obtain the best possible price, interest rate, and term for its new bonds. Georgia intends, therefore, to decide on the term of each series of the new bonds after the date of the respective public invitation for proposals and then in each case notify prospective bidders by telephone, confirmed in writing, of its decision not less than 72 hours prior to the time of each bidding.

Georgia also proposes to issue up to $50,000,000 of preferred stock, without par value, but with a stated value of $25 per share or $100 per share, ("new preferred stock") and to sell such securities at competitive bidding for the best price obtainable but for a price to Georgia of not less than 100% nor more than 102% of the stated value per share, which shall also be the public offering price per share. In addition, Georgia proposes to pay to the purchasers of the new preferred stock compensation for their services in purchasing and making a public offering of such shares. It is proposed that such stock be issued in February 1979 but in any event not later than August 1979. The terms of the new preferred stock will be established by amendment to the charter of Georgia. Georgia may also make provision for a cumulative sinking fund for the benefit of the new preferred stock which would retire annually not more than 5% of the number of shares initially issued, commencing five years after the sale, with the non-cumulative option on any sinking fund date, commencing five years or later after the sale, of redeeming an additional like number of shares.

It is stated that Georgia may request by amendment that each of the proposed sales be excepted from the competitive bidding requirements of Rule 50, should circumstances develop which, in the opinion of Georgia's management, make such exception in the best interest of Georgia and its investors and consumers.

Georgia intends to use the proceeds from each sale of the new bonds and the sale of the new preferred stock, along with other funds, in financing its 1979 construction.

Statements of the fees and expenses to be incurred in connection with the proposed transactions will be filed by amendment. It is stated that the proposed transactions will have been authorized by the Georgia Public Service Commission 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 January 31, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that 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 filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will recieve any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-1393 Filed 1-12-79; 8:45 am]

[8010-01-M]

[Administrative Proceeding File No. 3-5592; File No. 81-429]

GRAND UNION CO.

Application and Opportunity for Hearing

JANUARY 4, 1979.

Notice is hereby given that Grand Union Company ("Applicant") has filed an application, pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), that Applicant be granted an exemption from the reporting provisions of Section 15(d) of the 1934 Act.

The Applicant states, in part:

1. Applicant is incorporated under the laws of the State of Delaware.

2. On July 28, 1977, Applicant merged with and became a wholly-owned subsidiary of Cavenham (USA) Inc. As a result of this merger, Applicant no longer has any publicly owned common stock.

3. As of April 2, 1978, Applicant's Preferred Stock was held by 259 holders.

4. Prior to July 15, 1978, the Applicant deposited funds with Fidelity Union Trust Company, as Trustee under an Indenture dated as of July

15, 1958, sufficient to pay at the maturity of the Applicant's 4½ percent Subordinated Debentures on July 15, 1978 the principal and interest due to the date of maturity on all outstanding Debentures.

In the absence of an exemption, Applicant is required to file reports pursuant to Section 15(d) of the 1934 Act. 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 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person not later than Jan. 29, 1979, 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, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own notion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMONS,
Secretary.

[FR Doc. 79-1394 Filed 1-12-79; 8:45 am]

[8010-01-M]

[Administrative Proceeding File No. 3-5615; File No. 81-436]

ISL LIQUIDATING CORP. (FORMERLY LEONARD SILVER INTERNATIONAL, INC.)

Application and Opportunity for Hearing

JANUARY 4, 1979.

Notice is hereby given that ISL Liquidating Corporation ("Applicant") has filed an application, pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order exempting Applicant from the provisions of Section 15(d) of that Act.

The Applicant states, in part;

1. On September 11, 1978, the Applicant's assets were sold to the Elwot Corporation, a wholly owned subsidiary of Towle Manufacturing Company, in exchange for Towle stock. As a result of the sale, the Applicant ceased all business activities and public trading in its securities ceased.

2. On November 21, 1978, Applicant's registration under 12(g) of the 1934 Act was terminated.

In the absence of an exemption, Applicant would be required to file periodic reports for the year ending December 31, 1978.

Applicant believes that its request for an order exempting it from the reporting provisions of Section 15(d) of the 1934 Act is appropriate inasmuch as there is no public trading in its stock, it has ceased all business activities and the public may obtain sufficient information regarding Applicant's activities from the reports of Towle Manufacturing Company.

For a more detailed statement of the information presented, all persons are referred to the application which may be examined at the Commission's Public Reference Section, 1100 L St., N.W., Washington, D.C. 20549.

Notice is further given that any interested person, not later than January 29, 1979, may submit to the Commission in writing his view 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. 79-1395 Filed 1-12-79; 8:45 am]

[8010-01-M]

[Release No. 20874; 70-6047]

MIDDLE SOUTH UTILITIES, INC.

Proposal To Extend Period During Which Common Stock May Be Issued to Trustee Under an Employee Stock Ownership Plan

JANUARY 5, 1979.

Notice is hereby given that Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, has filed a post-effective amendment to an application-declaration previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transaction.

By order dated September 20, 1977 in this matter (HCAR No. 20183), Middle South was authorized to make available, for acquisition by First National Bank of Commerce, New Orleans, Louisiana, as trustee ("Trustee") under the Employee Stock Ownership Plan of Middle South Utilities, Inc. and Subsidiaries ("Plan"), directly from Middle South, through January 31, 1979, up to 300,000 authorized but unissued shares of its common stock, $5 par value ("Additional Stock"). Middle South now proposes to extend for three years, from January 31, 1979 to January 31, 1982, the period during which Middle South may offer and issue the Additional Stock directly to the Trustee under the Plan.

Pursuant to the terms of the Plan, Middle South and its subsidiaries contribute to the Trustee for employees participating in the Plan an amount equal to an additional investment tax credit allowed to Middle South on its consolidated federal income tax return for such purpose under the Internal Revenue Code of 1954, as amended. The Trustee must invest and reinvest cash contributions, and any income thereon, exclusively in Middle South's common stock, $5 par value, which is acquires, at its discretions, through open market or private purchases or directly from Middle South. If Middle South offers Additional Stock to the Trustee and the Trustee chooses to accept such offer rather than to acquire Middle South's common stock in the open market or elsewhere, the Additional Stock is acquired for an amount equal to the value of such Stock based upon the average of the closing prices of Middle South's common stock based on consolidated trading as defined by the Consolidated Tape Association and reported as part of the consolidated trading prices of New York Stock Exchange listed securities for twenty consecutive trading days immediately preceding the acquisition ("Market Value"). If dividends are reinvested in Additional Stock, such Stock is acquired for an amount equal to the Market Value of such Stock.

Middle South currently estimates that the balance of the Additional

Stock remaining unissued to date, namely 93,053 shares, should be sufficient, based upon the recent market value of its common stock and Middle South's current tax position, to satisfy the requirements of the Plan through January 31, 1982, the extended date through which it is now proposed that Middle South be permitted to offer and issue the Additional Stock directly to the Trustee pursuant to the Plan.

The proceeds derived by Middle South through the issuance of the balance of the Additional Stock will be utilized for repayment of then outstanding bank loans to Middle South, pursuant to the credit agreement between Middle South and various commercial banks, dated June 29, 1978.

Except as set forth above, all terms and conditions of the offer and issuance by Middle South, and acquisition by the Trustee, of the Additional Stock pursuant to the Plan, as set forth in the application-declaration as approved in the Commission's order of September 20, 1977, are to remain unchanged.

It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than January 29, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants 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-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-1396 Filed 1-12-79; 8:45 am]

[8010-01-M]

[Release No. 20876; 70-6241]

NATIONAL FUEL GAS CO., AND SENECA RESOURCES CORP.

Proposed Issuance and Sale of Short-Term Notes to Bank by Subsidiary Company and Guaranty Thereof by Holding Company

JANUARY 5, 1979.

Notice is hereby given that National Fuel Gas Company ("National") 30 Rockefeller Plaza, New York, New York 10020, a registered holding company, and one of its wholly-owned subsidiary companies, Seneca Resources Corporation ("Seneca") 10 Layfayette Square, Buffalo, New York 14203, have filed a declaration and an amendment thereto with this Commission pursuant to Sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transactions. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

Seneca proposes to issue and sell notes pursuant to a line of credit with Houston National Bank upon the following terms. Seneca will enter into a loan agreement with Houston National Bank pursuant to which Seneca will have the right to borrow not to exceed $20,000,000 in principal amount at any one time outstanding. Such loan will be evidenced by unsecured short-term notes which will be dated the date of issue, will mature on January 31, 1980, and will be prepayable, at any time in whole or in part, without penalty or premium. It is proposed that payment of principal and interest on the notes will be unconditionally guaranteed by National. The notes will bear interest not in excess of the prime rate of interest at Houston National Bank as it fluctuates from time to time. In addition, Seneca has agreed with Houston National Bank to maintain average balances at 10% of the amount of the line of credit, plus 10% of the amount drawn down by Seneca under the line of credit. Assuming an average balance of 20%, the effective cost of money, based on an 11¾% prime rate, would be 14.6875%.

Under the terms of the loan agreement, Seneca is obligated to pay the reasonable fees and expenses of counsel for Houston National Bank in connection with the preparation of the loan agreement and all transactions pursuant thereto. Other than such counsel fees, there will be no commitment fee or any other closing or related costs in connection with the above transactions.

Seneca intends to use the proceeds from the sale of said short-term notes to repay interest-free emergency loans aggregating not to exceed $9,000,000 from National Fuel Gas Supply Corporation ("Supply"), a wholly-owned subsidiary of National. Seneca also intends to repay at maturity $3,000,000 in loans advanced by National from the proceeds of the sale of commercial paper by National. The loans to Seneca from Supply and National were made for the purpose of supplying working capital to Seneca and financing Seneca's 1977 and 1978 gas exploration and development program. Seneca plans to use the remaining amount available under the proposed line of credit as working capital and to finance gas exploration and development in 1979. It is stated that repayment of the notes by Seneca will be made by funds generated internally and by possible external financial arrangements.

A statement of the fees and expenses to be incurred in connection with the proposed transactions is to be filed by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. National requests that it be permitted to file the certificates required by Rule 24 relating to the proposed transactions on a quarterly basis.

Notice is further given that any interested person may, not later than January 30, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-1397 Filed 1-12-79; 8:45 am]

[8010-01-M]

[Rel. No. 20879; 70-6252]

OHIO EDISON CO.

Proposed Issuance of Bonds for Sinking Fund Purposes, Proposed Issuance and Sale of Common Stock and Request for Exemption From Competitive Bidding

JANUARY 8, 1979.

Notice is hereby given that Ohio Edison Company ("Ohio Edison"), 76 South Main Street, Akron, Ohio 44308, an operating company and a registered holding company, has filed with this Commission an application-declaration and an amendment thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Ohio Edison proposes to issue on or about May 1 and November 1 of the year 1979 a total of $15,158,000 principal amount of its first mortgage bonds, 3¼% Series of 1955 due 1985 ("Sinking Fund Bonds"), such issuance to be under its Indenture dated as of August 1, 1930, as amended and supplemented (the "Mortgage"). The Sinking Fund Bonds are to be of the series provided for by the Twelfth Supplemental Indenture dated as of May 1, 1955, and will be identical in all respects to the sinking fund bonds of this series which were the subject of previous orders by this Commission (the latest such order being that of March 21, 1978 (HCAR No. 20549)).

Ohio Edison proposes to use the Sinking Fund Bonds solely to obtain the inclusion in its general funds, through the authentication and delivery by the Indenture Trustee and surrender by Ohio Edison to said Trustee for cancellation of Sinking Fund Bonds, of the sinking fund payments on deposit or required to be made with the Trustee under the improvement and sinking fund provisions of the Mortgage in 1979. The cash so withdrawn will be used for general corporate purposes. It is proposed that the Sinking Fund Bonds will be ussued either on the basis of unfunded property additions or on the basis of retired bonds previously outstanding under the Mortgage. It is estimated that, after giving effect to the issuance of the Sinking Fund Bonds, unfunded net property additions as of September 30, 1978, will amount to $604,000,000. Ohio Edison presently has available $25,058,000 aggregate principal amount of retired bonds previously outstanding under the Mortgage against which bonds can be issued.

Ohio Edison also proposes to issue and sell up to 6,000,000 shares of its authorized but unissued common stock, par value $9 per share ("New Common Stock"). The proceeds from such sale will be used (1) to enable Ohio Edison to continue its on-going construction program, estimated at $385,776,000 for 1979; (2) to reduce its unsecured short-term debt (estimated to amount to $130,000,000 at the time of issuance and sale of the New Common Stock; and (3) to use for other similar corporate purposes for which borrowing under short-term credit lines would be required if such funds were not so used.

Ohio Edison requests that it be granted for such issuance and sale an exemption from the competitive bidding requirements of Rule 50 promulgated under the Act pursuant to Rule 50(a)(5). It is stated that management believes it to be in the best interests of its securityholders and ratepayers that it be permitted to negotiate an offering of the New Common Stock with underwriters so so as to channel as much effort and flexibility as possible into the proposed sale. Ohio Edison's earnings per share for the twelve months ended November 30, 1978, were $1.19 per share; its dividend rate is currently $1.76 per share per annum. At said date its price/earnings ratio was 12.6 times, an extremely high ratio in comparison with the recent past. At the present time Ohio Edison cannot issue either first mortgage bonds or preferred stock due to lack of adequate coverage ratios under its first mortgage indenture and charter. It is claimed that these financial problems make for great uncertainties in the market for its common stock. Ohio Edison states it must be able to tailor the sale of the New Common Stock for the most favorable market if the sale is to be consummated on reasonable terms, and that this is not possible under the constraints of competitive bidding, which prevent last minute changes in timing or amount of securities to be offered. In addition it is felt that the sale of the New Common Stock in the present circumstances will require substantial presale preparation and effort by the underwriter, which only his advance selection will permit. Finally, it is noted that Ohio Edison has filed with this Commission an application under Section 3(a)(2) of the Act requesting an order exempting it from the provisions of the Act (File No. 31-766), and the effect of the action requested therein is something concerning which underwriters will need to be educated.

The fees and expenses to be incurred in connection with the propose transactions will be supplied by amendment. It is stated that the Public Utilities Commission of Ohio has jurisdiction over the issuance and sale of the New Common Stock and the issue and use of the Sinking Fund Bonds, 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 January 30, 1979, 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-declaration, as amended, 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 application-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as amended, or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-1398 Filed 1-12-79; 8:45 am]

[8010-01-M]

[Release No. 34-15459; File No. SR-NYSE-78-65]

SELF-REGULATORY ORGANIZATIONS

New York Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 18, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The New York Stock Exchange, Inc. ("NYSE") has proposed amendment of Paragraph .10 of NYSE Rule 103 to provide that (i) all members registered with the exchange as regular specialists, or odd-lot dealers or odd-lot brokers will be required to pay a monthly registration fee of $37.50 and (ii) all members registered as relief or associate specialists will be required to pay a monthly registration fee of $1.67. This proposal simply provides for payment of the registration fees required by NYSE Rule 103.10 in monthly, rather than quarterly, installments.

STATEMENT OF PURPOSE OF PROPOSED RULE CHANGE

The NYSE asserts that the purpose of the proposed rule change is to modify Paragraph .10 on NYSE Rule 103 to indicate that registration fees are to be paid monthly rather than quarterly by all members registered with the exchange as regular specialists, odd-lot dealers or brokers, relief specialists, or associate specialists.

STATEMENT OF BASIS UNDER THE ACT FOR PROPOSED RULE CHANGE

The NYSE believes that this amendment of NYSE Rule 103 will facilitate internal recordkeeping and enhance the exchange's capacity to enforce members' compliance with that provision. Accordingly, the NYSE points to Section 6(b)(1) of the Act as providing the statutory basis. Section 6(b)(1) requires, among other things, that a registered national securities exchange have the capacity to enforce compliance by its members with the exchange's rules.

COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS, OR OTHERS ON PROPOSED RULE CHANGE

The NYSE states that no comments have been solicited or received.

BURDEN ON COMPETITION

The NYSE believes that its Rule 103, as amended, will not impose any burden on competition.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act because it changes the time of payment of certain fees. At any time within sixty days of the date of filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the abovementioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days of the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 4, 1979.

[FR Doc. 79-1403 Filed 1-12-79; 8:45 am]

[8010-01-M]

[Release No. 34-15460; File No. SR-NYSE-78-67]

SELF-REGULATORY ORGANIZATIONS

New York Stock Exchange, Inc. (the "NYSE" or "Exchange")

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 26, 1978, the above mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change and has furnished the following terms of substance, purpose, and basis under the Act for the proposed rule change:

TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGES

The proposed rule changes would require that members, member organizations, allied members, approved persons and registered and non-registered employees report to the Exchange whenever any one of them becomes the subject of any of the following matters: violations of rules or regulations of regulatory and self-regulatory bodies; written customer complaints alleging defalcation, theft or forgery; any disciplinary proceeding by a regulatory or self-regulatory body, or when denied registration, membership or otherwise disciplined by such authorities; arrests and related criminal proceedings; certain associations with a fiduciary implicated in a regulatory or criminal matter; a claim by a customer, broker or dealer which is settled for more than $5,000; a judgment, award or settlement exceeding $5,000 resulting from securities or commodities-related civil litigation or arbitration; and "statutory disqualifications" as defined in the Act.

PURPOSE OF PROPOSED RULE CHANGES

The foregoing reporting requirements would, in light of the standards set forth in Section 6(c)(3) of the Act, enable the Exchange to determine if a member or person associated with a member is qualified to maintain his status with the Exchange.

The proposed amendments are intended to make Exchange reporting requirements consistent with the Act and provide greater efficiency to enable the Exchange to enforce the Act and rules of the Exchange.

Additionally, the proposed new rule eliminates redundancies by consolidating the reporting requirements for members, member organizations, allied members and approved persons, which are currently contained in one rule with the virtually identical reporting requirements for registered employees, which are set forth in another rule.

BASIS UNDER THE ACT FOR PROPOSED RULE CHANGES

The proposed new NYSE Rule 351 and the rescission of NYSE Rules 311.10 and 351 are consistent with Sections 3(a)(39), 6 (b) and (c), 15(b)(4)(B)-(E) and 17(a) of the Act. The proposed reporting requirements would provide the Exchange with information enabling it to enforce compliance by its members and persons associated with its members, with the Act and the rules and regulations thereunder. By requiring the reporting of persons subject to "statutory disqualifications" as defined in the Act and of other information necessary to determine if a person has "engaged in

acts or practices inconsistent with just and equitable principles of trade," the proposed rule provides the Exchange with the opportunity to determine, as stated in Section 6(c) of the Act, the qualifications of a broker or dealer to be a member or any person to be associated with a member. By providing the Exchange with a means to enforce compliance with the Act and rules of the Exchange, the proposed reporting requirements would help to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and serve to facilitate the protection of investors and the public interest. Further, the proposed Rule would provide the Exchange with a means to determine if its members or persons associated with its members should be appropriately disciplined for violation of the provisions of the Act or the rules of the Exchange.

COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS, OR OTHERS ON PROPOSED RULE CHANGES

The NYSE states that comments were solicited and received from the Securities Industry Association and incorporated into the proposed rule. Their suggestions were to require reports of settlements exceeding $5,000, rather than $2,500, and of rule violations known to have actually occurred.

BURDEN ON COMPETITION

The NYSE has determined that this proposal will not impose any burden on competition.

Within 35 days of the January 15, 1979, date of publication of this notice in the FEDERAL REGISTER (February 19, 1979), or within such longer period (i) as the Commission may designate up to 90 days of such date (April 16, 1979) if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submissions will be available for inspection in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 5, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 4, 1979.

[FR Doc. 79-1404 Filed 1-12-79; 8:45 am]

[8010-01-M]

[Administrative Proceeding File No. 3-5541; File No. 81-440]

SOUTH SHORE PUBLISHING CO., INC.

Application and Opportunity for Hearing

Notice is hereby given that South Shore Publishing Co., Inc. ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from the provisions of Sections 13 and 15(d) of that Act.

The Application states, in part:

1. The Applicant became subject to the periodic reporting requirements of Section 15(d) of the 1934 Act for its common stock in 1969.

2. Applicant's registration under Section 12(g) of the 1934 Act, effective in 1972, was terminated on November 28, 1978.

3. On October 6, 1978, the stockholders of the Applicant approved an amendment to the corporate charter to effect a reverse split of its common stock. As the result of such reverse stock split, the Company has only three stockholders.

In the absence of an exemption, Applicant would be required to file reports pursuant to Sections 13 and 15(d) of the 1934 Act and the rules and regulations, thereunder, for the balance of the fiscal year ending May 31, 1979. Applicant believes that its request for an order exempting it from the reporting provisions of Sections 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 the application which is on file in the offices of the Commission at 1100 L St., N.W., Washington, D.C. 20549.

Notice is further given that any interested person, not later than Jan. 29, 1979, 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 Capital Street, N.W., 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. 79-1400 Filed 1-12-79; 8:45 am]

[8010-01-M]

[Rel. No. 20878; 70-6251]

SOUTHWESTERN ELECTRIC POWER CO.

Proposed Acquisition of Coal Rail Cars

JANUARY 8, 1979.

Notice is hereby given that Southwestern Electric Power Company ("SWEPCO"), P.O. Box 21106, Shreveport, Louisiana 71156, an electric utility subsidiary of Central and South West Corporation, a registered holding company, has filed with this Commission an application pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a) and 10 of the Act as applicable to the proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

SWEPCO seeks authorization to acquire 605 one hundred ton, sixty foot, open-top coal hopper rail cars (the "Equipment") for use in unit train service between Gillette, Wyoming and SWEPCO's Welsh Unit No. 1, Welsh Unit No. 2 and Flint Creek power plants. SWEPCO has acquired 605 equivalent rail cars pursuant to the authorizations given in previous orders of August 9, 1976 (HCAR No. 19643), and October 12, 1977 (HCAR No. 20207). Each unit train consists of 110 coal cars and SWEPCO maintains a 10% or 11 car reserve for maintenance and repairs. The proposed acquisition of 605 cars will provide one additional unit train for Welsh Unit No. 1, one additional unit train for Flint Creek and three unit trains for Welsh Unit No. 2, which is presently

being constructed and is scheduled for commercial operation in 1980. The 605 cars comprising the Equipment will cost approximately $25,000,000, with the final cost dependent upon cost escalations under the contract with the manufacturer, delivery charges and the amounts of any sales or use taxes.

It is stated that additional unit trains for Welsh Unit No. 1 and Flint Creek are necessary because the turnaround times experienced by SWEPCO are in excess of the times originally estimated, such tardiness being attributed to congestion on the railroad's line from the mine site near Gillette, Wyoming to the Welsh plant in Cason, Texas and the Flint Creek plant in Siloam Springs, Arkansas, distances of about 1500 and 1100 miles, respectively. The estimated turnaround time to the Welsh plant was 155 hours; that actually experienced, 210 hours. The estimated turnaround time to the Flint Creek plant was 114 hours; that actually experienced, 183 hours. To compensate for the added times SWEPCO had been using two unit trains consisting of carrier-owned rail cars supplied by Burlington Northern, Inc., one of which is no longer available to SWEPCO. SWEPCO believes it advisable to acquire sufficient additional cars (242) so that it does not need to rely on carrier-owned cars for these two units trains.

It is further stated that 363 cars (three unit trains) are presently estimated to be sufficient to transport the coal requirements for Welsh Unit No. 2, the coal for which is to be provided under a contract between SWEPCO and Amax Coal Company covering coal requirements for Welsh Unit No. 1, Welsh Unit No. 2 and Flint Creek for the first 25 years of the operation of such facilities.

SWEPCO intends that all of the Equipment will be used exclusively by it. Since the unit trains will operate continuously there will be no spare car capacity. In the event the turnaround time now experienced by SWEPCO is reduced, SWEPCO will either acquire fewer coal cars than the number presently anticipated to be required to service Welsh Unit No. 3 or will refrain from replacing cars which have become worn out or irreparably damaged in operation, or both.

Of the 605 rail cars, SWEPCO plans to acquire 242 between February and June 1979, pursuant to a proposed railroad equipment lease ("Lease") described further below. The financing arrangements for the remaining 363 rail cars, which are scheduled for delivery from October through December 1979, have not been completed and will be the subject of further amendment to this application.

The Lease SWEPCO proposes to enter into is with Cason Car Corporation ("Lessor") and is for 242 rail cars for an interim term beginning on the date of delivery of the rail cars and ending on August 1, 1979, followed by a primary term of 20 years ending on August 1, 1999. The rental for the interim term will be a payment on August 1, 1979, equal to the purchase price of the rail cars, as defined in the Lease, times the daily equivalent of 9½% per annum for each day of the interim term. Rentals thereafter will be required semiannually, commencing February 1, 1980, in accordance with the following schedule:

Rental Payment Dates	Number of Payments	Percent of Purchase Price
Feb. 1, 1980 to Aug. 1, 1984	10	4.75%
Feb. 1, 1985 to Feb. 1, 1999	29	6.16%
Aug. 1, 1999	1	16.16%

The rental payments are calculated to be an amount sufficient to pay interest only at 9½% per annum on the purchase price for the first 5 years of the primary term, to amortize 90% of the purchase price at 9½% per annum during the 6th through 20th year of the primary term, with a final payment of the then-remaining unamortized portion of the purchase price.

The Lease is a net lease under which SWEPCO agrees to pay all taxes and charges on the rail cars or assessed against the Lessor (other than income taxes assessed against the Lessor on its fees) and covenants to keep the rail cars insured or self-insured, free of non-permitted liens and encumbrances, in good maintenance and repair and in compliance with laws and governmental regulations. In the event of a casualty occurrence (which would include a rail car's becoming worn out, lost, stolen, destroyed, condemned or otherwise permanently unfit for use), SWEPCO is required to either: (i) terminate the Lease with respect to such rail car and pay the Lessor a sum equal to the Casualty Value of such rail car; (ii) substitute replacement equipment having a value and a useful life at least equal to the Casualty Value and remaining useful life of the rail car being replaced; or (iii) provide sufficient funds to the lessor to enable it to acquire replacement equipment meeting the requirements of clause (ii) above. The Casualty Value of a rail car represents the then unamortized portion of its purchase price as of a given rental payment date.

The rail cars are being manufactured by Thrall Car Manufacturing Company ("Thrall") and will be sold by it to the Lessor under a conditional sales agreement ("CSA"). Thrall will assign its right, title and interest in the CSA and the rail cars to Mercantile-Safe Deposit and Trust Company, as agent ("Agent") pursuant to an agreement and assignment ("Assignment"), which will hold security title to the rail cars on behalf of Greenwich Savings Bank and Pilot Life Insurance Company (collectively, the "Investors") who will provide 100% of the purchase price of the rail cars. The Investors will be repaid in installments under the CSA equal to the rental payments required to be made by SWEPCO under the Lease. The Investors, the Agent and SWEPCO will enter into a finance agreement describing the proposed transaction, and the Lessor will assign to the Agent, as additional security, the rentals to be received under the Lease (SWEPCO will acknowledge notice of and consent to such assignment).

SWEPCO will have the right to terminate the Lease as of any rental payment date occurring on or after August 1, 1989, in the event it determines the rail cars are no longer economical for use in its operations by paying the Casualty Value of the rail cars at such date to the Lessor. Upon payment of the Casualty Value or upon payment of the last rental installment SWEPCO will receive title to the rail cars and will have no further obligations under the Lease. SWEPCO will also have the right to terminate the Lease as of any rental payment date by depositing with the Agent an amount sufficient to prepay the unamortized principal amount of the CSA indebtedness plus a premium equal to 9½% of such amount during the first year of the primary term and declining by equal annual amounts to no premium in the final year of the primary term, provided that no such redemption can be made prior to August 1, 1989, from the proceeds of borrowings by SWEPCO having a lesser interest cost or a shorter remaining weighted average life than the interest cost or remaining weighted average life of the CSA indebtedness. SWEPCO can also terminate the lease as of any rental payment date by entering into and delivering to the Agent an assumption agreement under which the lessor would assign its interests as vendee under the CSA to SWEPCO and SWEPCO would directly assume liability for repayment of the CSA indebtedness.

It is stated that SWEPCO intends to include the full amount of the rental payments under the Lease in determining its fuel costs for use in the fuel adjustment clause of its rates, subject to approval by applicable regulatory authorities.

The fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment. It is stated that no state com-

mission 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 January 29, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the 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 filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-1399 Filed 1-12-79; 8:45 am]

[8010-01-M]

[File No. 1-4162]

UOP, INC.

6¾% Sinking Fund Debentures Due May 1, 1993; Application To Withdraw From Listing and Registration

JANUARY 2, 1979.

The above named issuer has filed an application with the Securities and Exchange Commission, pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the NEW YORK STOCK EXCHANGE, INC. ("NYSE").

The reason alleged in the application for withdrawing this security from listing and registration include the following:

The 6¾% Sinking Fund Debentures ("Debentures") of UOP, Inc. (the "Company") are being withdrawn from listing and registration because the Company has determined that the expense of complying with the Commission's reporting requirements is not justified. The Company has indicated that there are less than 300 recordholders for the above listed Debentures. The NYSE has posed no objection in this matter.

Any interested person may, on or before January 31, 1978, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission will, on the basis of the application and any other information submitted to it, issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-1401 Filed 1-12-79; 8:45 am]

[8010-01-M]

[Administrative Proceeding File No. 3-5589; File No. 81-402]

WORCESTER CONTROLS CORP.

Application and Opportunity for Hearing

JANUARY 4, 1979.

Notice is hereby given that Worcester Controls Corporation ("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 Massachusetts corporation subject to the reporting provisions of Sections 13 and 15(d) of the 1934 Act.

2. On August 28, 1978, a wholly-owned subsidiary (WCC Corp.) of BTR Limited, an English Corporation, 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 WCC Corp. with and into the Applicant.

3. The merger was voted upon and approved by the Applicant's shareholders at a meeting held on August 28, 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 $30.00 cash.

5. The holders of such shares do not have any continuing interest in or rights as shareholders, of the Applicant.

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 August 31, 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, N.W., Washington, D.C.

Notice is further given that any interested person not later than January 29, 1979, 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, N.W., 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. 79-1402 Filed 1-12-79; 8:45 am]

[8010-01-M]

[Release Nos. 33-6011; 34-15458; 35-20869; IC-10542]

ADVISORY COMMITTEES

Establishment

ACTION: Notice of Establishment of the Securities and Exchange Commission Advisory Committee on Oil and Gas Accounting.

SUMMARY: The Chairman of the Commission, with the concurrence of the other members of the Commission, has established the Securities and Exchange Commission Advisory Committee on Oil and Gas Accounting, which is to advise the Chief Accountant of the Commission on various difficult, complex and technical questions relating to the development of oil and gas reserve recognition accounting.

FOR FURTHER INFORMATION CONTACT:

James Russell or Gretta Powers, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202) 755-0222 or (202) 472-3782.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. I, and the regulations thereunder, the Commission has ordered publication of this notice that Chairman Williams, with the concurrence of the members of the Commission, has established an advisory committee under the Federal Advisory Committee Act which is designated the Securities and Exchange Commission Advisory Committee on Oil and Gas Accounting, certifying that he has considered the establishment of this Committee and, with the concurrence of the other members of the Commission, has found the creation of this Committee to be in the public interest in that it will assist the Commission in the performance of its responsibilities under the federal securities laws.

The Advisory Committee's objectives are to advise the Chief Accountant of the Commission on various difficult, complex and technical questions relating to the development of oil and gas reserve recognition accounting including: cost-effective standards for reserve valuations; the appropriate format for a supplemental earnings summary presenting the results of oil and gas operations accounted for by the reserve recognition accounting method; the feasibility of incorporating data generated pursuant to the reserve recognition accounting method into the primary financial statements of registrants engaged in oil and gas producing activities; and other related matters coming to the attention of the Chief Accountant.

The Advisory Committee shall conduct its operations in accordance with the provisions of the Federal Advisory Committee Act.

The Advisory Committee shall submit its reports and recommendations to the Chief Accountant of the Commission. The duties of the Advisory Committee shall be solely advisory and shall extend only to the submission of reports and recommendations to the Chief Accountant of the Commission, who has sole responsibility for determining appropriate actions to be recommended to the Commission.

The Commission shall provide any necessary support services required by the Advisory Committee.

The estimated annual operating costs in dollars and staff-years of the Advisory Committee are as follows:

Dollar cost—$25,000 for travel, per diem and miscellaneous expenses for Advisory Committee members and Commission personnel per year on a continuing basis.

Staff-years—2 staff years, per year, for Commission personnel on a continuing basis.

The Advisory Committee shall meet at such intervals as are necessary to carry out its functions. It is estimated that the meetings of the full Advisory Committee generally will not occur more frequently than monthly (or twelve times a year).

The Advisory Committee shall terminate at the end of two years from the date of its establishment unless, prior to such time, its Charter is renewed in accordance with the Federal Advisory Committee Act, or unless the Chairman, with the concurrence of the other members of the Commission, determines that continuance of the Advisory Committee no longer is in the public interest.

Fifteen days after this notice has been published in the FEDERAL REGISTER, Notice of the establishment of the Committee and the Charter of this Committee will be filed with the Chairman of the Commission, the Senate Committee on Banking, Housing, and Urban Affairs, and the House of Representatives Committee on Interstate and Foreign Commerce. A copy of the Notice and the Charter will also be furnished to the Library of Congress and to the Office of Public Information of the Commission and will be available for public inspection.

The Commission anticipates announcing the membership of the Advisory Committee and the proposed date for its first meeting within the next few weeks.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 4, 1979.

[FR Doc. 79-1408 Filed 1-12-79; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[License No. 10/13-5027]

ALYESKA INVESTMENT CO.

Filing of Application for Transfer of Control

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to 13 C.F.R. 107.701 (1978) for the transfer of control of Alyeska Investment Company (licensee), a small business investment company licensed by the Small Business Administration on June 18, 1971, and operating under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (the Act).

Licensee, an Alaskan corporation with its principal place of business located at 1815 South Bragaw Street, Anchorge, Alaska 99504, is presently owned by the following stockholders:

Name	Voting Shares	Percent of Ownership
Amerada Hess Pipeline Corporation	150	1.5
Arco Pipeline Company	2,100	21.0
BP Pipeline Inc.	1,584	15.8
Exxon Pipeline Company	2,000	20.0
Mobil Alaska Pipeline Company	500	5.0
Phillips Alaska Pipeline Corporation	166	1.7
Sohio Pipe Line Company	3,334	33.3
Union Alaska Pipeline Company	166	1.7
Total	10,000	100.0

Under the terms of a "Stock Purchase Agreement", Allen R. Thompson and Connie F. Thompson, husband and wife (collectively "Buyers"), propose to acquire all of the outstanding stock of the licensee.

Upon transfer of control, the "Buyers" will continue the operations of the licensee at 234 East 2nd Avenue, Anchorage, Alaska 99501 with no change in the investment policy or in the area of operations. However, the following will be named officers and directors:

Allen R. Thompson, Lot 13, Prospect Heights Road, Anchorage, Alaska 99504, President, Director & 100% Stockholder.
Rick A. Thompson, SR 2, Box 251, Eagle River, Alaska 99577, Vice President, Director.
Sharyn C. Clabaugh, 2901 West 33rd, Anchorage, Alaska 99503, Secretary, Director.
Alfred R. Knighten, 1019 San Fernando #8, Anchorage, Alaska 99504, Treasurer, Director.
John L. Alexander, 1519 E Street, Anchorge, Alaska 99501, Director.
Nina M. Anderson, 1813 G Street, Anchorage, Alaska 99501, Director.
Robert W. Fritz, 3501 Lunar Drive, Anchorage, Alaska 99504, Director.
Terry L. Petruska, P.O. Box 4-1910, Anchorage, Alaska 99509, Director.
Finis J. Sheldon, Mi 23, Old Glenn Highway, Chugiak, Alaska 99567, Director.
Roger E. Smith, 715 Pisgah Drive, Canon City, Colorado 81212, Director.
George E. Williams, 2511 ½ West 30th, Anchorage, Alaska 99503, Director.

Matters involved in SBA's consideration of the application include the general business reputation and char-

acter of management and shareholders, and the probability of successful operations of the licensee under their management in accordance with the Act and Regulations.

Notice is further given that any person may, not later than January 31, 1979, submit to SBA in writing, comments on the proposed transfer of control of this company. Any such comments should be addressed to: Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice will be published by the licensee in a newspaper of general circulation in Anchorage, Alaska.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: December 18, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 79-1350 Filed 1-12-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1554]

INDIANA

Declaration of Disaster Loan Area

Clark County and adjacent counties within the State of Indiana constitute a disaster area as a result of damage caused by excessive rainfall and severe flooding which occurred from December 8-16, 1978. Applications will be processed under the provisions of Public Law 94-305. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on March 5, 1979, and for economic injury until the close of business on October 5, 1979, at:

Small Business Adminstration, District Office, Federal Building—5th Floor, 575 North Pennsylvania Street, Indianapolis, Ind. 46204,

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: January 4, 1979.

A. VERNON WEAVER,
Administrator.

[FR Doc. 79-1351 Filed 1-12-79; 8:45 am]

[4710-070-M]

DEPARTMENT OF STATE

[Public Notice CM-8/148]

STUDY GROUP 6 OF THE U.S. ORGANIZATION FOR THE INTERNATIONAL RADIO CONSULTATIVE COMMITTEE (CCIR)

Meeting

The Department of State announces that Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on February 8, 1979, at Boulder, Colorado. The meeting will open at 9:00 a.m., in Room 3012 of the Radio Building, 325 Broadway, Boulder, Colorado.

Study Group 6 deals with matters relating to the propagation of radio waves by and through the ionosphere. The purpose of the meeting will be a review of the documentation approved at the CCIR Special Preparatory Meeting and to review the program for submission of documents to the CCIR for the 1978-1982 cycle.

Members of the general public may attend the meeting and join in the discussions subject to the instructions of the Chairman.

Requests for further information should be directed to Mr. Gordon Huffcutt, State Department, Washington, D.C. 20520, Telephone 202-632-2592.

Dated: January 8, 1979.

GORDON L. HUFFCUTT,
Chairman,
U.S. CCIR National Committee.

[FR Doc. 79-1306 Filed 1-12-79; 8:45 am]

[4710-19-M]

[Public Notice 646]

PARTICIPATION OF PRIVATE-SECTOR REPRESENTATIVES ON U.S. DELEGATIONS

As announced in Public Notice No. 623 (43 FR 37783), August 24, 1978, the Department is submitting the following list of private-sector representatives and advisers who participated in U.S. Delegations during the month of December, 1978.

Publication of this list is required by Article IV(c)(4) of the guidelines published in the FEDERAL REGISTER on August 24, 1978.

Dated: January 2, 1979.

BRYAN H. BAAS,
Deputy Director, Office of International Conferences.

UNITED STATES DELEGATION TO THE SECOND SESSION, PREPARATORY COMMITTEE FOR THE THIRD INTERNATIONAL COCOA AGREEMENT, INTERNATIONAL COCOA COUNCIL AND SPECIAL SESSION, INTERNATIONAL COCOA COUNCIL, LONDON, DECEMBER 4-15, 1978

REPRESENTATIVES

John P. Ferriter, Chief, Tropical Products Division, Bureau of Economic and Business Affairs, Department of State.

ALTERNATE REPRESENTATIVE

Thomas J. O'Donnell, American Embassy, London.

ADVISERS

Ralph Ives, Resources Policy Division, Department of Commerce.
William Quinn, Office of Raw Materials, Department of the Treasury.
David A. Ross, Tropical Products Division, Bureau of Economic and Business Affairs, Department of State.

PRIVATE SECTOR ADVISERS

John C. K. Buckley, Vice-President, Purchasing, the Nestle Company, White Plains, N.Y.
Julian Hemphill, Chairman, New York Cocoa Exchange, New York, N.Y.
Elizabeth Wood, Assistant Coordinator of the Nutrition and Consumer Education, Consumers Cooperative of Berkeley, Berkeley, Calif.

THE ECONOMIC AND SOCIAL COUNCIL COMMITTEE OF EXPERTS ON THE TRANSPORT OF DANGEROUS GOODS, 10TH SESSION, GENEVA, DECEMBER 4 TO 13, 1978

REPRESENTATIVE

Alan I. Roberts, Director, Office of Hazardous Materials Regulation Research and Special Programs Administration, Department of Transportation.

ALTERNATE REPRESENTATIVE

Edward A. Atemos, Office of Hazardous Materials Regulation, Research and Special Programs Administration, Department of Transportation.

ADVISERS

Robert C. Herman, Explosives Safety Board, Department of Defense.
Donnell W. Morrison, Chief, Vehicle Requirements Branch, Bureau of Motor Carrier Safety, Federal Highway Administration, Department of Transportation.
Charles W. Schultz, Engineering Branch, Office of Hazardous Materials Regulation, Research and Special Programs Administration, Department of Transportation.
W. N. Spence, Captain, Chief, Cargo and Hazardous Materials Division, Office of Merchant Marine Safety, United States Coast Guard, Department of Transportation.

PRIVATE SECTOR ADVISERS

Michael T. Bohlman, Cargo Tank Engineer, Sea-Land Service, Inc., Elizabeth, N.J.
Orton Overman, Stauffer Chemical Co., Westport, Conn.

UNITED STATES DELEGATION TO THE AD HOC WORKING PARTY ON PULP AND PAPER, INDUSTRY COMMITTEE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD), PARIS, DECEMBER 12-13, 1978

REPRESENTATIVE

Donald W. Butts, Industry and Trade Administration, Department of Commerce.

ALTERNATIVE REPRESENTATIVE

Raymond Lombardi, United States Mission to OECD Paris.

PRIVATE SECTOR ADVISER

Irene Meister, Vice President, American Paper Institute, New York, N.Y.

UNITED STATES DELEGATION TO THE INTERNATIONAL SUGAR ORGANIZATION COUNCIL, LONDON, DECEMBER 13-14, 1978

REPRESENTATIVE

Thomas J. O'Donnell, American Embassy, London.

ALTERNATE REPRESENTATIVE

David H. Burns, Tropical Products Division, Bureau of Economic and Business Affairs, Department of State.

ADVISER

Paul P. Pilkauskas, American Embassy, London.

PRIVATE SECTOR ADVISERS

Arthur M. Best, Deputy Commissioner, Department of Consumer Affairs, New York, N.Y.
H. Paul Gardner, New York Coffee and Sugar Exchange, New York, N.Y.
Gregg R. Potvin, President, U.S. Cane Sugar Refiners Association, Washington, D.C.

UNITED STATES DELEGATION TO THE FOURTH SESSION OF THE PREPARATORY COMMITTEE OF THE INTERNATIONAL MARITIME SATELLITE SYSTEM (INMARSAT), INTERGOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION (IMCO), LONDON, DECEMBER 18-22, 1978

REPRESENTATIVE

Arthur L. Freeman, Office of International Communications Policy, Department of State.

ADVISERS

Veronica Ahern, Director, International Affairs, National Telecommunications and Information Administration, Department of Commerce.
H. Clay Black, Shipping Attaché, American Embassy, London.
Robert Greenburg, Common Carrier Bureau, Federal Communications Commission.
Waldimir Naleszkiewicz, National Telecommunications and Information Administration, Department of Commerce.

PRIVATE SECTOR ADVISERS

Robert N. Zxelrod, ComSat General Corporation, Washington, D.C.
Robert Bourne, Attorney, Communications Satellite Corporation, Washington, D.C.
Edward Martin, Assistant Vice President, ComSat General Corporation, Washington, D.C.
Edward Slack, ComSat General Corporation, Washington, D.C.

CONGRESSIONAL ADVISERS

Ronald Coleman, House Interstate and Foreign Commerce Committee Staff.
Brian Moir, House Interstate and Foreign Commerce Committee.

UNITED STATES DELEGATION TO THE INSURANCE COMMITTEE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD) PARIS, DECEMBER 19-20, 1978

REPRESENTATIVE

Albert N. Alexander, Director, International Services Division, Department of Commerce.

ADVISER

Stephen Altheim, United States Mission to OECD, Paris.

PRIVATE SECTOR ADVISER

Harold K. Shelp, International Insurance Advisory Council, Washington, D.C.

UNITED STATES DELEGATION TO THE INTERNATIONAL WHALING COMMISSION (IWC), TOKYO, DECEMBER 19-20, 1978

COMMISSIONER

The Honorable Richard A. Frank, Administrator, National Oceanic and Atmospheric Administration, Department of Commerce.

DEPUTY COMMISSIONER

Thomas Garrett, Garrett, Wyo.

ADVISERS

William Aron, Director, Office of Ecology and Conservation, National Oceanic and Atmospheric Administration, Department of Commerce.
Janice K. Barnes, Office of Ocean Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.
Robert Brownell, Fish and Wildlife Laboratory, Department of the Interior.
Robert Eisenbud, General Counsel, Marine Mammal Commission.
Prudence Fox, Office of International Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.
Katherine Gillman, Council on Environmental Quality.
Eldon Greenberg, General Counsel, National Oceanic and Atmospheric Administration, Department of Commerce.
James Johnson, Fisheries Attaché, Tokyo.
Michael Tillman, Marine Mammal Division, National Oceanic and Atmospheric Administration, Department of Commerce.

PRIVATE SECTOR ADVISERS

Patricia Forkan, Vice President, Humane Society of the United States, Washington, D.C.
Claudia Kendrew, National Wildlife Federation, Washington, D.C.
Ronn Storro-Patterson, Whale Center, Oakland, Calif.

[FR Doc. 79-1301 Filed 1-12-79; 8:45 am]

[4910-13—M]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

ELMENDORF RADAR APPROACH CONTROL

Closing

Notice is hereby given that on or about January 10, 1979, the Elmendorf Radar Approach Control (RAPCON), Anchorage, Alaska, will be closed. Air traffic services formerly provided by this facility will be provided by the Anchorage Terminal Radar Approach Control (TRACON).

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.

Issued in Anchorage, Alaska on January 2, 1979.

DONALD T. KEIL, Jr.,
Acting Director,
Alaskan Region.

[FR Doc. 79-1278 Filed 1-12-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMISSION

Office of Proceedings

[Notice No. 2]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 4, 1979.

IMPORTANT NOTICE

The following are notices of filing of applications for temporary authority under Section 210(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the

quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

NOTE: All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

MOTOR CARRIERS OF PROPERTY

MC 2202 (Sub-573TA), filed November 20, 1978. Applicant: ROADWAY EXPRESS, INC., P.O. Box 471, 1077 Gorge Blvd., Akron, OH 44309. Representative: William O. Turney, Suite 1010, 7101 Wisconsin Avenue, Washington, D.C. 20014. *General commodities* (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) serving Neosho, MO as an off-route point in connection with applicant's regular routes, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): LA-Z-Boy Chair, Inc., P.O. Box 628, Neosho, MO 64850. SEND PROTESTS TO: Mary Wehner, I.C.C., 731 Federal Office Bldg., 1240 East Ninth St., Cleveland, OH 44199.

MC 11207 (Sub-460TA), filed October 20, 1978. Applicant: DEATON, INC., 317 Avenue W, Post Office Box 938, Birmingham, Al 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, D.C. 20014. *Plywood paneling, gypsum board, composition board, and molding,* from the facilities of Cambe Industries, Incorporated, at or near Valdosta, GA, to points in AL, AR, FL, IN, KY, LA, MS, NC, SC, TN, TX, and VA, for 180 days. SUPPORTING SHIPPER(S): Cambe Industries, Inc., P.O. Box 1893, Valdosta, GA 31601. SEND PROTESTS TO: Mabel E. Holston, Transportation Asst., I.C.C., Rm. 1616—2121 Bldg., Birmingham, AL 35203.

MC 14215 (Sub-19TA), filed November 20, 1978. Applicant: SMITH TRUCK SERVICE, INC., P.O. Box 1329, Steubenville, Ohio 43952. Representative: John L. Alden, P.O. Box 12241, 1396 West Fifth Avenue, Columbus, Ohio 43212. *Roofing and roofing material,* From the facilities of Koppers Company, Inc. in Youngstown, Wickliffe, and Heath, OH to IN, KY, MI, NY, PA, and WV, for 180 days. SUPPORTING SHIPPER(S): Koppers Company, Inc., 850 Koppers Bldg., Pittsburgh, PA 15219. SEND PROTESTS TO: J. A. Niggemyer, I.C.C., 416 Old Post Office, Bldg., Wheeling, WV 26003.

MC 16872 (Sub-17TA), filed November 24, 1978. Applicant: WILLIAM MIRRER, d/b/a/ MIRRER'S TRUCKING CO., 100 E. 25th Street, Patterson, NJ 07514. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Plastic Granuels* (except in bulk) (1) From Joliet and Chicago, IL to Santa Ana, CA, Houston and Beaumont, TX (2) From Chicago, IL to NY, PA, CT, RI, MA, (3) From Houston and Beaumont, TX to Chicago, IL, NY, PA, CT, RI, MA, (4) Santa Ana, CA to TX, IL, NJ, MO, (5) Holyoke, MA to Santa Ana, CA, TX. (5) From NJ to NY, PA, CT, RI, MA. Restricted to shipments originating at the facilities of Mobil Chemical Co., and Rexene Polyefins Company, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Mobil Chemical Corp., P.O. Box 37, Paramus, NJ 07652. Rexene Polymers Co., P.O. Box 37, Paramus, NJ 07652. SEND PROTESTS TO: Joel Morrows, I.C.C., 9 Clinton St., Newark, NJ 07102.

MC 16872 (Sub-18TA), filed November 24, 1978 Applicant: WILLIAM MIRRER, D/B/A MIRRER'S TRUCKING CO., 100 E. 25th Street, Paterson, NJ 07524. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. (1) *Washing, cleaning, and scouring compounds,* (except commodities in bulk), From the facilities of Witco Chemical Corp., located at Paterson, NJ, to points in that portion of the US lying in and east of the states of ND, SD, NE, KS, OK and TX and (2) materials, equipment and supplies used in the manufacture and sale of the commodities described in (1) above, (except commodities in bulk) from points in the destination in (1) above to the facilities of Witco Chemical Corp., located at Paterson, NJ, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Witco Chemical Corp., P.O. Box 305, Paramus, NJ 07652. SEND PROTESTS TO: Joel Marrows, I.C.C., 9 Clinton Street, Newark, NJ 07102.

MC 17051 (Sub-20TA), filed November 27, 1978. Applicant: BARNET'S EXPRESS, INC., 758 Lidgerwood Ave., Elizabeth, NJ 07202. Representative: S. Michael Richards/Raymond A. Richards, 44 North Ave., Webster, NY 14580. *Wearing apparel, on hangers, equipment, materials, and supplies used or useful in the manufacture and sale of wearing apparel,* (1) between the facilities of L.CID Casuals, Inc. at New York, NY, on the one hand, and, on the other, Uniontown, AL, and (2) between the facilities of Cooper Sportswear Mfg. Co., Inc. at Carteret, Newark, Perth Amboy, and Trenton, NJ, and Johnstown, NY, on the one hand, and, on the other Columbus, OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. SUPPORTING SHIPPER(S): Sidney Panoff, Pres., L.CID Casuals, Inc., 1359 Broadway, New York, NY 10018 and Sidney Cooper, Sec/Treas., Cooper Sportswear Mfg. Co., Inc., 720 Frelinghuysen Ave., Newark, NJ 07114. Send protests to: Robert E. Johnston, I.C.C., 9 Clinton Street, Newark, NJ 07102.

MC 42011 (Sub-48TA), filed November 20, 1978 Applicant: D. Q. WISE & CO., INC., P.O. Drawer L, Tulsa, OK 74112. Representative: James W. Hightower, 136 Wynnewood Professional Building, Dallas, TX 75224. (1) *Process equipment, exchangers, tanks and vessels,* and (2) *material and equipment* used in, or in connection with the manufacture of (1) above, between the facilities of Plant Maintenance Service Corp., at or near Memphis, TN, on the one hand, and, on the other, points in the U.S. except AK, AL, GA, FL, SC and NC, for 180 days. SUPPORTING SHIPPER(S): Plant Maintenance Service Corporation, P.O. Box 28883, 3000 Fite Road, Memphis, TN 38128. SEND PROTESTS TO: Connie Stanley, ICC, Room 240 Old Post Office and Court House Building, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 59117 (Sub-63TA), filed November 27, 1978 Applicant: ELLIOTT TRUCK LINE, INC., P.O. Box 1, Vinita, OK 74301. Representative: Wilburn L. Williamson, 280 National Foundation Life Bldg., Oklahoma City, OK 73112. *Fly ash,* in bulk, from Gentry, AR to points in TX, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Gifford-Hill and Co., Inc., Ash Products Division, Box 47127, Dallas, TX 75247. SEND PROTESTS TO: Connie Stanley, Room 240 Old Post Office and Court House Building, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 94635 (Sub-6TA), filed November 20, 1978. Applicant: INTERSTATE SAND & GRAVEL TRANSPORTATION, INC., 717 Elmer Street, Vineland, NJ 08360. Representative: Terrance D. Jones, 2033 K Street, NW, Washington, DC 20006. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Sand, stone, gravel and clay,* from points in Burlington, Camden, Gloucester, Salem, Cumberland, Cape May and Atlantic Counties, NJ to points in DE, DC, MD, MA, NY and PA (except points in Bucks, Berks, Lehigh, Lebanon, Lancaster, Chester, Delaware, Montgomery and Philadelphia Counties), restricted to transportation services performed under a continuing contract or

contracts with Owens Illinois, Inc., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Owens Illinois, Inc., Glass Container Division, P.O. Box 1035, Toledo, OH 43666. SEND PROTESTS TO: John P. Lynn, ICC, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 100666 (Sub-414TA), filed November 20, 1978. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, LA 71107. Representative: Mr. Wilburn L. Williamson, 280 National Foundation Life Bldg., Oklahoma City, OK 73112. *Canned goods,* from the facilities of Michigan Fruit Canners Division, Curtis-Burns, Inc., at or near Coloma, MI to points in OK, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Michigan Fruit Canners Division, Curtis-Burns, Inc., P.O. Box 206, Coloma, MI 49038. SEND PROTESTS TO: Connie A. Guillory, ICC, T-9038, Postal Service Building, 701 Loyola Avenue, New Orleans, LA 70113.

MC 105813 (Sub-249TA), filed November 20, 1978. Applicant: BELFORD TRUCKING CO., INC., 1759 S.W. 12th Street, P.O. Box 2009, Ocala, FL 32670. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. *Meat, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A & C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766* (except hides and commodities in bulk), from the facilities of John Morrell & Co. at Montgomery, AL, to all points in all states in and east of TX, OK, KS, NE, SD, ND, and DC, for 180 days. SUPPORTING SHIPPER(S): John Morrell & Co., 208 S. LaSalle Street, Chicago, IL 60604. SEND PROTESTS TO: G. H. Fauss, Jr., ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 106398 (Sub-853TA), filed November 20, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, Oklahoma 74103. Representative: Irvin Tull, Traffic Manager, 525 South Main, Tulsa, Oklahoma 74103. *Iron and steel articles* from the facilities of Speedrack, Inc. at Quency, IL; from the facilities of Joslyn Empire Galvanizing at Franklin Park, IL; and from the facilities of Reliable Galvanizing at Chicago, IL, to all points in the United States (except HI)., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Speedrack, Inc., 5300 Golf Rd., Skokie, IL 60077. SEND PROTESTS TO: Connie Stanley, Trans., Asst., I.C.C., Rm. 240, Old Post Office & Courthouse Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 107515 (Sub-1191TA), filed November 27, 1978. Applicant: REFRIGERATED TRANSPORT CO., INC., Post Office Box 308, Forest Park, GA 30050. Representative: Alan E. Serby & Richard M. Tettelbaum. Fifth Floor, Lenox Towers South, 3390 Peachtree Road NE., Atlanta, GA 30336. *Drugs, medicines, and such commodities as are dealt in by wholesale and retail food chains, drugstores, hospitals, discount and variety stores, and grocery houses* (except in bulk), in vehicles equipped with mechanical refrigeration. From: Facilities utilized by Bristol-Myers, Inc., Atlanta, GA. To: Points in AL, FL, KY, MS, NC, SC, and TN, for 180 days. ETA is being filed simultaneously with this application. Supporting shipper(s): Bristol-Myers Company, 345 Park Avenue, New York, NY 10022. Send protests to: Sara K. Davis, Trans. Asst., I.C.C., 1252 W. Peachtree Street NW., Rm. 300, Atlanta, GA 30309.

MC 108631 (Sub-10TA), filed November 29, 1978. Applicant: BOB YOUNG TRUCKING, INC., Schoenersville Road at U.S. 22 Bypass, Bethlehem, PA 18017. Representative: Alan Kahn, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. *Steel transmission poles, and parts and accessories therefor,* between the facilities of Meyer Industries, Division of International Telephone and Telegraph Corp. at points in the borough of West Hazleton and the township of Hazle, Luzerne County, PA, on the one hand, and, on the other, points in MD, NJ, NY, OH, VA, and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Meyer Industries, Division of International Telephone and Telegraph Corp., P.O. Box L, Hazleton, PA 18201. Send protests to: T. M. Esposito, ICC, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 110563 (Sub-254TA), filed November 17, 1978. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, State Route 29 North, Sidney, OH 45365. Representative: John L. Maurer (same as applicant). *Candy, Confectionery and Confectionery Products,* from Philadelphia, PA to points in CO, IA, KS, and NE for 180 days. Supporting shipper(s): Falcon Candy Co., 2300 Carpenter Street, Philadelphia, PA 19146. Send protests to: I.C.C., 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

MC 112304 (Sub-157TA), filed November 21, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. *Zinc products* from the facilities of Jersey Miniere Zinc Co. in Montgomery County, TN to points in and east of ND, SD, NB, KS, OK, and TX for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Jersey Miniere Zinc Company, 2200 First American Center, Nashville, TN 37238. Send protests to: Paul J. Lowry, I.C.C., 5514-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

MC 112989 (Sub-80TA), filed November 21, 1978. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97405. Representative: John W. White, Jr., 85647 Highway 99 South, Eugene, OR 97405. *Insulated building and roofing panels and equipment, materials and supplies used in the installation thereof,* (expect commodities in bulk), from the facilities of Panel Era Corporation at or near Salt Lake City, UT to points in CA, ID, NV, OR, and WA; for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Panel Era Corp., 1857 S. 3850 W., Salt Lake City, UT 84104. SEND PROTESTS TO: A. E. Odoms, I.C.C., 114 Pioneer Courthouse, 555 SW. Yamhill Street, Portland, OR 97204.

MC 115379 (Sub-49TA), filed November 30, 1978. Applicant: JOHN D. BOHR, INC., P.O. Box 217, Annville, PA 17003. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. *Chemical lime,* from the facilities of Bethlehem Mines Corporation at or near Annville, PA to Cleveland, OH, restricted to traffic originating at and destined to the above-named origin and destination for 180 days. Supporting Shipper(s): Bethelem Steel Corp., Bethlehem, PA 18016. Send protests to: Charles F. Myers, I.C.C., P.O. Box 869 Federal Square Station, 228 Walnut Street, Harrisburg, PA 17108.

MC 115841 (Sub-581TA), filed November 20, 1978. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 37919. Representative: D. R. Beeler (same as above). *Frozen pies,* from Chicago, IL and its commercial zone to points in FL, GA, and TX, for 180 days. SUPPORTING SHIPPES(S): Fasano Pie Company, 6201 West 65th Street, Chicago, IL 60638. SEND PROTESTS TO: Glenda Kuss, I.C.C., Suite A-422 U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 115904 (Sub-135TA), filed November 28, 1978. Applicant: GROVER TRUCKING CO., 1710 West Broadway, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Lumber,* from points in AR, to points in KS,

NE, ND, SD, WY, and points in MN located in and north of Clay, Becker, Hubbard, Cass, Itasca, and Koochiching Counties, MN, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Chandler Corp., P.O. Box 2840, Boise, ID 83701. SEND PROTESTS TO: Barney L. Hardin, I.C.C., Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 117119 (Sub-706TA), filed November 29, 1978. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean (same address as applicant). *Malt beverages* (except in bulk), *in vehicles equipped with mechanical refrigeration*, from the facilities of Miller Brewing Company at Fort Worth, TX to Fayetteville, AR, for 180 days. SUPPORTING SHIPPER(S): Fayetteville Ice Company, 339 North West Street, Fayetteville, AR 72701. SEND PROTESTS TO: William H. Land, Jr., I.C.C., 3180 Federal Office Bldg., 700 West Capitol, Little Rock, AR 72201.

MC 118159 (Sub-302) filed November 30, 1978. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Ice cream, water ices, frozen yogurt, and frozen confection* from Macon, Atlanta, and Marietta, GA to Miami and Tampa, FL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: Tropic Ice, Inc., 16330 N.W. 48th Avenue, Hialeah, FL 33014 (Bob Tammara). Send protests to: Connie Stanley, Trans. Asst., I.C.C., Rm. 240, Old Post Office & Courthouse Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 118959 (Sub-186TA), filed November 26, 1978. Applicant: JERRY LIPPS, INC., 130 S. Frederick Street, Cape Girardeau, MO 63701. Representative: Edward G. Bazelon, 39 S. LaSalle, Chicago, IL 60603. *Paper and paper products, cellulose products, and textile softeners* from Green Bay, WI to IA, IL and MO, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): The Proctor and Gamble Paper Products Company, P.O. Box 599, Cincinnati, OH 45201. SEND PROTESTS TO: P. E. Binder, ICC, Room 1465, 210 N. 12th Street, St. Louis, MO 63101.

MC 119767 (Sub-343TA), filed November 20, 1978. Applicant: BEAVER TRANSPORT CO., P.O. Box 168, Pleasant Prairie, WI 53158. Representatives: Michael V. Kaney, P.O. Box 186, Pleasant Prairie, WI 53158 and John R. Sims, Jr., 915 Pennsylvania Building, 425—13th Street, NW., Washington, DC 20004. (1) *Such commodities as are dealt in by wholesale, retail, chain grocery and food business houses, drug and discount stores* from the plantsite and warehouse facilities of S. C. Johnson & Son, Inc., at Waxdale, WI to points in IL, IN, IA, KS, KY, MI, MN, MO, NE, OH and TN, and (2) *materials, equipment, and supplies used or useful in the manufacture, sale or distribution of the commodities described in (1) above*, from points in the states named in (1) above to the plantsite and warehouse facilities of S. C. Johnson & Son, Inc., at Waxdale, WI, for 180 days. RESTRICTED: (1) To traffic originating at or destined to the above named plantsite and warehouse facilities, (2) To traffic transported in vehicles equipped with mechanical refrigeration, and (3) Against commodities in bulk. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): S. C. Johnson and Son, Inc., Racine, WI 53403. SEND PROTESTS TO: Gail Daugherty, ICC, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 119767 (Sub-345TA), filed November 27, 1978. Applicant: BEAVER TRANSPORT COMPANY, P.O. Box 186, Pleasant Prairie, WI 53158. Representative: Michael V. Kaney (same as above). *Meat, fresh and frozen, in packages or combo bins*, from the facilities of Kenosha Beef International, Ltd., and Birchwood Meat Provisions, Inc., at or near Kenosha, WI to points in IL, IN, OH and MI, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Kenosha Beef International, Ltd. and Birchwood Meat Provisions, Inc., P.O. Box 639, Kenosha, WI 53141. SEND PROTESTS TO: Gail Daugherty, ICC, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 121470 (Sub-18TA), filed November 27, 1978. Applicant: TANKSLEY TRANSFER CO., 801 Cowan Street, Nashville, TN 37202. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202. (1) *Mining conveyors and industrial conveyors*, and (2) *materials, equipment, and supplies* (except commodities in bulk, in tank vehicles) used in the manufacture of the commodities in (1) above, from and to the following points, between the facilities of Goodman Conveyor Corp., at or near Murfreesboro, TN, on the one hand, and, on the other, AR, AL, AZ, CO, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NM, NY, NC, ND, OH, OK, PA, SC, SD, TN, TX, UT, VA, WV, WI, and WY, for 180 days. SUPPORTING SHIPPPER(S): Goodman Conveyor Corporation, 450 Butler Road, Murfreesboro, TN 37130. SEND PROTESTS TO: Glenda Kuss, ICC, Suite A-422—U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 124078 (Sub-905TA), filed November 21, 1978. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. *Cement*, from the facilities of Dundee Cement Co. and Louisville Cement Co. at or near Cincinnati, OH to points in IN and KY for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Dundee Cement Company, P.O. Box 122, Dundee, MI 48131, James H. Riley; Louisville Cement Company, 501 South Second Street, Louisville, KY 40202, Louis B. Hartlage. SEND PROTESTS TO: Gail Daugherty, Trans. Asst., I.C.C., U.S. Federal Bldg. & Courthouse, 517 East Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 124078 (Sub-906TA), filed November 21, 1978. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. *Clay slurry*, in bulk, in tank vehicles, from McIntyre, GA to Ft. Madison, IA for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Engelhard Minerals & Chemicals Corp., Menlo Park, Edison, NJ 08817. SEND PROTESTS TO: Gail Daugherty, I.C.C., U.S. Federal Bldg. & Courthouse, 517 East Wisconsin Ave., Milwaukee, WI 53202.

MC 124554 (Sub-25TA), filed November 20, 1978. Applicant: LANG CARTAGE CORP., P.O. Box 513, Milwaukee, WI 53201. Representative: Richard C. Alexander, 710 North Plankinton Ave., Milwaukee, WI 53203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by a retail mail order house (1) from the facilities of Stanley Home Products, Inc., at Dubuque, IA, to points in Anoka, Hennepin, Morrison, Ramsey, Todd and Washington counties, MN, for 180 days. SUPPORTING SHIPPER(S): Stanley Home Products, Inc., P.O. Box 58, Dubuque, IA, 52001. SEND PROTESTS TO: Gail A. Daugherty, I.C.C., U.S. Federal Bldg. and Courthouse, 517 East Wisconsin Ave., Milwaukee, WI 53202. Under a continuing contract or contracts with Stanley Home Products, Inc.

MC 126255 (Sub-5TA), filed November 27, 1978. Applicant: BUTLER-JONES AIR FREIGHT, INC., Salisbury-Wicomico Airport, P.O. Box 1964, Salisbury, MD 21801. Representative: Peter A. Greene, Caldwell & Greene, 900 17th Street, NW., Washington,

D.C. 20006. *General commodities* between Baltimore-Washington International Airport, Anne Arundel County, MD and National Airport, Gravelly Point, VA on the one hand, and, on the other, points in Kent and Queen Annes Counties, MD restricted to the transportation of traffic having an immediately prior or subsequent movement by air, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. SUPPORTING SHIPPER(S): Duffey Ford Tractor, Inc., Box 248, Rt 404, Wye Mills, MD. Lynn K. Schrecker, Inc., Rt 1, Box 756 A, Chester, MD 21619. La Motte Chemical Product Co., P.O. Box 329, Chestertown, MD 21620. Tidewater Publishing Corp., P.O. Box 130, Centreville, MD 21617. SEND PROTESTS TO: T. M. Esposito, Trans. Asst., 600 Arch St., Rm. 3238, Phila., PA 19106.

MC 129712 (Sub-16TA), filed November 28, 1978. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough, GA 30253. Representative: Frank D. Hall, Postell & Hall, P.C., Suite 713, 3384 Peachtree Rd. NE., Atlanta, GA 30326. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: *Lumber, treated or untreated, and materials, equipment and supplies used, sold or dealt in by lumber wholesalers and manufacturers*, between points in Henry County, GA, on the one hand, and, on the other, all points in AL, FL, NC, SC, MS, LA, TN, VA, KY, WV, and TX, under a continuing contract, or contracts, with Shockley Forest Industries, Inc., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Shockley Forest Industries, Inc., P.O. Box 311, McDonough, GA 30253. SEND PROTESTS TO: Sara K. Davis, Trans. Asst., I.C.C., 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 133405 (Sub-8TA), filed November 20, 1978. Applicant: BOWIE HALL TRUCKING, INC., P.O. Box 353, Waldorf, MD 20601. Attorney: Daniel B. Johnson, 4304 East-West Highway, Washington, DC 20014, (301) 654-2240. (1) *Malt beverages* from Williamsburg, VA, to ME, NH, VT, MA, RI, and CT, and (2) *empty containers, dunnage, and pallets*, from ME, NH, VT, MA, RI, and CT, to Williamsburg, VA, for 180 days. Applicant has also filed an underlying emergency temporary authority seeking up to 90 days of operating authority. SUPPORTING SHIPPER(S): Anheuser-Busch, Inc. of St. Louis, MO, at Williamsburg, VA. SEND PROTESTS TO: T. M. Esposito, Trans. Asst., 600 Arch St., Rm. 3238, Phila., PA 19106.

MC 133591 (Sub-54TA), filed November 20, 1978. Applicant: WAYNE DANIEL TRUCK, INC., P.O. BOX 303, Mt. Vernon, MO 65712. Representative: Charles A. Daniel (Same as above). *Bakery goods*, between Kansas City, KS and Oakland, CA and Santa Fe Springs, CA, for 180 days. SUPPORTING SHIPPER(S): Sunshine Biscuits, Inc., New York, NY 10017. SEND PROTESTS TO: John V. Barry, ICC, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 133655 (Sub-134TA), filed November 30, 1978. Applicant: TRANSNATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 E. Commercial Boulevard, Fort Lauderdale, FL 33308. *Such commodities* as are dealt in, or used by, manufacturers and distributors of specialty wood products between Klamath Falls and Bend, OR and El Paso and Amarillo, TX on the one hand, and, on the other, points in the United States, for 180 days. SUPPORTING SHIPPER: Maywood, Inc., P.O. Box 30550, Amarillo, TX 79120 (Carroll H. Posey). SEND PROTESTS TO: Haskell E. Ballard, I.C.C., P.O. Box F-13206 Federal Building, Amarillo, TX 79101.

MC 134105 (Sub-19TA), filed November 27, 1978. Applicant: CELERY-VALE TRANSPORT, INC., 1318 East 23rd Street, Chattanooga, TN 37404. Representative: Daniel O. Hands, Attorney at Law, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Malt beverages, related advertising materials and empty used beverage containers*, between the facilities of Adolph Coors Co., at or near Golden, CO, on the one hand, and, on the other, IA and MO, restricted to traffic originating at or destined to the facilities of Adolph Coors Co., for 180 days. SUPPORTING SHIPPER: Adolph Coors Co., Golden, CO. SEND PROTESTS TO: Glenda Kuss, Interstate Commerce Commission, Federal Building, 801 Broadway A422, Nashville, TN 37203.

MC 134467 (Sub-35TA), filed November 27, 1978. Applicant: POLAR EXPRESS, INC., P.O. Box 845, Springdale, Arkansas 72764. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman Street, Denver, Colorado 80203 (303) 839-5856. *Canned and preserved foodstuffs*, from the facilities of Heinz, U.S.A., Division of H. J. Heinz Co., at or near Pittsburgh, PA, to points in AR, OK, and TX, restricted to traffic originating at the named facilities and destined to the named states, for 180 days. SUPPORTING SHIPPER(S): Heinz, U.S.A., Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA, 15230. SEND PROTESTS TO: William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 134755 (Sub-164TA), filed November 20, 1978. Applicant: CHARTER EXPRESS, INC., P.O. Box 3772, Springfield, MO 65804. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Canned and preserved foodstuffs* (except commodities in bulk), from the facilities of Heinz U.S.A., Division of H. J. Heinz Co., at or near Pittsburgh, PA, to AR, OK and TX, for 180 days. SUPPORTING SHIPPER(S): Heinz U.S.A., Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230. SEND PROTESTS TO: John V. Barry, Rm. 600, 911 Walnut, Kansas City, MO 64106.

MC 134783 (Sub-44TA), filed November 30, 1978. Applicant: DIRECT SERVICE, INC., 940 East 66th Street, P.O. Box 2491, Lubbock, Texas 79408. Representative: Charles M. Williams, Kimball, Williams & Wolfe, P.C., 350 Capitol Life Center, 1600 Sherman Street, Denver, Colorado 80203. *Hides*, from the facilities of Iowa Beef Processors, Inc., at or near Dakota City, NE and Denison, IA to Laredo, TX for 180 days. Applicant has also filed an underlying ETA application seeking up to 90 days of operating authority. Supporting shipper: Iowa Beef Processors, Inc., Dakota City, NE, 68731. Send protests to: Haskell E. Ballard, I.C.C., Box 13206 Federal Bldg., Amarillo, TX 79101.

MC 134838 (Sub-18TA), filed November 28, 1978. Applicant: SOUTHEASTERN TRANSFER & STORAGE CO., INC., P.O. Box 39236—Bolton Station, Atlanta, GA 30318. Representative: Archie B. Culbreth, Suite 202, Century Parkway, Atlanta, GA 30345. (1) *Material handling and processing equipment*, from Loganville, GA, to points in AL, FL, KY, MS, NC, SC, TN, VA and WV, and (2) *Materials and equipment used in the manufacture of material handling and processing equipment* (expect commodities in bulk), from points in the states named in (1) above, to Loganville, GA, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Fesco Inc., 6295 Pleasantdale Rd., Doraville, GA 30340. SEND PROTESTS TO: Sara K. Davis, Trans. Asst., I.C.C., 1252 West Peachtree Street NW., Atlanta, GA 30309.

MC 135797 (Sub-164TA), filed November 20, 1978. Applicant: J. B. HUNT TRANSPORT, INC., U.S. Highway 71, P.O. Box 200, Lowell, AR 72745. Representative: Paul R. Bergant, P.O. Box 200, Lowell, AR 72745. *Canned foodstuffs*, (1) From Benton County, AR, to points in AZ, CO, CT, DE, ID, IL, IN, IA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OK, RI, SD, UT, VT, WI, WY, DC, (2) From Crawford County, AR, and Moorhead, MS, to points in

the United States (except AK, HI). Restricted in (1) and (2) above to traffic orginating at the facilities of Allen Canning Company, for 180 days. SUPPORTING SHIPPER(S): Allen Canning Company, P.O. Box 250, Siloam Springs, AR 72761. SEND PROTESTS TO: William H. Land, Jr., I.C.C., 3108 Federal Office Bldg., 700 West Capitol, Little Rock, AR 72201.

MC 138082 (Sub-3TA), filed November 20, 1978. Applicant: WARREN WILSON TRUCK LINE, R.R. No. 2, Stover, MO 65078. Representative: Warren Wilson (Same as above). *Cast iron pipe fittings,* from Lawrence, KS to Laurie, MO, for 180 days. SUPPORTING SHIPPER(S): Gravois Manufacturing Co., Inc., Route 1, Box 1206, Gravois Mills, MO 65037. SEND PROTESTS TO: John V. Barry, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 138469 (Sub-94TA), filed November 27, 1978. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, Oklahoma 73147. Representative: Mr. Jack H. Blanshan, 205 West Touhy Avenue, Suite 200, Park Ridge, Illinois 60068. *Frozen Foods* from the facilities of Stouffer Foods, a division of the Stouffer Corporation, located at Cleveland, OH and points in its commercial zone to points in CA and to Austin, Dallas, Garland, Houston and San Antonio, TX; Denver and Grand Junction, CO; and Seattle, WA and points in the respective Commercial Zones of the named cities. Send protests to Connie Stanley, Trans., Assit., Rm. 240, Old Post Office & Courthouse Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 139457 (Sub-11TA), filed November 27, 1978. Applicant: G. L. SKIDMORE, dba JELLY SKIDMORE TRUCKING COMPANY, P. O. Box 38, Paris, TX 75460. Representative: Paul D. Angenend, P. O. Box 2207, Austin, TX 78768. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Ingredients and supplies used in the manufacture of canned and preserved foodstuffs* from Chicago, IL and Hart, Lake Odessa and Sodus, MI to the facilities of Campbell Soup (Texas) Inc., at or near Paris, TX under a continuing contract or contracts with Campbell Soup (Texas) Inc., for 180 days. SUPPORTING SHIPPER(S): Campbell Soup (Texas) Inc., Paris, TX. SEND PROTESTS TO: Opal M. Jones, ICC, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 139923 (Sub-51TA), filed November 27, 1978. Applicant: MILLER TRUCKING CO., INC., P. O. Drawer D., Stroud, OK 74079. Representative: Stephen H. Loeb, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Canned and preserved foodstuffs* (except commodities in bulk), from the facilities of Heinz U.S.A., division of H. J. Heinz Co., at or near Pittsburgh, PA to points in AR, OK and TX, for 180 days. SUPPORTING SHIPPER(S): Heinz U.S.A., division of H. J. Heinz Company, P. O. Box 57, Pittsburgh, PA 15230. SEND PROTESTS TO: Connie Stanley, Room 240 Old Post Office and Court House Building, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 129923 (Sub-52TA), filed November 27, 1978. Applicant: MILLER TRUCKING CO., INC., P.O. Drawer D, Stroud, OK 74079. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue., Park Ridge, IL 60068. *Frozen foods,* from the facilities of Stouffer Foods, a division of the Stouffer Corporation located at Cleveland, OH and points in its commercial zone to points in CA and to Austin, Dallas, Garland, Houston, and San Antonio, TX and points in the respective commercial zones of the named cities, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Stouffer Foods Corporation, Division of the Stouffer Corporation, 5750 Harper Road, Solon, OH 44139. SEND PROTESTS TO: Connie Stanley, Room 240 Old Post Office and Court House Building, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 143775 (Sub-35TA), filed November 20, 1978. Applicant: PAUL YATES, INC., 660 W. Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke (Same as above). *Rubber in temperature controlled equipment,* from Burton, OH to Sparks, NV, for 180 days. SUPPORTING SHIPPER(S): Hamilton Kent of Nevada, 1650 Linda Way, Sparks, NV 89431. SEND PROTESTS TO: Andrew V. Baylor, ICC, Room 2020 Federal Building, 230 N. First Avenue, Phoenix, AZ 85025.

MC 143775 (Sub-36TA), filed November 20, 1978. Applicant: PAUL YATES, INC., 660 West Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke, 6601 West Orangewood, Glendale, AZ 85301. *Cherries and Olives in bottles or cans* from Fremont, MI to CA, FL, GA, IA, KS, KY, MN, MO, NC, NJ, OR, PA, TX, and WI. Applicant holds contract carrier authority at No. MC 143610; therefore, dual operations may be involved, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Belle-Sommers Inc., 411 N. Darling, Fremont, MI 49412. SEND PROTESTS TO: Andrew V. Baylor, I.C.C., Rm. 2020, Federal Bldg., 230 N. First Ave., Phoenix, AZ 85025.

MC 143775 (Sub-37TA), filed November 20, 1978. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke (Same as above). *Apple juice and sweet cider in cans and bottles,* from Fremont, MI to Rogers, AR; Denver, CO; Minneapolis, MN; Kansas City, MO; Oklahoma City, OK; Dallas, Houston, and Pairs, TX, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Spears, Inc., 502 Connie Avenue, Fremont, MI 49412. SEND PROTESTS TO: Andrew V. Baylor, I.C.C., Rm. 2020, Federal Bldg., 230 N. First Ave., Phoenix, AZ 85025.

MC 144083 (Sub-9TA), filed November 29, 1978. Applicant: RALPH WALKER, INC., P.O. Box 3222, Jackson, MS 39207. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. *New furniture and furnishings* from points in MS to points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, VT, VA, WA, WV, WI, and WY. (RESTRICTION: restricted to traffic destined to the facilities of Montgomery Ward in the named states.) (Hearing site: Jackson, MS or Chicago, IL.) An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Montgomery Ward and Company, One Montgomery Ward Plaza, Chicago, IL 60671. SEND PROTESTS TO: Alan C. Tarrant, I.C.C., Rm. 212, 145 East Amite Bldg., Jackson, MS 39201.

NOTE.—Applicant holds motor contract authority in No. MC-123064 and sub numbers thereunder, therefore, dual operations may be involved, for 180 days.

MC 144661 (Sub-3TA), filed November 21, 1978. Applicant: F. A. MILLER, INC., P.O. Box 401, Rexburg, Idaho 83440. Representative: Timothy R. Stivers, P.O. Box 162, Boise, Idaho 83701. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Lumber, lumber mill products and particleboard,* from (a) points in WA, east of U.S. Highway 97 and ID and points in MT, on and west of Interstate Highway 15 to points in CO and WY, under a continuing contract with Idaho Forest Industries, Inc., and (b) From Fremont County, ID to points in Albany County, WY, under a continuing contract with Authentic Homes Corporation; 2) *Precut log home packages,* from Albany County, WY to points in and west of MN, IL, MO, AR, IA, LA (except AK and HI), under a continuing contract with Authentic Homes Corporation, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Authentic Home Corp., P.O. Box 1288, Laramie, WY 82070. SEND PROTESTS TO: Barney L. Hardin, I.C.C.,

Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 145381 (Sub-3TA), filed November 28, 1978. Applicant: S & P Trucking Co., Inc., P.O. Box 1058, Fletcher, NC 28732. Representative: Eric Meierhoefer, Suite 423, 1511 K Street, N.W., Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *dialysis supplies and equipment* (except in bulk) between McAllen, TX and points in NJ on the one hand, and, on the other, points in the U.S. (execpt HI and AK) under a continuing contract or contracts with Erika, Inc., for 180 days. Applicant has also filed an underlying ETA seking up to 90 days of operating authority. SUPPORTING SHIPPER(S): Erika, Inc., 1 Erika Place, Rockleigh, NJ 07647. SEND PROTESTS TO: Terrell Price, I.C.C., 800 Briar Creek Rd., Rm. CC516, Mart Office Bldg., Charlotte, NC 28205.

MC 145514 (Sub-1TA), filed November 30, 1978. Applicant: CHRISTY TRUCKING, INC., Route 6, Box 6473-A, Nampa, ID 83651. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wood moulding*, from Lakeview, OR and Fruitland, ID to points in KS, GA, and TX, under a continuing contract with Dame Lumber and Moulding Co., for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Dame Moulding Co., P.O. Box 369, Fruitland, ID 83619. SEND PROTESTS TO: Barney L. Hardin, ICC, Suite 110, 1471 Shoreline Drive, Boise, ID 83706.

MC 145570 (Sub-1TA), filed November 20, 1978. Applicant: THOMAS & STROUD TRUCKING, P.O. Box 531, Pangburn, AR 72121. Representative: Charles Stroud (same as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Feed supplements*, from Memphis, TN and Marks, MS to Pangburn, AR, under a continuing contract or contracts with Tharp Bros., Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Tharp Bros., Inc., Route 1, Pangburn, AR 72121. Send protests to: William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 145671 (Sub-1TA), filed November 21, 1978. Applicant: TAYLOR BROTHERS WHOLESALE DISTRIBUTORS, 246 South Robson, Mesa, AZ 85202. Representative: Lewis P. Ames, Shimmel, Hill, Bishop & Gruender, P.C., 111 West Monroe, 10th Floor, Phoenix, AZ 85003. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *prepared foods* from Mesa, AZ, to Los Angeles, CA, and points in its commercial zone, for 180 days. An underlying ETA seeks 90 days. Supporting shipper(s): Rosarita Mexican Foods, 310 South Extension, Mesa, AZ 85301. Send protests to: Andrew V. Baylor, I.C.C., Room 2020, Federal Building, 230 North First Avenue, Phoenix, AZ 85025. Under a continuing contract or contracts with Rosarita Mexican Foods.

MC 145713TA, filed November 27, 1978. Applicant: TAURUS TRUCKING CORP., 199 Calcutta Street, Port Newark, NJ 07114. Representative: Joel J. Nagel, 19 Back Drive, Edison, NJ. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Furniture, library furniture, and materials used in their manufacture*, created and crated, from Art Metal-U.S.A., Inc., plantsite in Newark, NJ to points and places in GA, MD, MA, PA, VA, and DC, under a continuing contract or contracts with Art Metal-U.S.A. Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Art Metal-U.S.A. Inc., 300 Passaic Street, Newark, NJ 07114. Send protests to: Joel Morrows, ICC, 9 Clinton Street, Newark, NJ 07102.

MC 145738 (Sub-2TA), filed November 29, 1978. Applicant: EAST-WEST MOTOR FREIGHT, INC., Post Office Box 525, Selmer, TN 38375. Representative: Richard M. Tettelbaum, Serby & Mitchell, P.C., Fifth Floor, Lenox Towers South, 3390 Peachtree Road NE., Atlanta, GA 30326. (1) Rubber tire treads, tread stock, tire patches, tire tubes, solvents, adhesives, cured rubber, and (2) materials, equipment and supplies used in the manufacture, sale and distribution of the commodities in (1) above, between the facilities of Bandag, Inc., at Chino, CA; Griffin, GA; Muscatine, IA; Oxford, NC; and Abiline, TX. *Restriction:* Restricted against the transportation of commodities in bulk, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Bandag, Inc., Muscatine, IA 52761. Send protests to: Floyd A. Johnson, I.C.C., 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 145772 (Sub-1TA), filed November 20, 1978. Applicant: LANG CARTAGE CORP., P.O. Box 513, Milwaukee, WI 53201. Representative: Richard C. Alexander, 710 North Plankinton Avenue, Milwaukee, WI 53203. *Such merchandise, as is dealt in by a retail mail order house* (1) from the facilities of Spiegel, Inc., at Chicago, IL, to points in MN, WI, and the Upper Peninsula of MI, and (2) from the facilities of Lang Cartage Corp. at Milwaukee and LaCrosse, WI, to points in MN, WI, and the Upper Peninsula of MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Spiegel Inc., Spiegel Regency Towers, Oak Brook, IL 60521 (Richard Pawlak, Director of Trans.). Send protests to: Gail A. Daugherty, I.C.C., U.S. Federal Bldg. & Courthouse, 517 East Wisconsin Ave., Milwaukee, WI 53202.

MC 145788 (Sub-1TA), filed November 22, 1978. Applicant: RAYMOND C. THEDE, d/b/a THEDE TRUCKING, R.R. #2, P.O. Box 56, Jefferson, IA 50129. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Soybean meal* (except in tank vehicles), from the facilities of West Central Co-Op at or near Ralston, IA to points in IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): West Central Co-Op, Ralston, IA 51459. Send protests to: Herbert W. Allen, I.C.C., 518 Federal Bldg., Des Moines, IA 50309.

MC 145793TA, filed November 27, 1978. Applicant: EMBERS EXPRESS TRUCKING CO., INC., P.O. Drawer 937, Lake City, SC 29560. Representative: Wm. Reynolds Williams, P.O. Box 1909, Florence, SC 29503. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Charcoal briquettes and charcoal supplies*, from Lake City, SC to points in FL, GA, SC, KY, MD, NJ, WV, AL, NC, DC, PA, IN, MS, VA, DE, OH, TN, and NY, under a continuing contract or contracts with T. S. Ragsdale Co., Inc., for 180 days. Supporting shipper(s): T. S. Ragsdale Company, Inc., P.O. Drawer 937, Lake City, SC 29560. Send protests to: E. E. Strotheid, ICC, Room 302, 1400 Building, 1400 Pickens Street, Columbia, SC 29201.

MC 145815TA, filed November 29, 1978. Applicant: COBRA TRUCKING, INC., 132 Highway 80 West, P.O. Box 2137, Clinton, MS 39056. Representative: John A. Crawford, 17th Floor, Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. (1) *glass beads, glass spheres and thermal plastic marking materials;* and (2) *materials, equipment and supplies* used in the installation of the commodities named in (1) above, except commodities in bulk, from the facilities of Cataphote Div. of Ferro Corporation at or near Jackson, MS to points in CT, DE, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, VA, WV and WI; and (3) *materials, equipment and supplies* used in the manufacture and distribution of the commodities listed in (1) above, except commodities in bulk, from points in the states listed in (2) above to the facilities of Cataphote Div. of Ferro Corporation at or

near Jackson, MS, for 180 days. Supporting shipper(s): Cataphote Div./ Ferro Corp., 1001 Underwood Drive, Flowood, MS 39208. Send protests to: Alan C. Tarrant, I.C.C., Rm. 212, 145 East Amite Bldg., Jackson, MS 39201.

MC 145818TA, filed November 30, 1978. Applicant: AMERICAN TRANSPORT, INC., 305 West 14th Street, Sioux Falls, South Dakota 57102. Representative: M. Mark Menard, Post Office Box 480, Sioux Falls, South Dakota 57101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Steel buildings, grain bins, grain drying systems and elevator leg systems;* From: Atlantic and Houghton, Iowa; Assumption, Illinois; and Madison, Wisconsin; To: Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, North Dakota, Nebraska, Oklahoma, South Dakota, Texas and Louisiana, over irregular routes under a continuing contract or contracts with Agra Sun Systems, Inc. and Wholesale Farm Supply, Inc., Sioux Falls, South Dakota, for 180 days. SUPPORTING SHIPPER(S): Agra Sun Systems, Inc., Wholesale Farm Supply Corp., 305 W. 14th St., Sioux Falls, SD 57102 (Dennis Chambliss Secretary-Treasurer & Gen. Mgr. SEND PROTESTS TO: J. L. Hammond, I.C.C., Rm. 455, Federal Bldg., Pierre, SD 57501.

MC 145822TA, filed November 28, 1978. Applicant: EWING G. MCDOWELL AND DONALS HASTIE, D/B/A M&H TRANSPORT, R.R. 1, Box 34A, Cave-in-Rock, IL 62919. Representative: Robert T. Lawley, 300 Reisch Building, Springfield, IL 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Flurospar, barite, zinc and lead, for the account of Ozark Mahoning Company*, from points in Hardin County, Illinois to points in the United States east of MN, IA, MO, AR and LA, for 180 days. SUPPORTING SHIPPER(S): H. Dale Whiteis, Mgr. of Trans., Ozark-Mahoning Company, 1870 S. Boulder, Tulsa, OK 74119. SEND PROTESTS TO: Charles D. Little, I.C.C., 414 Leland Office Bldg., 527 East Capitol Ave., Springfield, IL 62701. Under a continuing contract or contracts with Ozark-Mahoning Company.

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 79-1253 Filed 1-12-79; 8:45 am]

[7035-01-M]

[Notice No. 3]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

January 5, 1979.

Important Notice

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there wil be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

NOTE.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 2421 (Sub-18TA), filed November 22, 1978. Applicant: NEWTON TRANSPORTATION COMPANY, INC., P.O. Box 678, Lenoir, NC 28645. Representative: Charles H. Keller, P.O. Box 678, Lenoir, NC 28645. *New furniture and furniture parts*, from the plantsites and warehouse facilities of Broyhill Furniture Industries, Inc., located in Catawba and Alexander Counties, NC., to points in IL, IN, OH, PA, and WV., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPERS(S): Broyhill Furniture Industries, Lenoir, NC 28633. SEND PROTESTS TO: Terrell Price DS, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 30032 (Sub-9TA), filed November 23, 1978. Applicant: GRANE TRANSPORTATION LINES, LTD., 1011 S. Laramie Avenue, Chicago, IL 60644. Representative: Hubert Grane, Jr., (same address as applicant). *Freight all kinds*, (1) Between the Chicago, IL Commercial Zone, and the states of WI, IA, IN, MI, OH, and KY.; (2) Between the Chicago, IL Commercial Zone, and the St. Louis, MO Commercial Zone. RESTRICTION: Parts 1 and 2 of this authority is restricted to traffic having a prior or subsequent movement by rail, for 180 days. SUPPORTING SHIPPERS(S): There are approximately (17) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below, SEND PROTESTS TO: Lois M. Stahl Trans. Asst., I.C.C., 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 78228 (Sub-No. 97TA), filed November 24, 1978. Applicant: J MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., Wick Vuono & Lavelle, 2319 Grant Building, Pittsburgh, PA 15219. *Coke* (in bulk, in dump vehicles), from the facilities of Semet Solvay Division of Allied Chemical Corporation, Ashland, KY, to points in IL, IN, MI, NY, NC, OH, PA, TN, VA, and WV., for 180 days. An underlying ETA seeks up to 90 days of authority. SUPPORTING SHIPPER(S): Semet Solvay Division of Allied Chemical Corporation, P.O. Box 1013R, Morristown, NJ 07960. SEND PROTESTS TO: J. A. Niggemyer DS, ICC, 416 Old Post Office Building, Wheeling, WV 26003.

MC 78228 (Sub-98TA), filed November 24, 1978. Applicant: J MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., Wick, Vuono & Lavelle, 2310 Grant Bldg., Pittsburgh, PA 15219. *Bulk rock salt*, from the facilities of Morton Salt, a Division of Morton-Norwich Products, Inc., Fairport Harbor, OH to points in Allegheny, Armstrong, Beaver, Butler, Clarion, Fayette, Indiana, Lawrence, Mercer, Somerset, Washington and Westmoreland Counties, PA, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): Morton Salt Division of Morton-Norwich Products, Inc., 110 N. Wacker Drive, Chicago, IL 60606. Send protests to: J. A. Niggemyer, DS, ICC, 416 Old Post Office Building, Wheeling, WV 26003.

MC 85970 (Sub-14 TA), filed November 22, 1978. Applicant: SARTAIN TRUCK LINE, INC., 1625 Hornbrook Street, Dyersburg, TN 38107. Representative: Mr. Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Rubber, rubber products and such commodities* as are manufactured, processed or dealt in by manufacturers of rubber and rubber products, and equipment, materials and supplies used in the manufacture of facilities of The Goodyear Tire & Rubber Company located in the states of New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Kentucky, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Missouri, Kansas, Oklahoma and TX., for 180 days. NOTE: Applicant intends to tack the authority here applied for to authority presently held by it in MC 85970 and subs thereunder, and further intends to interline with other carriers at Memphis, TN; Nashille, TN; St. Louis, MO; Jackson, TN; Fulton, KY; Union City, TN; Alamo, TN; Trenton, TN and Dyersburg, TN. SUPPORTING SHIPPER(S): The Goodyear Tire & Rubber Company, 1144 E. Market Street, Akron, OH 44316. SEND PROTESTS TO: Mr. Floyd A. Johnson DS, ICC, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 87511 (Sub-24TA), filed November 22, 1978. Applicant: SAIA MOTOR FREIGHT LINE, INC., P. O. Box 10157, Station One, Houma, LA 70360. Representative: Mr. Phillip Robinson, P.O. Box 2207, Austin, TX 78768. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring the use of special equipment), serving the facilities of Monsanto Co., at or near Chocolate Bayou, TX., as an off-route point in connection with carrier's otherwise-authorized regular-route operations, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Monsanto Company, 800 N. Lindbergh Blvd., St. Louis, MO 63166. SEND PROTESTS TO: Connie A. Guillory DS, ICC, T-9038 U.S. Postal Service Bldg., 701 Loyola Avenue, New Orleans, LA 70113.

MC 95490 (Sub-45TA), filed November 24, 1978. Applicant: UNION CARTAGE COMPANY, 94 Southwest Cutoff, Worcester, MA 01604. Representative: Edward J. Kiley, 1730 M Street, Suite 501, Washington, D.C. 20036. *Glass containers and plastic containers*, from Bridgeton, Yardville, and Millville, NJ., to Boston, Methuen, Lawrence, Amesburg and Ayer, MA and Providence, RI., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): S. H. Ansell Company, 825 Summer Street, Boston, MA. SEND PROTESTS TO: David M. Miller DS, ICC, 436 Dwight Street, Springfield, MA 01103.

MC 95920 (Sub-50TA), filed November 22, 1978. Applicant: SANTRY TRUCKING CO., 10505 N.E., 2nd Avenue, Portland, OR 97211. Representative: George R. LaBissoniere, 1100 Norton Building, Seattle, WA 98104. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from St. Paul, MN., to Olympia, WA., under a continuing contract or contracts, with Olympia Brewing Company, for 180 days. SUPPORTING SHIPPER(S): Olympia Brewing Company, P.O. Box 947, Olympia, WA 98501. SEND PROTESTS TO: A. E. Odoms DS, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 107496 (Sub-1174TA), filed November 22, 1978. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check (same address as applicant). *Sand*, (in bulk), from LaSalle County, IL and Berrien County, MI., to points in Arkansas, Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Lousisana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, and WI., for 180 days. SUPPORTING SHIPPER(S): Manley Bros., P.O. Box 538, Chesterton, IN 46304. SEND PROTESTS TO: Herbert W. Allen DS, ICC, 518 Federal Building, Des Moines, IA 50309.

MC 107496 (Sub-1175TA), filed November 22, 1978. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check (same address as applicant). *Inedible tallow*, (in bulk, in tank vehicles), from points in Iowa, Missouri and Kansas, to Fayetteville, AR., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Jacob Stern and Sons, Inc., Benjamin Fox Pavilion, Jenkintown, PA 19046. SEND PROTESTS TO: Herbert W. Allen DS, ICC, 518 Federal Building, Des Moines, IA 50309.

MC 109689 (Sub-340TA), filed November 22, 1978. Applicant: W. S. HATCH CO., 643 South 800 West, Woods Cross, UT 84087. Representative: Mark K. Boyle, 10 West Broadway Bldg., Suite 400, Salt Lake City, UT 84101. *Borate rock*, in bulk, From Dunn Siding, CA., to Aiken and Anderson, SC, and Jackson, TN., for 180 days. SUPPORTING SHIPPER(S): Owens-Corning Fiberglas Corporation, Fiberglas Tower, Toledo, OH 43659. (James K. Terry, General Traffic Manager) SEND PROTESTS TO: L. D. Helfer DS, ICC, 5301 Federal Bldg., Salt City, UT 84138.

MC 109533 (Sub-107TA), filed November 28, 1978. Applicant: OVERNITE TRANSPORTATION COMPANY, 1000 Semmes Avenue, Richmond, VA 23224. Representative: C. H. Swanson, P.O. Box 1216, Richmond, VA 23209. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as described by the Commission, commodities in bulk and those requiring special equipment), to serve Red Bud, IL, as an off-route point in connection with its regular route operation, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): Singer Climate Control Division, Jimmy Hartsfield, Traffic Manager, 602 Sunnyvale Dr., Wilmington, NC. Send protests to: Paul D. Collins DS, Room 10-502, Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 110988 (Sub-377TA), filed November 22, 1978. Applicant: SCHNEIDER TANK LINES, INC., 4321 West College Avenue, Appleton, WI 54911. Representative: John R. Patterson, 2480 East Commercial Blvd., Fort Lauderdale, FL 33308. *Liquid chemicals*, (in bulk, in tank vehicles), from Marquette, MI to Minnesota and WI, for 180 days. Supporting shipper(s): Dow Chemical U.S.A., 690 Building, Midland, MI 48640 (Edward H. Gangross). Send protests to: Gail Daugherty, Trans. Asst., ICC, U.S. Federal Building and Courthouse, 517 E. Wisconsin Ave., Room 619, Milwaukee, WI 53202.

MC 112520 (Sub-358TA), filed November 28, 1978. Applicant: McKENZIE TANK LINES, INC., P.O. Box 1200, Tallahassee, FL 32302. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Liquid chemicals*, (in bulk, in tank vehicles), from the facilities of Callaway Chemical Company, in Muscogee County, GA, to points in AL, NC, SC, VA, TN, MS, LA, AR, and TX, for 180 days. An underlying ETA seeks up to

90 days authority. Supporting shipper(s): Callaway Chemical Company, P.O. Box 2335, Columbus, GA 31902. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 112617 (Sub-410TA), filed November 22, 1978. Applicant: LIQUID TRANSPORTERS, INC., P.O. Box 21395, Louisville, KY 40221. Representative: Charles R. Dunford (same address as applicant). *Nitric Acid,* (in bulk, in tank vehicles), from the facilities of Kaiser Agricultural Chemicals at Finney, OH, to points in IN; Hudson, WI; Midland, Warren & Romulus, MI; Pekin & Joliet, IL; St. Louis, MO; Carrollton & Louisville, KY; Erwin & Nashville, TN; Asheville & Hendersonville, NC; Brackenridge, West Leechburg & Midland, PA, and their commercial zones, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): David C. Cowart, Manager of Transportation, Kaiser Agricultural Chemicals, P.O. Box 246, Savannah, GA 31402. Send protests to: Linda H. Sypher, DS, ICC, 426 Post Office Bldg., Louisville, KY 40202.

MC 112617 (Sub-411TA), filed November 24, 1978. Applicant: LIQUID TRANSPORTERS, INC., P.O. Box 23195, Louisville, KY 40221. Representative: Charles R. Dunford (same address as applicant). *Salt and salt products,* from the facilities of Cargill, Inc., at or near Florence, AL, to points in AL, GA, MS and TN, for 180 days. Supporting shipper(s): Mr. John Labriola, General Transportation Manager, Salt Division, Cargill, Incorporated, P.O. Box 9300, Minneapolis, MN 55440. Send protests to: Mrs. Linda H. Sypher, DS, ICC, 426 Post Office Bldg., Louisville, KY 40202.

MC 112617 (Sub-411TA), filed November 24, 1978. Applicant: LIQUID TRANSPORTERS, INC., P.O. Box 23195, Louisville, KY 40221. Representative: Charles R. Dunford (same address as applicant). *Coloring syrup,* (in bulk, in tank vehicles), from Louisville, KY, to Fergus Falls, MN, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): Michael F. Recktenwald, Regional Sales Manager, D. D. Williamson & and Co., Inc., 1901 Payne Street, P.O. Box 6001, Louisville, KY 40206. Send protests to: Mrs. Linda H. Sypher, DS, ICC, 426 Post Office Building, Louisville, KY 40202.

MC 112796 (Sub-10TA), filed November 22, 1978. Applicant: ELMER G. BRAKE, INC., 220 Wholesale Street, Clarksburg, WV 26301. Representative: John M. Friedman, 2930 Putnam Avenue, Hurricane, WV 25526. *Flat glass,* from Clarksburg and Jerry's Run, WV, to points in AL, AR, CT, LA, MA, MS, NJ, NY, RI, and TN, for 180 days. Supporting shipper(s): Fourco Glass Company, Carter L. Shelton, Traffic Manager, P.O. Box 890, Bridgeport, WV. Send protests to: Mrs. Ruth F. Stark, DS, ICC, 3108 Federal Office Building, 500 Quarrier Street, Charleston, WV 25301.

MC 114211 (Sub-388TA), filed November 24, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, 210 Beck Street, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). *Such commodities* as are dealt in or used by agricultural equipment and industrial equipment dealers and manufacturers (except commodities in bulk), between Armstrong, IA, on the one hand, and, on the other, points in United States, (including AL, but excluding HI), and including all Ports of Entry between the United States and Canada for furtherance in foreign commerce, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): Armstrong Rim & Wheel Manufacturing Co., P.O. Box 556, Armstrong, IA 51504. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Building, Des Moines, IA 50309.

MC 114552 (Sub-184TA), filed November 22, 1978. Applicant: SENN TRUCKING COMPANY, P.O. Drawer 220, Newberry, SC 29108. Representative: Frank A. Graham, Jr., 707 Security Federal Building, Columbia, SC 29201. *Clay and clay products,* (except in bulk), from Paris, TN., to points in the United States, (except Alaska and Hawaii), for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Lowe's, 348 South Columbia Street, South Bend, IN 46601. SEND PROTESTS TO: E. E. Strotheid DS, ICC, Room 300, 1400 Building, 1400 Pickens Street, Columbia, SC 29201.

MC 116063 (Sub-156TA), filed November 22, 1978. Applicant: WESTERN-COMMERCIAL TRANSPORT, INC., P.O. Box 270, Fort Worth, TX 76101. Representative: W. H. Cole (Same address as applicant). *Vegetable oils,* (in bulk, in tank vehicles), between Lorenzo, IL, on the one hand, and on the other, points in Alabama, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, South Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and WI, for 180 days. SUPPORTING SHIPPER(S): Durkee Foods, Division of S C M Corporation, P.O. Box 796, Joliet, IL 60447. SEND PROTESTS TO: Martha A. Powell Trans. Asst., ICC, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 116459 (Sub-76TA), filed November 24, 1978. Applicant: RUSS TRANSPORT, INC., P.O. Box 4022, Pineville Road, Route 5, Chattanooga, TN 37405. Representative: Charles T. Williams (Same address as applicant). *Ground limestone and ground limestone products,* (in bulk, in hopper type vehicles), from the facilities of Franklin Limestone Company at or near Crab Orchard, TN, to points in Alabama, Georgia, Kentucky, North Carolina, and South Carolina, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Franklin Limestone Company, 610 10th Avenue North, Nashville, TN. SEND PROTESTS TO: Glenda Kuss Trans. Asst., ICC, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 116947 (Sub-63TA), filed November 22, 1978. Applicant: SCOTT TRANSFER CO., INC., 920 Ashby Street, SW., Atlanta, GA 30310. Representative: William Addams, 5299 Roswell Road, NE., Suite 212, Atlanta, GA 30342. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Pulpboard, NOI, not corrugated,* From Chattanooga, TN, to points in the states of Arkansas, Missouri, Louisiana (West of the Mississippi River), and TX, under a continuing contract or contracts, with Container Corporation of America, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Container Corporation of America, 5853 E. Ponce de Leon Avenue, P.O. Box 1225, Stone Mountain, GA 30086. SEND PROTESTS TO: Sara K. Davis Trans. Asst., ICC, 1252 W. Peachtree Street, NW., Room 300, Atlanta, GA 30309.

MC 119726 (Sub-150 TA), filed November 28, 1978. Applicant: N.A.B. TRUCKING CO., INC., 1644 W. Edgewood Avenue, Indianapolis, IN 46217. Representative: James L. Beattey, 130 E. Washington St., Suite 1000, Indianapolis, IN 46204. *Glass containers,* from the facilities of Thatcher Glass Manufacturing Company, a division of Dart Industries, Inc., at or near Lawrenceburg, IN, to St. Louis, MO, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Thatcher Glass Mfg., Co., P.O. Box 265, Elmira, NY 14902. SEND PROTESTS TO: Beverly J. Williams Trans. Asst., ICC, Federal Building & U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 120866 (Sub-5 TA), filed November 22, 1978. Applicant: THE TIMLAPH CORP., OF VIRGINIA, P.O. Box 3596, Richmond, VA 23213. Representative: Stanley E. McCormick, 1600 Wilson Blvd., Suite 1301, Arlington, VA 22209. *Petroleum products,* (except petrochemicals), in bulk, in tank vehicle, from the facilities of Exxon Company, U.S.A., located at or

near Wilmington, NC, to Buena Vista, Hopewell, Elkton, Dublin, Orange, Bedford, Brookneal, and Richmond, VA., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Exxon Company, U.S.A., P.O. Box 2180, Houston, TX 77001. SEND PROTESTS TO: Paul D. Collins DS, ICC, Room 10-502 Federal Building, 400 North 8th Street, Richmond, VA 23240.

MC 123294 (Sub-52 TA), filed November 22, 1978. Applicant: WARSAW TRUCKING CO., INC., P.O. BOX 784, Warsaw, IN 46580. Representative: H. E. Miller, Jr., 1102 West Winona, Warsaw, IN 46580. *Asphalt*, (except in bulk), from Lawrenceville, IL, to points in IN and OH., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Witco Chemical Corp., 6200 W. 51st Street, Chicago, IL 60638. SEND PROTESTS TO: Lois Stahl Trans. Asst., ICC, Everett McKinley Dirksen Bldg., Room 1386, 219 South Dearborn Street, Chicago, IL 60604.

MC 124071 (Sub-16 TA), filed November 24, 1978. Applicant: LIVESTOCK SERVICE, INC., 1420 Second Avenue South, St. Cloud, MN 56301. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Steel castings*, from Chehalis, WA to Sartell, MN; and (2) *Clay*, in bags, from Anniston, AL to Sartell, MN, under a continuing contract or contracts, with DeZurik Corporation of Sartell, MN for 180 days. SUPPORTING SHIPPER(S): DeZurik Corporation of Sartell, MN. Sartell, MN 56377. SEND PROTESTS TO: Delores A. Poe Trans Asst., ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 126109 (Sub-7TA), filed November 24, 1978. Applicant: TRECHO TRANSPORT, INC., 2756 Short Street, York, NY 14592. Representative: Robert D. Gunderman, 710 Statler Building, Buffalo, NY 14202. Authority sought to operate as a *contract carrier*, by motor vehicle, over regular routes, transporting: (1) *Commodities* manufactured and-or distributed by Friendship Dairies, Incorporated, (2) *Related materials, supplies and equipment* used in the manufacture, production, packaging, sale or distribution of such commodities, (1) Friendship, NY., to New York, NY.; Coatsville, PA and points in the New York City commercial zone, NJ and FL; (2) From New York, NY, Ludlow, MA and points in the New York City commercial zone and NJ., to Friendship, NY., under a continuing contract or contracts, with Friendship Dairies, Incorporated, for 180 days. SUPPORTING SHIPPER(S): Friendship Dairies, Incorporated, Martin P. Schanback President, Friendship, NY 14739. SEND PROTESTS TO: ICC, U.S. Courthouse & Federal Building, 100 S. Clinton St., Room 1259, Syracuse, NY 13260.

MC 126582 (Sub-4TA), filed November 22, 1978. Applicant: CANOVA MOVING AND STORAGE, 1336 Woolner Avenue, Fairfield, CA 94533. Representative: Jonathan M. Lindeke, Loughran & Hegarty, 100 Bush Street, 21st Floor, San Francisco, CA 94104. *Used household goods*, restricted to the transportation of traffic having a prior or subequent movement, in containers, to interstate and foreign destinations, beyond the points authorized and further restricted to the performance of pickup and delivery service in connection with packing, crating and containerization or unpacking, uncrating or decontainerization of such traffic. (1) Between points in Trinity County, CA; on the one hand and, on the other, points in 33 counties named in Attachment B, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Chief, Regulatory Law Office, U.S. Army Legal Services Agency, Dept. of Army (JALS-RL) Room 20455, Pentagon, Washington, D.C. 20310. SEND PROTESTS TO: A. J. Rodriguez DS, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 133095 (Sub-220TA), filed November 22, 1978. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. *Plumbers' goods and materials, equipment and supplies* used in the manufacture and distribution thereof, from the facilities of American Standard at Salem, OH., to points in Arkansas, Louisiana, Oklahoma and TX., for 180 days. SUPPORTING SHIPPER(S): American Standard, Inc., P. O. Box 2003, New Brunswick, NJK 08903. SEND PROTESTS TO: Martha A. Powell Trans. Asst., ICC, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 133655 (Sub-132TA), filed November 22, 1978. Applicant: TRANSNATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Plastic containers*, from the facilities of The Continental Group, Inc., located at or near Passaic and Morris Counties, NJ to points in Kent County, MI., and Hillsborough County, NH, and Dothan, AL; Sterling, CO; Lenexa, KS; Madisonville, Lexington and Elizabethtown, KY; New Orleans, LA; Norfolk, NE; and Abilene, Corpus Christi, Dallas, Hallettsville, Houston, Longview, and San Antonio, TX., for 180 days. SUPPORTING SHIPPER(S): Continental Plastics Industries, 633 Third Avenue, New York, NY 10017. SEND PROTESTS TO: Haskell E. Ballard DS, ICC, Box F—13206 Federal Building, Amarillo, TX 79101.

MC 133805 (Sub-15TA), filed November 24, 1978. Applicant: LONE STAR CARRIERS, INC., Route 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Road, Suite 115, Fort Worth, TX 76112. *Canned and preserved foodstuffs*, from the facilities of Heinz U.S.A., Division of H. J. Heinz Co., at or near Pittsburgh, PA to points in AR, OK and TX. Restriction: Restriced to traffic originating at the named facilities and destined to the named destination states, for 180 days. Supporting shipper(s): Heinz U.S.A., Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Martha A. Powell, Trans. Asst., ICC, Room 9A27, Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 135687 (Sub-5TA), filed November 28, 1978. Applicant: WEAVER TRANSPORTATION COMPANY, 5452 Oakdale Road, Smyrna, GA 30080. Representative: Jack Weaver, 5452 Oakdale Road, Smyrna, GA 30080. *Roofing materials*, (except in bulk), from Warrior Sales and Distributors of Alabama, Inc., at Gwinnett County, GA, to all points in NC, SC and TN, and from Tuscaloosa County, AL, to all points in GA and TN, for 180 days. Supporting shipper(s): Warrier Sales & Distributors of AL., Inc., P.O. Drawer 3159, Tuscaloosa, AL 35401. Send protests to: Sara K. Davis, Trans. Asst., ICC, 1252 W. Peachtree Street, NW., Atlanta, GA 30309.

MC 136086 (Sub-13TA), filed November 22, 1978. Applicant: GUILEY TRUCKING, INC., 8615 Pecan Avenue, Fontana, CA 92335. Representative: Milton W. Flack, 43111 Wilshire Blvd., Suite 300, Los Angeles, CA 90010. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Steel roofing, siding and floor decking*, from the facilities of Verco Manufacturing, Inc., located at Phoenix, AZ; Fontana, CA; and Everett, WA, to points in ID, under a continuing contract or contracts, with Verco Manufacturing, Inc., of Phoenix, AZ, for 180 days. An underlying ETA seeks up to 90 days. Supporting shipper(s): Verco Manufacturing, Inc., 4340 North 42nd Avenue, Phoenix, AZ 85019. Send protests to: Irene Carlos, Trans. Asst., ICC, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 136888 (Sub-14TA), filed November 24, 1978. Applicant: NORMAN AND SON, 7255 Avenue, Houston, TX 77587. Representative: Timothy Mashburn, P.O. Box 2207, Austin, TX 78768. *Spent molybdenum catalysts,* (in bulk, in dump vehicles only), from Denver, CO, to Houston and Freeport, TX, and from Tulsa, OK, to Freeport, TX, for 180 days. Supporting shipper(s): Phillipp Brothers, 1221 Avenue of the Americas, New York, NY 10020. Send protests to: John F. Mensing, DS, 8610 Federal Bldg., 515 Rusk Avenue, Houston, TX 77002.

MC 138328 (Sub-76 TA), filed November 22, 1978. Applicant: CLARENCE L. WERNER, d/b/a WERNER ENTERPRISES, I-80 and Highway 50, Omaha, NE 68137. Representative: James F. Crosby or Jack Pugh, P.O. Box 37205, Omaha, NE 68137. *Plastic resins,* from Chicago, IL, and points in its commercial zone to Dallas and Ft. Worth, TX and points in their commercial zones, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Michael A. McAlister President, Lone Star Chemical Co., Suite 334, 558 South Central Expressway, Richardson, TX 75080. SEND PROTESTS TO: Carroll Russell DS, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 139206 (Sub-54 TA), filed November 22, 1978. Applicant: F.M.S. TRANSPORTATION, INC., 2564 Harley Drive, Maryland Heights, MO 64043. Representative: R. C. Mitchell (same address as applicant). Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Dairy substitutes, such as powdered milk with chocolate additive, materials, equipment and supplies* used in the manufacture and distribution of dairy substitutes, Between the facilities of Dairy Substitutes, Inc., St. Louis, MO, on the one hand, and, on the other, points in the Continental United States, under a continuing contract or contracts, with Dairy Substitutes, Inc., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Dairy Substitutes, Inc., 10920 Schuetz Road, St. Louis, MO 63141. SEND PROTESTS TO: P. E. Binder DS, ICC, Room 1465, 210 N. 12th Street, St. Louis, MO 63101.

MC 139482 (Sub-74TA), filed November 22, 1978. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 877, New Ulm, MN 56073. Representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. *Foodstuffs, and food curing, preserving and seasoning compounds,* from Owensboro and Henderson, KY, to points in the states of Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Missouri, Kansas and OK, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Ragu' Foods, Inc., 33 Benedict Place, Greenwich, CT 06830. SEND PROTESTS TO: Delores A. Poe Trans. Asst., ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 140134 (Sub-10TA), filed November 28, 1978. Applicant: CALDARULO TRADING CO., 2840 South Ashland Avenue, Chicago, IL 60608. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Candy, confectionary and dessert preparations,* (except in bulk), from the facilities of Leaf Confectionery, Inc., at Chicago, IL, to Billings, MT; Spokane and Seattle, WA; and Portland, OR, under a continuing contract or contracts, with Leaf Confectionery, Inc., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Leaf Confectionary, Inc., Dan G. Duchak Distribution Manager, 1155 N. Cicero, Chicago, IL 60651. SEND PROTESTS TO: Lois M. Stahl Trans. Asst., ICC, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 140363 (Sub-16TA), filed November 28, 1978. Applicant: CHAMP'S TRUCK SERVICE, INC., P.O. Box 1233, Meraux, LA 70075. Representative: Mr. Edward A. Winter, 235 Rosewood Drive, Metairie, LA 70005. *Aluminum fluoride,* (in bulk, in dump trucks), from Geismar, LA., to Hannibal, OH., across the river from New Martinsville, WV., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Allied Chemical Corp., Industrial Chemicals Division, P.O. Box' 1139R, Morristown, NJ. 07960. SEND PROTESTS TO: Connie A. Guillory DS, ICC, T-9038 U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, LA. 70113.

MC 140849 (Sub-17TA), filed November 24, 1978. Applicant: ROBERTS TRUCKING CO., INC., U.S. Highway 271 South, Drawer G, Poteau, OK 74953. Representative: Prentiss Shelley, P.O. Drawer G, Poteau, OK 74953. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Polyester fibers, quilting, quilting fillers, comforters, drapes, quilted bedspreads, and mattress pads in shipper and carrier owned trailers,* From Clinton, OK., to points in North Carolina and VT., under a continuing contract or contracts, with Kellwood Company, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Kellwood Company, 200 Sears Road, Perry, GA. 31069. SEND PROTESTS TO: William H. Land, Jr., DS, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 141450 (Sub-6TA), filed November 24, 1978. Applicant: OLIN WOOTEN, d/b/a WOOTEN TRANSPORT COMPANY, P.O. Box 731, Hazelhurst, GA 31539. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Sheet steel containers,* from Baltimore, MD, to points in Alabama, Conneticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, North Carolina, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and WV, under a continuing contract, or contracts, with Steeltin Can Corporation, for 180 days. SUPPORTING SHIPPER(S): Steeltin Can Corporation, 1101 Todds Lane, Baltimore, MD 21237. SEND PROTESTS TO: G H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 141770 (Sub-7TA), filed November 28, 1978. Applicant: TPC TRANSPORTATION COMPANY, 40 Cleveland Road East, Huron, OH 44839. Representative: Russell J. Bragg, 608 Second Avenue South, Minneapolis, MN 55402. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Brewers wet grain,* from St. Louis, MO, to all points in the States of Alabama, Kansas, Mississippi, Ohio and Oklahoma, under a continuing contract or contracts, with The Pillsbury Company, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): The Pillsbury Company, 608 2nd Avenue, South, Minneapolis, MN 55402. SEND PROTESTS TO: ICC, 313 Federal Office Bldg., 234 Summit Street, Toledo, OH 43604.

MC 142081 (Sub-1TA), filed Novermber 22, 1978. Applicant: ETHLAR T. SMALL, JULIA T. SMALL, ERIC T. SMALL AND CRAIG T. SMALL, d/b/a SMALL'S L.P. GAS COMPANY, P.O. Box 397, Wyatt, MO 63882. Representative: Eric T. Small (same address as applicant). *Propane gas,* from Wood River and E. St. Louis, IL, St. Louis, MO, West Memphis and Light, AR, Memphis, TN and Calvert City, KY, to all points in MO, KY, AR, TN and IL; and *Anhydrous ammonia,* from Wood River and E. St. Louis, IL, Crystal City (Selma), MO, Blytheville (Armorel), AR, Memphis (Woodstock), TN, and Henderson, KY, to all points in MO, KY, AR, TN and IL, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING

SHIPPER(S): There are approximately (4) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: P. E. Binder, DS, ICC, Room 1465, 210 N. 12th Street, St. Louis, MO 63101.

MC 143179 (Sub-8TA), filed November 24, 1978. Applicant: CNM CONTRACT CARRIERS, INC., P.O. Box 1017, Omaha, NE 68101. Representative: Foster L. Kent (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bonded synthetic fiber*, from St. Louis, MO, to Minneapolis, MN; and Tomah, WI, under a continuing contract or contracts, with Mid America Fiber Co., Inc., for 180 days. SUPPORTING SHIPPER(S): Charles Lang, Corporate Secretary, Mid America Fiber Co., Inc., 4193 Beck St., St. Louis, MO 63116. SEND PROTESTS TO: Carroll Russell DS, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 143651 (Sub-6TA), filed November 22, 1978. Applicant: BLACKHAWK EXPRESS, INC., P.O. Box 705, Lake View, IA 51450. Representative: Kenneth F. Dudley, 611 Church Street, P.O. Box 279, Ottumwa, IA 52501. *Potting soil and organic compost*, from LaPorte, IN to points in Delaware, Illinois, Indiana, Iowa, Kansas, Maryland, Michigan, Missouri, Nebraska, New York, North Dakota, Ohio, Pennsylvania, South Dakota, Virginia, West Virginia and Wisconsin for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Leon Rydberg, National Traffic Manager, Green Thumb Company, Division of Ralston Purina, P.O. Box 760, Apopka, IL 32703. SEND PROTESTS TO: Carroll Russell DS, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 144247 (Sub-4TA), filed November 22, 1978. Applicant: DOWNEY ENTERPRISES, INC., 31706 Coast Highway, South Laguna, CA 92677. Representative: Gregory L. Parkin, 2500 W. Orangethorpe, Suite U, Fullerton, CA 92633. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by wholesale, retail and chain grocery and food business houses and also discount and drug stores, (except frozen commodities and commodities in bulk), from traffic originating at the facilities of Grocery Store Products located at Kennett Square and West Chester, PA, and from traffic originating at the facilities of The Clorox Company located at Atlanta, GA; Chicago, IL; Columbus, OH; Jersey City, NJ; Kennett Square, PA; and West Chester, PA, and destined to points in the United States in and west of Minnesota, Iowa, Missouri, Arkansas, and Louisiana, (except Alaska and Hawaii), under a continuing contract or contracts, with The Clorox Company, for 180 days. SUPPORTING SHIPPER(S): The Clorox Company, 1221 Broadway, Oakland, CA 94612. SEND PROTESTS TO: Irene Carlos, Trans. Asst., ICC, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 144352 (Sub-2TA), filed November 28, 1978. Applicant: HARRIS BAKING COMPANY, 33 North Street, Waterville, ME 04901. Representative: Kenneth B. Williams, 84 State Street, Boston, MA 02109. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bakery products*, from Springfield, MA, to Conway, NH and points in ME, under a continuing contract or contracts, with Springfields' Bakery, Inc., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Springfields' Bakery, Inc., 297 Plainfield Street, Springfield, MA 01101. SEND PROTESTS TO: ICC, 76 Pearl Street, Room 305, Portland, ME 04111.

MC 144509 (Sub-2TA), filed November 22, 1978. Applicant: HOLSTON MOTOR EXPRESS, INC., 2372 Woodridge Avenue, Kingsport, IN 37664. Representative: Walter Harwood, P.O. Box 15214, Nashville, TN 37215. *General commodities*, (except those of unusual value, classes A and B explosives, household goods, commodities in bulk, and those requiring special equipment), Between Rogersville, TN and Knoxville, TN (and its commercial zone) From Rogersville via TN Hwy 70 to its junction with I-81, and thence via I-81 to Knoxville, TN, and return over the same route, serving all points in Carter, Hawkins, Sullivan, Unicoi, and Washington, TN as off-route points. RESTRICTION: Restricted against the receipt of interline traffic from other motor carriers at Kingsport, TN and points in its commercial zone, for 180 days. SUPPORTING SHIPPER(S): There are approximately (8) statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: Joe J. Tate DS, ICC, Suite A-422 U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 145333TA, filed November 24, 1978. Applicant: SCHOEN-FOR, INC., d/b/a, M. A. C. TRUCKING, 3658 S. Nova Road & Herbert St., Port Orange, FL 32019. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. *Flakeboard*, from Port Manatee, FL, to Port Orange, FL, for 180 days. SUPPORTING SHIPPER(S): Pinewood Panels, Inc., P.O. Box 6161, Daytona Beach, FL 32202. SEND PROTESTS TO: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 145435 (Sub-1TA), filed November 24, 1978. Applicant: WESTERN AG INDUSTRIES, INC., 2750 North Parkway, Fresno, CA 93771. Representative: Roland J. Mefford, 2750 North Parkway, Fresno, CA 93771. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Steel and aluminum wheels, without tires, automotive accessories and related parts*, between points in CA, OR, WA, CO, OK, MI, NY, GA, IN and MO, under a continuing contract or contracts, with Western Wheel Division Rockwell International, for 180 days. SUPPORTING SHIPPER(S): Western Wheel Division Rockwell, International, 1314 E. North Avenue, Fresno, CA 93725. SEND PROTESTS TO: Michael M. Butler DS, 211 Main, Suite 500, San Francisco, CA 94105.

MC 145569 (Sub-1TA), filed November 24, 1978. Applicant: M & M EQUIPMENT CO., INC., 24400 E. Alameda Avenue, Aurora, CO 80011. Representative: Charles J. Kimball, Kimball, Williams & Wolfe, P.C., 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses*, from the facilities of United Packing Company at or near Denver, CO, to points in Massachusetts, Connecticut, New York, Pennsylvania, New Jersey and Maryland, under a continuing contract or contracts, with United Packing Co., for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): United Packing Co., 5000 Clarkson, Denver, CO. SEND PROTESTS TO: Roger L. Buchanan DS, ICC, 721 19th Street, 492 U.S. Customs House, Denver, CO 80202.

MC 145644 (Sub-1TA), filed November 28, 1978. Applicant: TOTER-TEE TRANSPORTE, INC., P.O. Box 107, Kingsbury, IN 46435. Representative: Philip A. Lee, 120 West Madison Street, Suite 618, Chicago, IL 60602. *Iron and steel products* transported on specialized Toter-Tee equipment, between Kingsbury, IN and Chicago IL, and the Chicago, IL Commercial Zone and points and places in the State of MI, for 180 days. An underlying ETA seeks up to 90 days authority. SUP-

PORTING SHIPPER(S): Roll Coater, Inc., P.O. Box 787, Greenfield, IN 46140. SEND PROTESTS TO: Lois M. Stahl Trans. Asst., ICC, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 145796TA, filed November 24, 1978. Applicant: VIC ADAMS, INC., 411 W. Sanderson, Yates Center, KS 66783. Representative: Clyde N. Christey, 1010 Tyler, Suite 110L Topeka, KS 66612. *Soy bean meal*, from the facilities of Bunge Corp., at or near Emporia, KS, to points in Missouri, Arkansas, and Oklahoma, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Bunge Corporation, Box 518, Emporia, KS 66801. SEND PROTESTS TO: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 145821TA, filed November 28, 1978. Applicant: THURMOND BENNETT TRUCKING, INC., P.O. Box 628, Sparta, NC 28675. Representative: Francis J. Ortman, 7101 Wisconsin Avenue. Suite 605, Washington, DC 20014. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from the plantsite of Coleman Furniture Corporation, Pulaski, VA to points and places in Montana, Idaho, Utah, Nevada, California, Washington and OR.,, under a continuing contract or contracts, with Coleman Furniture Corporation, for 180 days. An underlying ETA seeks up to 90 days authority. SUPPORTING SHIPPER(S): Coleman Furniture Corporation, P.O. Drawer 908, Pulaski, VA 24361. SEND PROTESTS TO: Terrell Price DS, 800 Briar Creek Road, Room CC 516, Mart Office Building, Charlotte, NC 28205.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-1254 Filed 1-12-79; 8:45 am]

[7035-01-M]

[I.C.C. Order No. 12 Under Service Order No. 1344]

LOUISVILLE & NASHVILLE RAILROAD CO. AND BIRMINGHAM SOUTHERN RAILROAD CO.

Rerouting Traffic

JANUARY 10, 1979.

In the opinion of Robert S. Turkington, Agent, the Louisville and Nashville Railroad Company and the Birmingham Southern Railroad Company are unable to transport certain carload traffic, loaded to excessive dimensions, over their lines in the vicinity of Bessemer, Alabama, due to restricted clearances at their normal interchange points.

It is ordered,

(a) *Rerouting traffic.* The Louisville and Nashville Railroad Company and the Birmingham Southern Railroad Company being unable to transport certain carload traffic, loaded to excessive dimensions, over their lines in the vicinity of Bessemer, Alabama, due to restricted clearances at their normal interchange points, are authorized to reroute or divert such traffic over any available route to expedite the movement.

(b) *Concurrence of receiving roads to be obtained.* The Louisville and Nashville Railroad Company shall receive the concurrence of the Birmingham Southern Railroad Company before the rerouting or diversion is ordered.

(c) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be during the time this order remains in force, those voluntarily agreed upon by and between said carriers, or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(d) *Effective date.* This order shall become effective at 12:01 a.m., January 1, 1979.

(e) *Expiration date.* This order shall expire at 11:59 p.m., March 31, 1979, unless otherwise modified, changed or suspended by order of this Commission.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the order shall be filed with the Director, Office of the FEDERAL REGISTER.

Issued at Washington, D.C., December 28, 1978.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-1354 Filed 1-12-79; 8:45 am]

[7035-01-M]

[Notice No. 146]

MOTOR CARRIER TRANSFER PROCEEDINGS

JANUARY 15, 1979.

Application filed for temporary authority under Section 210a(b) in connection with transfer application under Section 212(b) and Transfer Rules, 49 CFR Part 1132:

MC-FC-77959. By application filed December 13, 1978, FALCON MOTOR TRANSPORT, INC., 1250 Kelly Ave., Akron, OH 44306, seeks temporary authority to transfer the operating rights of RUBBER CITY EXPRESS, INC., 1805 East Market St., Akron, OH 44305, under section 210a(b). The transfer to FALCON MOTOR TRANSPORT, INC., of the operating rights of RUBBER CITY EXPRESS, INC., is presently pending.

MC-FC-77964. By application filed December 15, 1978, TAURUS TRANSPORT, INC., 302 N. Main Street, Monticello, IN 47960, seeks temporary authority to transfer the operating rights of JENKINS AND NAGEL, INC., Wolcott, IN 47995, under section 210a(b). The transfer to TAURUS TRANSPORT, INC., of the operating rights of JENKINS AND NAGEL, INC., is presently pending.

MC-FC-77965. By application filed December 19, 1978, MARK PRODUCTS & SERVICES, INC., Box 354, Chatham, MA 02633, seeks temporary authority to transfer a portion of the operating rights of GRINGERI BROS. TRANSPORTATION CO., INC., (M. G. SHERMAN, TRUSTEE IN BANKRUPTCY), 18 Tremont St., Boston, MA 02108, under section 210a(b). The transfer to MARK PRODUCTS & SERVICES, INC., of a portion of the operating rights of GRINGERI BROS. TRANSPORTATION CO., INC. (M. G. SHERMAN, TRUSTEE IN BANKRUPTCY), is presently pending.

MC-FC-77966. By application filed December 19, 1978, LONGMONT, TRANSPORTATION COMPANY, INC., 149 Kimbark Street, Longmont, CO 80501, seeks temporary authority to transfer the operating rights of LONGMONT TURKEY PROCESSORS, INC., 149 Kimbark Street, Longmont, CO 80501, under section 210a(b). The transfer to LONGMONT, TRANSPORTATION COMPANY, INC., of the operating rights of LONGMONT TURKEY PROCESSORS, INC., is presently pending.

MC-FC-77967. By application filed December 19, 1978, BEST REFRIGERATED EXPRESS, INC., P.O. Box 7365, Omaha, NE 68107, seeks temporary authority to transfer a portion of the operating rights of MERLE

NICOLA, TRUSTEE, and FIRST WESTROADS BANK, INC., A Secured Creditor of REDFEATHER FAST FREIGHT, INC., d/b/a FIRST WESTROADS BANK, INC., 270 Italia Mall, Westroads Shopping Center, Omaha, NE 68114, under section 210a(b). The transfer to BEST REFRIGERATED EXPRESS, INC., of a portion of the operating rights of MERLE NICOLA, TRUSTEE, and FIRST WESTROADS BANK, INC., A Secured Creditor of REDFEATHER FAST FREIGHT, INC., d/b/a FIRST WESTROADS BANK, INC., is presently pending.

MC-FC-77972. By application filed December 21, 1978, GRAHAM BELL, AN INDIVIDUAL, d/b/a B & W TRUCKING, P.O. Box 281, 1 Porter Street, Gloucester, MA 01930, seeks temporary authority to transfer a portion of the operating rights of GRINGEERI BROS, TRANSPORTATION CO., INC., (M. G. SHERMAN, TRUSTEE IN BANKRUPTCY), c/o M. G. Sherman, 18 Tremont Street, Boston, MA 02108, under section 210a(b). The transfer to GRAHAM BELL, AN INDIVIDUAL, d/b/a B & W TRUCKING, of a portion of the operating rights of GRINGEERI BROS, TRANSPORTATION CO., INC., (M. G. SHERMAN, TRUSTEE IN BANKRUPTCY), c/o M. G. Sherman, is presently pending.

MC-FC-77973. By application filed December 21, 1978, JON W. McCARTER, AN INDIVIDUAL, d/b/a McCARTER TRANSIT, 2569 Darlington Road, Beaver Falls, PA 15010, seeks temporary authority to transfer the operating rights of BEAVER VALLEY MOTOR COACH COMPANY, Box 238, New Brighton, PA 15066, under section 210a(b). The transfer to JON W. McCARTER, AN INDIVIDUAL, d/b/a McCARTER TRANSIT, of the operating rights of BEAVER VALLEY MOTOR COACH COMPANY, is presently pending.

MC-FC-77974. By application filed December 21, 1978, JAMES F. LETTMAN, AN INDIVIDUAL, d.b.a. LETTMAN TRANSPORT, 13647 103d N.E., Kirkland, WA 98033, seeks temporary authority to transfer the operating rights of GERALD R. HACKETT, AN INDIVIDUAL, d.b.a. G. R. HACKETT TRANSPORT, 10529 N.E. 141st, Kirkland, WA 98033, under section 210a(b). The transfer to JAMES F. LETTMAN, AN INDIVIDUAL, d.b.a. LETTMAN TRANSPORT, of the operating rights of GERALD R. HACKETT, AN INDIVIDUAL, d.b.a. G. R. HACKETT TRANSPORT, is presently pending.

MC-FC-77978. By application filed December 28, 1978, ROBERT J. RATHWAY and WILLIAM C. PAULL, JR., A PARTNERSHIP, d.b.a. WOLFE & WOLFE, R. D. No. 2, Box 169A, Perryopolis, PA 15473, seeks temporary authority to transfer the operating rights of LAVERN E. WOLFE, AN INDIVIDUAL, d.b.a. WOLFE & WOLFE, 305 Crossland Avenue, Uniontown, PA 15401, under section 210a(b). The transfer to ROBERT J. RATHWAY and WILLIAM C. PAULL, JR., A PARTNERSHIP, d.b.a. WOLFE & WOLFE, of the operating rights of LAVERN E. WOLFE, AN INDIVIDUAL, d.b.a. WOLFE & WOLFE, is presently pending.

MC-FC-77979. By application filed December 28, 1978, MARTIN C. HOFFMAN and KENNETH K. HOFFMAN, A PARTNERSHIP, d.b.a. HOFFMAN TRUCKING, Route No. 2, Spencer, NE 68777, seeks temporary authority to transfer the operating rights of TOMMIE BOSKA, AN INDIVIDUAL, d.b.a. BOSKA TRUCKING, Spencer, NE 68777, under section 210a(b). The transfer to MARTIN C. HOFFMAN and KENNETH K. HOFFMAN, A PARTNERSHIP, d.b.a. HOFFMAN TRUCKING, of the operating rights of TOMMIE BOSKA, AN INDIVIDUAL, d.b.a. BOSKA TRUCKING, is presently pending.

MC-FC-77986. By application filed January 2, 1979, RANDY ERICKSON, AN INDIVIDUAL, R. R. No. 1, Luck, WI 54853, seeks temporary authority to transfer the operating rights of DONALD M. DAVIDSON, AN INDIVIDUAL, d.b.a. DON DAVIDSON, R. R. No. 1, Luck, WI 54853, under section 210a(b). The transfer to RANDY ERICKSON, AN INDIVIDUAL, of the operating rights of DONALD M. DAVIDSON, AN INDIVIDUAL, d.b.a. DON DAVIDSON, is presently pending.

MC-FC-77987. By application filed January 2, 1978, GOODMAN COMPANY, INC., 109 Wayne Street, P.O. Box 195, Glasgow, KY 42141, seeks temporary authority to transfer the operating rights of MOTLEY TRANSFER, INC., Route 7, Box 206, Glasgow, KY 42141, under section 210a(b). The transfer to GOODMAN COMPANY, INC., of the operating rights of MOTLEY TRANSFER, INC., is presently pending.

By the Commission.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-1355 Filed 1-12-79; 8:45 am]

[7035-01-M]

[Notice No. 147]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under Section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include request for oral hearing, must be filed with the Commission within 30-days after the date of this publication. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be seved upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

MC-FC-77613, filed November 27, 1978. Transferee: JAMES D. HANSON, doing business as Earl Hanson Trucking Co. 2517 Riverbend Rd. Mount Vernon, WA 98273. Transferor: Earl L. Hanson, doing business as Earl Hanson Trucking Co., 2517 Riverbend Rd. Mount Vernon, WA 98273. Representative: James T. Johnson, Attorney, 1610 IBM Building, 1200 5th Ave., Seattle, WA 98101. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate No. MC-117444, issued November 20, 1958, as follows: Olivine sand, in bulk and in bags, from Hamilton, WA and points within 10 miles thereof, to ports of entry on the United States-Canada Boundary line at or near Blaine and Sumas, WA.

MC-FC-77866, filed October 12, 1978. Transferee: MEYER FARMS TRANSPORT, INC. Box 65, Oregon, MO 64473. Transferor: FARRIS TRUCK LINE, P.O. Box 224, Faucett, MO 64448. Representative: TOM B. KRETSINGER, ESQ., KRETSINGER & KRETSINGER, 20 East Franklin, Liberty, MO 64068. Authority sought for purchase by transferee of a por-

tion of the operating rights of the transferor, as set forth in Permit No. MC-138557 (SUB No. 2), issued to Walt Keith Trucking, Inc., and acquired by transferor herein pursuant to MC-F-12977, approved October 18, 1977 and consummated December 14, 1977, as follows: *Meat, meat products, and meat by-products, and articles distributed by meat packinghouses* as described in section A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766, (except hides and commodities in bulk, in tank vehicles), from the plant site of MBPXL Corporation, Inc., at Phelps City, MO to points in KS, MO, IL, and OK, under a continuing contract or contracts with Missouri Beef Packers, Inc. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under section 210a(b).

MC-FC-77870, filed September 28, 1978. Transferee: GOPHER TRUCK LINES, INC., 1931 East 27th Street, Vernon, CA 90058. Transferor: Service Truck Co., 2163 East 14th Street, Los Angeles, CA 90021. Representative: David P. Christianson, Knapp, Stevens, Grossman & Marsh, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate of Registration No. MC-120784 Sub-1 issued March 9, 1974, as follows: General commodities with exceptions, between all points in the Los Angeles Basin Territory. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under Section 210a(b).

MC-FC-77881, filed September 15, 1978. Transferee: DIXIE TRANSPORT, INC., P.O. Box 1126, Hattiesburg, MS. Transferor: Berry Transportation, Inc., P.O. Box 2147, Longview, TX 75601. Authority sought for purchase by transferee of a portion of the operating rights of transferor as set forth in Certificate No. MC-129282 Sub 31 issued February 14, 1977, as follows: Sugar, in containers, from the plantsites of Colonial Sugar Company at Gramercy, LA and Godchaux-Henderson Sugar Company at Reserve, LA to points in Alabama, Mississippi and Tennessee. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

MC-FC-77884, filed October 20, 1978. Transferee: ETI CORP., P.O. Box 549, Linden, NJ 07036. Transferor: Eastern Transport, Inc., P.O. Box 549, Linden, NJ 07036. Representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought for purchase by transferee of a portion of the operating rights of transferor as set forth in Permit No. MC-135379 Sub 7 issued June 4, 1977, as follows: Such merchandise as is dealt in by wholesale, retail, chain, grocery, department stores, and food business houses (except glass containers and commodities in bulk), and in connection therewith, equipment, materials and supplies used in the conduct of such business (except glass containers and commodities in bulk), between points in Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, North Carolina, South Carolina, West Virginia, Georgia, Florida, Alabama, Louisiana, Mississippi, Tennesee and the District of Columbia. Restricted to transportation service to be performed under a continuing contract, or contracts with J. M. Fields, Inc. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under Section 210a(b).

MC-FC-77923, filed November 6, 1978. Transferee: TRANSPORT G. COURCHESNE, INC., 2015 Route 122, St-Curille-de-Wnedover, Comte de Drummond, P.O. Joc 1HO. Transferor: John N. Brocklesby Transport, Ltd., 10525 Cote de Liesse, Montreal, Quebec, Canada H9P 1A7. Representative: L. C. Major, Jr., Suite 400 Overlook Office Bldg., 6121 Lincolnia Rd., Alexandria, VA 22312. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificates Nos. MC-126672 and MC-126672 Sub 4 issued October 8, 1976 and April 11, 1978, respectively, as follows: Cement, from ports of entry on the US-Canada Boundary line located at or near Derby Line and Highgate Springs, VT and Champlain and Trout River, NY to points in Maine, those parts of Vermont and New Hampshire south of U.S. Highway 2, and that part of New York south of a line beginning at Sackets Harbor, NY and extending eastward along New York Highway 3 to Saranac Lake, NY, thence along New York Highway 86 to junction New York Highway 73, near Lake Placid, NY thence along New York Highway 73 to Keene, NY and thence along New York Highway 9N to Westport, NY. From ports of entry on the US-Canada Boundary line located at or near Rooseveltown, Ogdensbury, Alexandria Bay, and Niagara Falls, NY and Jackman, ME to points in Maine, New Hampshire, New York, and Vermont. RESTRICTION: The authority above is restricted to the transportation of shipments in foreign commerce originating at the facilities of the St. Lawrence Cement Co., in the Province of Quebec, Canada. Cement, in bulk, in tank vehicles, from ports of entry on the US-Canada Boundary line at or near Morses Line, West Berkshire, Richford, East Richford, North Troy, Beebe Plain, Derby Line, High Gate Springs and Norton, VT, Beecher Falls and Scott Bog, NH, and Fort Covington, Trout River, Mooers Forks, Champlain, and Rouses Point, NY to points in those parts of New Hampshire and Vermont on and north of U.S. Highway 2, and points in the part of New York on and north of a line beginning at Sackets Harbor, NY and extending eastward along New York Highway 3 to Saranac Lake, NY, thence along New York Highway 86 to junction New York Highway 73 near Lake Placid, NY thence along New York Highway 73 to Keene, NY and thence along New York Highway 9N to Westport, NY. RESTRICTION: The operations authorized above are limited to transportation in foreign commerce only. Cement, in bags, from the ports of entry on the US-Canada Boundary line, at or near Morses Line, West Berkshire, Richford, East Richford, North Troy, Beebe Plain, Derby Line, High Gate Springs, and Norton, VT, Beecher Falls and Scott Bog, NH and Fort Covington, Trout River, Mooers Forks, Champlain, and Rouses Point, NY to points in those parts of New Hampshire and Vermont on and north of U.S. Highway 2, and that part of New York on and north of a line beginning at Sackets Harbor, NY and extending eastward along New York Highway 3 to Saranac Lake, NY thence along New York Highway 86 to junction New York Highway 73 near Lake Placid, NY, thence along U.S. Highway 73 to Keene, NY and thence along New York Highway 9N to Westport, NY. Cement, in bulk, in tank vehicles, and in bags, from ports of entry on the US-Canada Boundary line located in Maine, New Hampshire, New York, and Vermont to points in Connecticut, Rhode Island and Massachusetts. RESTRICTION: The authority granted herein is restricted to the transportation of shipments originating at the facilities of Independent Cement, Inc., and St. Lawrence Cement Co., in the Province of Quebec, Canada. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

MC-FC-77954 filed December 12, 1978. Transferee: O.K. MOVING & STORAGE CO. OF MARYLAND, INC., 8955 D'Arcy Road, Upper Marlboro, MD, 20780. Transferor: Kennedy Van & Storage Company, Inc., Dulles International Airport, P.O. Box 17191, Washington, DC 20041. Representative: Joseph T. Bell, Address: same as transferee. Authority sought for purchase by transferee of the operating

rights of transferor as set forth in Certificate No. MC-20337, issued October 23, 1970, as follows: Household goods, as defined by the Commission (except pianos, pianos benches, laundry machines, refrigerators, gas and electric ranges, radios, musical instruments, ice-making or refrigerating machinery and incidental equipment, when transported as a separate and distinct movement), between Washington, DC, on the one hand, and, on the other, points in MD and VA; between Washington, DC, on the one hand, and on the other, points in VA, NC, SC, MD, PA, DE, NJ, and NY. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-1356 Filed 1-12-79; 8:45 am]

[7035-01-M]

[Docket No. 37013]

MOTOR CARRIERS, WATER CARRIERS, AND FREIGHT FORWARDERS

Certification of Rates or Fares to Cover New Operating Authority

JANUARY 10, 1979.

The Commission is planning to implement, effective March 1, 1979, a new procedure which will assure the earlier issuance of new operating rights. This procedure will reduce regulatory lag and allow operations to commence on an earlier date. It will also reduce government costs by reducing the Commission's workload.

The Interstate Commerce Act requires every carrier or freight forwarder to file its rates or fares to cover its operations. Under the present procedure, rate or fare compliance is verified before the rights are issued. Under the new procedure, the carrier or forwarder must certify that it has rates or fares on file to cover the new authority. The certification should identify the tariffs which contain the rates or fares. Operating rights will be issued on the basis of this certification without prior verification unless a protest or complaint is received. The procedure for emergency temporary authority will not be changed.

We expect the cost of each certification to vary greatly from carrier to carrier. We estimate the cost of a certification will range from $1 to $5. In return for this small cost, the carriers or forwarders will receive their operating rights much sooner. In addition, the new procedure will save the Commission about $38,000 the first year.

The notice which the Commission issues to inform a carrier that it is being granted operating authority will be changed to include a requirement that the certification be filed before the operating rights are issued. The notice will remind the carriers of the penalties for fraud.

The Commission does not believe this change requires a rulemaking proceeding under section 553 of the Administrative Procedure Act (5 U.S.C. § 553) or a formal regulation because the change is procedural in nature and will benefit those affected by it. However, in keeping with our belief that any procedural change can benefit from public scrutiny, we are requesting that the public study the new procedure and inform us not later than February 15, 1979, of any change that should be considered.

Comments should be addressed to: William P. Geisenkotter, Chief, Section of Tariffs, Bureau of Traffic, Interstate Commerce Commission, Washington, D.C. 20423.

Mr. Geisenkotter may be contacted on 202-275-7739 for further information.

This procedural change will not significantly affect the quality of the human environment.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-1357 Filed 1-12-79; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3)

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[6320-01-M]

1

[M-189, Amdt. 2]

CIVIL AERONAUTICS BOARD.

Notice of deletion of item from the January 11, 1979, meeting agenda.

TIME AND DATE: 10 a.m., January 11, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW, Washington, D.C. 20428.

SUBJECT: 3. Amendment of Board's *Ex Parte* rules, 14 CFR 300.2, 300.3 (OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Item 3 is being deleted because the staff will be unable to complete their coordination of this item in time to give the Board an adequate opportunity to review the proposed amendment to the *ex parte* rules. Accordingly, the following Members have voted that item 3 be deleted from the January 11, 1979, agenda and that no earlier announcement of this change was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-74-79 Filed 1-11-79; 3:51 pm]

[6320-01-M]

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[M-189, Amdt. 3; Jan. 9, 1979]

CIVIL AERONAUTICS BOARD.

Notice of deletion of items from the January 11, 1979, agenda.

TIME AND DATE: 10 a.m., January 11, 1979.

PLACE: Room 1027.

SUBJECT:

9. Docket 33171, Dismissal of an application for approval of interlocking directors. Hawaiian Airlines, Inc., *et al.* (BPDA).

10. Dockets 33580, 33629, 33672, 33821, 33863, 33878, and 33997—Applications for certificate amendments nonstop Denver-Detroit authority in the following: Frontier, Braniff, Northwest, Allegheny, Continental, American and Ozark (BPDA).

15. Dockets 31128, 31213, 31244, 31529, and 32791—Service to Fort Myers (BPDA, OCCR, BALJ, (OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Items 9, 10, and 15 are being deleted because the staff will be unable to complete their coordination of these items in time to give the Board adequate time to review them. Accordingly, the following Members have voted that agency business requires the deletion of items 9, 10, and 15 from the January 11, 1979, agenda and that no earlier announcement of these deletions was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-75-79 Filed 1-11-79; 3:51 pm]

[6320-01-M]

3

[M-189, Amdt. 4; Jan. 9, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the January 11, 1979, agenda.

TIME AND DATE: 10 a.m., January 11, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 23a. Dockets 32686, 33587, 33640, 33637, 34036, and 34038—Applications of TIA, Braniff, World, Capitol, and Seaboard for *pendente lite* exemption authority to provide scheduled passenger service between points in the United States and points in the Federal Republic of Germany. (BIA).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: At the January 4, 1979, Board meeting BIA staff was directed to prepare a draft order addressing the merits of the six applications set forth above for action at the January 11, 1979, Board meeting. The draft order is being coordinated and attention to this matter now is required in order to address these important international markets as soon as possible. Accordingly, the following Board Members have voted that agency business requires the addition of this item to the January 11, 1979, agenda and that no earlier announcement of this change was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-76-79 Filed 1-11-79; 3:51 pm]

[6320-01-M]

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[M-189, Amdt. 5; Jan. 9, 1979]

CIVIL AERONAUTICS BOARD.

Notice of closure and addition of item to the January 11, agenda.

TIME AND DATE: 10 a.m., January 11, 1979 (after open meeting).

PLACE: Room 1011, 1825 Connecticut Avenue N.W, Washington, D.C. 20428.

SUBJECT: 26a. Dockets 33887, 33984 and 34314, the applications of Saudi Arbian Airlines Corporation for a 402 permit and for an exemption pending issuance of a permit and the joint application of Saudi and Pan American for prior approval of a blocked-space agreement and a letter to the Department of State requesting that it obtain assurances from the Saudi Arabian Government on multiple designation. (BIA).

STATUS: Closed.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068

SUPPLEMENTARY INFORMATION: On January 5 the staff was advised by the Department of State and the Saudi Arabian Chargé D' Affaires that the Saudi Arabian Government urgently requests the earliest possible resolution by the Board on these matters since the Saudi carrier hopes to begin service February 1. Accordingly, the following Members have voted that agency business requires the addition of item 26a to the January 11, 1979, agenda 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

This memo concerns strategy and positions that have taken and may be taken by the United States in negotiations with Saudi Arabia. Public disclosures, particularly to foreign governments, of opinions, evaluations, and strategies relating to the issues could seriously compromise the ability of the United States Delegation to achieve agreements which would be in the best interest of the United States. Accordingly, the following Members have voted that the meeting on this subject would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552b(c)(9)(B) and 14 CFR Section 310b.5(9)(B) and that any meeting on this item should be closed:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

PERSONS EXPECTED TO ATTEND

Board Members.—Chairman, Marvin S. Cohen; Member, Richard J. O'Melia; Member, Elizabeth E. Bailey; and Member Gloria Schaffer.
Assistants to Board Members.—Mr. Sanford Rederer, Mr. David M. Kirstein, Mr. Stephen H. Lachter, and Mr. Elias Rodriguez.
Office of the Managing Director.—Mr. John R. Hancock.
Bureau of International Affairs.—Mr Donald A. Farmer, Jr., Mr. David A. Levitt, Mr. Richard Loughlin, Ms. Mary I. Pett, and Ms. Agnes M. Trainor.
Office of the General Counsel.—Mr. Philip J. Bakes, Jr., Mr. Gary J. Edles, Mr. Peter B. Schwarzkopf, Mr. Michael Schopf, and Ms. Carol Light.
Bureau of Pricing and Domestic Aviation.—Mr. Michael E. Levine, Ms. Barbara A. Clark, Mr. Herbert Aswall, Mr. Douglas V. Leister, and Mr. James L. Deegan.
Office of Economic Analysis.—Mr. Robert H. Frank and Mr. Richard H. Klem.
Bureau of Consumer Protection.—Mr. Reuben B. Robertson.
Office of the Secretary.—Mrs. Phyllis T. Kaylor and Ms. Deborah A. Lee.

GENERAL COUNSEL CERTIFICATION

I certify that this meeting may be closed to the public under 5 U.S.C. 552b(c)(9)(B) and 14 CFR Section 310b.5(9)(B) and that this meeting may be closed to public observation.

PHILIP BAKES, Jr.,
General Counsel.

[S-77-79 Filed 1-11-79; 3:51 pm]

[6320-01-M]

5

[M-189, Amdt. 6; Jan. 10, 1979]

CIVIL AERONAUTICS BOARD.

Notice of change of time and deletion of item from the January 11, 1979, agenda.

TIME AND DATE: 9 a.m., January 11, 1979.

PLACE: Room 1027 and 1011 for closed items, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 27. Negotiating Strategy for Northern and Southern Europe (BIA).

STATUS: Items 1-25, open. Items 26 and 26a, closed.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: The Chairman's schedule on January 11, 1979 (Thursday) will not permit discussion of all three items. Accordingly, the following Members have voted that agency business requires the deletion of item 27 from the January 11, 1979, agenda and that no earlier announcement of this change was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

NOTE.—Items 26 and 26a will be taken up at 9 a.m.

[S-78-79; Filed 1-11-79; 3:51 pm]

[6320-01-M]

6

[M-189, Amdt. 7; Jan. 11, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the January 11, 1979, agenda.

TIME AND DATE: 10 a.m., January 11, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 28. Dockets 33112, 33283—Texas International—National Acquisition Case and Pan American—National Acquisition Case. National application to take testimony of Dr. Robert H. Frank.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: National filed an application on Friday, January 5, 1979, to take the testimony of Dr. Robert H. Frank, the Board's Director of the Office of Economic Analysis. The application was granted by the Administrative Law Judge on Monday, January 8, 1979. The Law Judge directed Dr. Frank to appear on Thursday, January 11, although we understand that he has since postponed Dr. Frank's appearance to January 12. Dr. Frank's attorney filed an answer on January 10, 1979.

Although the Board's rules indicate that Dr. Frank cannot testify without prior Board approval, the Board needs to consider adopting an order staying the order requiring Dr. Frank's appearance until the Board can consider whether to permit Dr. Frank to testify.

Accordingly, the following Board Members have voted that agency business requires the addition of this item to the January 11, 1979, agenda and that no earlier announcement of this change was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-79-79 Filed 1-11-79; 3:51 pm]

[6570-06-M]

7

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, January 16, 1979.

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. Freedom of Information Act Appeal No. 78-11-FOLA-253, concerning a request for certain EEO-1 Employment Survey Reports.

2. Freedom of Information Act Appeal No. 78-7-FOIA-171, concerning a request for information included in a national charge investigative file.

3. Office of Personnel Management Merit System Standards.
4. Amendments to Procedural Regulations and the Compliance Manual to Reflect EEOC's Reorganization.
5. Report on Commission Operations by the Executive Director.

CLOSED TO THE PUBLIC

1. Proposed Decisions in two Charges.
2. Termination of Conciliation Efforts in Connection with Commission Decision No. 77-21.
3. Litigation Authorization: General Counsel Recommendations: Matters closed to the public under the Commission's regulations at 29 CFR 1612.13.

NOTE.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6748.

This notice issued January 9, 1979.

[S-68-79 Filed 1-11-79; 11:09 am]

[6570-06-M]

8

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Friday, January 12, 1979.

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: Open to the public.

MATTERS TO BE CONSIDERED: Revisions of Affirmative Action Guidelines:

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, Chair; Armando M. Rodriguez, Commissioner; and J. Clay Smith, Jr., Commissioner.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6748.

This notice issued January 10, 1979.

[S-66-79 Filed 1-11-79; 11:09 am]

[6570-06-M]

9

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.
"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-12-79.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, January 9, 1979.

CHANGE IN THE MEETING: The following matter is added to the agenda for the closed portion of the meeting:

Status of Compliance with an Outstanding Consent Decree.

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of change: Eleanor Holmes Norton, Chair; Daniel E. Leach, Vice Chair; Armando M. Rodriguez, Commissioner; and J. Clay Smith, Jr., Commissioner.
Opposed: None

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6750.

This notice issued January 9, 1979.

[S-70-79 Filed 1-11-79; 3:08 pm]

[6712-01-M]

10

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, January 17, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Closed Commission meeting following the 9:30 a.m. open meeting.

MATTER TO BE CONSIDERED:

Agenda, Item No., and Subject

General—1—Fiscal Year 1979 Policy Research Funding.

This meeting may be continued the following workday 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: January 11, 1979.

[S-71-79; Filed 1-11-79, 2:23 pm]

[6712-01-M]

11

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, January 17, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

General—1—Restrictions on the publication of articles written by Commission personnel.
General—2—Petition for waiver of duty cycle requirement for an invalid security alert system.
General—3—Rules and policies governing interconnection of private land mobile radio systems. (Docket No. 20846).
General—4—Rule adjustments in light of the Sunshine Act.
General—5—International Maritime Satellite Telecommunications.
General—6—Motion Picture Association of America petition for declaratory judgment filed in Network Inquiry.
General—7—Fiscal year 1979 Policy Research Funding.
Common Carrier—1—Application by AT&T and various record carriers to construct a 300 circuit cable between Florida and St. Thomas, Virgin Islands.
Common Carrier—2—Joint application by AT&T and GTE Satellite Corporation for authority to provide a video conferencing service via their domestic satellite system.
Common Carrier—3—GTE acquisition of Telenet.
Cable Television—1—Request for Declaratory Ruling and Petition for Waiver filed by Capitol Cablevision Corp., Charleston, S.C. and Dunbar, West Virginia; and Request for Special Relief filed by Gateway Communications, Inc., Huntington, West Virginia.
Assignment and Transfer—1—Assignment of license of Television Station WANC-TV, Asheville, North Carolina, from WISE-TV, Incorporated to Carolina Christian Broadcasting, Inc. (BALCT-643).
Renewal—1—Petition to deny renewal of WPXY (FM), Rochester, New York, filed by Metro-Act of Rochester, Inc.
Renewal—2—Reconsideration of the renewals of KEYS, Corpus Christi, Texas, WNOR and WNOR-FM, Norfolk, Virginia and of the assignment of WDJX, Zenia, Ohio, all by Roger H. Stoner.
Renewal—3—Reconsideration of compliant against renewal of KETV (TV), Omaha, Nebraska filed by the Black Coalition of KETV.
Aural—1—Applications filed by International Radio, Inc. (KGST, Fresno, Calif.) and by La Fiesta Broadcasting Co., (KLFB, Lubbock, Texas) for nighttime operations.
Aural—2—Application for a new noncommercial educational FM station filed by State University of New York, Buffalo, New York.
Complaints and Compliance—1—Application for Review of a letter by the Broadcast Bureau stating that a proposed 2½ hour auction program would violate the Commission's policy as to program-length commercials.

This meeting may be continued the following workday 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: January 11, 1979.

[S-72-79 Filed 1-11-79; 2:23 pm]

[6715-01-M]

12

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Thursday, January 18, 1979, at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: Portions of this meeting will be open to the public and portions will be closed.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC

Setting of dates for future meetings.
Correction and approval of minutes.
Advisory opinion 1978-99.
Policy on release of information in computer tape format.
Personnel policy on time-in-grade for employees not in bargaining unit.
Appropriations and budget.
Pending legislation.
Pending litigation.
Liaison with other Federal agencies.
Classification actions.
Routine administrative matters and quality of reports received.

PORTIONS CLOSED TO THE PUBLIC (FOLLOWING OPEN SESSION)

Audits and Audit Policy, Compliance, Personnel.

PERSONS TO CONTACT FOR INFORMATION:

Mr. Fred S. Eiland, Public Information Officer, telephone 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-73-79 Filed 1-11-79; 3:31 pm]

[6740-02-M]

13

JANUARY 10, 1979.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., January 17, 1979.

PLACE: 825 North Capitol Street, NE., Washington, D.C. 20426, Room 9306.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

NOTE.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, telephone 202-275-4166.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda. However, all public documents may be examined in the Office of Public Information.

POWER AGENDA—241ST MEETING, JANUARY 17, 1979, REGULAR MEETING

CAP-1. Docket No. ER79-95, New Bedford Gas & Edison Light Co.
CAP-2. Docket No. ER78-592, Dayton Power & Light Co.
CAP-3. Docket No. ER77-584, New England Power Co.
CAP-4. Docket No. ES79-19, Detroit Edison Co.
CAP-5. Docket No. ES79-18, Iowa Power & Light Co.

GAS AGENDA—241ST MEETING, JANUARY 17, 1979, REGULAR MEETING

CAG-1. Docket No. RP79-19, Mountain Fuel Supply Co.
CAG-2. Docket No. RP72-142, RP76-135 and RP78-76, (PGA No. 79-1) (AP No. 79-1), Cities Service Gas Co.
CAG-3. Docket Nos. RP75-13, RP75-113, and RP76-137, Tennessee Gas Pipeline Co., a division of Tenneco, Inc. Docket No. RP77-62, Tennessee Gas Pipeline Co., a division of Tenneco, Inc.
CAG-4. Docket No. CS78-373, G & G Operating Co., Docket No. CS73-338, James P. Evans Jr., Docket No. CS74-149, Daniel Oil Co., Docket No. CS78-377, SPG Operating Co., Docket No. CS78-381, William S. Evans, Docket No. CS78-386, Michel T. Halbouty, Docket No. CI78-602, J. M. Huber Corp., Docket No. CI78-799, The Superior Oil Co., Docket No. CI75-729, Union Texas Petroleum, (a division of Allied Chemical Corp.)
CAG-5. Docket No. G-17062, Estate of L. D. French.
CAG-6. Docket No. CI65-781, et al, Mobil Oil Corp.
CAG-7. Docket No. CP78-453; Transcontinental Gas Pipe Line Corp.
CAG-8. Docket No. CP76-60, *Arkansas Louisiana Gas Company* v. *McCulloch Oil Company of Texas.*
CAG-9. Docket No. CP78-186, Natural Gas Pipeline Co. of America and Southwestern Gas Pipeline, Inc.
CAG-10. Docket No. CP77-108, Tennessee Gas Pipeline Co., a division of Tenneco, Inc. and United Gas Pipe Line Co., Docket No. CP78-456 and CP78-466, Transcontinental Gas Pipe Line Corp., Docket No. CP78-530, Florida Gas Transmission Co.
CAG-11. Docket No. CP79-23, Columbia Gas Transmission Corp.
CAG-12. Docket No. CP75-376, Tennessee Gas Pipeline Co., a division of Tenneco, Inc.
CAG-13. Docket No. CP78-489, Columbia Gulf Transmission Co. and Tennessee Gas Pipeline Co., a division of Tenneco, Inc.
CAG-14. Docket No. CP78-431, Transcontinental Gas Pipe Line Corp.
CAG-15. Docket No. CP76-356, Michigan Wisconsin Pipe Line Co.
CAG-16. Docket No. CP73-244, Midwestern Gas Transmission Co.
CAG-17. Docket No. CP78-399, Transwestern Pipeline Co.
CAG-18. Docket No. CP78-465, Michigan Wisconsin Pipe Line Co.
CAG-19. Docket No. CP77-383 (Phase I), Panhandle Eastern Pipe Line Co., Docket No. CP77-423 (Phase I), Colorado Interstate Gas Co.

MISCELLANEOUS AGENDA—241TH MEETING, JANUARY 17, 1979, REGULAR MEETING

CAM-1. Secretary of Energy's proposed rule to amend 10 CFR 211.67(e); in order to reduce the level of benefits received under the small refiner bias of the domestic crude oil allocation program ("entitlements program").

POWER AGENDA—241ST MEETING, JANUARY 17, 1979, REGULAR MEETING

I. LICENSED PROJECT MATTERS

P-1 Project No. 2131, Wisconsin Electric Power Co.
P-2 Project No. 283, Crown Zellerbach Corp.

II. ELECTRIC RATE MATTERS

ER-1. Docket No. ER78-506, Wisconsin Public Service Corp
ER-2. Docket No. ER78-522, Virginia Electric & Power Co.
ER-3. Docket No. ER77-533, Louisiana Power & Light Co.
ER-4. (A). Docket Nos. ER78-19 (Phase I) and ER78-81, Florida Power & Light Co. (B). Docket Nos. ER78-325, ER78-376, and ER78-19, et al. Florida Power & Light Co.
ER-5. Docket No. ER-76-285 (Phase II), Public Service Co. of New Hampshire.

GAS AGENDA—241ST MEETING, JANUARY 17, 1979, REGULAR MEETING

I. PIPELINE RATE MATTERS

RP-1. Docket Nos. RP74-61 (PGA78-2) and RP76-10 (PGA78-2), Arkansas-Louisiana Gas Co.
RP-2. Docket No. RP79-4, Cities Service Gas Co.
RP-3. Docket No. RP79-7, Southern Natural Gas Co.
RP-4. Docket No. RP79-157 (PGA79-2) (PGA79-2a), Consolidated Gas Supply Corp.
RP-5. Docket Nos. RP71-107 (Phase II) and RP72-127, Northern Natural Gas Co.

II. PRODUCER MATTERS

CI-1. Docket No. RI77-104, Kennedy & Mitchell, Inc.
CI-2. Docket No. RI76-123, J. M. Zachary, et al.
CI-3. Docket No. CI78-705, *Arapahoe Production Company* v. *Panhandle Producing Company, et al.*

II. PIPELINE CERTIFICATE MATTERS

CP-1. Docket No. CP76-285, Mountain Fuel Resources, Inc. Docket No. CP77-289, El Paso Natural Gas Co. Docket No. CP77-512, Clay Basin Storage Co. Docket No. CP77-511, Northwest Pipeline Corp.
CP-2. Docket No. CP78-292, Colorado Interstate Gas Co.
CP-3. Docket No. CP78-272, et al., The Brooklyn Union Co., et al.
CP-4. Docket No. CP75-140, et al., Pacific Alaska LNG Company, et al. Docket Nos. CP74-160, et al., Pacific Indonesia LNG Company, et al. Docket No. CI78-453, Pacific Lighting Gas Development Co. Docket No. CI78-452, Pacific Simpco Partnership.
CP-5. Docket No. RP72-99, Transcontinental Gas Pipe Line Corp.

MISCELLANEOUS AGENDA—241ST MEETING, JANUARY 17, 1979, REGULAR MEETING

M-1. Annual reports pursuant to part 276 of the interim regulations under NGPA and proposed changes to the filing requirements.
M-2. RM79-. . . ., Treatment of refunds under purchased adjustment clauses.

KENNETH F. PLUMB,
Secretary.

[S-67-79 Filed 1-11-79; 11:09 am]

[6720-01-M]

14

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: January 18, 1979, 9:30 a.m.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Franklin O. Bolling, 202-377-6677.

MATTERS TO BE CONSIDERED:

Consideration of Appointment of Directors and Designation of Chairman and Vice Chairman, Federal Home Loan Banks.
Consideration of Fidelity Bond Amendments (§ 563.19(b)) and Proposed New § 571.14.
Branch Office Application—Loyola Federal Savings & Loan Asociation, Baltimore, Md.
Service Corporation Activity Application—Clearwater Federal Savings & Loan Association, Clearwater, Fla.

No. 209, January 11, 1979.

[S-81-79 Filed 1-11-79; 4:00 pm]

[8010-01-M]

15

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of January 15, 1979, in Room 825, 500 North Capitol Street, Washington, D.C.

An open meeting will be held on Monday, January 15, 1979, at 10 a.m. and will be followed by a closed meeting.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A), and (10) and 17 CFR 200.402(a) (8), (9)(i), and (10).

Chairman Williams and Commissioners Loomis, Evans, Pollack, and Karmel determined to hold the aforesaid meeting in closed session.

The subject matter of the closed meeting scheduled for Monday, January 15, 1979, after the open meeting will be:

Access to investigative files by Federal, State or self-regulatory authorities.
Formal orders of investigation.
Freedom of Information Act appeals.
Settlement of injunctive action.
Institution of administrative proceedings of an enforcement nature.
Report of Investigation.
Litigation matters.
Institution of injunctive action.
Opinion.

The subject matter of the open meeting scheduled for Tuesday, January 16, 1979, at 10 a.m., will be:

1. The Commission will consider what response to make to the Office of Management and Budget's request for its comments concerning S.2 (the "Sunset Act of 1978"), which is designed to improve Congressional oversight of federal programs by providing, among other things, that the budget authority for such programs will terminate unless a "sunset" review is completed once every ten years. For further information, please contact Alan Rosenblat at (202) 755-1198.

2. The Commission will consider whether to issue a notice of the filing of an application for exemption from several provisions of the Investment Company Act of 1940 ("Act") by MFS Variable Account ("MFS"), a unit investment trust registered under the Act, and Nationwide Life Insurance Company, its sponsor-depositor (collectively "Applicants"). Applicants have requested, pursuant to Section 6(c) of the Act, exemptions from the definition of "sales load" in Section 2(a)(35) of the Act and the related regulatory provisions of Sections 27(c)(2) and 26(a)(2)(C). Additionally, Applicants have requested exemptive relief from the definition of "redeemable security" in Section 2(a)(32) of the Act and the related regulatory provisions of Sections 22(c), 27(c)(1), and 27(d) of the Act and Rule 22c-1. Finally, Applicants request approval of certain offers of exchange pursuant to Section 11 of the Act. For further information please contact Laura A. Boughan at (202) 755-0237.

3. The Commission will consider an application filed by Fidelity Government Securities, Ltd. (a Nebraska Limited Partnership), registered under the Investment Company Act of 1940 ("Act") as an open-end diversified, management investment company, and Fidelity Management and Research Company, the Fund's investment adviser, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting the Fund and its general partners from the provisions of Section 2(a)(19) of the Act to the extent necessary to permit the Fund to operate as a limited partnership. For further information, please contact Glen A. Payne at (202) 755-1739.

FOR FURTHER INFORMATION, PLEASE CONTACT:

George G. Yearsich at (202) 755-1100.

JANUARY 11, 1979.

[S-69-79 Filed 1-11-79; 12:45 pm]

[8120-01-M]

16

[Meeting No. 1207]

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 9:30 a.m., c.s.t., Thursday, January 18, 1979.

PLACE: Jaycee Civic Center, 2701 Park Avenue, Paducah, Ky.

STATUS: Open.

MATTERS FOR DISCUSSION: Changes in arrangements for sale of interruptible power to large industrial customers.

MATTERS FOR ACTION:

B—CONSULTING AND PERSONAL SERVICE CONTRACTS

1. Renewal of consulting contract with Dr. John Otis Brew, Cambridge, Massachusetts, for advice and assistance in connection with archaeological assessments, requested by the Division of Water Management.

2. Renewal of consulting contract with Dr. Robert Lloyd Stephenson, Columbia, South Carolina, for advice and assistance in connection with archaeological assessments, requested by the Division of Water Management.

3. Renewal of consulting contract with Dr. Stuart Struever, Evanston, Illinois, for advice and assistance in connection with archaeological assessments, requested by the Division of Water Management.

4. Extension and amendment of personal service contract with Arthur Andersen & Co., Atlanta, Georgia, for advice and assistance in connection with TVA's Materials Management System, requested by the Office of Planning, Budget, and Systems.

C—PURCHASE AWARDS

1. Req. No. 824076—Air filtration units for Yellow Creek Nuclear Plant.

2. Req. No. 823481—Fire alarm system for the Hartsville and Phipps Bend Nuclear Plants.

F—POWER ITEMS

1. Application for renewal of Access Permit No. 2748 for restricted isotope separation data.

2. Lease and amendatory agreement with the city of Bristol, Tennessee—South Holston Hydro Plant-Bluff City 69-kV line and certain facilities at the Bluff City 161-kV Substation.

G—REAL PROPERTY TRANSACTIONS

1. Grant of permanent easement to the Tennessee Department of Transportation for public road right of way, affecting approximately 12.3 acres of TVA land in Oliver Springs, Tennessee—Tract XTOSFP-5H.

2. Modification of 40-year easement for a farmers/flea market previously granted to Mountain Valley Economic Opportunity Authority affecting a portion of Norris Reservoir land in Campbell County, Tennessee, to permit development of a mine safety training and education center—Tract XTNR-99FFM.

3. Filing of condemnation suits.

H—UNCLASSIFIED

1. Agreement with Electric Power Research Institute covering arrangements for development of a program to improve pipe designs in nuclear power plants.

Dated: January 11, 1979.

CONTACT PERSON FOR MORE INFORMATION:

Lee C. Sheppeard, Acting Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-566-1401.

[S-80-79 Filed 1-11-79; 3:56 pm]

federal register

MONDAY, JANUARY 15, 1979
PART II



DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

■

REAL ESTATE ACTIVITIES

Procedures; Final Rule

[3710-08-M]

Title 32—National Defense

CHAPTER V—DEPARTMENT OF THE ARMY

[EP 405-1-2]

PART 644—REAL ESTATE HANDBOOK

Procedures Relating to Acquisition, Management and Disposal of Lands

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final Rule.

SUMMARY: This handbook describes existing procedures pertinent to the real estate activities of the Corps of Engineers as they relate to the acquisition, management and disposal of lands for the Department of the Army (military and civil works), Department of the Air Force, Department of Energy, National Aeronautics and Space Administration, and other Federal agencies as required. It also sets forth the procedures to be followed for the administration of the Homeowners Assistance Program of the Department of Defense. Since this handbook is designed to replace existing Engineer Regulations through the development of a comprehensive Engineer Pamphlet, with a flexible amendment method, it will be published in increments as they are prepared in the new format.

EFFECTIVE DATE: January 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Leslie L. Pitchford, Jr., Chief, Programs Division, Real Estate Directorate, Office of the Chief of Engineers, Washington, DC 20314 (202-693-6285).

SUPPLEMENTARY INFORMATION: Since this handbook provides only procedural guidance to personnel of the Office of the Chief of Engineers and Corps of Engineers field operating agencies having real estate responsibilities, notice of proposed rulemaking and the procedures thereto are considered unnecessary.

NOTE.—The Chief of Engineers has determined that this rule does not contain a major proposal requireing preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107 (Statutory Authority Pub. L. 90-483).

Dated: December 11, 1978.

THORWALD R. PETERSON,
Colonel, Corps of Engineers, Executive Director, Engineer Staff.

In consideration of the above, 32 CFR is amended by adding a new Part 644, the first increment of which is as follows:

PART 644—REAL ESTATE HANDBOOK

Subpart A—Project Planning

Sec.

644.1 Preface.

CIVIL WORKS

644.2 General.
644.3 Navigation Projects.
644.4 Reservoir Projects.
644.5 Mineral Acquisition Practices.
644.6 Feasibility Reports and Design Memoranda.
644.7 Acquisition Lines.
644.8 Planning and Scheduling Real Estate Activities.

MILITARY (ARMY AND AIR FORCE) AND OTHER FEDERAL AGENCIES

644.21 General.
644.22 Site Selection.
644.23 Real Estate Planning Documents.
644.24 Acquisition by Transfer from other Government Departments or Agencies (except Public Domain).
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AUTHORITY: §§ 644.1 through 644.104 issued under 5 U.S.C. 301; 10 U.S.C. 3012. §§ 644.181 through 644.242 issued under 42 U.S.C. 3374.

Subpart A—Project Planning

§ 644.1 Preface.

Subpart A sets out basic procedures to be followed in planning and scheduling for the acquisition of lands in connection with Military and Civil Works projects. It is not intended to be taken as absolute, without modification, but more as a guide to insure all aspects involved and potential problems are fully considered in planning for the acquisition of additional lands. Proper planning in the initial stages of any project can and should eliminate unnecessary delays during the acquisition phase.

CIVIL WORKS

§ 644.2 General.

(a) *Purpose.* Sections 644.2 through 644.8 describe the authorities and procedures of the Corps of Engineers relating to real estate planning and project authorization for the acquisition of land and interests therein for all water resource projects.

(b) *Applicability.* These sections are applicable to all Division and District Engineers having civil works real estate responsibilities.

(c) *River and Harbor and Flood Control Projects*—(1) *River and Harbor Projects.* The Act of Congress approved 24 April 1888 (33 U.S.C. 591) authorizes acquisition of land for river and harbor purposes. These include the construction, operation, maintenance and improvement of both natural and artificial waterways, the construction of locks and dams, dikes, bulkheads, jetties, revetment and other bank protection works, and spoil disposal dikes and retaining structures for construction and maintenance. Unless otherwise specified by Congress, local interests furnish, free of cost to the United States, all lands, easements and rights-of-way required for initial construction, operation and subsequent maintenance. A cash contribution may also be required if enhancement of land values results from disposal of spoil dredged from project areas (ER 1150-2-301 and EM 1120-2-101).

(2) *Flood Control Projects.* The Act of Congress approved 1 March 1917 (33 U.S.C. 701) authorizes acquisition of land for flood control purposes, and Section 2 of the Act of Congress approved 28 June 1938, as amended (33 U.S.C. 701c-1), authorizes the acquisition of land and interests therein for dam and reservoir projects, channel improvements, and rectification projects for flood control at Federal expense. Dam, reservoir and lake projects are generally constructed entirely at the expense of the United States and are maintained and operated with the use of Federal funds. Local interests are not required to furnish lands, easements and rights-of-way for dam and reservoir projects, unless specifically authorized by law for small reservoirs which provide localized flood protection (EM 1120-2-101). For local flood protection projects, except channel improvement or channel rectification projects authorized by the Flood Control Acts of 1936, 1937 and 1938, local interests must provide, without cost to the United States, all necessary lands, easements, and rights-of-way. They must also hold and save the United States free from damages due to the construction, operation and maintenance of the project, except where such damages are due to the fault or negligence of the United States or its contractors, and maintain and operate all the works after completion, in accordance with regulations prescribed by the Secretary of the Army. Channel improvement and channel rectification projects authorized by the Acts of 1936, 1937 and 1938 are built entirely at Federal expense and no local cooperation is required. Exceptions to these rules are provided by law in the case of certain specific projects such as hurricane protection, shore protection, beach erosion control or other purposes. As in river and harbor projects, a cash contribution may also be required if enhancement of land values results from disposal of spoil dredged from project areas (ER 1150-2-301 and EM 1120-2-101).

(d) *The Navigational Servitude.* As a general rule the United States does not acquire interests in real estate which it already possesses or over which jurisdiction is or can be legally exercised. Irrespective of the ownership of the banks and bed of a stream below ordinary high water mark, and irrespective of western water rights under the prior appropriation doctrine, no further Federal interest is required for navigation projects in navigable streams below the ordinary high water limit. It is required, therefore, that the acquisition plan consider the extent of the navigational servitude.

(1) ER 1165-2-302 contains the practice and procedures regarding navigation.

(2) The navigational servitude affects abutting uplands, in that the special site value attributable to their location near a navigable stream is noncompensable. However, this has been partially changed by Section 111 of Pub. L. 91-611. In all cases where real property is acquired by the United States for public use in connection with any improvements of rivers, harbors, canals or waterways of the United States, the compensation to be paid shall be the fair market value of such real property based upon all uses to which such real property may reasonably be put, including its highest and best use, any of which uses may be dependent upon access to or utilization of such navigable waters. In cases of partial acquisitions of real property, no depreciation in the value of any remaining real property shall be recognized, and no compensation shall be paid for any severance to the remaining real property which results from loss of or reduction of access from the remaining real property to the navigable waters because of the acquisition of real property or the purposes for which the real property is acquired.

(3) Injury to private property within or abutting non-navigable streams is compensable if inflicted in the course of an exercise of the navigation power limited to the navigable mainstream. *U.S.* v. *Kansas City Life Ins. Co.*, 339 U.S. 799 (1950), *U.S.* v *Cress*, 243 U.S. 316 (1917).

(e) *Buildings.* Buildings for human occupancy, as well as other structures which would interfere with the operation of the project, or which would be substantially damaged by inundation, are prohibited below the guide acquisition line unless otherwise specifically approved by the Chief of Engineers.

(f) *Estates.* Standard estates for acquisition of land or interests therein are contained in Subpart C. Nonstandard estates should be submitted to HQDA (DAEN-REA-P) WASH DC 20314 for approval.

§ 644.3 Navigation Projects.

(a) *Land to be Acquired in Fee.* All lands necessary for permanent structures, construction areas, public access areas and fish and wildlife purposes will be acquired in fee. No interests need be acquired in areas subject to

the Government's right of navigational servitude. Spoil disposal areas may be acquired in fee upon approval of HQDA (DAEN-REA-P).

(b) *Lands Over Which Easements are to be Acquired.* (1) Permanent easements are required for channel improvements, navigation pools, navigation aids, and spoil disposal areas for future maintenance. Requirements for navigation aids should be coordinated by the District Engineer with the local Coast Guard District Commander.

(2) Temporary easements may be acquired for temporary disposal of spoil, and temporary construction and borrow areas.

(3) In navigation-only projects, the right to permanently flood should be acquired in all lands located within the navigation pool and the right to occasionally flood should be acquired in lands above the pool. However, when the area to be occasionally flooded above the navigation pool consists of a narrow band of land, the right to permanently flood may be taken therein, to avoid acquisition of two different estates from the same ownership, and/or to reduce overall costs of acquisition.

§ 644.4 Reservoir Projects.

(a) *Joint Land Acquisition Policy for Reservoir Projects.* The joint policies of the Department of the Interior and the Department of the Army, governing the acquisition of land for reservoir projects, are published in the FEDERAL REGISTER, dated February 22, 1962, Volume 27, page 1734. On July 2, 1966 the Joint Policy was again published in 31 F.R. 9108 as follows:

A joint policy statement of the Department of the Interior and the Department of the Army was inadvertently issued as a Notice in 27 F.R. 1734. Publication should have been made as a final rule replacing regulations then appearing in 43 CFR Part 8. The policy as it appears in 27 F.R. 1734 has been the policy of the Department of the Interior and the Department of the Army since its publication as a Notice and is now codified as set forth below.

JOINT POLICIES OF THE DEPARTMENTS OF THE INTERIOR AND OF THE ARMY RELATIVE TO RESERVOIR PROJECT LANDS

Sec.
8.0 Acquisition of lands for reservoir projects.
8.1 Lands for reservoir construction and operation.
8.2 Additional lands for correlative purposes.
8.3 Easements.
8.4 Blocking out.
8.5 Mineral rights.
8.6 Buildings.

AUTHORITY: The provisions of this Part 8 issued under Sec. 7, 32 Stat. 389, sec. 14, 53 Stat. 1197; 43 U.S.C. 421, 389.

8.0 *Acquisition of lands for reservoir projects.* Insofar as permitted by law, it is the policy of the Departments of the Interior and of the Army to acquire, as a part of reservoir project construction, adequate interest in lands necessary for the realization of optimum values for all purposes including additional land areas to assure full realization of optimum present and future outdoor recreational and fish and wildlife potentials of each reservoir.

8.1 *Lands for reservoir construction and operation.* The fee title will be acquired to the following:

(a) Lands necessary for permanent structures.

(b) Lands below the maximum flowage line of the reservoir including lands below a selected freeboard where necessary to safeguard against the effects of saturation, wave action, and bank erosion and to permit induced surcharge operation.

(c) Lands needed to provide for public access to the maximum flowage line as described in paragraph 1b, or for operation and maintenance of the project.

8.2 *Additional lands for correlative purposes.* The fee title will be acquired for the following:

(a) Such lands as are needed to meet present and future requirements for fish and wildlife as determined pursuant to the Fish and Wildlife Coordination Act.

(b) Such lands as are needed to meet present and future public requirements for outdoor recreation, as may be authorized by Congress.

8.3 *Easements.* Easements in lieu of fee title may be taken only for lands that meet all of the following conditions:

(a) Lands lying above the storage pool.

(b) Lands in remote portions of the project area.

(c) Lands determined to be of no substantial value for protection or enhancement of fish and wildlife resources, or for public outdoor recreation.

(d) It is to the financial advantage of the Government to take easements in lieu of fee title.

8.4 *Blocking out.* Blocking out will be accomplished in accordance with sound real estate practices, for example, on minor sectional subdivision lines; and normally, land will not be acquired to avoid severance damage if the owner will waive such damage.

8.5 *Mineral rights.* Mineral, oil and gas rights will not be acquired except where the development thereof would interfere with project purposes, but mineral rights not acquired will be subordinated to the Government's right to regulate their development in a manner that will not interfere with the primary purposes of the project, including public access.

8.6 *Buildings.* Buildings for human occupancy as well as other structures which would interfere with the operation of the project for any project purpose will be prohibited on reservoir project lands.

(b) *Application of Joint Policy by Corps of Engineers.* In order to assure that the water and land areas of reservoirs constructed by the Corps are available to the public, the lands which provide access along the shore of the reservoir will be supplemented at selected locations for concentrated public use. Where projects have either recreation or fish and wildlife, or both, as project purposes, additional lands will be acquired as set out in the authorization and specified in design memoranda. The policy contemplates that the United States own in fee a continuous area of land around the reservoir above the water level to insure ready access along the shore. However, certain exceptions have been adopted, as set forth hereinafter. Under the Joint Policy the Corps will take an adequate interest in lands, including areas required for public access, to accomplish all of the authorized purposes of the project and thereby obtain maximum public benefits therefrom. The statements in the policy which define the land interests to be acquired in particular areas are guidelines in application of policy.

(1) *Land to be Acquired in Fee.* (i) Lands necessary for the dam site, construction areas and permanent structures.

(ii) The lands below a guide contour line (guide acquisition line) established with a reasonable freeboard allowance above the top pool elevation for storing water for flood control, navigation, power, irrigation, and other purposes, referred to in this paragraph as the "full pool" elevation. In nonurban areas generally, this freeboard allowance will be established to include allowances for induced surcharge operations plus a reasonable additional freeboard to provide for adverse effects of saturation, wave action and bank erosion. Factors such as estimated frequency of occurrence, probable accuracy of estimates, and relocation costs, will be taken into consideration. Where this freeboard does not provide a minimum of 300 feet horizontally from the conservation pool, defined as the top of all planned storage not devoted exclusively to flood control, then the guide acquisition line will be increased to that extent. In the vicinity of urban communities or other areas of highly concentrated developments, the total freeboard allowance between the full pool elevation and the acquisition line may be greater than prescribed for nonurban areas generally, and shall be sufficient to assure that major hazards to life or unusually severe property damages would not result from floods up to the magnitude of the standard project flood. In such circumstances, however, consideration may be given to easements rather than fee acquisition for select sections if found to be in the public interest. However, when the project design provides a high level spillway, the crest of which for economy of construction is substantially higher than the storage elevation required to regulate the reservoir design flood, the upper level of fee acquisition will normally be at least equal to the top elevation of spillway gates or crest elevation of ungated spillway, and may exceed this elevation if neces-

sary to conform with other criteria prescribed herein.

(iii) Lands to be acquired for public use, being those reflected in the Recreation Resources Appendix of the Phase I General Design Memorandum (ER 1120-2-400). The Phase I General Design Memorandum is required to be prepared and submitted for approval prior to submission of the Real Estate Design Memorandum.

(iv) Lands required for operation and maintenance of the project for:

(A) Frequently used operational areas.

(B) Clearing and disposition of debris.

(C) Maintenance, repair, and restoration.

(D) Anticipated erosion.

(E) Safeguarding public health, and malaria and mosquito control.

(F) Sanitation.

(v) Lands specifically authorized by the Congress for recreation and fish and wildlife purpose as defined by the Federal Water Project Recreation Act (Pub. L. 89-72) and Fish and Wildlife Coordination Act of 1958 (Pub. L. 85-624, 16. U.S.C. 661 et seq).

(A) All lands to be acquired for fish and wildlife purposes, either mitigation enhancement lands or estates therein required for other project purposes, will be presented in such a way as to distinguish clearly all such lands under each of the separate authorities involved. Specific guidance on fish and wildlife resources is contained in ER 1120-2-400 and ER 1120-2-404.

(B) The purpose of Pub. L. 89-72 is to provide a uniform policy with respect to recreation and fish and wildlife benefits and costs of Federal multiple-purpose water resource projects, and for other purposes.

(*1*) Pub. L. 89-72, as amended by Section 77 of Pub. L. 93-251, does, however, create a unique provision relating to local participation in the recreation and fish and wildlife developments in water resource projects. Provisions of that Act, as amended, must be adhered to and contracts for administration of project lands and cost-sharing shall follow the amendments contained in Section 77 of Pub. L. 93-251.

(*2*) Section 3(b) of Pub. L. 89-72 further provides that, notwithstanding the absence of an indication of intent as specified above, lands may be provided in project planning which would preserve the recreation and fish and wildlife potential of the project for *subsequent* development by local interests. The act prescribes that local interests must within 10 years after initial operation of the project enter into agreements specified above. In the event such agreements are not obtained, the proposed facilities cannot be constructed and the Corps may utilize the lands acquired for any lawful purpose within the Corps' jurisdiction or may offer said land for sale to its immediate prior owner or his immediate heirs at its appraised fair market value at the time of disposal. In the event that an agreement with the prior owner or his heirs cannot be reached in 90 days, disposal of the property will ensue pursuant to usual disposal procedures.

(*3*) The provisions of Pub. L. 89-72, as amended, are construed to apply to planning for projects authorized in 1965 or thereafter. Accordingly, all planning for future projects must be coordinated with local interests as defined in the law and all design memoranda relating to land acquisition or development of recreation or fish and wildlife areas must clearly set forth the potential of the project for such development and the intent of local interests in fulfilling the requirements of this law.

(*4*) Pub. L. 89-72, as amended, does not impose a requirement for local participation in all recreation and fish and wildlife areas. Development of recreation areas and planning for fish and wildlife areas will be in accordance with the guidelines set forth in this Chapter and related regulations.

(vi) Lands for resource preservation and/or enhancement in fulfillment of the National Environmental Policy Act of 1969 (Pub. L. 91-190, 83 Stat. 852) and Executive Order 11514 will be those approved in the authorizing document and/or those approved in the Recreation Resources Appendix of the General Design memorandum.

(vii) Uneconomic remnants required to be purchased in fee under Section 301(9) of Pub. L. 91-646.

(viii) Recommendations may be made in the Real Estate Design Memorandum to eliminate lands from acquisition located within the approved guide acquisition line but above the guide contour line which are highly developed or devoted to public uses such as parks, golf courses, cemeteries, etc. Also, where for reasons of steep terrain, presence of highways and railroads, severe severance, or for other reasons, sound real estate practice indicates requirement for some adjustments in the area above the guide contour line, recommendations for such adjustments will be included in the real estate design memorandum, or will be subsequently submitted with proposed final real property acquisition lines, for approval of the Division Engineer in accordance with § 644.7.

(ix) Lands which will be covered by any sediment delta that is expected to form as the result of aggradation of streams draining into the reservoir. The estimate of this area shall be based upon the probable sediment inflow for a period at least equal to the economic life of the project.

(2) *Lands Over Which Easements are to be Acquired.* (i) Lands in reservoir areas of flood-control-only projects, which do not provide conservation pools, except as required for public access.

(ii) Lands required for a relatively short time for temporary structures or for use during the construction period only.

(iii) The Joint Policy of 1962 provides that flowage easements *may* be acquired in reservoir projects if *all* four conditions of Section 8-3 of the Joint Policy are met. For the purposes of land acquisition, to distinguish between fee and flowage easement "remote portions of the project area" as referred to in Section 8-3 of the Joint Policy are defined as those lands lying upstream from the conservation pool (the top elevation of all storage other than that devoted exclusively to flood control use) on the main stream and all significant tributaries thereof.

(iv) Lands downstream from the dam and required only for operational purposes.

(v) In flood control projects which do not have conservation pools, the right to occasionally flood should be acquired in all lands, except that the right to permanently flood should be acquired in those lands which may be subjected to permanent flooding, as in the case of a trash pool.

(3) *Levees in Lieu of Acquisition.* Where construction of levees or flood walls and necessary associated facilities for protection of lands and properties located within potential flowage limits of a reservoir is proposed in lieu of acquisition of fee title or easements over such properties, the protective structures shall meet the following minimum functional requirements:

(i) In urban communities or other areas of highly concentrated developments where overtopping of levees would result in major hazards to life or unusually severe property damage under anticipated future conditions, levee grades and designs shall be adequate to withstand without failure the occurrence of the standard project flood, assuming the reservoir is filled to highest level that is reasonably likely to prevail at the beginning of such a flood.

(ii) Under circumstances where it can be reasonably shown that possible overtopping of protective levees or flood walls as proposed would not result in unusual hazards to life or major property damage, levee grades shall be as high as economically practicable in consideration of apparent risks and costs involved, and flowage easements or other appropriate assurances from local interests shall be obtained insofar as necessary to protect the Government in the event the protective structures are overtopped.

§ 644.5 Mineral Acquisition Practices.

(a) *Procedure.* The procedure of the Corps of Engineers in acquiring the necessary land or interests therein to accommodate projects authorized by the Congress is to permit the reservation of the minerals in the land, unless the reservation is inimical to the operation of the project. In all cases wherein a reservation is permitted, the mineral interests are subordinated to the primary project purposes, including public access and preservation of environmental quality.

(b) *General.* (1) The multiplicity of ownerships in mineral interests, the variety of minerals and the different methods of mineral exploration, recovery and production make it impracticable to define in advance specific guidelines concerning the reservation of mineral interests and their subordination to primary project purposes in any given project. The initial planning documents, real estate design memoranda, and master plans will fully discuss and consider the extent of acquisition and/or reservation of mineral interests.

(2) Generally fee title to all subsurface interests will be acquired in areas required for all structures, areas required for project operations and public use including access, and in areas where the value of the subsurface interests is nominal. Reservation of coal, oil, gas and other minerals will be permitted whenever any aspect of mineral development will not interfere with project purposes. The reservation of mineral rights will be predicated upon the Government's right to so regulate their development as to eliminate any interference with project purposes and to minimize any adverse impact on the environment including aesthetic values.

(c) *Reservation of Minerals.* (1) When it has been determined that the reservation of minerals will not interfere with the purposes of the project, the minerals will be subordinated in accordance with the following guidelines:

(i) The estate providing for the subordination will not be utilized unless approved by HQDA (DAEN-REA).

(ii) Any subordination agreement, together with additional regulations incorporated by reference, must clearly define:

(A) The rights and obligations of the Government and the mineral owner, operator, and/or lessee.

(B) The control to be exercised over site development for mining purposes.

(C) Required land reclamation or restoration.

(D) Restrictions against pollution and degradation of project environment and aesthetics.

(E) Provisions for compliance inspection by the Government of all site development and mining activities over which the Government has control under (B) above.

(2) After execution of a subordination agreement as provided above, the District Engineer will develop a program for the surveillance of mineral activities at each project.

(3) The representatives of the Division and District Engineers are to be fully informed concerning the rights and responsibilities of the Government and the mineral owner and/or operator under the terms of the estates acquired for the subordination of minerals, and will periodically inspect all mining activities to insure compliance with the terms of the subordination agreement and any plan incorporated by reference into such agreement.

(d) *Off-Project Mineral Activity.* In connection with all drainage basins, where there is present or potential mineral activity upstream from a project or nearby lands outside the project limits, the District Engineer will:

(1) Establish and maintain liaison with Federal and State agencies having responsibility for the regulation of mineral activities and the control of environment in order to prevent adverse effects of mining on the project.

(2) Institute a system for monitoring adverse effects on the project such as sedimentation and acid drainage.

(3) Take steps to insure that Corps personnel in charge of the project are familiar with State and Federal laws governing the control of mineral recovery and the environment, as well as the Federal or State agencies responsible for the enforcement of such laws.

(4) Division and District Engineers are requested to use the Refuse Act of 1899 and any other legal remedies that may be appropriate in a particular situation in order to protect the interests of the United States and preserve the integrity of the project.

§ 644.6 Feasibility Reports and Design Memoranda.

(a) *Feasibility Investigations and Reports.* Survey investigations and reports are the studies and reports, specifically authorized by Congress and made by Division and District Engineers as assigned by the Chief of Engineers, to determine the scope, justification, and degree of Federal interest in protection and development of harbors, waterways, shores and beaches, and river basins. For water resource projects the reports include determination of needs of alternative plans of protection and development to be considered for recommendation to Congress for authorization as Federal projects. Survey reports should clearly specify real estate requirements, both immediate and prospective, and the responsibilities of Federal and non-Federal agencies relative thereto. The real estate estimates in the reports should be recent enough to be meaningful for the purpose intended. Documentation regarding the estimates, such as when and by whom made, nature and extent of field investigation, search for comparable sales and similar factual material, shall be maintained.

(b) *Phase I and Phase II General Design Memoranda.* (1) The General Design Memorandum (GDM) is a report on an authorized project. Its form and content are set forth in ER 1110-2-1150. It includes a real estate section, which consists of a general discussion of real estate requirements for the project, recommendations as to estates to be acquired, a gross appraisal of the necessary land and interests therein, and other features considered desirable to present all major real estate problems and to recommend solutions. Subject to the availability of data, minerals in the project area should be covered in the manner set forth in § 644.5. Detailed sales data are not necessary, but may be included if it is anticipated that recommendations will be made for early acquisition of interior tracts.

(2) Real Estate personnel will prepare the real estate section of the GDM. The requirements for current real estate estimates and necessary documentation thereof contained in § 644.6(a) are also applicable to this subparagraph.

(c) *Real Estate Design Memoranda.* (1) Following approval of the Phase I GDM, a Real Estate Design Memorandum (REDM) will be prepared by the Division or District Engineer. Approval of the REDM shall be in accordance with ER 1110-2-1150, para 21b(2)(j). No land shall be acquired for the project without approval of the initial REDM except (i) in the case of an advance land acquisition situation, (ii) acquisition for local cooperation project, or (iii) when a letter-type REDM has been submitted. The REDM will include the following in the order set forth below:

(A) A statement that this REDM is tentative in nature for planning purposes only and that both the final real property acquisition lines and the estimate of value are subject to change even after approval of this REDM.

(B) Project authorization, designation, location and date of approval of GDM Phase I, including the Recreation Resources Appendix (App A, ER 1110-2-1150).

(C) General description of the area and estimated total acreage. The total acreage will be broken down as to fee and easement areas. The fee will be further broken down to indicate, separately, the estimated acreage required

for the various authorized project purposes.

(D) If any Government-owned land is within the area, indicate the Government's estate, degree of interest required for project purposes, and views of the local representative of the controlling agency as to use for project purposes (see Act of July 26, 1956 (70 Stat. 656) with respect to national forest land).

(E) Appraisal information containing a general statement as to character, present use and highest and best use of the land, local economic conditions which may affect the trend of real estate values in the community and the gross estimate of value for the area to be acquired under the REDM. The gross appraisal on which this estimate is based should be forwarded concurrently to HQDA (DAEN-REE) WASH DC 20314.

(F) Information necessary to ascertain responsibility under PL 91-646 including but not limited to the following:

(*1*) The number of persons, farms and businesses to be displaced.

(*2*) An estimate of all costs, including contingencies to be incurred as a result of compliance with Pub. L. 91-646. Part 641 of this Subchapter sets out the items to be considered in estimating these costs.

(*3*) Information regarding the availability of replacement housing.

(G) Estimated cost to the United States of lands, easements, and rights-of-way necessary for acquisition by the United States for:

(*1*) Access roads to project area. A statement will be included as to whether existing public roads will be utilized within the purview of 33 U.S.C. 701r-1 or new rights-of-way for access roads will be acquired, with the estimated cost of such new rights-of-way. The proposed plan of access during construction will be fully described.

(*2*) Relocation of highways, roads, railroads, pipelines, and utilities (ER 1180-1-1, Section 73). Statement will be included as to whether the Government or the owner(s) will acquire new rights-of-way, if any, necessary for the various relocations.

(H) Number of structures and facilities which will come within the purview of Section 111 of the Act of Congress approved July 3, 1958 (Pub. L. 85-500), and a preliminary estimate of Government costs (ER 1180-1-1, Section 73).

(I) A study, in accordance with § 644.5, of present or anticipated mineral activity in the vicinity of the project which may affect the operation thereof. A recommendation including cost estimate, if applicable, regarding the acquisition of the minerals should also be included in this section of the REDM.

(J) A discussion of standing timber and other vegetative cover in proposed recreation areas and other areas above the conservation pool which have recreation or scenic value. Recommendations should be made as to the significance of such timber and cover and as to whether reservation of standing timber should be permitted in the various parts of the fee area.

(K) A map(s) showing the area which is the subject of the REDM, indicating the acquisition guide line, contour line, the tentative blocked out fee line, multipurpose pool, and lands in which the acquisition of easements is recommended. The map(s) will show, where appropriate, the dam site, construction area, borrow areas, spoil areas, public access areas, fish and wildlife areas, and recreation areas. In addition, the appropriate map(s) will have outlined thereon the items of construction or major project features. Access roads and railroad rights-of-way required for these areas will also be shown. Chapter 3 of EP 405-1-2 relates to the preparation of maps. With respect to a project where it is planned to submit several REDMs covering portions of the project, the initial REDM will contain a map showing the entire project, with the information shown thereon as indicated above, insofar as this information covering the entire project is then available. All subsequent REDMs will contain the same type of map, on which will be shown the area(s) on which REDMs have been previously submitted with each such area keyed to the number of its REDM. Maps shall be of sufficient scale to be legible and to permit ready interpretation of pertinent features.

(L) An aerial mosaic, if available, to provide a pictorial support to the rest of the report concerning involved problems.

(M) Discussion relating to the acquisition or relocation of towns and cemeteries within the project area (ER 1180-1-1, Section 73).

(N) A realistic estimate of administrative costs, giving due recognition to existing and foreseeable conditions. To assure direct relationship between costs and estimates, the breakdown of these estimates will conform to the prescribed acquisition activity cost items as set forth under Real Estate Schedule/Cost and Performance, ENG Form 4564, or any further breakdown which the District Engineer may consider desirable. Included as a minimum requirement will be: estimated administrative costs for mapping, surveying, and boundary monumentation, appraising, title evidence, negotiating and closing direct purchases, condemnation, and relocation assistance.

(O) Summary of project real estate costs, total all project real estate costs by category, i.e., land cost, improvements, severance, Pub. L. 91-646 costs, relocations, minerals, contingencies, administrative costs, etc.

(P) Schedule of acquisition.

(Q) Discussion and recommendations concerning the nonstandard estates proposed for acquisition and the real property boundary lines.

(R) The extent of the existing navigational servitude (ER 1165-2-302).

(S) The REDMs will be assigned a single basic number for each project; succeeding REDMs will be given alphabetical suffixes to the basic assigned number—for example, REDM Nos. 5, 5A, 5B, etc. Copies of the letter of transmittal and indorsements thereon will be inserted in the front of each copy of the REDM. A cover sheet will list chronologically all REDMs (including supplements thereto and brief letter-type memoranda) previously submitted, and will show dates submitted by the District Engineer and, if approved, dates of approval thereof.

(2) Upon approval of each REDM, the Division or District Engineer may, subject to the availability of funds, proceed with the acquisition of land and/or interests therein. The REDM, as approved, will constitute the overall real estate plan for acquisition of the area covered by the REDM. Whenever changes in the approved REDM are required, a supplementary REDM describing the proposed changes and setting forth the reasons therefor will be submitted. Approval of a supplemental REDM is required before acquisition can proceed in the area in which the changes are proposed.

(3) Prior to the approval of the REDM, Division and District Engineers should, subject to the availability of funds, proceed with preliminary real estate work, in the same manner as set out in § 644.30. No action will be taken to solicit an offer from a landowner for the purchase of his land until the acquisition has been approved and subject to availability of funds and compliance with the applicable provisions of Pub. L. 91-646.

(4) An REDM is not required for projects authorized by the Congress subject to the condition that local interests furnish without cost to the United States the necessary lands, easements, and rights-of-way. However, the GDM should include a statement enumerating the requirements of local cooperation, the name of the local interests proposing to fulfill said requirements, an estimate of land costs, and any other information pertinent thereto.

(5) Number and content of Real Estate Design Memorandum.

(i) With respect to reservoir projects involving an extensive real estate pro-

gram, it is considered preferable that more than one REDM be prepared so that each will cover a segment or group of segments, making up the total project, consistent with the planned schedule of acquisition.

(ii) For those projects, requiring two or more REDMs to cover the project area, each REDM will include all contiguous lands for each public access point and recreational site proposed within the area covered by that REDM. Noncontiguous areas planned for these purposes that are located beyond the limits of the REDM involved will be omitted therefrom. This procedure does not apply to areas authorized for fish and wildlife purposes. Lands authorized specifically for fish and wildlife purposes may be included either in a conventional REDM, along with other project lands or be submitted as a separate REDM, depending on convenience in preparation and size of the area. However, in either event, whenever practicable, the entire area proposed for this purpose should be covered in one REDM, as a unit.

(iii) For smaller projects, not involving an extensive real estate program, all real estate requirements, including those for public access, fish and wildlife, and recreation, may be covered in a single REDM.

(d) *Blocking Out.* The following are guidelines to be observed to the extent possible in preparing the REDM. These guidelines will be adhered to by the Division Engineer in his approval of the final real estate acquisition lines.

(1) Close blocking out will be accomplished in accordance with sound real estate practices.

(2) For land acquired in fee, the blocked out final real estate acquisition line will be established in such manner as to minimize costs and cause the least disruption in the use of the remainder of the ownership.

(3) Severance damages will be avoided to the extent possible consistent with real estate requirements for the project. In accordance with Section 301 of Pub. L. 91-646, if the acquisition of part of a tract will render the remainder an uneconomic unit, an offer must be made to purchase the entire tract.

(4) It is conceivable that, in certain instances, acquisition of an easement will result in an uneconomic remainder and this requires application of Section 301 of Pub. L. 91-646, as in paragraph (d)(3) of this section.

(5) A remnant without access need not be acquired if

(i) the owner desires to retain the property and releases the Government from damages for lack of access, and

(ii) the obtaining of such release in lieu of acquisition is concurred in, in writing, by the local road authority, and the local road authority is released from damages due to loss of access.

(6) For lands to be acquired in fee or easements, close tangent will be used, generally following the acquisition line.

(7) When small portions of additional properties, not otherwise needed for the project, are within the acquisition line, they may be omitted if to do so will not materially affect the operation and maintenance of the project as determined by operational elements.

§ 644.7 Acquisition lines.

(a) *Tentative Acquisition Lines.* As indicated in § 644.6(c)(1)(iii)(K), tentative acquisition lines are shown on maps which are part of the REDM. However, at that time, the lines will, to some extent, be irregular and located without full regard to their effect upon fringe tracts. It will, therefore, be necessary to establish final acquisition lines, in accordance with sound real estate practices. Accordingly, fringe tracts will not be acquired until the final acquisition lines are approved by the Division Engineer.

(b) *Submission.* As soon as possible after authority has been granted to acquire the land and/or interest therein, the District Engineer will complete appraisals covering the fringe tracts. Thereupon, a map showing proposed final acquistion lines will be submitted to the Division Engineer, accompanied by justification and reasons therefor. This submission may be for an entire project or by segments or units. However, if the final map is submitted on a segment or unit basis, each segment or unit must be complete in itself and not be dependent on another segment or unit not submitted for approval.

(c) *Approval.* The Division Engineer is authorized to approve final acquisition lines, but shall not delegate this responsibility to District Engineers. This authority is subject to the following:

(1) Except for the addition or deletion of individial ownerships, or portions thereof, on the basis of the criteria contained in § 644.6(d), approval of any changes in the overall plan will be in compliance with ER 1110-2-1150.

(2) Estates in individual tracts may be changed if consistent with the overall plan. Approval, however, will be required from HQDA (DAEN-REA-P) if the estates are non-standard.

§ 644.8 Planning and scheduling real estate activities.

(a) *Normal Scheduling.* (1) The objective of a planned program is to provide for the early acquistion of land to avoid enhancement in land prices and a minimum of inconvenience to the property owners. Also, it is essential that there be adequate planning of the land acquisition program to insure that there is no interference with unacquired properties as a result of construction activities.

(2) It is essential that adequate funds be programmed on ENG Form 2213, Advance Engineering and Design Planning Schedule (PB-2B), to proceed with real estate planning; preparation of Real Estate Design Memoranda; determination of final project boundaries; and preliminary real estate work to the point where land acquisition can be started as soon as construction funds become available.

(3) Surveys and boundary monumentation and/or marking shall be completed prior to acquistion.

(4) Funds will be programmed for acquisition of lands for the construction area and/or other areas initially required within the first year, and for acquisition of lands for the other features of the project as rapidly as necessary real estate data can be assembled. For projects with major impoundment features and with scheduled construction periods of more than two years, funds will be programmed at a uniform level so that total real estate requirements will be covered by accepted offers to sell or declarations of taking filed in court by the end of two-thirds of the overall construction period.

(b) *Public Information.* (1) The real estate activities of the Corps are extremely sensitive, since they disrupt the lives of individuals and take their homes, farms and businesses. Therefore, the importance of keeping landowners and others having an interest in the land informed of the land acquisition program is emphasized. In order to avoid false rumors and to permit the affected owners to formulate plans for the future, information concerning the land acquisition program, procedures with respect thereto, and the specific effect on the individual properties, will be furnished to the affected owners at the outset of the project.

(2) Section 302 of Pub. L. 86-645 (33 U.S.C. 597) is quoted, in part, for guidance:

> Within six months after the date that Congress authorizes construction of a water resource development project under the jurisdiction of the Secretary of the Army, the Corps of Engineers shall make reasonable effort to advise owners and occupants in and adjacent to the project area as to the probable timing for the acquisition of lands for the project and for incidental rights-of-way, relocations, and any other requirements affecting owners and occupants. Within a reasonable time after initial appropriations are made for land acquisition or construction, including relocations, the Corps of Engineers shall conduct public meetings at locations convenient to owners and tenants to be displaced by the project in order to advise them of the proposed plans for acquisition and to afford them an oppor-

tunity to comment. To carry out the provisions of this section, the Chief of Engineers shall issue regulations to provide, among other things, dissemination of the following information to those affected: (1) Factors considered in making the appraisals; (2) desire to purchase property without going to court; (3) legal right to submit to condemnation proceedings; (4) Payments for moving expenses or other losses not covered by appraised market value; (5) occupancy during construction; (6) removal of improvements; (7) payments required from occupants of Government-acquired land; (8) withdrawals by owners of deposits made in court by Government; and (9) use of land by owner when easement is acquired.

(3) Within a reasonable time after initial appropriations are made for land acquisition or construction, including relocations, Division and District Engineers will conduct meetings with landowners. The United States Senators of the state or states and Members of the House of Representatives of the district or districts in which the project is located should be invited to attend. Normally, the public meetings should be scheduled prior to the commencement of the land acquisition program. The agenda for the meetings will include not only the nine specific items listed in Section 302, Pub. L. 86-645, but all other items of a nature that will assist landowners and tenants in understanding all of the Corps' real estate procedures such as, but not limited to: Acquisition schedules, the type of land interests to be acquired under the Joint Policy, approximate acquisition lines, management of the project, etc. In addition to the foregoing, pamphlets containing this information and the information brochure explaining the benefits to landowners under Pub. L. 91-646 will be given wide distribution at approximately the same time the landowners meeting program is initiated, and copies will be furnished to the appropriate United States Senators and Members of the House of Representatives.

(4) Inquiries, comments of landowners and tenants, and problems developed at the landowners meetings should be recorded or, at least, a detailed written resume made. HQDA (DAEN-REA-P) should be informed as to the outcome of these meetings. Effective follow-up to supply any information not available at the meeting, or to consider any particular problems presented, is essential to realize the full advantage of the public relations program.

(5) The provisions of this paragraph are applicable to all water resource development projects, including all local cooperation projects for which real estate is to be acquired in whole or in part by local interests. Initial information as to such projects for which real estate acquisition is exclusively a local interest responsibility may be given, within six months after project authorization, by either the local interest or Federal Government, through the media best adaptable under the circumstances. Advice should be given as to the timing of acquisition of the lands and lesser interests, and also as to the extent to which acquisition will be accomplished by the local interests. After appropriations, the local interests should be encouraged to sponsor and conduct a landowners meeting with attendance by Corps of Engineers representatives. If there is a joint responsibility for real estate acquisition, the local interests should explain the scheduled requirement for possession of the lands involved and their acquisition procedures, and the Corps of Engineers representatives should explain the procedures followed when lands are condemned by the Federal Government on behalf of local interests, and the authority for each action.

(6) If local interests refuse to call a landowners meeting, the District Engineer should call such a meeting, to explain the general construction features of the project, to inform the landowners and tenants that local interests are obligated to acquire the necessary lands, to state that we cannot explain the exact procedures which will be followed by local interests, but to explain the procedures followed when lands are condemned by the Federal Government on behalf of local interests. If only a very few landowners and tenants are involved, local interests may hold their meeting in the District Engineer's office or at a location more convenient to the landowners and tenants. While this would not be a formal meeting, the same type of information would be furnished. Here, also the District Engineer should call such a meeting if local interests refuse to do so.

(7) To summarize, public (landowners) meetings are required by Section 302 of Pub. L. 86-645. This requirement applies to local cooperation projects as well as to the large Federal water resources development projects. The meetings will be held by Division/District Engineers, to comply with the law, if local interests refuse to call meetings at which information would normally be furnished jointly by the local interests and by the Corps of Engineers representatives.

(8) Real Estate personnel and the Public Affairs Officers of the Division and District Engineers should cooperate closely in planning vigorous public relations programs as contemplated in this paragraph and through the press, radio, and television.

(c) *Land Acquisition Funds for Land Acquisition in Advance of Project Construction.* (1) A Land Acquisition Fund in the amount of $2 million was established as a part of the appropriations contained in the Public Works for Water, Pollution Control, and Power Development and Atomic Energy Commission Appropriation Act, 1971 (Pub. L. 91-439). Comments of the House Appropriations Committee in establishing the Fund are contained in House Committee Report No. 91-1219, 91st Congress, 1st Session, as follows:

> New land acquisition fund. The committee has approved the budget proposal to allocate $2 million to establish a fund for land acquisition, in advance of project construction, to alleviate severe hardship cases and to avoid price escalation. The proposal has been approved with the understanding that prior committee approval will be obtained for initial purchases in each project area and that use of the fund shall be confined to those projects on which planning has progressed to the point that the damsite has been finalized, and it is known with certainty the lands to be acquired for the project.

This fund was increased to $3 million by the Public Works for Water and Power Development and Atomic Energy Commission Appropriation Act of 1973 (Pub. L. 92-405).

(2) *Applicability.* Expenditures from the Fund are applicable to *authorized* water resource development projects for which land acquisition is a Federal responsibility.

(3) *Guidelines for Utilization of the Fund for Advance Land Acquisitions.* (i) The Fund will be used to acquire private and non-Federal publicly-owned properties at authorized water resource development projects on which planning has progressed to the point that the damsite has been finalized and it is established with certainty that the individual properties will be required for the project.

(ii) Only those individual properties will be considered for acquisition where it can be shown that advance acquisition of the properties will alleviate severe hardship to the landowner and/or will avoid unusual land price escalation. Unusual price escalation cases involve those individually owned properties where it can be demonstrated that the land value will materially escalate, prior to commencement of the land acquisition program for the project from future appropriations for land acquisition or construction, because of imminent actions which will change the highest and best use of land, such as zoning actions, planned construction on the land and other changes in real estate market factors which will materially escalate land values. Normal land escalation occurring to all properties in general within a project will not be considered as a basis for acquisition. Hardship cases include, but are not necessarily limited to, cases involving the following:

(A) The landowner has a valid contract to purchase a replacement property and failure to dispose of his property inside the project will force him

to default the contract, forfeit his deposit, or otherwise lose the benefits of the contract, and other replacement property is not available within the same area under similar terms;

(B) The property owner is forced to relocate from the area due to his employment or other circumstances beyond his control, and the Government's project has so affected the sale of properties within the project area as to make a sale to another private party at a fair and reasonable price extremely difficult; and

(C) Illness of the owner or other members of his family, or other personal hardship makes his relocation from the area necessary and the Government's project has so affected the sale of properties within the project area as to make a sale to another private party at a fair and reasonable price extremely difficult.

(D) As indicated above, these examples are not intended to exclude other cases where, in the exercise of sound judgment, actual hardship is found to exist.

(iii) Individual tract ownerships recommended for advance acquisition by Division and District Engineers and approved by OCE will be acquired by direct purchase or through the filing of condemnation proceedings, in accordance with normal procedures.

(4) *Procedures.* Individual tract ownerships which Division and District Engineers consider are hardship cases or involve unusual price escalation, within the guidelines set forth in para (c)(3) above should be recommended to OCE for acquisition.

(i) Full justification must be submitted to HQDA (DAEN-CWB) WASH DC 20314 in support of the recommendation to acquire the individual ownerships.

(ii) If the recommendation is approved, action will be taken by OCE to obtain approval of the House and Senate Committees on Appropriations. Upon receipt of Committee approvals, the Division Engineer will be authorized to proceed with the acquisition action if sufficient funds are available from the Land Acquisition Fund.

(iii) Appropriate records will be maintained by District or Division Engineers of allocations made from the Fund which are used for approved acquisition cases. These funds will be accounted for under a designated account number.

(iv) When appropriations for land acquisition or construction of the Federal project are specifically made by the Congress, the initial allowance of funds to the project will be reduced by the amount previously allotted from the Land Acquisition Fund in order to replenish the Fund for use at other projects.

(d) *Acquisition for State or Local Interests—Resettlement Sites.* (1) Section 209 of Pub. L. 90-483 (82 Stat. 745) enacted 13 August 1968, provides that the Secretary of the Army may, prior to the approval of title by the Attorney General, acquire, enter upon, and take possession of lands or interests in lands by purchase, donation, condemnation or otherwise, whenever any State, or any agency or instrumentality of a State or local Government, or any nonprofit incorporated body organized or chartered under the law of the State, or any nonprofit association, shall undertake to secure any lands or interests therein as a site for the resettlement of families, individuals, and business concerns displaced by a river and harbor improvement, flood control or other duly authorized water resource project, and

(i) It is determined by the Secretary of the Army that the State or local interest is unable to acquire the necessary land, or unable to acquire it with sufficient promptness, and

(ii) The Governor of the State in which the site is located has requested such acquisition.

(2) *Cost of Acquisition.* The Act also provides that:

(i) All expenses of acquisition accomplished under the authority of the Act, including any award that may be made in a condemnation proceeding, the cost of title evidence, appraisals and any other costs incident to such acquisition, shall be paid by the State, agency, instrumentality or nonprofit body.

(ii) The State, agency, instrumentality or nonprofit body may repay such amount from any funds made available to it by any Federal department, agency, or instrumentality, other than the Department of the Army.

(iii) Pending such payment, the Secretary of the Army may expend from any funds appropriated for the project such sums as may be necessary to carry out Section 209, Pub. L. 90-483.

(iv) To secure such payment, the State, agency, instrumentality or nonprofit body may be required to execute a proper bond before acquisition is commenced.

(v) Any sums paid by a State, agency, instrumentality or nonprofit body under Section 209 shall be credited to the appropriation for the project.

(3) *Determinations Required Before Application of Section 209.* No acquisition by the Department of the Army may be undertaken under this section until the Secretary of the Army has determined, after consultation with appropriate Federal, State and local government agencies, that:

(i) The development of a site is necessary in order to alleviate hardships to displaced persons;

(ii) The location of the site is suitable for development in relation to present or potential sources of employment; and

(iii) A plan for development of the site has been approved by appropriate local government authorities in the area or community in which the site is located.

(4) *Action by District or Division Engineer.* When the District Engineer is of the opinion that Section 209 may be applicable to a given situation, after consultation with State and State agency officials, the Governor of the State should be advised of the pertinent provisions of the law and the assistance that can be rendered by the Secretary of the Army under the terms and conditions of the law at the request of the Governor. If planning towards resettlement is undertaken by a State, agency, instrumentality or nonprofit body, the District Engineer will keep advised of the progress of such local planning and will furnish guidelines and consultation to the local interests during development of the plan.

(5) *Implementation of the Plan of Resettlement.* When the final plan has been developed and approved by the appropriate Federal, State and local governmental agencies (which will include information showing that the site is necessary to alleviate hardships to displaced persons and suitable for development in relation to present or potential sources of employment), a showing has been made that the State is unable to acquire the necessary lands or interests therein or is unable to acquire the lands with sufficient promptness, the Governor has executed a request that the Secretary of the Army acquire the lands under the terms and conditions of the Act, and the State or agency of the State has executed a proper bond in an amount deemed necessary to cover total expenditures to be made by the Army for the land acquisition, the District Engineer should submit to HQDA (DAEN-REA-P) WASH DC 20314 a brief Real Estate Design Memorandum covering the land to be acquired under the plan. The REDM should be accompanied by the final approved plan and the information listed above in order that the Secretary may make the determinations as required by Section 209(b) of Pub. L. 90-483. No action will be taken by the District Engineer to acquire the land, proposed for acquisition in the plan and the REDM, until receipt of authority from DAEN-REA-P to proceed with the acquisition. A complete record will be maintained of all land and administrative costs incident to the acquisition as a basis for a request for reimbursement to the State and/or the State agency or agencies. Upon authoriza-

tion to the District Engineer to proceed with land acquisitions of the site, normal Corps land acquisitions procedures will be followed.

(6) *Conveyance of the Site to the State or State Agency or Agencies.* In accordance with Section 209(c) of Pub. L. 90-483, upon completion of the acquisition of the site, a proper deed will be submitted to HQDA (DAEN-REA-P) WASH DC 20314 for execution by the Secretary of the Army, for conveyance of the land to the State or State agency, as appropriate. Evidence must be submitted that the terms and conditions of the deed have the approval of the Governor and the agency to which conveyance is to be made. The deed will not be delivered until reimbursement has been made to the United States for the land and administrative costs expended by the District Engineer incident to the acquisition of the site.

MILITARY (ARMY AND AIR FORCE) AND OTHER FEDERAL AGENCIES

§ 644.21 General.

(a) *Purpose.* Sections 644.21 through 644.30 describe the procedures of the Corps of Engineers relating to real estate planning and project authorization for the acquisition of land and interests therein for military projects, for the Department of Energy (DOE), and for other Federal agencies as required.

(b) *Applicability.* Provisions of these sections are applicable to the Office of the Chief of Engineers and all Division and District Engineers having real estate responsibilities.

(c) *General Procedures.* (1) AR 405-10 and AFR 87-1 outline the policies of the Department of the Army and the Department of the Air Force, respectively, with respect to real estate acquisitions.

(2) The policies of the Department of Energy (DOE) with respect to acquisition of real estate are generally set forth in requests of that agency for preparation of real estate design memorandums.

(3) The purpose of the planning function is to establish a sound basis for the acquisition of land and interests therein in accordance with existing law and broad procedures of higher authority; to collect all necessary real estate data; to correlate and evaluate these data from the standpoint of establishing the necessity for the proposed acquisition; to establish that no Government-owned or Government-controlled lands are available for the intended use; to determine the required estate, in accordance with existing policies, sufficient to protect the interests of the Government; and in general, to prepare each project for submission to the head of the interested department or agency, or his designee, and, where necessary, to the Department of Defense and the Committees on Armed Services of the Senate and House of Representatives, for approval.

(4) In the preparation of Real Estate Planning Reports, or Real Estate Summaries, consideration will be given to the procedures and criteria expressed in the regulations cited herein.

§ 644.22 Site Selection.

When a requirement develops for a new installation or the extension of an existing installation, site selection will be the primary responsibility of the using service. A representative of the appropriate Division or District Engineer will participate in selection of sites for the Department of the Army and, upon request, in Department of the Air Force site selection and preliminary investigations. Commanders and site boards should be informed of any available lands, including marginal lands in civil works projects and available lands under the control of other departments and agencies, suitable for the desired purpose. The using service will request the Chief of Engineers or the appropriate Division or District Engineer to prepare a Real Estate Planning Report or Real Estate Summary, making reference to the prior Site Selection Report if one was prepared.

§ 644.23 Real Estate Planning Documents.

(a) *Real Estate Planning Reports.* (1) A Real Estate Planning Report (REPR), as shown in Figure 2-1 in EP 405-1-2, will be prepared by the Division or District Engineer for all major fee and easement projects other than Reserve Component projects and extinguishment of grazing privileges on Federal lands. The request for such REPR may be initiated by any command or echelon of the Army or Air Force (or by the Washington Headquarters or field operations offices of DOE for a Real Estate Design Memorandum). Certain items contained in Figure 2-1 (EP 405-1-2) relate only to Department of the Air Force land acquisition programs for runways and approach zones and are not applicable to other projects. Such items will be omitted from REPRs where not applicable. When forwarding the REPR, a copy of the Reviewing Appraiser Comment, concerning the estimated land values assigned therein, should be included as an inclosure to the transmittal letter.

(2) On Department of the Air Force projects where estimated cost is not in excess of $25,000, brief REPRs are to be prepared for issuance of directives by the approprate Air Force Regional Civil Engineer (AFRCE). Such reports need not be submitted to the Chief of Engineers except in those cases in which the major command submits a copy to Headquarters, USAF. This report should contain adequate information on the items listed in the following outline but need not be limited thereto:

(i) Requirement for the property.

(ii) Cost estimate of the property with indication of the method used in arriving at the estimate.

(iii) Summary sheet showing the acreages, interests to be acquired, improvements and estimated costs, including the administrative costs of acquiring the real property and all costs in connection with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646).

(iv) Map showing property to be acquired, ownerships, and relation to existing installation, where appropriate.

(v) In reports covering the acquisition of runway clearance easements, a profile, topographic, and obstruction drawing should be furnished.

(vi) Discussions of any peculiar or unusual problems anticipated in connection with the proposed acquisition including relocation assistance required by Pub. L. 91-646.

(vii) Recommendations of the office preparing the report.

(b) *Planning Documents for Reserve Component Acquisitions.* Figure 2-2 in EP405-1-2 is a sample of an REPR for use in acquisition of land for the U.S. Army Reserve Program. This report omits some items which appear in the usual planning report but includes other items particularly applicable to U.S. Army Reserve sites.

(1) *Real Estate Planning Report.* The REPR for Reserve Component acquisitions should contain the following:

(i) A list of all sites inspected with reasons for rejection of the other sites.

(ii) Description of physical characteristics of the site.

(iii) Type and extent of grading and drainage required.

(iv) Soil and foundation conditions with classification of overburden materials (to be determined by test borings only if conditions indicate this necessity).

(v) Availability of adequate access, water supply, electricity, gas for space heating, sewage disposal, drainage conditions, and telephone services. Where it is necessary to construct or extend streets, water, sewer, or other utility facilities to serve the selected site, a written commitment will be obtained from the municipal authorities assuring the United States that the municipality will perform such work without cost to the United States, or indicating the proportionate share of the costs the municipality will bear. This commitment will be made a part of the REPR.

(vi) Cost estimates of supporting facilities and any unusual building foundations, itemized to the degree practicable to indicate items, quantities, sizes, unit prices and totals.

(vii) A preliminary site plan, showing existing conditions and proposed layout, to insure adequacy of the site for its intended ultimate use.

(viii) A formal legal commitment in the form of a resolution or other instrument authorizing a long-term, nominal-rental lease or a donation, together with a reference to the authority to grant the lease or make the donation, in instances where land is owned by a State, county, city or other political subdivision.

(ix) A draft of the proposed lease in terms acceptable to the lessor, taking into consideration the requirements in DOD Directive 4165.16.

(2) *Agreements for Joint National Guard-Army Reserve Center.* Title 10, United States Code, Sections 2231 through 2238, DOD Directives 1225.2 and 1225.5, and AR 140-478 contain policy and directions for the establishment of this type of training facility. The Division or District Engineer will participate in negotiation of the joint-use agreement and preparation of the necessary instruments, in coordination with local Army Reserve and National Guard representatives. A copy of the agreement so negotiated will be attached to each copy of the REPR prior to its distribution for review. DOD Directive 1225.2 provides in part: "The agreement shall remain in full force and effect for the fixed term of years which represents the estimated useful life of the facility." This provision has generally been interpreted as fixing the use term at 25 years, although the probably useful life of a well-maintained armory type structure is much longer. The DOD provision states a minimum requirement; however, it does not preclude the Army from securing a longer period of use. In order to secure a use term more commensurate with the Government investment, joint-use agreements, at a minimum, will be set up on a 25-year basis, with the option on the part of the Government to renew for an additional 25-year period under the same terms and conditions.

(3) *Real Estate Summary.* Considerable time, effort and funds can be saved if REPRs are foregone in those cases involving acquisition of property for U.S. Army Reserve and Army National Guard use by transfer from another military department or the General Services Administration. The Real Estate document in support of such proposed acquisitions will be a Real Estate Summary which will contain the following elements only:

(i) Authority for request.

(ii) Acreage and estate.

(iii) *Estimated* gross fair market value.

(iv) Map.

(v) Excess status of land.

(vi) Description of improvements (including building numbers and square feet).

(vii) Justification for use of the property as provided by the Command. Proposed construction (if any) should be included.

(viii) Engineering Feasibility Study (if construction is planned).

(ix) Draft Acquisition Report is required for clearance under Title 10 U.S.C. 2662 if *estimated* gross fair market value is over $50,000 for acquisition by transfer from another military department.

(c) *Lease Planning Reports.* Reference is made to AR 405-10 and AFR 87-1, concerning requests for leasehold acquisitions. A Lease Planning Report will be submitted upon request of the Chief of Engineers or the using service. Figure 2-3 in EP 405-1-2 is a sample of a Lease Planning Report.

(d) *Grazing Land Reports.* (1) When Federal grazing lands are a part of a project and it is proposed to cancel, or to prevent the use of, grazing privileges thereon, under authority contained in the Act of Congress approved July 9, 1942, as amended (43 U.S.C. 315q), the REPR will be utilized with appropriate changes. The report will disclose each of the ranch units comprising grazing privileges, indicating, in tabulated form, the name of each operator, acreage owned in fee, acreage of State-owned land held under lease, acreage of railroad land held under lease, acreage of other privately owned land held under lease, acreage under Federal grazing permits or licenses, total acreage in ranch unit, total carrying capacity of ranch unit, and actual number of stock being carried on each ranch unit; whether project will be classified as a permanent or temporary installation; other acquisition problems, such as mining and water rights or claims, which may be encountered; and a project map indicating project boundaries, Federal and State-owned lands, and location of mining and water rights or claims.

(2) The cost estimate will be prepared in accordance with Subpart B.

(e) *Distribution and Approval of Planning Reports.* (1) *Army Projects.* Upon completion of a fee and/or easement planning report or a Lease Planning Report, the report will be processed as outlined in AR 405-10. Information will be included in the transmittal letter concerning status of environmental assessment or impact statement.

(2) *Air Force Projects.* (i) Upon the completion, review and approval of a fee and/or easement planning report, the District Engineer will forward copies of the planning report to the Division Engineer who will forward the original and one copy with appropriate recommendations to HQDA (DAEN-REA-L) WASH DC 20314. Simultaneously with this action, the Division Engineer will furnish the Major Air Command with six copies of the planning report for review, approval, and subsequent transmittal to Headquarters, USAF.

(ii) After preparation, review and approval, the District Engineer will submit the Lease Planning Report, wherein the estimated annual rental is in excess of $25,000, to the Division Engineer. Upon review and approval, the Division Engineer will forward the original and a copy, with appropriate recommendations, to DAEN-REA-L. Simultaneously with this action, the Division Engineer will furnish the Major Air Command with two copies of the report. The Chief of Engineers will review the report and forward the original to Headquarters, USAF, with appropriate recommendations.

(3) *DOE Projects.* Upon completion of a fee and/or easement real estate design memorandum and review and approval by the District Engineer and, in turn, the Division Engineer, a copy of the report will be submitted to the appropriate DOE office for review and approval. When notice of approval is received, the District Engineer will transmit, through the Division Engineer, the original and two copies of the REDM, with recommendations, and evidence of approval by the DOE field office, to HQDA (DAEN-REA-P) WASH DC 20314. Upon review and approval, the Chief of Engineers will transmit the original and one copy of the REDM to Headquarters, DOE, for approval and further action.

§ 644.24 Acquisition by Transfer from Other Government Departments or Agencies (Except Public Domain).

When a requirement develops for the acquisition of Government-owned real property and an appropriate request is received for the acquisition, the District Engineer will prepare and submit, through the Division Engineer, to HQDA (DAEN-REA-L) WASH DC 20314 a Real Estate Planning Report (Figure 2-1 in EP 405-1-2) (or a brief report, if it is determined this would be sufficient) setting forth the requirements for the property, the market value thereof, the "in place" value of existing improvements, the estimated cost of the proposed construction, attitude of the local representative of the department or agency having control, and such other items as are necessary to give full discussion of the real estate implications, for consideration and the obtaining of a real estate directive for the acquisition by transfer.

§ 644.25 Withdrawal of Public Domain for Defense Purposes.

(a) The Act of Congress approved February 28, 1958 (Pub. L. 85-337, 72 Stat. 27) provides that all withdrawals and reservations of public domain land, water, or land and water, or restrictions on use of areas in the Continental Shelf, aggregating an area of more than 5,000 acres for any one defense project, shall be by Act of Congress. Upon receipt of a request for withdrawal or reservation of lands of the public domain or for restrictions on exploration and exploitation in the Continental Shelf, and in order that the Chief of Engineers may present the project to higher authority for approval and submission to the Congress, if approved, the District Engineer will prepare and submit, through the Division Engineer, to HQDA (DAEN-REA-L) WASH DC 20314 a Real Estate Planning Report, including the following items.

(1) A copy of the request from the Army or the using service.

(2) Complete information relative to the eight items specified in Section 3 of Pub. L. 85-337 (43 U.S.C. 156).

(3) If the proposed withdrawal constitutes an expansion of an existing installation, pertinent data relative to the lands constituting the existing installation.

(4) Information relative to outstanding mineral, grazing, water and other rights.

(5) A statement as to the estimated cost:

(i) of extinguishing such rights; and

(ii) of suspending the exercise of such rights on a leasehold (annual rental) basis.

(6) Map(s) indicating the exterior boundaries of the project; excepted areas, if any; location of mineral rights, water rights, and other resources discussed in the report.

(b) The District Engineer will also prepare and include a draft of application for withdrawal covering the eight items specified in Section 3 of Pub. L. 85-337.

(c) Upon receipt of the REPR and draft of application for withdrawal, the Chief of Engineers will prepare a Real Estate Directive.

(d) The REPR, draft of application for withdrawal, and Real Estate Directive will be transmitted through the Chief of Staff and the appropriate Assistant Secretary of the Army to the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) for approval of the acquisition and for coordination with the Department of the Interior (Bureau of Land Management). Upon receipt of approval from the ASD (MRA&L), the Chief of Engineers will dispatch the application to the Department of the Interior and will draft the necessary legislation for processing through normal legislative channels.

(e) It has been determined that the words "in the aggregate" in Section 2 of Pub. L. 85-337 shall be interpreted as applying only to withdrawals of land since enactment of Pub. L. 85-337. For example, if 4,500 acres of public land had been withdrawn prior to enactment of Pub. L. 85-337 and the new application for withdrawal covers 1,000 acres, the requirements of Pub. L. 85-337 do not have to be satisfied. If the new application covering 1,000 acres is honored and the withdrawal completed and a later requirement for 4,500 acres of public lands developed, the requirements of Pub. L. 85-337 would have to be satisfied.

(f) Pub. L. 85-337 and the above instructions do not relate to the use of public lands under permit.

(g) In Department of Air Force cases, the District Engineer will continue to prepare such REPR's and to furnish such other services as are requested by the Major Air Commands.

(h) When the REPR contains a proposal for the acquisition of minerals, the local office of the Bureau of Land Management, Department of the Interior, will be furnished with a copy of the Mineral Section of the planning report, which will indicate the number and types of claims, areas involved, and the gross appraisal. Accompanying this Mineral Section will be a request that the Bureau of Land Management place an item in the next available budget for the funds required for the validation of the mineral claims involved. A copy of the Mineral Section, together with a copy of the request to the local office of the Bureau of Land Management, will be forwarded to HQDA (DAEN-REA-L) WASH DC 20314 for coordination with the Director, Bureau of Land Management, Department of the Interior, Washington, D.C. 20240.

§ 644.26 Required Clearances.

(a) As stated in AR 405-10 and AFR 87-1, no real estate or interests therein will be acquired until there is legislative authorization for the acquisition (41 U.S.C. 14) and an appropriation available for the purpose.

(b) AR 405-10 and AFR 87-1 also outline the clearances which must be made within the Departments of the Army and the Air Force, with the Department of Defense, and with the Committees on Armed Services of the Senate and the House of Representatives before acquisition may proceed. The Chief of Engineers is responsible for initiating all clearance actions as to Army acquisitions. The Director of Engineering and Services (AF/PRE) and the Director of Planning, Programming and Analysis (AF/RDXI), as to industrial installations, of Headquarters, USAF, are responsible for initiating all clearance actions as to Air Force acquisitions.

§ 644.27 Authority to Issue Real Estate Directives.

Where there is legislative authorization, an appropriation is available, and necessary clearances have been obtained, the formal Real Estate Directive (designating the land to be acquired, the estate to be acquired, and the amount of funds available for the acquisition) will be issued by the head of the interested department or agency, or his designee.

(a) Authority to issue all Department of the Army Real Estate Directives is vested in the Chief of Engineers. The Chief of Engineers has been delegated authority from the Secretary of the Army, and has redelegated to Division and District Engineers authority, to approve:

(1) Acquisition of permits from other Government departments and agencies, excepting the use of space in the National Capital Region.

(2) The making of minor boundary changes in approved projects to avoid severance damages, by including or excluding small tracts of land which will not decrease the usefulness of the project for the purpose for which being acquired.

(b) The delegated authority referred to in Paragraph (a) of this section was redelegated to Division and District Engineers, provided it can be accomplished without the allotment of additional funds: *And provided*, That there is an existing Real Estate Directive. When there is a change in scope (area and/or funds), recommendation will be made to the Chief of Engineers for amendment of the directive.

(c) The Chief of Engineers has been delegated authority to approve for the Secretary of the Army leasehold acquisitions, including renewals and extensions, and space assignments from the General Services Administration, where the estimated annual rental for any single project is not in excess of $50,000 and the acquisition is not controversial, unusual, or inconsistent with Department of the Army policies, excepting the acquisition by lease of industrial and commercial facilities; projects requiring a certificate of necessity in accordance with the Act of Congress approved June 30, 1932, as amended (40 U.S.C. 278a); and space in the National Capital Region. This authority has been redelegated to the Division Engineer where the annual rental does not exceed $25,000.

(d) Authority to issue all Department of the Air Force Real Estate Directives is vested in the Real Property Division, Directorate of Engineering and Services, HQ, USAF. Major Air Commands and Air Force Regional

Civil Engineers may issue Real Estate Directives for acquisitions not exceeding $50,000 in cost.

(1) Division Engineers will assign numbers to Real Estate Directives issued by Air Force Regional Civil Engineers. The numbers will be in a consecutive series for each Division and will be preceded by a symbol identifying the Division to which the directive is issued.

(2) All revisions to Real Estate Directives will be designated as amendments to the basic Real Estate Directive and will be appropriately numbered.

(3) Division Engineers will forward the original and one copy of each Directive, and each amendment thereto to HQDA (DAEN-REA-L) WASH DC 20314.

(4) Commanders of Major Air Commands will approve requests for leases, lease renewals, and space assignments from the General Services Administration, where the estimated cost of the project does not exceed $50,000 per annum, and subject to any necessary clearances, excepting, however, the leasehold acquisitions listed in AFR 87-1.

(e) Authority to issue DOE Real Estate Directives has been delegated by the General Manager to the Directors of Operating Divisions, DOE.

§ 644.28 Responsibility for Acquisition.

HQDA (DAEN-REA-L) is responsible for acquiring real estate for the Departments of the Army (military) and Air Force. HQDA (DAEN-REA-P) is responsible for acquiring real estate for the Department of the Army (civil works), DOE, and other Federal agencies as required.

§ 644.29 Authority to Proceed with Acquisition.

(a) Upon receipt of the formal Real Estate Directive by the Chief of Engineers, with necessary clearances made and an allotment of funds to the District Engineer, the Division Engineer will be authorized to proceed with acquisition in accordance with the directive and the procedures outlined in Subpart C and Pub. L. 91-646 instructions. Where authority has been delegated, the Division or District Engineer may proceed with the acquisition upon receipt of proper directive, any necessary clearances, and allotment of funds.

(b) Under no circumstances will offers be made to landowners or construction initiated prior to the issuance of instructions from the Chief of Engineers to proceed with the acquisition.

(c) The Division or District Engineer will maintain liaison with the local commander and advise him when possession of the land is available.

§ 644.30 Preliminary real estate work.

(a) Preliminary real estate work is defined as that action taken with regard to the individual ownerships leading up to, but not including, solicitation of offers from landowners. It includes preparation or procurement of tract ownership data (ENG Form 900—Tract Ownership Data, where its use is considered desirable), legal descriptions and mapping, title evidence, and individual tract appraisals. At this stage of the acquisition program, it will be necessary to make some contact with landowners, tenants, or other interested persons; for example, the appraiser's discussion of the property with the owner, his agent, or other representative (Pub. L. 91-646, Sec. 301(2)). In any such contacts, information should be confined to the fact that acquisition of the real property is being considered; no acquisition action can be taken until funds are made available; and, after acquisition is approved, as much advance notice as possible will be given to all interested parties. Supply of ENG Form 900 may be requisitioned from the OCE Publications Depot in the prescribed manner.

(b) Preliminary real estate work on Army projects will be conducted as soon as design has progressed to the point at which the exact land needed has been firmly determined, or as soon as the District Engineer has determined that it is practicable to proceed.

(c) Preliminary real estate work on Air Force projects will be conducted upon request of Headquarters, USAF, or Major Air Command installations, and at the request of any of those persons designated for industrial acquisitions.

Subpart B—Appraisal

§ 644.41 General.

(a) *Purpose.* (1) Subpart B describes the general procedures and standards governing all appraisal work undertaken in connection with the real estate responsibilities of the Corps of Engineers.

(2) These guidelines are to promote and encourage the utilization of uniform appraisal methods, standards, and techniques. Their use should result in the most effective solutions to the many appraisal problems with which the Corps of Engineers is confronted in the implementation of its real estate programs involving acquisition, disposal, and management of all kinds of real property. They are to encourage the appraiser to include in his appraisal process sufficient factual data and other supporting information to develop sound, unbiased, and independent market value estimates; promote appraisal reporting techniques that reflect acceptable judicial concepts, intelligent and convincing reasoning; and provide a sound basis for negotiations and valid testimony in court.

(b) *Applicability.* Provisions of this subpart are applicable to the Office of the Chief of Engineers and all field operating agencies having real estate responsibilities.

(c) *Procedures and Standards.* (1) In acquiring, disposing, and managing real estate, or any interest therein, it is the practice of the Department of the Army to impartially protect the interests of all concerned.

(2) The fair market value of the pertinent real estate interest in each parcel or tract of real property being acquired, disposed of or managed will be developed by a competent appraiser preparing an adequate appraisal report indicating sound estimates of values of each estate required. The appraisal may be prepared by either a staff employee or by a self-employed contract appraiser; however, each must have demonstrated the ability to exercise good judgment and must have had adequate experience in estimating the market value of the particular type of property involved. The qualifications and selection of staff appraisers will be based on the Civil Service Standards for the GS-1171 Series. A contract appraiser must also meet the experience requirements set forth in the Civil Service Standards.

(3) It is the practice of the Chief of Engineers to engage the services of competent appraisers and consultants to augment staff capabilities in the appraisal of various real estate interests to be acquired, disposed of or managed by the Corps. Preference will be given to local appraisers and consultants, if qualified, and the costs of their services will be paid by the Government. Any appraiser having an interest in the property being appraised or any relationship, family or business, to the owner thereof, will be disqualified from appraising that particular tract.

(4) Normally, only one appraisal per ownership or tract will be obtained. However, in cases involving controversial appraisal problems or precedent setting patterns of value in first priority areas of large projects, more than one appraisal of the same property may be obtained if considered necessary by the Division or District Engineer. If negotiations with the owners have reached an impasse and it appears that the filing of condemnation proceedings will be necessary to acquire the land or interest therein, the joint Corps of Engineers-Department of Justice policy provides that in fee takings, where the value of the property is between $50,000 and $100,000 only one appraisal need be provided to the Department of Justice so long as it is a contract appraisal; two appraisals

will be provided for values exceeding $100,000. In the filing of condemnation proceedings for easement takings in excess of $50,000 two appraisals will be required. At least one of the two appraisals must be made by a contract appraiser. More often than not, both will be by contract appraisers.

(5) Each appraisal report will be carefully reviewed and acted upon by a qualified reviewing appraiser.

(6) It is essential that negotiations for any required real estate interests be conducted on the basis of an approved appraisal that reflects current fair market value. Any appraisal report with an effective date of six months or more prior to initiation of negotiations with the landowner or the date of filing of a condemnation action is considered outdated and should be reviewed and brought up to date to reflect current market conditions.

(7) The appraiser may be called upon, in condemnation proceedings or otherwise, to establish the validity and competence of his estimates. He must familiarize himself with basic rules of trial evidence so that his testimony will be admissible and of probative value. Since, as a witness, he must be prepared to offer convincing testimony, his report should contain an analysis of all factual data upon which his estimates are based.

(8) Local representatives of the Department of Justice are available for consultation in matters pertaining to acquisitions and legal principles involved in valuation problems.

(9) Appraised valuations and the supporting appraisal reports, for acquisition or disposal purposes, are privileged information and the appraiser should not divulge his findings and opinions to anyone except authorized officials of the Government. Section 301(3), Pub. L. 91-646, January 2, 1971, dictates that written statement of, and summary of the basis for, the amount of the estimate of just compensation, shall be furnished the property owner. This does not mean that the appraisal report or any part of it should be given to the landowner, but only a summary of the amount and methods of appraisal.

(10) The appraiser is usually the first personal contact the owner has with a representative of the Government. The owner is generally the prime source of information pertaining to the history, condition, management, and operation of the property. It has always been the Corps' practice for the appraiser to contact and consult with the owner of a property prior to and during the inspection of the tract. Section 301(2), Pub. L. 91-646, January 2, 1971, dictates that "* * * the owner shall be given an opportunity to accompany the appraiser during his inspection of the property." Before the appraiser makes his first visit to the property, he must make every effort to contact the owner and invite him or his designated agent or representative to accompany him on his actual field inspection. If personal contact is not possible, a registered letter should be sent to the owner. The appraisal report should reflect when and how the owner or his representative was contacted, whether or not he accompanied the appraiser, and any other pertinent comments.

(d) *Definition of Market Value.* "Under established law the criterion for just compensation is the fair market value of the property at the time of the taking. 'Fair market value' is defined as the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy. In ascertaining that figure, consideration should be given to all matters that might be brought forward and reasonably be given substantial weight in bargaining by persons of ordinary prudence, but no consideration whatever should be given to matters not affecting market value. The cash or on terms reasonably equivalent to cash, requirement is important and numerous courts have noted this factor." (Source: "Uniform Appraisal Standards For Federal Land Acquisitions," Interagency Land Acquisition Conference, Washington, D.C., 1973.) This definition is considered to be consistent with another definition approved by the American Institute of Real Estate Appraisers which sets out market value "as the highest price estimated in terms of money which a property will bring if exposed for sale in the open market, allowing a reasonable time to find a purchaser who buys with knowledge of all the uses to which it is adapted and for which it is capable of being used."

(e) *Use of Appraisal Procedures.* (1) The appraisal of real estate is the estimation of the fair market value of a specified interest in a particular ownership of property, and the appraisal profession has developed certain basic appraisal techniques and procedures. There are three approaches to value which have become standardized—the cost approach; the market approach; and the income approach.

(2) In the COST APPROACH, the appraiser estimates the cost of reproduction of the buildings and land improvements. A deduction is made for depreciation due to physical deterioration, and also for functional and economic obsolescence. The value of the land is then estimated by comparison with sales of similar unimproved tracts and added to the depreciated value of the improvements. This procedure is also referred to as the Summation Approach. This approach is always applicable in the valuation of publicly owned structures such as schools, fire houses, etc.

(3) In the MARKET APPROACH, the appraiser compares the subject property on an overall basis with similar properties which have recently sold. Adjustments are made for all factors of dissimilarity. All known sales are considered, but the appraiser selects only those which are verified to be good "arms length transactions" and considered to be most similar to the property appraised. After these sales are analyzed and adjusted to the subject, this data is then correlated into a final estimate of value as indicated by the market.

(4) In the INCOME APPROACH, the appraiser estimates the probable gross and net income to be expected from the rental of the property, adjusts for the quality and durability of this income stream, and processes this income into a value estimate by use of an appropriate capitalization rate.

(5) The appraiser then correlates the indicated value estimates from the three approaches into a final estimated market value. Consideration is given to the relative strengths and weaknesses of each approach. Normally, the most weight is given to the approach commonly used by the typical purchasers of the type of property appraised. In almost all routine appraisals the market approach is most applicable.

(f) *Importance of the Appraisal Function.* The measure of success or failure in any real estate transaction is inseparably bound up in the matter of price. The heart of the real estate business is the price estimate or appraisal. The importance of sound appraisals for the Department of the Army cannot be over-emphasized. The courts have established basic rules governing exercise of the power of eminent domain.

(g) *Appraisal is an "Estimate."* The market value of any real estate interest is not a matter of exact determination, and the appraiser does not "establish" or "determine" the value. An appraisal is an "estimate" of current value based upon and supported by an analysis of all the factors, physical, economic, and social which influence the present and future benefits to be derived from the ownership of the property appraised.

(h) *The Appraisal Format.* In order to establish a degree of uniformity throughout the Corps as to an appraisal format, all staff appraisers and contract appraisers will follow the outline as set forth in the "Uniform Ap-

praisal Standards For Federal Land Acquisition" and § 644.42.

§ 644.42 Appraisal report.

(a) *Preface.* The appraisal report is an important document which serves as a material aid in the acquisition of required real estate interests. It is also an indispensable factor in justifying expenditures of public funds. It is essential that the report indicates conclusively that the appraiser has considered and analyzed all available data and used logical reasoning and judgment in developing his value conclusions.

(b) *Scope of Reports.* (1) It is the Corps' practice that all appraisal reports will be prepared in narrative form. The report will include, as a minimum, all essential data which will disclose the purpose, the scope of the problem and the principal techniques and approaches employed. The report should contain all the pertinent supporting data required to sustain the appraiser's final conclusion of market value.

(2) The use of preprinted narrative sales data sheets is authorized. Care should be exercised to properly relate each sale to subject in the narrative. Use of individual forms is also authorized for tabular exercises, such as the "cost approach." In every instance the narrative should reflect the appraiser's reasoning.

(c) *Narrative Report Format.* (1) The following report format is taken verbatim from "Uniform Appraisal Standards For Federal Land Acquisitions," published by the Interagency Land Acquisition Conference, 1973.

"B-1. Contents of appraisal report: The text of the appraisal report shall be divided into four parts as outlined below:

PART I—INTRODUCTION

1. TITLE PAGE. This shall include (a) the name and street address of the property, (b) the name of the individual making the report, and (c) the effective date of the appraisal.

2. TABLE OF CONTENTS.

3. LETTER OF TRANSMITTAL.

4. PHOTOGRAPHS. Pictures shall show at least the front elevation of the major improvements, plus any unusual features. There should also be views of the abutting properties on either side and that property directly opposite. When a large number of buildings are involved, including duplicates, one picture may be used for each type. Views of the best comparables should be included whenever possible. Except for the overall view, photographs may be bound as pages facing the discussion or description which the photographs concern. All graphic material shall include captions.

5. STATEMENT OF LIMITING CONDITIONS AND ASSUMPTIONS.

6. REFERENCES. If preferred, may be shown with applicable approach.

PART II—FACTUAL DATA

7. PURPOSE OF THE APPRAISAL. This shall include the reason for the appraisal, and a definition of all values required, and property rights appraised.

8. LEGAL DESCRIPTION. This description shall be so complete as to properly identify the property appraised. If lengthy, it should be referenced and included in Part IV. If furnished by the Government and would require lengthy reproduction, incorporate by reference only.

9. AREA, CITY AND NEIGHBORHOOD DATA. This data (mostly social and economic) should be kept to a minimum and should include only such information as directly affects the appraised property together with the appraiser's conclusions as to significant trends.

10. PROPERTY DATA:

a. Site. Describe the soil, topography, mineral deposits, easements, etc. A statement must be made concerning the existence or nonexistence of mineral deposits having a commercial value. In case of a partial taking, discuss access both before and after to remaining tract. Also discuss the detrimental and hazardous factors inherent in the location of the property.

b. Improvements. This description may be by narrative or schedule form and shall include dimensions, cubic and/or square foot measurements, and where appropriate, a statement of the method of measurement used in determining rentable areas such as full floor, multitenancy, etc.

c. Equipment. This shall be described by narrative or schedule form and shall include all items of equipment, including a statement of the type and purpose of the equipment and its state of cannibalization. The current physical condition and relative use and obsolescence shall be stated for each item or group appraised, and, whenever applicable, the repair or replacement requirements to bring the property to usable condition.

Any related personalty or equipment, such as tenant trade fixtures, which are not attached or considered part of the realty, shall be separately inventoried. Where applicable, these detachable or individually owned items shall be separately valued.

d. History. State briefly the purpose for which the improvements were designed, dates of original construction and/or additions; include, for privately owned property, a ten-year record as to each parcel, of all sales and, if possible, offers to buy or sell, and recent lease(s); if no sale in the past ten years, include a report of the last sale.

e. Assessed value and annual tax load. If the property is not taxed, the appraiser shall estimate the assessment in case it is placed upon the tax roll, state the rate, and give the dollar amount of the tax estimate.

f. Zoning. Describe the zoning for subject and comparable properties (where Government owned, state what the zoning probably will be under private ownership), and if rezoning is imminent, discuss further under item 11.

PART III—ANALYSES AND CONCLUSIONS

11. ANALYSIS OF HIGHEST AND BEST USE. The report shall state the highest and best use that can be made of the property (land and improvements and where applicable, machinery and equipment) for which there is a current market. The valuation shall be based on this use.

12. LAND VALUE. The appraiser's opinion of the value of the land shall be supported by confirmed sales of comparable, or nearly comparable lands having like optimum uses. Differences shall be weighed and explained to show how they indicate the value of the land being appraised.

13. VALUE ESTIMATE BY COMPARATIVE (MARKET) APPROACH. All comparable sales used shall be confirmed by the buyer, seller, broker, or other person having knowledge of the price, terms and conditions of sale. Each comparable shall be weighed and explained in relation to the subject property to indicate the reasoning behind the appraiser's final value estimate from this approach.

14. VALUE ESTIMATE BY COST APPROACH, IF APPLICABLE. This section shall be in the form of computative data, arranged in sequence, beginning with reproduction or replacement cost, and shall state the source (book and page if a national service) of all figures used. The dollar amounts of physical deterioration and functional and economic obsolescence, or the omission of same, shall be explained in narrative form. This procedure may be omitted on improvements, both real and personal, for which only a salvage or scrap value is estimated.

15. VALUE ESTIMATE BY INCOME APPROACH, IF APPLICABLE. This shall include adequate factual data to support each figure and factor used and shall be arranged in detailed form to show at least (a) estimated gross economic rent or income; (b) allowance for vacancy and credit losses; (c) an itemized estimate of total expenses including reserves for replacements.

Capitalization of net income shall be at the rate prevailing for this type of property and location. The capitalization technique, method and rate used shall be explained in narrative form supported by a statement of sources of rates and factors.

16. INTERPRETATION AND CORRELATION OF ESTIMATES. The appraiser shall interpret the foregoing estimates and shall state his reasons why one or more of the conclusions reached in items (13), (14), and (15) are indicative of the market value of the property.

17. CERTIFICATION. This shall include statement that Contractor has no undisclosed interest in property, that he has personally inspected the premises, date and amount of value estimate, etc.

PART IV—EXHIBITS AND ADDENDA

18. LOCATION MAP. (Within the city or area)

19. COMPARATIVE MAP DATA. Show geographic location of the appraised property and the comparative parcels analyzed.

20. DETAIL OF THE COMPARATIVE DATA.

21. PLOT PLAN.

22. FLOOR PLANS. (When needed to explain the value estimate.)

23. OTHER PERTINENT EXHIBITS.

24. QUALIFICATIONS. (Of all Appraisers and/or Technicians contributing to the report.)"

(2) The following exceptions are made to the above format:

(i) Estate, either a copy of the estate appraised should be included in the report or by reference in the report to the appropriate estate.

(ii) Legal description must be included in the appraisal report, either in the body or as an exhibit.

(3) Photographs of important buildings and unusual land conditions are considered an integral part of each appraisal report. Judgment should be exercised in conserving time and expense, and several small buildings can often be covered in one photograph. The use of color film and photographs is encouraged, especially wherein development cost either "in-house" or by outside firms is reasonable.

(d) *Brief Appraisals.* (1) Brief narrative appraisal reports, of a one-to-four page composition, are authorized for use in many instances wherein the evaluation or per annum rental value does not exceed $3,600. The use of this type of report is encouraged and authorized for: (i) Family housing appraisals, (ii) inleasing of privately-owned quarters and outleasing of government-owned quarters to civilian tenants, (iii) the purchasing or leasing of undeveloped land, (iv) rentals of small office-type space (example: Recruiting facilities), (v) rights of way for utility lines and roadways, (vi) leases; easements, and (vii) other minor interests in real property.

(2) Appraisals exceeding $2,000 per annum rental are subject to the Economy Act, and the fee value must be shown if improvements are included. A brief or short form-type of appraisal is adequate.

(3) All appraisals will be supported by at least three comparable sales or rentals of similar properties. A narrative discussion of each will be included. In bulk acquisition projects the use of prepared sales data sheets is authorized and encouraged. Each sale or rental must be discussed and compared to the subject property within the narrative of the report.

(4) Brief narrative appraisals will be reviewed under the same requirements as normal appraisal reports.

§ 644.43 Gross Appraisals.

(a) *Preparation.* (1) The gross appraisal sections of real estate design memoranda and planning reports are subject to minute scrutiny by higher authority in the Department of Defense and by Congressional Committees. It is essential that they be meticulously prepared to reflect actual market conditions and unit prices.

(2) Each gross appraisal will be supported by detailed analyses of an adequate number of typical comparable sales. Each index sale will be analyzed to show various land classifications and values, building contribution estimates and other relevant information. The sales prices should be verified by someone having knowledge of the transaction.

(3) Where letter-type or brief real estate design memoranda on civil works projects are submitted, comparable sales data will be presented in one of the following methods:

(i) Be submitted within the report in a brief manner, with at least three truly comparable sales discussed in narrative form and comparisons shown to the subject lands covered by the memorandum.

(ii) Be referenced to the last real estate design memorandum issued on the same project and if values have changed in the interim, additional sales data submitted to support the changes. If the last design memorandum is over a year old, new supporting data must be submitted.

§ 644.44 Fee Appraisals.

(a) *Definitions and Procedures.* (1) The complete and unrestricted ownership of all the rights to the full use and enjoyment of a parcel of real estate is called the "fee simple estate." An appraisal of this interest is referred to as "Fee Value."

(2) Most fee appraisals require the use of all three of the standard appraisal approaches.

(b) *Applicability.* Appraisals of the fair market value of the free and clear fee title to the subject property is necessary in the greatest majority of the Corps of Engineers' real estate responsibilities be it acquisition (full or partial), disposal, inleasing, outleasing, rentals, etc. In almost every case the monetary value of the required estate and interest is based on the fee value of the property; therefore, the Corps' greatest appraisal requirement is for fee appraisals.

(c) *Approaches.* (1) It is recommended that whenever possible all three of the standard appraisal approaches, Cost-Market-Income, be used in a fee appraisal. However, if due to the type of property, is is not practical, beneficial, or necessary to use a particular approach, the appraiser is required to indicate in his report that consideration was given to its use and discuss why it was not used.

(2) In the Cost Approach it is extremely important that the appraiser document all items of costs for development, construction, utilities, etc. It also is extremely important that he fully consider all forms of depreciation such as physical deterioration, functional obsolescence, economic obsolescence, etc., and justify his methods and factors used in developing his depreciation factors.

(3) The Market Approach or Comparative method of appraisal is the most direct approach to a market value estimate and is preferred above all others. It is basically an application of the principle of substitution wherein the sales of similar type properties are analyzed to develop a price at which an equally desirable and similar property can be obtained. It involves the collection and analyzing of current sales of comparable properties and comparing these sales to the subject property. Since no two properties are identical, the appraiser must make adjustments for differences between the two. Adjustments may be by a dollar amount (per unit, per acre, or lump sum) or on a percentage basis. Full support and justification must be given for each amount. Adjustments may be shown either by a tabular analysis or by a narrative discussion.

(4) The market value of an income-producing property is quite often governed by the net income it will produce. The fair market value may be estimated by developing the expected net income and processing it into a value estimate by use of an appropriate capitalization rate. The keynote of this approach lies in the sound development of a proper rate. The appraiser must have a basic knowledge of the principle and techniques involved and must be certain that he has adequate data to develop this rate and properly process the income into a fair market value.

(5) It is most important that the valuation estimates developed by all of the approaches used are correlated into one conclusive value. In those cases where there is a substantial spread among values, the appraiser is cautioned to recheck all his data and figures for accuracy. The cost figures and depreciation factors should be checked in the Cost Approach; the sales data should be further documented and analyzed in the Market Approach; and the Income Method may require a recheck of the soundness of the capitalization rate.

(d) *Partial Takings.* (1) A substantial number of acquisitions require only portions of an ownership necessitating a "partial taking." In these cases the appraiser is required to estimate the value of the whole ownership before the taking; the value of the remainder—the difference being the value of the part taken. Many times the remainder is of less value after the taking, indicating a "severance damage." The appraiser is usually required to allocate the total taking value between the value of the part acquired and the severance damage to the remainder by reason of the taking.

(2) In order to promote uniformity in the reporting format, the following example of the "before" and "after" method is presented for guidance:

A 220-acre parcel of land is to be acquired from a 420-acre farm:

Value "before" the taking ($300 p/ac)	$126,000
Value of remainder "after" taking ($200 p/ac)	40,000
Total Value of part taken, including severance damage to remainder	$86,000
Value of 220 acres taken ($300 p/ac)	66,000
Severance Damage to Remainder	$20,000

(3) The appraisal of the property before the taking must be a complete narrative-type appraisal containing adequate market data to support the total value. The report then must also include a full appraisal on the remainder portion of the property consisting of a full description of the residue immediately after the taking and a complete set of market data and sales other than those used in the "before" evaluation. If the remainder parcel has diminished in value as a result of the taking, the appraiser must have adequate support and justification for the reduction in value.

(4) In the case of partial takings, consideration must also be given to offsetting benefits applicable to the remaining property. A combination of legal interpretation of the law and judicial decisions with regard to such benefits must be used in determining whether offsetting benefits are applicable. Reference is made to paragraph A-9 and A-10 in the "Uniform Appraisal Standards For Federal Land Acquisitions."

(5) Paragraph A-13 of the "Uniform Appraisal Standards" is also referenced in connection with guidance regarding "navigation servitude."

(e) *Appraisal Certificate.* (1) No appraisal report will be considered acceptable without appropriate certification by the appraiser responsible for the contents of the report and the conclusion of values. The certification can be in the front or the back of the report, consistent with Division or District policy.

(2) An appropriate certification shall be substantially in accordance with the following: I certify that I have carefully examined the property described herein and that the estimates as developed in the report represent my unbiased opinion and judgment. I further certify that I have no interest, past, present or prospective, in the subject property which would affect my opinion and that the present fair market value of the (*insert estate appraisal*) is subject only to all the assumptions and limitations as specifically set forth. (Date and signature of appraiser.)

§ 644.45 Rental Value.

(a) *Definition.* (1) The fair rental value of the property is the amount which, in a competitive market, a well-informed and willing lessee would pay and which a well-informed and willing lessor would accept for the temporary use and enjoyment of the property.

(2) Appraisals to establish fair rental values will be made in accordance with acceptable standards of appraisal applicable to the particular type of property and in accordance with general appraisal practices and procedures heretofore described in relating to all appraisal work. The preparation of time-consuming and lengthy appraisal reports should be kept to a minimum, particularly with regard to rental properties of low value. A brief summary of the essential facts will be sufficient to support leases by the Government of building space or unimproved land where the net rental value is not in excess of $3,600 per annum.

(b) *Applicability.* All provisions of this subpart are applicable to "inleasing" of real property for use of the Government, and equally applicable to "outleasing" of Government-owned real property. Paragraph 644.45(l) Government Quarters, is normally applicable only to "outleasing" of quarters to civilian employees. The provisions are, however, also considered valid considerations in appraising "inleases," wherein privately-owned housing is being rented for occupancy by military personnel in lieu of quarters allowances.

(c) *Services.* In the absence of an agreement or contract, a lessor is not bound to furnish any utilities or building services of any kind, and such services may not be acquired under the power of eminent domain. It is, therefore, necessary for the appraiser to include in his report as separate items the estimated cost of all customary services that may be required to permit the normal use and occupancy of the property.

(d) *Market Value of Fee.* (1) Where temporary use of an entire building or other independent unit of an ownership is proposed, the appraisal will ordinarily report both the market value of the fee title and the fair annual rental value. However, no appraisal of fair market value of fee title is required in any case where assessed value, supported by statement of the assessor and ENG Form 869-R (15% Valuation Certificate), can be used for compliance with existing law, Section 322 of the Act of June 30, 1932 (40 U.S.C. 278a), known as the "Economy Act." Fee value is not required for land only leases, as the Economy Act is not applicable.

(2) An exception to the above procedure is in regard to the appraisal of family housing units. As an alternative, the appraiser can support his rental valuation by use of comparable rentals and a statement that the lease value does not exceed 15% of the fair market value.

(e) *Lease of Minor Portions of Buildings.* Where appraisals are required to establish rental value of a minor portion of a building, it will not be necessary to estimate the fee value of the entire property, provided that the net annual rental does not exceed $2,000. A sound rental value can ordinarily be estimated by comparison with established rentals in subject property and in adjacent similar properties in the community. However, care should be exercised to insure the reasonableness of the reported comparable rental values. The appraiser's report must include sufficient data on these current rentals to support adequately the rental estimate for the subject space.

(f) *Unexpired Lease.* Where the premises to be acquired are occupied by tenants under leases which cannot be terminated at will by the landlord, the appraiser's report will set forth in detail the terms of the existing leases and will show the value of the tenant's interest. The value of the tenant's interest is based on the fair rental value (economic rent) of the part of the property occupied by the tenant for the unexpired term of the lease, or for the term condemned, whichever is shorter, less the rent which the tenant is obligated to pay (contract rent) under the existing lease. The difference between the economic and contract rent is known as "bonus rent."

(g) *Bonus Value.* Wherein a "bonus rent" is reflected as being the difference between economic and contract rent, a full narrative discussion will be included in the report. It is of paramount importance that the present economic rental be supported by the rental market data. The "bonus value" is the present worth of the discounted bonus rent.

(h) *Rental Appraisal Report.* The appraisal report will contain adequate facts and discussions relative to the following:

(1) Land description, showing street frontages and lot depths.

(2) Adequate description of improvements and furnishings, including type of construction, total floor space, floor load for storage space, number of rentable rooms, or income-producing space, nonproductive or public space, total cubic content, and reproduction cost of improvements less depreciation.

(3) Assessed valuation and lawful ratio to market value, if the annual rental value exceeds $2,000.

(4) Analysis and discussions of current rentals of similar properties and rental history of the property appraised.

(5) Discussion of the appraisal process and rental rates applicable to the terms of the proposed lease, particularly as to any differential in the rate of return applicable to customary long term rentals.

(6) Statement showing distribution of appraised annual rental as allocated

to fixed charges and fair rate of return on land, buildings, and any furnishings or equipment that are included in the proposed taking.

(i) *Special Purpose Properties.* Appraisals to estimate the rental value of hotels, clubs, hospitals, and other highly specialized properties will include full information on the income capacity of the property under average competent management and under accepted standards of operation for the particular type of property involved. The appraisal reports will, among other things, contain an analysis and discussion of the following items:

(1) Financial history of property, including indebtedness, the actual past income or earnings of the property based upon audit reports for the past five years or longer, and any unaudited current months of the fiscal year. In the absence of audits, corporate statements may be furnished if properly certified.

(2) Discussion of the past operation and management methods with comments relative to any excessive or insufficient charges appearing in the financial statements obtained.

(3) Appraiser's estimate of the stabilized income of the property.

(4) Appraiser's estimate of profits available for typical lessee-operator.

(5) Recommendations of the appraiser as to the relative merits of acquiring fee title to the property as against acquiring a leasehold interest.

(j) *Farms and Rural Properties.* Appraisals to estimate the rental value of farms and other types of rural properties will report the present market value of the fee title, the fair annual rental value, and any direct damage to growing crops, standing timber, or improvements to be removed or destroyed. The damage will be reported separately from the rental value in order to permit the reflection of the damage in the primary rental term.

(k) *Industrial Installations.* (1) Appraisal reports will be obtained to support all leases of industrial installations or portions thereof. It is important that appraisals of operating industrial installations be prepared by specially qualified appraisers or consultants intimately familiar with the particular processes and production capabilities and related factors having any bearing on the value of a particular plant.

(2) The appraisers selected to estimate the rental value should be fully informed as to all known prospective lessees and the amount of any bids, or offers made for the use of the property, and as to all terms, conditions, and limitations under which the property will be made available for use or operation.

(3) The appraisal reports will include a detailed inventory setting forth all physical factors pertaining to the land, buildings, machinery, and equipment and an adequate discussion of all local factors influencing the profitable use of the facility. Data pertinent to the prevailing rentals for other Government and privately-owned industrial plants and warehouses considered reasonably similar to the facilities to be leased will also be included. The conclusions of the appraiser as to other matters of importance to the Department of the Army in its leasing operations will likewise be presented. The appraiser should bear in mind that idle manufacturing plants, and all industrial properties, as a general rule, are valuable only to the extent and degree that they are usable in actual production. It is also a generally accepted economic fact that the plant and fixed equipment (real estate) is the production factor for which a return can ordinarily be realized after the cost of all other factors in production has been provided. Military necessity has required the construction of many plants which are designed for special purposes and which may tend to defeat the ordinary approaches to the market rental value problem. In the absence of comparable rentals of similar properties or other reliable comparative guides to value for temporary use, market rental value should be estimated with particular consideration to the following methods:

(i) *Reasonable Return on Estimated Fair Value.* For this purpose "fair value" is defined as the prudent cost of reproduction less depreciation of only that portion of the property that is readily adaptable or capable of competition with alternative properties which may be available to or constructed by the proposed lessees. Items of equipment and any portions of a plant that do not directly contribute to the specific use may be eliminated from consideration and the rental return estimated only on items and space actually adaptable for use in the proposed enterprise. The appraiser is particularly concerned with any competitive disadvantages or penalties accruing to subject property by comparison with the alternatives available to prospective users. The rental estimate should therefore be appropriately modified with respect to adequate allowances for amortization of necessary alterations to be made by the lessee. Other operating disadvantages that might tend, from the competitive viewpoint, to result in increased operating cost or other penalties that might in any way be brought forward in negotiations to establish an acceptable rental price must also be considered.

(ii) *Ratio of Plant Costs to Productive Capacity.* In many lines of industrial enterprise, it may be possible to obtain comparable operating experience ratios with reference to relation of average annual real estate costs or plant investment charges to the gross annual production. The difficulties of estimating production levels and obtaining sufficiently accurate data as to actual operating experience are fully appreciated. Suggested sources of such information are annual statements of prospective lessees and their competitors. It is believed that this approach to the appraisal problem is fundamentally sound, particularly so when there is an indicated demand for the full capacity of an industrial plant as originally designed, and that this method will serve as a reasonable check and balance against return on "fair value." It should also be very helpful as a guide to the rate of capitalization in the "fair value" approach to the rental problem.

(iii) *Taxes.* The appraisal will not be influenced by the fact that the Government is not presently required to pay taxes on the property.

(iv) *Savings.* When appropriate, the estimated savings in maintenance, protection, repair and restoration, if any, will be obtained by the Management and Disposal Branch from the using service or other competent authority and furnished to the appraiser preparing the appraisal report.

(l) *Government Quarters.*

(1) Rental schedules for Government quarters furnished to civilian employees will be supported by written appraisal reports reflecting adequate coverage of the following items:

(i) *Construction Details.* Physical description of quarters will include the general grade of construction work, materials and decorations, number of rooms, floor space, porches, garages, general appearance and condition.

(ii) *Equipment and Accessories:*

Refrigeration
Cooking facilities
Kitchen cabinets
Closet space
Built-in conveniences
Screening
Elevators
Telephone service
Utilities
Plumbing

(iii) *Furniture and Furnishings.*

(iv) *Site Conditions:*

Lot size
Lot size per living unit
Access (street and road frontage)
Restrictions
Land improvements (walks, driveways, shrubbery, lawns, topography, etc.)
Hazards and/or amenities

(v) *Neighborhood Development and Data:*

Local zoning regulation

Public transportation
Schools
Shopping facilities
Recreational facilities
Supply and demand for housing
Population statistics
General trends

(vi) *Comparable Rental Data.* Data will include results of a comprehensive survey of current rental rates applicable to the most similar privately-owned housing in the nearest competitive or comparable neighborhood or community. Typical rental rates will be compiled, analyzed and tabulated, and subject properties identified and described in the same manner as prescribed above for Government quarters. The appraisal report should include a vicinity map showing location of rental units listed for comparison in relation to the location of the quarters being appraised.

(vii) *Comparative Relationships.* The appraisal report will include a discussion of relative merits of Government quarters by comparison with private housing units. Rental rates of housing controlled by governmental agencies or subsidized by private industry will not be used as a basis for comparison.

(viii) *Correlation of Rental Units.* A discussion of basic reasoning supporting the final rental value unit for each distinctive rental bracket is imperative.

(ix) *Photographs.* Photographs of typical views of the quarters appraised and typical private housing units cited as comparable rentals will be included in each report.

(x) *Appraisal Certificate.* Rental appraisal reports will not be considered acceptable without appropriate certification substantially in accordance with: "I certify that the above rental values represent my unbiased opinion of the present fair market rental value of the quarters described. I am not now a tenant residing in such quarters nor do I have any intention of becoming a tenant therein."

(2) Reappraisals of rental quarters are required every fifth year subsequent to previous appraisal. Rental rates will be adjusted annually between appraisals by application of the Consumer Price Index (CPI) maintained by the Bureau of Labor Statistics, Department of Labor, and as further required in accordance with Transmittal Memorandum No. 2, OMB Circular A-45, revised October 30, 1974.

§ 644.46 Easements.

(a) *Definition.* An easement is a property right of specified use and enjoyment falling short of fee ownership. It follows that the value of an easement is less than the market value of fee title to the same portion of property (exclusive of severance damages to residual portions).

(b) *Measure of Value.* The measure of compensation for an easement is the amount by which market value of the ownership is diminished by the imposition of the easement. This should be developed by use of the "before" and "after" method of appraisal, the difference being the value of the taking.

(c) *Flowage Easements.* (1) The appraisal of flowage easements will not be undertaken until flood frequency surveys have been completed and approved by proper authority. The flood frequency data will be made available to the appraisers with the definite understanding that it is to be accepted as one of the controlling factors in estimating the market value of the easements. The appraiser's certificate should be qualified to include the assumption that the frequency data is correct and that he has no responsibility therefore.

(2) The market value of fee simple title to each property over which a flowage easement is required will first be appraised in the usual manner. This estimate will be followed by appraisal of the market value of the property after imposition of the easement. The market value of the easement is then computed on the basis of the amount the market value of fee title is reduced by imposition of the easement. The appraiser will give full consideration to all factors having a bearing on the reduction in value of the parcel on which the easement is to be imposed. Each appraisal report will include complete information as to estimated flood frequency pertaining to each parcel appraised.

(3) The appraiser's major problem in appraising tracts having considerable value is the development of his value estimate after the imposition of the easement. The market data approach to value is limited in this phase of the appraisal to index sales of land reflecting the "use adaptability" of lands to a less profitable purpose. Typical of such change in highest and best use are the conversion of row crop land and orchard land to pasture and forestry. Likewise, the cost approach to value is applicable only to land improvements and structures to be removed or destroyed. It is, therefore, considered essential that flowage easement appraisals reflect, in adequate detail, changes in utility by the development and use of the earnings approach to value before and after imposition in all cases involving lands capable of producing income. The ratios thus developed in "before" and "after" values for income producing lands should prove to be helpful in developing appropriate ratios for nonproductive lands.

(4) In those instances where the type of land, topography, flood frequency and duration data clearly indicate that a minimal change in value (not to exceed $100) will result from exercise of the required rights, a brief appraisal is authorized. The appraisal report will contain as a minimum a complete statement of pertinent facts, including information regarding flood frequency and duration data pertaining to the property appraised. In the event condemnation is required to acquire the necessary rights, an acceptable "before" and "after" appraisal will be prepared prior to the institution of condemnation proceedings.

(5) A tract map showing each contour level of varying flood frequency will be made a part of each appraisal report. This map should facilitate review of the appraisals and serve as an aid to the negotiator in his contacts.

(d) *Other Easements.* It is recognized that many other types of easements, i.e., road, pipeline, restrictive, borrow, transmission line, flight, spoil, etc. are to be appraised. In all instances, the measure of value is still the same, the amount by which the market value of the ownership is diminished by the imposition.

§ 644.47 Appraisal of Other Interests.

(a) *Minerals.* (1) In all cases, the value of the subsurface will be included or accounted for in the appraisal report in such manner that negotiations may be readily conducted to acquire or extinguish subsurface rights if they are outstanding in third parties or if it develops that the vendors desire to reserve them. In those instances where minerals are held separately in large blocks underlying several individual surface tracts, a statement to this effect should be included and the plan for appraising the mineral estate identified. Unless the person who is appraising the surface has had training and experience in appraising minerals, the subsurface appraisal should be made separately by an appraiser qualified to perform this service. Since the removal of certain minerals may destroy the usefulness of the surface, care should be exercised to avoid duplication of value.

(2) In the event that subsurface valuation is unfamiliar to the Division or District requiring same, HQDA (DAEN-REE) WASH DC 20314 should be contacted for advice and recommendations. Mineral valuation engineers within the Corps may be utilized on a cost reimburseable basis for furnishing gross or tract appraisals.

(b) *Timber.* (1) Where the land being appraised has only young trees or timber not of merchantable size, the value thereof will be included with the value of the land. If the timber is of

merchantable size, a timber cruise will be made by a professional forester and the timber classified in the appraisal according to species, type, range of size, quantity, unit value, and total value. A discussion of logging, haulage, and market conditions will be given. The total value of timber shall be the amount by which the timber enhances the market value of the bare land.

(2) Extreme care must be exercised in the use of separate timber estimates for appraising timber land, so as to avoid "doubling up." Where a timber cruise or estimate is used, comparable sales of recently timbered land should be used to support the remaining land value. Where such sales are not available, care must be utilized to extract the timber value from sales of timber land. The optimum situation would be to have sales that were also cruised; however, this does not often happen.

(c) *Growing Crops.* (1) Crop appraisals will not ordinarily be necessary except in those cases where the Division or District has determined that possession of the cropland is necessary prior to the normal harvest period. Where the Division or District Engineer has determined that the landowner or his tenant cannot be permitted to harvest the crops, they will be appraised as separate property items.

(2) The crop appraisal will identify the crops by type, number of acres, estimated yield per acre taking into account all hazards, the unit value, gross market value at maturity based upon current local prices for the commodities less cost of bringing to maturity, harvest, and delivering to available markets. The expected harvest period will be reported, together with other pertinent information, in order to indicate an approximate date when the cropland may be available for construction purposes.

(d) *Use of Government-owned Property.* (1) An appraisal will be made, when required, to justify the consideration reserved in all leases, licenses and easements, except those specifically mentioned in Paragraph (d)(3) of this section. The appraisal will be made in accordance with acceptable standards applicable to the particular type of property and the use to be made thereof in the proposed grant, and in accordance with the general appraisal practices and standards heretofore outlined in this chapter. Ordinarily the appraisals of property involving substantial improvements will include, in addition to complete coverage of all factors influencing the use of the property appraised, complete information as to the following:

(i) Data of acquisition and completion of Government construction.

(ii) Complete cost data as to original purchase price and Government construction.

(iii) Detailed discussion of the predominant uses to which the property is adaptable.

(iv) Competitive position of the property with respect to availability of privately-owned properties for similar use.

(v) Estimate of market value of fee title.

(vi) Estimate of annual rental value assuming unrestricted use over a reasonable period of time.

(vii) Estimate of annual rental value under proposed Government restrictions.

(2) Time consuming and lengthy appraisal reports should be avoided in the case of low value grants involving Government-owned property. The consideration in such cases may be substantiated by a simplified appraisal report by a qualified appraiser setting forth only such facts as are required to validate his conclusions as to value. In such instances, a physical inspection of the property may be waived where the appraiser is sufficiently familiar with the property under appraisals and local market conditions to prepare a reasonable value estimate of the estate to be appraised. When a property is not physically inspected, it will be so noted in the appraisal report. The decision concerning the necessity for a physical inspection of the property and analyzing local market conditions will rest with the appraiser signing the appraisal certificate since he is personally responsible for the value conclusion developed in the appraisal report. A low value grant for the purpose of this paragraph is defined as any grant for which the fair market rental value (before applying any offset in rental for estimated savings in maintenance, protection, repair and restoration) does not exceed the following:

Easement—$500 for the term.
Lease or License—$500 per annum if granted for not more than a five-year period and is granted after advertising.

(3) The following are exempt from the above requirements:

(i) Leases for land on which to construct new credit union facilities, under long-term leases. See DOD Directive No. 1000.10 for formula.

(ii) Concession leases under Graduated Rental System.

§ 644.48 Review and Approval.

(a) *Procedure.* (1) Upon completion of an appraisal, the signed report is to be reviewed by a reviewing appraiser to assure that the information and data developed by the appraiser substantiates the estimated valuation. The review function also serves as a means of resolving differences that might be found in two or more individual appraisals of a single property. The reviewing appraiser is also responsible for maintaining consistency in appraisals for the various properties in a project.

(2) A review of all real estate appraisals is considered of vital importance to the successful operation of the real estate mission of the Corps of Engineers. It is essential that each and every appraisal be given an independent review and check by a thoroughly qualified reviewing appraiser. This will insure that the appraisal represents relative concurrence as to value of not less than two real estate appraisers professionally qualified by previous experience in appraising the particular type of property involved. The reviewing appraiser should familiarize himself with the property to the extent that he can adequately present and support his opinion when called upon to do so.

(3) The review action will be documented by a separate narrative memorandum signed and dated by the authorized reviewing appraiser. Such review memorandum will indicate, but not be limited to, the following:

(i) Date and nature of physical inspection of the subject property.

(ii) Statement relative to reviewer's knowledge of comparable sales used.

(iii) Reviewer's opinion as to the appraiser's valuation.

(iv) Other pertinent data, if any, relative to the property or comparable sales that the reviewer feels would lend additional credence to value estimate.

(v) Reviewer's certification of approval, disapproval, or recommendation.

(4) If more than one appraisal is obtained for an ownership, all should be reviewed by the same reviewing appraiser. The reviewer can cover all appraisals in one review memorandum, or write individual reviews.

(5) No alterations or additions will be made to a signed appraisal report by anyone other than the appraiser who signed the report. A reviewer cannot change the value reflected or approve an amount other than the appraiser's final conclusion of value. His alternative is disapproval.

(6) A reviewing appraiser may not review other appraisal reports covering a property that he has himself previously appraised. In this instance the reports must be assigned to another reviewer or be forwarded to the next level of review for appropriate action.

(7) Appraisal reports obtained by the Department of Justice and submitted for Corps review are to be treated in the same manner as those obtained by the Corps.

(b) *Delegation.* (1) Division Engineers have been authorized to approve or take action as appropriate on all real estate appraisal reports made for

the purpose of purchase, disposal, or any use of real property in which the estimated fair market value (of the part to be acquired, if a partial taking) does not exceed $250,000, or the estimated fair market rental value does not exceed $150,000 per annum.

(2) Division Engineers have been authorized further, at their discretion, to redelegate any part of this authority, up to $150,000, to District Engineers.

(3) All appraisals exceeding $250,000 will be forwarded to HQDA (DAEN-REE) WASH DC 20314 for final review, approval, and/or appropriate action. Each report will be thoroughly reviewed at all levels, including the Project, District and Division.

(4) A copy of all those reports between $100,000 and $250,000 will be forwarded to DAEN-REE for post review and retention.

(5) In addition to those reports which exceed the delegated authority, DAEN-REE will review and take appropriate action on complex, difficult and controversial appraisals. Where more than one appraisal has been made within either of these categories, a copy of each appraisal report should be submitted for review regardless of variances in opinions of value. At times, the Division Engineers may receive specific instructions as to appraisals which may require final approval of DAEN-REE. Also, from time to time, DAEN-REE may call for and review typical appraisals prepared by individual appraisers.

(c) *Reconciliation of Appraisal Reports.* In the event that a reviewing appraiser does not agree with the value conclusion of the appraiser, the following steps should be taken:

(1) Attempt to reconcile differences with the appriser in a face-to-face meeting. The reviewing appraiser should present his additional evidence of value to the appraiser and discuss the report weaknesses, if any.

(2) In the event reconciliation and approval are not possible, the reviewer must then forward the report and review certificate to higher authority for resolution and request that another appraisal be obtained.

(d) *Qualifications of Reviewing Appraisers.* (1) A reviewing appraiser should have a minimum of five years experience in the field of real estate appraising. He should also have taken and successfully completed two or more appraisal courses offered by professional appraisal organizations. His experience record should indicate that he has thorough knowledge of all the standard appraisal techniques and approaches and has the ability to analyze the market and all pertinent data which affects value.

(2) Upon selection and appointment by the District Engineer of qualified staff personnel to act as reviewing appraisers, a copy of their qualifications and experience records, along with a copy of the appointing orders, will be forwarded to HQDA (DAEN-REE) WASH DC 20314.

(e) *Code of Ethics.* Under no circumstances will an appraiser be directed to make an appraisal at any predetermined amount or to change his opinion of value on any property appraised. It is recognized that the review function will develop some differences of opinion. However, where those differences cannot be resolved on a higher ethical basis, predicated upon sound reasoning and adequate data properly analyzed and applied, an additional appraisal will be obtained.

§ 644.49 Contracts.

(a) *Appraisal Reports.* (1) Within their contract authority, Division and District Engineers may contract with recognized appraisal firms, corporations and individuals for necessary appraisal reports on a lump sum basis. Following the award of any appraisal contract in excess of $5,000 a copy of such contract will be forwarded by the issuing office direct to HQDA (DAEN-REE) WASH DC 20314, immediately upon execution.

(2) Requests from Division and District Engineers to the Chief of Engineers for names of appraisers qualified to make particularly complex appraisals are invited.

(3) Division and District Engineers will develop and maintain current lists of qualified appraisal firms, corporations and individuals, from which contractor selection will be made. These lists should be appropriately grouped or rated in accordance with special qualifications and experience in connection with various and specific types of appraisal problems.

(4) Prior to receipt of proposals and negotiations with appraisers, a target fee (Government estimate) will be developed with due consideration to the relative skill and ability required in solving the appraisal problem and the appraiser's time and expense required for preparing the desired reports.

(5) In the negotiation of appraisal contracts the following items are to be considered:

(i) The appraisal of real estate is a recognized profession governed by a code of ethics prohibiting competition in obtaining appraisal assignments. All negotiations for proposals will be conducted on an individual basis, with adequately qualified appraisal firms, corporations or individuals competent to deliver the required appraisal reports on schedule.

(ii) In view of the technical nature of appraisals, Division and District Engineers shall give consideration to designating qualified member(s) of their real estate staffs as contracting officer's representative(s) with full responsibility for all cost estimates involved in contracting for appraisal services and reports. Such contracting officer's representative(s) may also, in the designation of the contracting officer, be utilized to conduct negotiations with the prospective contractors, serve as ordering officer pursuant to the contracts, certify invoices and act in any other capacity within their authority as contracting officer's representative(s).

(6) A copy of the narrative, detailed record of contract negotiations will be forwarded to DAEN-REE, along with the contract as specified above.

(7) In contracting for appraisal reports, contract forms as set forth in Armed Services Procurement Regulations (ASPR) (Chapter I of this title) and ER 1180-1-1 (Engineer Contract Instructions) will be used. An outline of the qualifications of the appraiser employed to perform the contemplated services shall be included in the contract assembly.

(b) *Expert Appraisal Services.* Employment of qualified real estate appraisers and consultants may be effected utilizing the pertinent provisions of ASPR and ER 1180-1-1.

(c) *Obtaining Appraisal Reports by Purchase Order.* (1) Division and District Engineers are urged to utilize an authorized type of purchase order, such as DD Form 1155, in lieu of long-form contract, provided that:

(i) It is in the best interest of the Government, cost wise, not to issue the long-form contract.

(ii) The contractor has performed satisfactorily on at least one contract within the prior three fiscal years.

(iii) The total order, by such purchase orders, from the contractor does not exceed $10,000 for the project during the current fiscal year.

(iv) The order is accompanied by a brief history of negotiation signed by both the contractor and the contracting officer's representative(s).

(2) Care should be exercised to insure that the above provisions are used only to order supplementary reports, single appraisals, and other "one-time" reports needed.

(d) *Department of Justice Consultation.* Authorized local representatives of the Department of Justice will be consulted concerning the acceptability of the appraiser(s) prior to negotiating any appraisal contract covering tracts proposed for acquisition. The local representative must also approve the per diem fee to be utilized in the appraisal contract. Where agreement cannot be reached between the Division or District Engineer and the local representative of the Department of Justice as to the selection of the appraiser(s), a complete report will be

submitted to DAEN-REE, for resolution with the Attorney General.

(e) *Interdepartmental Services.* Division Engineers are authorized to arrange for interdepartmental services of qualified specialists in the regular employ of other Government agencies in connection with special problems concerning mineral deposits, water rights, timber cruises, etc. Division Engineers are further authorized, in their discretion, to redelegate this authority or any part thereof to District Engineers.

Subpart C—Acquisition

Procurement of Title Evidence, Title Clearance, and Closings

§ 644.61 General.

(a) *Purpose.* Sections 644.61 through 644.72 describe the procedures relating to the procurement of title evidence, title clearance, and closings for the acquisition of real estate and interests therein for all land acquisition programs administered by the Chief of Engineers. Exceptions in connection with the acquisition of properties under the Homeowners Assistance Program are set forth in Subpart E.

(b) *Applicability.* These sections are applicable to all Division and District Engineers having real estate responsibility.

(c) *Guidelines.* (1) The satisfactory progress of land acquisition programs necessitates the prompt procurement of title evidence and prompt title clearance. One of the following types of title evidence should be obtained, after considering the cost of the several types and other factors mentioned below. To effect these objectives, careful planning is essential, including a determination of the most acceptable and available type of title evidence and the source from which such title evidence may be procured. The Chief of Engineers is responsible for procuring all title evidence, including title evidence needed for lands which are acquired by condemnation proceedings. The early procurement and examination of the title evidence and title clearance will expedite payment to landowners from whom offers are obtained or against whom condemnation proceedings are filed.

(2) Insured certificates of title or policies of title insurance shall be obtained wherever possible. This is on the theory that the Government is buying title searching service as well as the title evidence itself and is avoiding the time and cost of examining abstracts of title, generally voluminous in nature.

(3) Where it is not possible to obtain certificates of title or title insurance, abstracts of title may be obtained, as a last resort.

(4) As used in these sections, an abstract of title is a synopsis or digest of all instruments of record affecting the title to a specific parcel of land. It neither guarantees nor insures the title. A certificate of title is a contract whereby a title company certifies that title to a specific parcel of land is good and unencumbered of record in a named person excepting only such defects and encumbrances as are shown therein. The liability of the company is limited to an amount specified in the certificate. A title insurance policy is a contract which insures that the owner or mortgagee will not suffer any loss or damage by reason of defects in the title to the property, or liens or encumbrances thereon existing at the date of the policy, except those defects, liens, or encumbrances which the policy specifically excepts. Liability thereunder is not limited to matters of record but extends to matters beyond the record.

(5) The Directory of the American Land Title Association may be obtained upon request to the Association at 1828 L Street, NW., Washington, DC 20036, or to any major title insurance company. This Directory lists, by States, the abstract and title companies which provide title insurance. These companies are acceptable to the Attorney General. Requests for furninshing title certificates or title insurance should be made to the major title insurance companies in addition to local abstractors and title companies.

(6) From past experience, it is considered that the procurement of certificates of title or title insurance is more economical than abstracts of title and the use of these types of title evidence expedites payment to landowners. In the majority of the States either certificates of title or title insurance are obtainable and the premium for issuance of such certificates or policies is based on a schedule of fees approved by the State Insurance Commission or some similar State agency. The premium fixed by such schedules, in most cases, includes the charge for title examination (preliminary certificate of title or preliminary binders) and the charge for insurance (final certificates of title or title guarantee policy) and any variance from the prescribed fees is considered a violation of the Sate law or regulation. Most State Insurance Commissions have recognized and approved the forms of certificates of title and title insurance policies prescribed by the Attorney General and have authorized their use in lieu of owners' policies. Division and District Engineers should familiarize themselves with the State title insurance laws and regulations. If prices quoted by all possible sources seem exorbitant, the matter should be referred to HQDA (DAEN-REA-P) WASH DC 20314 for action.

§ 644.62 Title Evidence.

(a) *Acceptable Types of Title Evidence.* (1) Certificates of title are acceptable title evidence. Certificates of title must be in a form acceptable to the Attorney General. An acceptable form of certificate of title which has been approved by the Attorney General has been issued by the Chief of Engineers as ENG Form 903, Certificate of Title.

(i) In contracting for certificates of title, ENG Form 1016, Specifications for Furnishing and Delivering Certificates of Title Owner's Title Guarantee (Insurance) Policies and Continuations Thereof, will be used.

(ii) Any title or abstract company approved by the Department of Justice and authorized and qualified to issue certificates of title in the State where the land is located will be acceptable to furnish certificates of title (Department of Justice "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States, 1970.") In those few jurisdictions where bar associations or other public or professional bodies hold that the issuance of certificates of title is the issuance of title opinions and therefore the practice of law and where title companies as corporations cannot engage in the practice of law, insured certificates of title may be procured from attorneys, acceptable to the Lands Division of the Department of Justice, acting as agents for title companies. The procedure for the selection of attorneys is set forth in § 644.63(b).

(iii) Certificates of title will be based on a search of all records affecting the title to the land and be unqualified as to the period of search. In the event that it is not practicable to obtain certificates of title, unqualified as to the period of search, all pertinent facts will be referred to the Department of Justice for consideration and approval.

(iv) Certificates of title or title insurance policies shall not limit the liability of the title company to a sum less than 50 percent of the reasonable value of the property. If property is acquired by donation or exchange, the value will be determined by the Corps of Engineers. However, as to acquisitions valued at more than $50,000, the liability of the title company may be limited to 50 percent of the first $50,000 and 25 percent of that portion of the value in excess of that amount. This limitation on the general rule has been approved by the Department of Justice. The appropriate ENG Forms for specifications for supplying title evidence may be amended, if that limited liability can be obtained. A certificate of title or title insurance policy by

one title company for a single acquisition valued at more than 25 percent of the admitted assets (after deducting existing liabilities secured or unsecured and excluding any trust or escrow funds) of the issuing company is not acceptable.

(v) Generally, it is not necessary to obtain a final certificate of title when land is acquired by condemnation proceedings. However, it may be necessary that an intermediate certificate of title be obtained setting forth the limitation of liability of the title company. Division and District Engineers will be governed by the requirements of the local United States Attorney as to the necessity of obtaining an intermediate or final certificate of title.

(vi) Certificates of title, whether preliminary, intermediate, or final, will be procured in sufficient numbers to satisfy the needs of the District involved. Normally an original and two signed copies of each certificate of title will suffice.

(vii) The specifications may be supplemented to require the title company to have a local representative stationed convenient to the project office, when, because of the nature of the project (anticipated complexities of title; high purchase prices, or other reasons), it is considered advisable that a local representative be available to perform preclosing interim title searches on request of the Contracting Officer.

(viii) The title company's local representative must be authorized to pass on the sufficiency of the proposed deed to the United States; to give final approval of curative material furnished to satisfy title objections set forth in certificates of title; and to testify in court relative to the status of title, if called upon to do so.

(2) Title guarantee or title insurance policies are acceptable title evidence.

(i) Interim binders on owner's title guarantee or title insurance policies supplemented by an owner's title guarantee policy or title insurance policy in the forms approved by the Attorney General (ENG Form 1014), Interim Binder on Owner's Title Guarantee (Insurance) Policy, and ENG Form 1015, Owner's Title Guarantee (Insurance) Policy will be acceptable as evidence of title only in acquisition in those States where certificates of title may not be issued. ENG Form 3893-R is the form of endorsement for use with the title insurance policies when changes or corrections become necessary. No other substantial variation in the form of interim binder or the form of title guarantee or title insurance policy will be acceptable without prior approval of the Attorney General.

(ii) Companies contracting to issue such interim binders or preliminary reports and title guarantee or title insurance policies must have authority under the laws of the State of their incorporation and their charter to issue the same. They must also be financially sound and be willing and able to issue such binders and policies for all tracts for the amount of liability as set forth above.

(iii) In contracting for title guarantee or title insurance policies, ENG Form 1016, Specifications for Furnishing and Delivering Certificate of Title Owner's Title Guarantee (Insurance) Policies and Continuations Thereof, will be used.

(iv) The interim binder or preliminary report must disclose the title holders of record and contain full information on all matters set forth in the binder as affecting the title. This data must be in sufficient detail to enable an attorney examining the report to determine the nature and extent of such matters and their effect on the validity of the title of the land described therein. The contents of the report must meet the requirements of ENG Form 1016.

(v) The provisions of paragraphs (a)(1) (iv), (v), (vi), (vii) and (viii) also apply to title guarantee or title insurance policies.

(3) Abstracts of title may be acceptable title evidence.

(i) Abstracts if title complying with the rules for abstracts in "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" issued by the Department of Justice, 1970, are acceptable title evidence if prepared by abstractors acceptable to the Attorney General. These may include abstractors employed by a department or agency of the Government. Corps of Engineers personnel generally will not prepare abstracts of title. However, where there is a comparatively small amount of abstract work to be performed, it may be desirable to have the abstracts prepared by qualified Government personnel. In such cases, the prior approval of the Chief of Engineers will be obtained. The request should justify the preparation of abstracts by Government personnel.

(ii) The form and contents of abstracts of title will meet the requirements in the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" (Department of Justice, 1970) and ENG Form 1012, Specifications for Furnishing and Delivering Abstracts of Title.

(iii) The period of search of an abstract of title to be acceptable to the Attorney General will, wherever possible, begin with some undisputed source of title such as an original grant or patent from the sovereign. Where it is impossible or impracticable to begin with such grant or patent, refer to "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" (Department of Justice, 1970) and ENG Form 1012 for guidance.

(iv) In contracting for abstracts of title, ENG Form 1012 will be used. ENG Form 1012 provides for an unlimited period of search. For the purpose of conserving Government funds and in applicable easement acquisitions, Division and District Engineers are authorized to modify ENG Form 1012 to provide for the mimimum period of search allowable under the regulations of the Department of Justice, when deemed to be to the best interest of the Government.

(4) Where the consideration to be paid by the Government is $1,000 or less, acquisition in fee may be based upon a title search by a staff attorney when it is deemed to be in the best interest of the Government. The Preliminary Certificate of Title, ENG Form 909, shall be based upon a search of the local land records beginning with a deed or other instrument transferring title recorded at least 40 years prior to the date of the preliminary certificate. The Final Certificate of Title on ENG Form 1013, shall be executed by a qualified Corps of Engineers' attorney, preferably the same attorney who executed the preliminary certificate, and shall be based on a further search of the local land records from the date of the preliminary certificate to and including the date and time of recordation of the deed to the United States or to the date title passes in a condemnation proceeding. The attorney preparing such preliminary or final certificate of title shall also prepare an Abstract of Title evidencing the results of his search of the records. The Certificate of Title will set forth in detail all liens, encumbrances, outstanding interests and other estates adversely affecting the title.

(b) *Easements.* The standards and requirements as to title evidence for fee acquisition, set forth above, will be observed in the acquisition of all easements, except as follows:

(1) Preliminary certificates of title of approved title companies for easement acquisitions will be in the same form approved by the Attorney General for fee acquisitions and issued by the Chief of Engineers as ENG Form 903. Final certificates of title in easement acquisitions, however, must show title to the easement vested in the United States in the same land described in the certificate and the deed to the United States. A form of final certificate of title for easements approved by the Attorney General and issued by the Chief of Engineers as ENG Form 1017, Final Certificate of Title for Easements, will be used in easement acquisitions.

(2) In contracting for certificates of title to easements, ENG Form 1016, Specifications for Furnishing and Delivering Certificates of Title, Owner's Title Guarantee (Insurance) Policies and Continuations Thereof, may be used provided the following paragraph is substituted in the detailed specifications: "Each certificate of title shall be executed in triplicate on legal size paper. Preliminary certificates of title shall be in the form attached hereto, ENG Form 903, and final certificates of title for easements, showing title vested in the United States, shall be in the form attached hereto, ENG Form 1017."

(3) In jurisdictions where it is not possible to obtain certificates of title commercially, title guarantee (insurance) policies may be obtained. In such cases, appropriate adjustment in forms and specifications will be made, comparable to those prescribed for certificates of title to easements above.

(4) For easements costing more than $100 but not in excess of $5,000, the requirements of the Attorney General have been waived. In such cases, it is acceptable to use certificates of title prepared and executed by a qualified Corps of Engineers' attorney. The Preliminary Certificate of Title, ENG Form 909, shall be based upon a search of the local land records beginning with a deed or other instrument transferring title recorded at least 25 years prior to the date of the preliminary certificate. The Final Certificate of Title on ENG Form 1013, shall be executed by a qualified Corps of Engineers' attorney, preferably the same attorney who executed the preliminary certificate, and shall be based on a further search of the local land records from the date of the preliminary certificate to and including the date and time of recordation of the deed to the United States or to the date title passes in a condemnation proceeding. The attorney preparing such preliminary or final certificate of title shall also prepare an Abstract of Title evidencing the results of his search of the records. The Certificate of Title will set forth in detail all liens, encumbrances, outstanding interests and other estates adversely affecting the title.

(5) As to easements which cost $100 or less, acquisition shall be in accordance with the provisions of Paragraph (5) on page 5 of "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" (Department of Justice, 1970) which permit such acquisition to be based on a last owner search. Any search authorized by these provisions may be conducted by a qualified attorney employed by the Corps of Engineers.

§ 644.63 Contracting for Title Evidence.

(a) *Survey of Area and Source of Title Evidence.* Contemporaneously with the preparation of the real estate design memorandum, or real estate planning report, the Division or District Engineer is requested to:

(1) Give careful consideration to the problems involved to determine the most acceptable type of title evidence, its source, availability of title plants, costs, and time of procurement, so that the most advantageous bid(s) may be received and accepted and the acquisition schedule maintained. In considering costs of abstracts of title versus certificates of title or title insurance, the workhours involved in the examination of abstracts of title by both Corps and Department of Justice personnel should be considered.

(2) Determine the total number of tracks in the project area. In major projects, it may be desirable to invite bids for title evidence for each county or other specified areas, in addition to the entire project, in order to maintain the acquisition schedule.

(3) Determine the names and addresses of title companies and abstractors available to furnish title evidence and whether such companies or abstractors have been approved by the Attorney General as acceptable companies or abstractors. Current information on approved title companies and abstractors may be obtained direct from the Land and Natural Resources Division, Department of Justice, WASH DC 20530.

(b) *Selection Procedure.* (1) Normally selection of persons or firms to perform title evidence services will be based upon formal advertising in accordance with the Armed Services Procurement Regulation (ASPR) (Chapter I of this title).

(2) In those States where the furnishing of title evidence is held to constitute the practice of law and the State canons of legal ethics prohibit attorneys from engaging in competitive bidding for such services, contracts for title evidence services must necessarily be negotiated. In such cases, negotiations shall be conducted with attorneys or law firms duly authorized to practice law in the jurisdiction within which the real property is located. Division and District Engineers shall notify HQDA (DAEN-REA-P) WASH DC 20314 before negotiating for title evidence, and submit the list of attorneys with whom negotiations may be conducted. Selections shall be in accordance with the procedures set forth below:

(i) A contract for title services shall be based upon, but not limited to, consideration of the following professional qualifications necessary for the satisfactory performance of the services required:

(A) Professionally trained for type of work;

(B) Specialized experience in the type of work required;

(C) Capacity to accomplish the work in the required time;

(D) Past experience, if any, with respect to performance on Corps of Engineers contracts;

(E) Location in the general geographical area of the project to which the services relate: *Provided*, That there is an appropriate number of qualified attorneys or law firms therein for consideration; and

(F) Volume of work previously awarded, with the objective of effecting an equitable distribution of title evidence contracts among qualified attorneys and law firms.

(ii) A preselection list of qualified attorneys and law firms shall be prepared by a preselection board from data submitted by interested attorneys and law firms and from other pertinent information which may be available. The list shall be approved by the District Engineer or his designee.

(iii) A selection board shall review the qualifications of each of the attorneys or law firms on the preselection list, in accordance with the procedure established in paragraph (b)(2)(i) of this section and shall recommend to the District Engineer, in order of preference, a minimum of three for approval for contract negotiations.

(iv) Upon approval of the selections by the District Engineer and such approval as may be required by paragraph (b)(2)(vi) of this section, negotiations shall be initiated with the first selected attorney or law firm. If the negotiations result in a price which exceeds the Government estimate, revised to correct errors of fact or judgment, if any, by more than ten percent, the Contracting Officer shall terminate the negotiations and request a proposal from the attorney or law firm next in order of preference.

(v) Preparation of preselection lists and selections for contracts estimated to cost more than $10,000, shall be accomplished by formally constituted boards consisting of at least three members, one of whom shall be the District Counsel or an attorney on his staff, and one of whom shall be the Chief, Real Estate Division, or a member of his staff.

(vi) Special approval shall be required for certain selections as indicated below:

(A) When the estimated cost of a contract to be negotiated exceeds $100,000, the selection shall require the approval of the Division Engineer.

(B) When an attorney or law firm, to which the District has awarded contracts totalling over $100,000 during the current fiscal year, has been selected by the District for additional

negotiations, the selection shall require the approval of the Division Engineer.

(C) When the estimated cost of a contract to be negotiated exceeds $200,000, the selection shall require the approval of the Director of Real Estate, OCE, or his designee, with the concurrence of the Chief Counsel or his designee.

(c) *Forms to be Used.* When purchasing title evidence, Standard Form 33, Solicitation, Offer, and Award, which form embraces an invitation, bid, and acceptance, should be used with copies of ENG Form 1012 or ENG Form 1016, depending upon the type of title evidence to be obtained. Standard Form 33 will state that time is of the essence; that ability to comply with delivery requirements is mandatory; that the specifications attached thereto constitute a part of the proposed contract; the quantity and description of the supplies by item to be furnished; the time, place, and method of delivery; and the primary period of contract and extensions. Bids must be submitted in the form required by the invitations for the bids, so that the successful bid can be accepted on Standard Form 33 and a formal contract consummated thereby. The contract must incorporate all the covenants, terms, and conditions which are contemplated.

(d) *Base Price vs. Per-Item Basis.* The invitation will call for the furnishing of an approximate number of certificates of title, abstracts of title, or preliminary binders and title guarantee (insurance) policies, as the case may be, at a stated price per certificate of title, abstract, or preliminary binder and title guarantee (insurance) policy. If this basis of payment is not possible, payment for abstracts may be made on a per-item or per-page basis and certificates of title and interim binders and title guarantee (insurance) policies may be paid for in accordance with an established rate schedule based on the cost of the property. Where necessary, alterations in the payment paragraphs of the specifications may be made in order to comply with local practices, State statutes, or other special requirements.

(e) *Specifications.* The specifications for title service will follow ENG Form 1012 for abstracts, ENG Form 1016 for certificates of title and ENG Form 1014 for interim binders on owner's title guarantee (insurance) policies. Additional provisions may be added as circumstances require, but basic requirements will not be changed.

(f) *Several Contracts for Title Evidence.* To meet the acquisition schedule, it may be necessary to enter into several contracts for title evidence to lands within a designated project area. In such cases, the portions of the projects to be covered by each contract will be defined according to established political subdivisions, such as districts, townships, counties, or any specified part thereof.

§ 644.64 Award of Contracts.

(a) *Contract Awards.* Contract awards will be made only by duly qualified contracting officers in accordance with applicable procurement regulations.

(b) *Review of Title Evidence Contracts.* The Contracting Officer, if an employee of the Real Estate Division, or otherwise the Real Estate representative designated by the Division or District Engineer, will review contracts for title evidence. If this review is made by a Real Estate employee other than a Contracting Officer, he will advise the Contracting Officer relative thereto. The Contracting Officer or the Real Estate representative will ascertain that the Department of Justice has approved the bidder, and the contract will not be awarded to any bidder not so approved. The Contracting Officer or the Real Estate representative who is to advise him, will familiarize himself with "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States," issued by the Department of Justice, 1970.

(c) *Distribution.* Upon acceptance, copies of title evidence contracts will be distributed in the same manner as other contracts.

§ 644.65 Ordering Title Evidence.

(a) *Placing Orders.* Where the contract does not specify the order in which title evidence for particular tracts will be furnished, orders will be submitted to the abstractor or title company on ENG Form 1011, Order for Title Evidence. An accurate legal description of the tract of land involved will be attached to the order or will be typed thereon.

(b) *Orders Based on Contiguous Areas.* If the contract does not contain a list of tracts for which title evidence is to be furnished, orders will be based on contiguous areas of land in identical ownership and will be deemed to be contiguous even though crossed by roads, railroads, rights-of-way, or streams. In such event the variation in quantity shall not exceed plus or minus ten percent as prescribed by ASPR. If there has been a severance of surface and subsurface estates, determination of what constitutes a tract will be based on ownership of the surface. However, in unusual cases where such a contiguous area is composed of several parcels derived through separate chains of title and requiring separate searches of each chain of title down to a comparatively recent date or where such contiguous area lies in more than one section, the Contracting Officer may contract to pay a specified reasonable additional charge for each such additional chain or section if such additional charge is customary in the locality where the land lies.

(c) *Type of Title Evidence.* The order will set forth the type of evidence to be furnished. When abstracts are contracted for, the following rules will be observed:

(1) If an abstract of title in satisfactory form cannot be procured from the landowner, a new abstract will be ordered.

(2) If an abstract in satisfactory form is procured from a landowner, the abstract will be transmitted to the abstractor with an order for a continuation of the old abstract.

§ 644.66 Payment for Title Services.

(a) *Approval.* The Contracting Officer will approve payment for all title evidence obtained in connection with the acquisition of land from funds available to the Division or District Engineer for that purpose, whether the land is acquired by purchase or condemnation.

(b) *Review.* When abstracts are furnished on a per-item or per-page basis, the contents must be carefully reviewed by a qualified representative of the Division or District Engineer, to insure that bills are not excessive and that abstracts do not include superfluous material. Where erroneous or superfluous material is included in abstract, the bills involved will be corrected so that payment for such material is not made. All title evidence will be examined to determine that there has been full compliance with the specifications.

(c) *Payment for Title Evidence.* Payments for title evidence will be made by the Contracting Officer from available funds for the project to which the title evidence pertains, upon receipt of certified and approved vouchers.

(d) *Preparation of Invoices for Title Services.* The abstractor or title company will submit a certified invoice for services rendered, to the office to which the title evidence was delivered for review. The invoice must specify the particular type of title evidence furnished, the tract number, name of owner, name of project, and contract number. Invoices found to be correct will be certified as to receipt of the services by the receiving office and will be transmitted to the Division or District Engineer for further action and payment.

§ 644.67 Approval of Title by the Attorney General.

(a) *General.* Section 355 of the Revised Statutes of the United States, as amended (40 U.S.C. 255), formerly required the written opinion of the At-

torney General in favor of the validity of the title to lands as a prerequisite to the expenditure of public funds thereon.

(b) *Delegation.* Pursuant to the provisions of Pub. L. 91-393, approved September 1, 1970, authority to approve title to lands being acquired for the use of the Department of the Army, or of any other department or agency for which the Department of the Army is authorized to acquire land, has been delegated to the Department of the Army, subject to the supervision and review of the Attorney Genral. Generally, military authorization and/or appropriation legislation expressly authorizes construction on the land prior to approval of title.

(c) *Redelegation.* The authority delegated to the Department of the Army pursuant to Pub. L. 91-393 has been redelegated to Division and District Engineers with real estate responsibility.

(d) *Issuance of Title Opinions.* Division and District Engineers are authorized to designate staff attorneys to give written approval of the sufficiency of title to land for the purposes for which the property is being acquired. Such attorneys shall issue preliminary and/or final opinions of title.

(1) Attorneys designated for such purposes will have as a minimum five years legal experience, from the date of admission to a State bar, including three years experience in the law of real property. Real estate attorneys on the staffs of Division and District Engineers, who possess these qualifications, will be designated by the Division and District Engineers, in writing, to pass on the sufficiency of title to lands pursuant to the said delegation. The names of such attorneys shall be furnished to HQDA (DAEN-REA-P) WASH DC 20314 as soon as possible.

(2) A final opinion of title shall be issued in all acquisitions, except for easement acquisitions not in excess of $1,000 which are governed by § 644.69(b).

(3) Division and District Engineers are authorized to waive the issuance of written preliminary opinions of title where the closing of the case is based upon a certificate of title or title insurance issued by an acceptable and approved title company, in either fee or easement acquisitions.

(4) A preliminary and a final opinion of title shall be issued in all fee and easement acquisitions involving abstracts of title, except for easement acquisitions not in excess of $1,000 which are governed by § 644.69(b).

(5) Any final title opinion issued pursuant to the delegated authority shall substantially follow the format of the Attorney's Final Title Opinion (Figure 5-3 of EP 405-1-2).

(e) *Opinion of Attorney General.* Whenever the District or Division Engineer determines that a title defect is of such character that a possibility exists that it may be waived, the case shall be submitted to HQDA (DAEN-REA-P) WASH DC 20314 for review and transmittal to the Attorney General for a title opinion. The letter of submittal shall contain or be accompanied by the information and data required by § 644.72(b).

(f) *Rejection Opinion.* If it is obvious that no possibility of waiver of a title defect exists, a title opinion shall be issued according to the procedure set forth in § 644.67(d). Copies of such opinion shall be submitted with the condemnation assembly.

§ 644.68 Title Clearance—Certificate of Title and Title Insurance.

(a) *Curative Action.* Upon receipt of an acceptable certificate of title, ENG Form 903 or an interim binder on an owner's title guarantee or insurance policy, ENG Form 1014, the title evidence will be reviewed by a qualified real estate attorney of the Corps of Engineers. Where the title evidence indicates that the acquisition of the land or interest therein by purchase is feasible, and a satisfactory ENG Form 42, Offer to Sell Real Property, or ENG Form 2970, Offer to Sell Easement, is received from the landowner and accepted by the Government, curative action will be conducted and curative material will be processed as follows:

(1) With regard to the title objections set forth in Schedule "B" of certificates of title or interim binders, it will be necessary to take such curative action as will insure the issuance of a final certificate of title or title guarantee or insurance policy showing title vested in the United States of America, subject only to those objections, if any, which have been administratively waived.

(2) As set forth in the title contract, the title company will authorize its local representative to give final approval of curative material furnished to satisfy such objections and insure their elimination from the final certificate of title or title guarantee or insurance policy. As such curative material is approved, the local representative of the title company will:

(i) Initial, or otherwise indicate, on the margin of the preliminary certificate or interim binder, the fact that the objection has been eliminated through the procurement of satisfactory curative material.

(ii) Determine whether or not he wishes the curative instrument recorded and if the instrument is to be recorded, so indicate on the margin of the certificate or interim binder. By the express terms of the offer to sell, the vendor is responsible for payment of recording fees on such curative material.

(iii) Where curative material is not recorded, the title company will be permitted to retain such material if they wish it for their files; otherwise, it will be placed with the title assembly. If the original curative instruments are retained by the title company, true copies will be transmitted with the Final Title Assembly to HQDA (DAEN-REA-P) WASH DC 20314.

(b) *Intermediate Certificates or Interim Binders.* In the following types of cases, it may be necessary, after examination of the preliminary certificates of title or interim binder, to obtain intermediate certificates of title or interim binders in order to perfect title prior to closing the transaction:

(1) When the signer of the offer is not the record title holder but is the holder of a contract for purchase, recorded or unrecorded, the preliminary certificate of title or interim binder will show title in the record title holder. In such cases, the certificate or binder will make appropriate reference to the contract. It will recite the action necessary to complete the contract and effect transfer of title from the record holder to the contract purchaser. When the deed to the contract purchaser is recorded, an intermediate certificate of title or interim binder, in proper form, will be obtained.

(2) In those cases in which record title is vested in a deceased person, the preliminary certificate of title or interim binder may be issued in the name of the deceased record owner, followed by the word "deceased," and will be accompanied by a letter from the title company stating whether a judicial proceeding will be required, or whether affidavits of heirship, or other forms of proof, will suffice to permit the issuance of intermediate certificate or binder showing title vested in the heirs of the deceased.

(i) Where a judicial proceeding is required, action will immediately be taken by the owners to perfect title by such proceeding, and, upon completion, an intermediate certificate of title or interim binder should be obtained. If such action cannot be completed within 60 days, action will be taken to acquire the tract by condemnation, § 644.72(a).

(ii) Where a judicial proceeding is not required, it will be necessary to effect the necessary curative action and obtain an intermediate certificate or interim binder showing title in the heirs of the deceased record owners.

(3) In those cases in which conveyance to the United States is to be made by a fiduciary, a corporation, a political subdivision, or an unincorporated association, the certificate of title or interim binder will state whether

the proposed grantor has legal authority to convey valid title to the United States, and, if so, will cite the source of the authority. If the preliminary certificate of title or interim binder does not so indicate, it will be returned to the title company for correction or for issuance of an intermediate certificate of title or interim binder.

(4) Where the certificate of title or interim binder contains any objection, or reference to liens of taxes, assessments, bonds, or other indebtedness of a road improvement, school, drainage, or other type of special improvement district, the specifications provide that the certificate or interim binder will also contain reference to the statute or statutes, under which the district was created, its bonds issued, and its taxes levied; the amount of taxes and assessments levied and bonds issued; and other additional pertinent information. If the preliminary certificate or interim binder does not contain sufficient information to enable an examining attorney to determine the nature and extent of the lien, if any, on the land, of such taxes, assessments and bonds, it will be returned to the title company for correction or for issuance of an intermediate certificate of title or interim binder. If the preliminary certificate or interim binder does not clearly indicate that the bonds or taxes of such district become a lien annually at the same time as the lien of ad valorem taxes attaches to land in the State and that the lien is of the same nature as the lien of ad valorem taxes, the information specified above must be obtained and a determination must be made as to the nature and extent of the liens of such bonds and taxes.

(5) Where the certificate of title or interim binder discloses a covenant or condition restricting the use of the land, the certificate or interim binder will set forth the restriction, will quote the provision imposing the restriction or creating the right of reverter for a breach thereof, and will state whether a release will eliminate the objection. If such information is not contained in the preliminary certificate of title or interim binder, it will be returned to the title company for correction or for issuance of an intermediate certificate of title or interim binder. If a release will eliminate the objection, action will be taken to obtain an appropriate release from the person or persons holding the right of reverter. Should the title company hold that the title cannot be perfected by a release or if an acceptable release cannot be obtained, action will be taken to acquire the tract by condemnation.

(6) When the specifications require the title company to include any of the above information in the preliminary certificate of title or interim binder and it is necessary to obtain an intermediate certificate of title or interim binder due to the omission of such information from the preliminary report by the title company, the intermediate certificate of title or interim binder will be furnished without cost to the United States.

(c) *Question of Law.* Any difficult or complicated question of law raised by an objection or exception in a preliminary or intermediate certificate of title or interim binder should be submitted to HQDA (DAEN-REA-P) WASH DC 20314 for review and transmittal to the Attorney General for an opinion. The letter of submittal shall contain a full statement of the facts and references to the provisions of applicable statutes and pertinent decisions of state courts on the question involved. This action should be taken before closing. This action should also be taken on questions involving the nature and extent of the liens of bonded indebtedness, assessments, or taxes to meet the bonded indebtedness of special improvement districts, or relating to restrictive covenants.

§ 644.69 Title Clearance—Easements.

(a) *Easements Costing in Excess of $1,000:* Curative action and clearance of title to easements costing in excess of $1,000 will be the same as in fee acquisitions, as outlined above, except as follows:

(1) Under an agreement with the Department of Justice, title to easements will be approved subject to outstanding encumbrances, such as mortgages, deeds of trust, judgments, and vendors' liens, where the tract is not encumbered in excess of 50 percent of the reasonable value of the remaining property, and the consideration being paid for the easement does not represent a sum in excess of ten percent of the value of the remaining property. (As to taxes, see § 644.70(k)(6).)

(2) For the purpose of making the determinations necessary to apply the formula set forth in Paragraph (a)(1) of this section, resort may be had to the tract appraisal, provided it is based on a "before and after" approach, in which case the amount of the "after" appraisal will be used as the reasonable value of the remaining property. In the event no such appraisal has been made, a memorandum estimate by a qualified appraiser (staff or contract) will be obtained. Determination of the total encumbrances may be made on the basis of the face of the encumbering instruments. However, if it is necessary to determine that the total amount of the outstanding liens as of the date of closing has been reduced to an amount less than 50 percent of the reasonable value of the remaining property, such reduction must be evidenced by signed statements from the lienees or their authorized representatives. The appraisal or memorandum estimate and the lienee statements will be placed in the tract file.

(3) On the basis of the determinations described in Paragraph (a)(2) of this section, the appropriate information will be inserted on ENG Form 3536, Statement Concerning Outstanding Encumbrances, which will be signed by the closing agent. The original will appear as a separate document in the Final Title Assembly submitted to HQDA (DAEN-REA-P) WASH DC 20314.

(b) *Easements Costing Not in Excess of $1,000.* (1) Requirements for the release or subordination to such easements of mortgages, deeds of trust, judgments, vendors' liens, taxes which are a lien, whether or not presently due and payable, and similar encumbrances will ordinarily be the same as for easements costing in excess of $1,000.

(2) In unusual circumstances, these requirements need not be applied if the purchase price of the easement is insufficient to satisfy the liens and interest, or the amount of such liens or interest is small in comparision with the value of the land in which the easement is being acquired, and in comparison with the cost of condemnation proceedings to clear the title. In such cases, the Division or District Engineer (or the Chief, Real Estate Division, if delegated such authority) may waive such title infirmities as he determines will not interfere with the use of the easement by the Government or jeopardize the interests of the United States: *Provided:*

(i) The easement deed contains a general warranty covenant by the grantor to satisfy all such unpaid taxes and other liens and to warrant the title against any encumbrances or interests left outstanding.

(ii) The Division or District Engineer (or the Chief, Real Estate Division, if delegated the authority) has determined that such outstanding liens, encumbrances, or interest, if left outstanding, will not interfere with the Government's use of the easement, or will not jeopardize the interests of the United States, and in his opinion the title is sufficient. A certificate to this effect should be attached to the Final Title Assembly.

(c) *Curative Action.* (1) Curative action will be initiated promptly in all cases to eliminate all title defects or encumbrances, except those which may be administratively waived, those which may be eliminated by the payment of money and cleared at the time of closing, and those which may be waived as hereinafter provided. Curative material need not be recorded,

however, until the closing of the transaction.

(2) All encumbrances, defects, outstanding interests, and other matters shown in the preliminary certificates of title or interim binders, must be cured and eliminated before delivery of the purchase check, except those of a nature which have been waived as not interfering with the Government's use of the easement or as not jeopardizing the interest of the United States.

§ 644.70 Closing of Cases.

(a) *Closing and Settlement Officers.* Payment and closing of cases will be initiated immediately upon completion of curative action, by qualified Closing Officers employed by the Corps of Engineers. To be qualified, a Closing Officer must be employed in the Real Estate Division of a Division or District Office, or in a Real Estate Project or Suboffice, in an Attorney-Advisor position, or in a Realty Officer position if he is a member in good standing of the Bar of a State, Possession, or the District of Columbia, and has been instructed in Federal procedure and in the requirements for closing land acquisition transactions by a Division or District Closing Officer and has been approved by the Division or District Engineer to close land acquisition transactions independently. It is no longer necessary for Closing Officers to be individually bonded. Contracting for closing services will require prior approval of HQDA (DAEN-REA-P).

(b) *Payment.* Payment for land, or interests therein, will be made from funds available to the Division or District Engineer.

(c) *General.* The details of the closing necessarily differ according to the number of vendors and the outstanding interests, the number and variety of the encumbrances and title objections to be met, and miscellaneous other details resulting from complications in the particular title. Upon receipt of the check and title papers, the Closing Officer will review the entire file relating to the acquisition, fully acquaint himself with the terms and conditions of the sale, and with the condition of the title, and will ascertain whether there are any special conditions to be performed, or requirements to be met, on the part of the landowner or the Government and what objections to the title are to be eliminated before valid title may vest in the United States.

(d) *Curative Data.* The Closing Officer will determine the character and amount of all outstanding interests in, liens on, or claims against the land, which are to be satisfied out of the purchase price, and see that necessary curative action has been taken and curative data obtained to cure all defects in and meet all objections to the title. If the title evidence consists of a certificate of title of a title company, or a title guarantee policy, approval of the curative material, obtained to eliminate the title objections, must be obtained from the title company.

(e) *Continuation of Title Search.* The Closing Officer will satisfy himself that no change has occurred in the land records from the date of the prior certification which will adversely affect the title to the real estate interest being acquired by the United States. Where deemed appropriate because of the complexities of the title, the amount of the purchase price, or other reason, the local representative of the title company or the abstracter will be requested to examine the title records for the purpose of making this determination, and a continuation of the title evidence should be obtained, if considered necessary. Otherwise, the interim title search may be made by the Closing Officer.

(1) If no adverse change in the status of title has occurred since the date of the preliminary or the latest certification of the title by the abstracter or the title company, as the case may be, the Closing Officer will proceed to close the case.

(2) In case of change in ownership during the period, the Closing Officer will order a continuation of the abstract or an intermediate certificate of title or interim binder, as the case may be, and take such action as necessary to cure the title.

(f) *Payment and Closing Sheet.* ENG Form 1566, Payment and Closing Sheet and Receipt for United States Treasurer's Check, covering all charges to be eliminated by payment of money to be deducted from the purchase money check, will be prepared in advance of closing. This sheet will show, in detail, all disbursements of the purchase money, including all amounts to be expended for satisfaction of:

(1) Taxes and assessments.

(2) Outstanding judgments—State and Federal.

(3) Mortgages, deeds of trust, and other liens.

(4) Amounts received under any contract or bond.

(5) Landowner's balance after all charges are deducted from the purchase price.

(g) *Division or District Inspection of Premises.* The Closing Officer or other authorized Division or District employee will personally make an inspection of the premises to ascertain whether any person is occupying the property in whole or in part.

(1) The Closing Officer or an authorized Division or District employee will prepare ENG Form 798, Certificate of Inspection and Possession.

(2) If any person other than the vendor is found in possession, the Closing Officer will secure a disclaimer on ENG Form 1290, Disclaimer. The disclaimer will be modified to make allowance of any provision in the offer to sell permitting possession after closing.

(3) The Closing Officer or an authorized Division or District employee will check to determine that the buildings, improvements, and crops listed on the appraisal report are still on the land being conveyed. Where buildings, improvements, and crops have been reserved by the landowner, it will be determined that only the items reserved have been removed. Whenever possession of land is surrendered to the Government before the time of payment and closing, and immediate inspection and report ENG Form 1567, Report on Vacation of Property, will have been made. The Closing Officer may rely upon this report for the inspection required in the first part of this subparagraph unless he is aware of circumstances which would make a supplemental inspection and report proper. If no such inspection and report have been made and possession has been surrendered to the Government, the inspection and report must be made at this time.

(4) The Closing Officer or an authorized Division or District employee will determine whether there have been repairs or improvements to or construction on the premises which might give rise to mechanics liens.

(5) The ENG Form 798 will be executed and placed with the title papers. If executed by an employee other than the Project Manager or Closing Officer, it must be approved by the Project Manager or Closing Officer, to indicate that the Project Manager or Closing Officer has authorized the employee signing the certificate to make the inspection and is satisfied it has been properly done.

(h) *Deed to the United States.* (1) The deed to the United States will be drafted in accordance with the "Standards for the Preparation of Title Evidence in Land Acquisition by the United States," issued by the Department of Justice in 1970.

(2) Where the landowner's name appears in various forms among the title papers, full use will be made of the "also known as" clause in identifying the grantor in the deed to the United States.

(3) The deed shall contain a quitclaim clause by which the grantor quitclaims to the United States all right, title, and interest which the grantor may have in the banks, beds, and waters of any streams bordering the said land to be conveyed, and also

all interest in alleys, roads, streets, ways, strips, gores, or railroad rights-of-way abutting or adjoining said land and in any means of ingress or egress appurtenant thereto.

(4) Recording fees, transfer taxes, and similar expenses incidental to conveying real property to the United States; penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier, shall be paid by the Government pursuant to authority of Section 303, Pub. L. 91-646, approved January 2, 1971.

(i) *Satisfaction of Liens and Encumbrances.* All mortgages, deeds of trust, judgments, mechanics liens, and similar encumbrances will be satisfied and released or discharged of record. In the acquisition of easements, liens and encumbrances should be satisfied, released or subordinated to the Government's easement, except as provided in § 644.69(a) or unless administratively waived under § 644.69(c).

(j) *Payments to Tenants and Lessees.* Amounts due lessees, or other tenants, under ENG Form 1564, Consent to Offer to Sell, will be paid from the purchase price or by the landowner direct. In either case, proper receipts and releases will be obtained.

(k) *Satisfaction and Release of Liens of Taxes and Assessments.* (1) Except as provided in § 644.69(b) and Paragraph (k)(6) of this section, all taxes and assessments which, under the law of the State where the land is located, are a lien on the property as of the date of the delivery and recordation of the deed to the United States must be paid at or before closing, unless provision for their payment is made as follows:

(i) Where closing takes place before the completion of the assessment and levy of the taxes necessary to the determination of the amount of the taxes, or before the taxes are due and payable, a sufficient sum will be withheld from the purchase price to satisfy such taxes when the amount is later determined or they later become due and payable. In cases where the amount of taxes has not been determined, an estimate will be made, after consultation with the assessor and consideration of the amount of taxes paid on the land for the preceding year. The amount withheld should be at least 20 percent in excess of the amount of taxes assessed against the property for the preceding year.

(ii) If the taxes are not due and payable under State law, though the amount has been determined at the time of closing, payment will not be made to the collector or other official charged with the collection of taxes, unless he has authority to accept payment and receipt for them in advance of the due date.

(2) Funds withheld for the payment of taxes will be transmitted promptly to the Division or District Engineer in the form of cashier's check or money order payable to the Treasurer of the United States, unless the taxes are paid or held in escrow by the title company. The Closing Officer, in transmitting such payments, must clearly identify, by name, the vendor from whom the tax money was withheld, and must identify the land for which the taxes were withheld by its tract number in the project. He must also identify the taxes for payment of which the money has been withheld by specifying the type of taxes, such as county, city, or school. He will set forth the year each became or becomes due and fully explain the manner in which payment or withholding has been handled in order that proper payment will be effected by the Division or District Engineer when the taxes are due and payable. Any balance of the amount withheld and not needed to satisfy the taxes will be refunded to the grantor.

(3) Where payment of the taxes is not possible at the time of closing and funds are withheld for this purpose, the Closing Officer will immediately notify the local tax official that title to the particular tract has been conveyed to the United States and that funds have been withheld for the payment of taxes, specifying the taxes for which an amount has been withheld and stating that such funds are in the custody of the Division or District Engineer. In giving such notice, he will use ENG Form 894, Notice to Tax Official.

(4) When the taxes become due and payable, the Division or District Engineer will pay such taxes from the funds withheld from the purchase price. Any excess between the amount of taxes actually paid and the amount withheld will be refunded to the grantor by the Division or District Engineer. Refund checks will be transmitted to the grantor only after it has been definitely determined that all taxes which were liens on the tract are shown as satisfied on the books of the tax collector. This is necessary to avoid the possibility of a refund being made before satisfaction of all tax liens. The tax receipt should be forwarded to HQDA (DAEN-REP-S) WASH DC 20314 for filing with the original title papers.

(5) Where the evidence of title consists of certificates of title or title insurance, and funds are withheld for payment of taxes, the amount so withheld may be turned over to the title company, provided:

(i) The title company is financially responsible and will agree to issue a final certificate of title or title policy in which no tax liens or unpaid taxes will be noted or, if noted, will be followed by the statement: "For the payment of which provision has been made by deposit of a sufficient sum with this company."

(ii) The title company will enter into an escrow agreement with the grantor to hold such sum for the satisfaction of the taxes when they become due, and to return to the grantor any excess remaining after their payment.

(6) Agreements have been reached with the Department of Justice that, in the acquisition of easements, the following will apply:

(i) No provision need be made for the payment of taxes which are a lien but are not due and payable, provided that the purchase price of the easement, including severance damage, is not in excess of 50 percent of the reasonable value of the entire contiguous property of the vendor. In the event the value of the easement has been determined by a "before and after" appraisal, the amount of the "after" appraisal will be utilized in making the necessary determination. In the event no such appraisal has been made, it will not be necessary to prepare a complete appraisal of the value of the contiguous property. In lieu thereof, a memorandum estimate by a qualified appraiser (staff or contract) will be obtained and placed in the tract file. In either case, the appropriate information will be inserted on ENG Form 3536, Statement Concerning Outstanding Encumbrances.

(ii) It will not be necessary to withhold funds for payment of current taxes which are due and payable, if the purchase price of the easement is insufficient to pay such taxes. In such case, Item 4 of ENG Form 3536 and the third block of that form will be completed.

(iii) ENG Form 3536 will be signed by the Closing Officer and the original will appear as a separate document in the Final Title Assembly.

(l) *Payment and Recordation of Deed.* (1) No disbursement of the purchase price shall be made until:

(i) A duly executed deed has been accepted;

(ii) All outstanding charges, liens, or encumbrances on the land have been satisfied and discharged, or a sufficient sum has been withheld from the purchase price to satisfy and discharge such charges, liens and encumbrances; and

(iii) The title is sufficient for the purposes for which it is being acquired, and all objections thereto have

been eliminated or administratively waived in writing.

(2) When the requirements of Paragraph (l)(i) of this section have been satisfied, the balance of the purchase price shall be delivered to the landowners.

(3) The deed and all instruments which release liens or encumbrances on the property shall be promptly recorded.

(m) *Closing of Easements Acquisitions*—(1) *Easement Costing in Excess of $1,000.* Closing requirements and procedures with respect to easements costing in excess of $1,000 are the same as in fee acquisitions, except as to mortgages, deeds of trust, judgments, vendors' liens, and similar title infirmities (§ 644.69(a)), and as to taxes which are liens but which are not due and payable (Paragraph (k)(6) of this section).

(2) *Easements Costing Not in Excess of $1,000.* Closing requirements and procedures with respect to easements costing not in excess of $1,000 are the same as a fee acquisition except that title infirmities may be waived as provided in § 644.69(b).

(n) *Payment and Closing Under Power of Attorney.* Where the landowner is unable or unwilling to be present personally or to pay from his own funds the amount necessary to satisfy all encumbrances and expenses, the following steps may be taken:

(1) Obtain a power of attorney from the landowner. Standard Form 232, Power of Attorney by Individual for the Collection of a Specified Check Drawn on the United States Treasury, will be used. If the landowner is a corporation, Standard Form 236, Power of Attorney by a Corporation for the Collection of a Specified Check Drawn on the Treasurer of the United States, and Standard Form 237, Resolution by Corporation Conferring Authority Upon an Officer to Execute a Power of Attorney for the Collection of Checks Drawn on the Treasurer of the United States, will be used. The power of attorney will be drawn in favor of the Closing Officer making the payment and closing. Immediately after the post office address of the Closing Officer, the following will be inserted, "Agent for the Disbursing Officer." This insertion must be initialed by the person(s) executing the power of attorney. (Above forms are available through the local GSA Regional Office.)

(2) Obtain from the landowner ENG Form 1569, Order to Disburse Under Power of Attorney. It will be noted that this form specifically recites types of indebtedness or expense, the names of the persons to be paid under the power of attorney, and the estimated, but not necessarily the exact, amounts thereof. It is important that all items (including cost of revenue stamps, recordation fees for curative material, and bank service charges) be itemized on the form.

(3) The Closing Officer then will take the necessary action for and on behalf of the landowner to discharge the indebtedness and pay expenses under the ENG Form 1569.

(4) If it is possible to have all interested parties, other than the landowner, present at one time and to make all payments simultaneously, a round table closing will be conducted. The Closing Officer, under the power of attorney and order to disburse, will endorse and cash the Treasurer's check and will make the individual disbursements in actual cash.

(5) If it is possible to determine definitely all items of payment simultaneously, but it is not possible to have all interested parties present at one time, the Closing Officer will, under the power of attorney and order to disburse, endorse and cash the Treasurer's check, obtain separate cashier's checks for all items of payment (including the bank services charge for the issuance of such checks), and deliver the checks.

(6) Where it is not possible to determine definitely all items of payment simultaneously, the Closing Officer, under power of attorney and order to disburse, will endorse and cash the Treasurer's check and will obtain separate cashier's checks for all items of payment for which disbursements may be properly made and for any balance representing the total of any items, the amounts of which cannot be definitely determined; in other words, for the residue of the amount of the United States Treasurer's check. In every instance, the cashier's checks will be drawn to provide for endorsement by the Closing Officer or landowner as later determined to be appropriate.

(7) Curative material which requires recordation will be recorded for and on behalf of the landowner and will then be placed with the title papers.

(8) The usual tax receipts, mortgage releases, judgment satisfactions, etc., will be obtained for each monetary encumbrance which has been discharged. These instruments will be placed with the title papers, unless the landowner wishes to retain them.

(9) Separate receipts on ENG Form 1571, Receipt for Payment Under Power of Attorney, must be obtained for each disbursement made under the power of attorney and order to disburse, including a receipt for the balance of the purchase price paid to the landowner. One copy of such receipt will be placed in the project files.

(10) The Closing Officer will prepare an original and two copies of ENG Form 1570, Report of Disbursement Under Power of Attorney, showing the exact amount of each disbursement made under the power of attorney and order to disburse. The Closing Officer will prepare an original and two copies of appropriate certification thereon. The original and two copies will be signed by the landowner, who will retain one copy. The Closing Officer will place one copy in the files of the project office and will place the original with the title papers. The separate receipts on ENG Form 1571 for each disbursement made will be attached to the original ENG Form 1570.

(o) *Procurement of Check.* (1) After acceptance and distribution of the offer assembly and the acquisition is ready for closing, the following instruments and supporting data will be transmitted to the Finance and Accounting Officer for scheduling of SF 1166, Voucher and Schedule of Payments, and issuance of check:

(i) Two true copies of the preliminary opinion of the Attorney General, where required; or

(ii) Two true copies of a preliminary certificate of title or title guarantee policy where the preliminary opinion of the Attorney General is not required; or

(iii) Two copies of ENG Form 909, Attorney's Preliminary Certificate of Title, in easements acquisition which cost less than $1,000; and

(iv) Two true copies of other supporting data evidencing amount due and payable, such as statement of closing attorney; and

(v) Two true copies of the offer assembly or deed executed by the vendor, if offer form has not been utilized.

(2) The following statement, appropriately modified, signed by the Chief, Real Estate Division, may be transmitted in lieu of the above listed certificates: "I certify that the check requested hereby is to pay an obligation of the United States as reflected on the attached (Offer to Sell) (easement or deed). I further certify that the parties signatory to this document and shown on the voucher as payees are the same parties reflected in a preliminary certificate of title issued by the ———— Title Company in the possession of the Real Estate Division of this office. The completion of the transaction will be in accordance with existing regulations pertaining to the closing of real estate acquisitions." The landowner's signature on a voucher is not necessary. On payments involving civil funds, paragraph 3-7g, ER 37-2-10, will be followed.

(p) *Procedure After Payment.* When the above closing requirements have been met, the Closing Officer will:

(1) Immediately order a final continuation of the type of title evidence which has been contracted for. The

final title evidence must be dated as of the date of recordation of the deed to the United States, or a subsequent date, to show a valid title vested in the United States of America subject only to those title defects which have been administratively waived or to those liens and encumbrances for which sufficient funds were withheld from the purchase price to satisfy and discharge them.

(2) Check carefully ENG Form 1566, Payment and Closing Sheet and Receipt for United States Treasurer's Check, to see that funds have been properly disbursed.

(3) Review the continued abstract, final certificate of title, or title insurance policy, as soon as they are prepared and determine that the proper preliminary and final title evidence and related papers on the case have been completed in proper order. Thereupon a Final Title Opinion will be prepared.

(4) Transmit as the Final Title Assembly to HQDA (DAEN-REA-P) WASH DC 20314, the Final Title Opinion, title evidence and related papers. This Final Title Assembly must be chronologically arranged and securely fastened for permanent filing, and should include the following:

(i) Abstract of title, properly continued through time of closing; or preliminary, intermediate, and original of final certificate of title; or interim binder and original of the Title Guarantee (Insurance) Policy.

(ii) Curative instruments and material pertaining to title defects appearing in the abstract, the final certificate of title, or the title guarantee or insurance policy.

(iii) Deed to the United States, executed, stamped, acknowledged, and recorded.

(iv) Copy of the accepted offer to sell (ENG Form 42 or ENG Form 2970).

(v) Completed ENG Form 798.

(vi) Completed ENG Form 1566.

(vii) Statement regarding payment of taxes or amount withheld to pay the taxes.

(viii) Where required, completed ENG Form 1290.

(ix) If the power of attorney procedure is followed, power of attorney on proper Department of the Treasury Form and completed ENG Forms 1569 and 1571.

(x) Certified copy of any waiver letter or certificate.

(xi) Any other papers relating to the title or closing of the case.

(xii) An additional copy of the deed and the Attorney's Final Title Opinion for review by the Attorney General.

(5) A copy of the executed and recorded deed will be retained by the Division or District Engineer for the project files.

(6) Similar action will be taken by the Closing Officer in acquisition of easements costing not in excess of $1,000.

§ 644.71 Final Title Assembly.

(a) *Disposition of Final Title Assemblies.* The final title opinion and related papers will be forwarded to HQDA (DAEN-REA-P) WASH DC 20314 for review and disposition. In addition, copies of deeds and related papers in acquisitions for the Strategic Petroleum Reserve Program of the Department of Energy will be forwarded to: Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, Louisiana 70123.

(b) *Division/District Files.* True copies will be retained for Division or District files.

§ 644.72 Transfer to Condemnation.

(a) *Transfer of Tracts from Purchase to Condemnation.* If at any time, in the course of acquisition by purchase, it becomes apparent that title clearance and closing cannot be completed within 60 days of the offer to sell, action will immediately be taken to acquire the land by condemnation in order to make funds available to the landowner.

(b) *Contents of Letter of Submittal.* In such cases the letter of submittal will contain or be accompanied by:

(1) All title evidence.

(2) An analysis of the title defects and a statement of the attempts which have been made to cure the defects.

(3) A statement of the attempts to have the title infirmities waived by the title company and the reasons for refusal; or

(4) The curative material which has been obtained to remedy the infirmities; and

(5) Two copies of the offer to sell from the apparent owners.

Acquisition by Purchase, Donation, and Transfer

§ 644.81 General.

Sections 644.81 through 644.88 describe the procedures of the Corps of Engineers relating to the acquisition of land and interests therein for both military and civil works projects by purchase, donation and transfer.

(a) *Applicability.* These sections are applicable to all Division and District Engineers having real estate responsibilities.

(b) *Acquisition Authority.*—(1) *Limitation.* Acquisition of land for use by the United States requires express authorization (10 U.S.C. 2676, 41 U.S.C. 14).

(2) *Military.* Title 10 U.S.C. 2571 authorizes transfer of real property between Defense elements without compensation if the Secretaries approve. Title 10 U.S.C. 2662 provides that acquisition of fee title or transfer of real property owned by the United States to another Federal agency, military department or a state must be reported to the Committees on Armed Services of the Senate and House of Representatives if the estimated value is more than $50,000 and the transaction may not be consummated until after 30 days have expired from the date the report is submitted to the Committees. Title 10 U.S.C. 2663 provides for acquisition by the Secretary of a military department during time of war or when war is imminent of any interest in land, including temporary use, required for a Defense installation, munitions plant or power plant for production of munitions, through negotiation and purchase, by condemnation or by gift. Title 10 U.S.C. 2672 provides that the Secretary of a military department may acquire any interest in land, including temporary use, by gift, purchase, exchange of United States owned land or otherwise, that he or his designee determines is needed in the interest of national defense and does not cost more than $50,000 exclusive of administrative costs or the amounts of deficiency judgments.

(3) *Civil Works.* Acquisition of real property for civil works projects for which provision has been made by law is authorized in 33 U.S.C. 591-595a and 701. As in the case of military projects, the Secretary of the Army is also authorized to accept donations of lands and materials required for civil works projects.

(c) *Rights-of-Entry.* Rights-of-entry for construction may be obtained by the Division or District Engineer, after he has been authorized by the Chief of Engineers to acquire the land, pending completion of acquisition by purchase or the filing of condemnation proceedings with declaration of taking. In the event the landowner will not voluntarily grant a right-of-entry, an appraisal of the required interest should be made and negotiations conducted on the basis thereof. If the negotiations are not successful, a declaration of taking should be submitted to acquire the necessary rights. The same procedure will be used for acquiring rights-of-entry for other purposes, such as survey and exploration.

§ 644.82 Prerequisites to Acquisition.

(a) *Authority to Begin Acquisition.* Action to acquire a tract of land will not be initiated until the Real Estate Design Memorandum (for all projects except military) or Real Estate Planning Report (for Army, other than Civil Works, and Air Force projects) is approved and specific authorization of

the Chief of Engineers, or the appropriate Air Force Regional Civil Engineer (AFRCE), to proceed with the acquisition of the project is received by the Division and District Engineer and funds have been made available. Upon such approval, the Division or District Engineer is authorized to initiate action for the acquisition of the estate approved for the particular project in accordance with the procedures hereinafter set forth.

(b) *Tract Description.* Authority to initiate engineering planning of a project will state the mapping procedures provided for in Chapter 3, EP 405-1-2. It is necessary that land requirements be determined, that the various tracts be identified by ownership, and that accurate tract descriptions be developed. Tract ownership data may be developed by Division or District personnel from the local land records or procured by contract from a qualified local Government official, abstractor or title company representative.

(c) *Title Evidence.* With approval to proceed with acquisition, title evidence contracts can be initiated. The procedures for obtaining title evidence are covered in §§ 644.61 through 644.72. Preliminary title evidence to confirm ownership and status of the title is prerequisite to negotiating for acquisition of the land or interests therein.

(d) *Appraisals.* Concurrently with the procurement of title evidence, the appraisal of the land should begin. The appraisal, when approved, forms the basis for the determination of fair market value which will not be less than the approved appraised value. The appraisal procedures are covered in Subpart B. Normally, one appraisal per tract (ownership) will be obtained; however, in unusual cases such as those which involve novel, unique or controversial appraisal concepts, there is no objection to obtaining more than one appraisal covering the same tract if considered advisable by the Division or District Engineer. When fee tracts are acquired by eminent domain procedures, where the value of the property is between $50,000 and $100,000, only one appraisal need be provided to the Department of Justice so long as it is a contract appraisal; two appraisals will be provided for values exceeding $100,000. Easement tracts acquired by eminent domain procedures, in excess of $50,000, will require two appraisals. At least one of the two appraisals must be made by a contract appraiser. Generally, in these cases, the second appraisal is procured only after negotiations indicate that agreement on price cannot be reached and that acquisition by condemnation will be required. The second appraisal will be procured in order that the Corps can take advantage of any negotiating flexibility that the second appraisal may afford in order to preclude court action. It is also necessary that the appraisals be relatively current in point of time (not to exceed six months) since dependent upon the real estate activity and degree of stability of the local economy, significant changes may take place in relatively short periods of time.

(e) *Environmental Considerations.* Paragraph D3, Attachment 1 to Enclosure 1, DOD Directive 6050.1, dated March 19, 1974, subject: "Environmental Considerations in DOD Actions," requires close environmental scrutiny of real estate acquisitions, disposals and outgrants to determine if said actions constitute a "Major Action Significantly Affecting the Quality of the Human Environment (MASAQHE)." If the action is determined to be a MASAQHE, then an environmental impact statement is required. Paragraph D3 is quoted here for ready reference:

> "D. Certain types of actions require close environmental scrutiny because of the possibility that they may either affect the quality of the environment or create environmental controversy. It may be desirable in such cases to have a complete presentation of the environmental aspects of the proposed action available for any interested party. For these reasons, consideration shall be given to documenting the environmental effect of the following types of actions in writing: (The written environmental assessment need not be elaborate for actions in which it is readily determinable that the impact would not be significant; however, negative declarations must be supported by written environmental assessments which generally meet the EIS format requirements.)
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> . . . . .
>
> 3. Real estate acquisition, disposal and outgrants.
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> . . . . .

§ 644.83 Negotiations.

(a) *Acquisition Objectives.* The objective of a land acquisition program is to acquire land at a price that will afford each landowner his constitutional guarantee of "just compensation" as that term has been defined by Federal judicial decisions. The Government must never pay less than just compensation unless a gift is intended. In eminent domain proceedings, the just compensation due a landowner is determined judicially by court award or by settlement prior to trial; in a purchase case, it is determined by negotiations leading to a satisfactory price and agreement with the landowner. While it is recognized that an appraisal is only an informed opinion and does not establish or determine just compensation, it is also recognized that, in negotiating for the purchase of land, an appraisal is the best and sometimes the only reliable opinion of the market value of the land which is supported by a thorough, acceptable analysis of market conditions at the time of purchase. Therefore, in the negotiation for the purchase of land, an approved current appraisal shall establish the minimum price to be paid for the land being acquired by the Corps of Engineers. Negotiations or offers below this price are prohibited except where the property is being acquired on a competitive basis and condemnation is not authorized.

(b) *Negotiating Objectives.* In all cases, it is important that the negotiator receives adequate guidelines and explicit instructions. Promptly, after the amount of the estimated just compensation is established, the negotiator shall make an initial offer in the full amount of the fair market value, shall advise the landowner that the land was appraised for such amount, and shall furnish the landowner a written statement of, and summary of the basis for, said amount. A concentrated effort will be made to acquire the land for that amount. This written statement will be in the form of a letter which may be delivered personally or by first class mail. Such summary will include, as a minimum, the following items:

(1) Definition of the term "fair market value."

(2) An accurate legal description and location identification of the real property and the interest(s) therein to be acquired (legal description and estate may be attached).

(3) The amount of the offer and a statement that such amount:

(i) Is the amount believed by the agency to be just compensation for the property;

(ii) Is not less than the approved appraisal of the fair market value of the property;

(iii) Disregards any increase or decrease in the fair market value caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for such project, other than that due to physical deterioration within the reasonable control of the owner;

(iv) Does not reflect any consideration of or allowance for any relocation assistance and payments which the owner is entitled to receive.

(4) An inventory identifying the buildings, structures, fixtures, and other improvements, including appurtenant removable building equipment, which are considered to be part of the real property for which the offer of just compensation is made. The inventory shall include a statement of the utility and condition of said buildings, structures, fixtures, and other improvements.

(5) A description of the appraisal technique used, i.e., market approach,

income approach, or cost approach, in sufficient detail to explain clearly to the landowner the process by which his property was valued. Thus, as an illustration, where the market approach was used, the explanation should include the number of comparable sales used, their general location and type, the factors considered in adjusting sales of subject property, and any other information which would help the landowner understand what was done to value his property. A statement that comparable sales of similar properties were examined without more explanation is not sufficient. Similar information should be given when any other appraisal technique is used. Unusual cases will require a more detailed explanation.

(6) An identification of land classification categories (do not show acreage breakdown).

(7) If only a portion of a property is to be acquired, an apportionment of the total estimated just compansation for the partial acquisition between:

(i) The amount representing the just compensation for the real property to be acquired;

(ii) The amount, if any, representing severance damages to the remainder, together with a brief narrative description of the cause thereof; and

(iii) In the event "off-setting benefits" are involved, these must be shown, along with a narrative explanation and the landowner shall be given a "person-to-person" explanation by the negotiator.

(8) If the property contain a dwelling, the value of said dwelling and homesite shall be set forth separately, with the statement that this figure will be used in calculating housing relocation benefits under title II of Pub. L. 91-646.

(9) If any building, structure, fixture, or other improvement, comprising part of the real property, has been identified as being owned by a tenant who has the right or obligation to remove it at the expiration of his term, the amount of the value of such building, structure, fixture, or other improvement, being the greater of:

(i) The amount which the tenant's improvement contributes to the fair market value of the real property to be acquired; or

(ii) The fair market value of the tenant's improvement for removal from the real property. The basis of such amount shall be included.

(c) Appraisal reports or the appraiser's analysis (complete breakdown of principal value elements) will not be revealed by the negotiator unless specifically authorized. Cases involving property for which the highest and best use cannot be definitely established, and to which the exceptions mentioned in para. (a) of this section do not apply, will be reported to HQDA (DAEN-REA) WASH DC 20314 for specific instructions. If the land is being donated, initial offers are not necessary, and the appraisal will be significant in negotiations only when considering the conditions under which the donation is made as, for example, an agreed valuation for tax purposes. Negotiations will be based on current market values, which normally means that last offers will be based on appraisals not over six months old. Exceptions will be required in instances of rapid escalation of values when the appraisal is quickly outdated or in instances of a relatively static market or other condition resulting in a minimal change in property values. In such cases an explanation will be necessary.

(d) *Exceptions*—(1) *Corps Employees.* If an employee of the Corps of Engineers has a direct interest in a tract of land being acquired by the Corps for public use, the tract will be acquired by condemnation. In cases of this nature, appraisal reports should be prepared, reviewed and forwarded together with a declaration of taking, with the condemnation assembly. The negotiator's report, of course, will not be included. The Department of Justice will be requested to handle all further matters pertaining to settlement or trial of the case. The Department of Justice has agreed to accept full responsibility for negotiations and approval of settlements or awards in such cases, without contacting any Corps personnel other than the owner of the interests being acquired.

(2) *Members of Congress.* Since, under 18 U.S.C. 431 and 432, members of Congress who hold interests in land that is required for project purposes cannot contract for sale of such interests to the Government, these interests will also be acquired by condemnation. Negotiations for acquisition by purchase or for settlement without trial cannot be conducted by officers or agents of the United States. The determination of just compensation must be made by judicial proceedings. Appraisal reports and the condemnation assembly should be prepared and forwarded as set forth in paragraph (d)(1) of this section.

(e) *Negotiating Guidelines.* (1) The negotiator should be thoroughly familiar with the Division and District negotiating guidelines and should study the background data of the project, consisting of the authorizing act, survey report, project document, design memoranda, etc.; the applicable appraisal reports; tract ownership data; preliminary title certificates; and other related material. He should be entirely familiar with the project and the owner's individual property before initiating negotiations.

(2) The owner shall be provided with available brochures which explain the project and the Pub. L. 91-646 benefits, together with the written statement and summary required by § 644.83(b). The negotiator should explain to the landowner the Government's requirement for the land, the amount of land required, the estate(s) to be acquired, the terms and conditions of the Government's contract form, and the fact that relocation assistance benefits may be available. He should furnish the landowner a copy of a map indicating the boundaries of that portion of his land to be acquired, where the entire ownership is not being acquired or where different estates are being acquired in the same ownership, specifying the estate in each area.

(3) Negotiations will be continued in an effort to obtain acceptance of the Government's offer or a reasonable counteroffer from the landowner, or until it is definitely determined that such a counteroffer will not be forthcoming. It is not intended that negotiations be continued until an unacceptable counteroffer is finally obtained. However, in an effort to obtain a reasonable counteroffer above the Government's estimate, the negotiator will, if necessary, take the initiative in suggesting a series of prices within a range which, in accord with the guidelines discussed in § 644.84, has been predetermined to be reasonable.

(4) The interest of both owners and tenants must be considered and protected. The tenant is a proper party to the transaction, and every effort must be made to obtain the consent of the landowner and tenant as to the price to be paid to the tenant for his leasehold interest. This can be accomplished by the tenant's execution of ENG Form 1564, Consent to Offer to Sell Real Property, which shall then accompany the owner's offer to sell. In cases where the tenant executes this form, payment for the tenant's interest can be made to him in the closing of the purchase transaction. This procedure will be followed whenever possible. An exception is permitted in those cases where the landowner and tenant prefer to handle the matter as a private transaction between themselves. In such cases, it should be determined that a satisfactory agreement has been made by the landowner and tenant. Consideration should be given to any interest which the tenant may have in growing crops. This procedure is also applicable to any third party having an interest in the property, except through severance of a subsurface estate.

(5) Negotiations with landowners will be conducted in a fair and courteous manner. The negotiator must not,

under any circumstances, resort to coercion or threats of condemnation.

(6) The negotiator has no authority to obligate the Government in any manner beyond the contract form. He must refrain from oral promises or understandings and include all terms and conditions in the contract form.

(7) Although appraisal reports cannot be made available for inspection by a landowner, the various elements of value considered by the appraisers may, and should, be discussed with the landowner to satisfy him that all elements of compensable values and damages have been considered in arriving at an overall value for the property being acquired. Care will be exercised during any discussion not to reveal specific amounts related to any elements considered in the appraisal, except the acquisition cost assigned to the dwelling for purpose of calculating replacement housing payment under Section 203, Pub. L. 91-646.

(8) Any interest in a tract of land sought to be acquired, or any type of relationship with the owner, disqualifies the negotiator from participating in negotiations for the acquisition of that particular tract.

(9) An appraiser is not, under any circumstances, permitted to negotiate for the acquisition of a tract of land for which he has prepared the appraisal or reviewed it as reviewing appraiser.

(f) *Discussions With Landowners.* In order to avoid the creation of negotiating patterns, and keeping in mind that counteroffers must be justified as being just and reasonable, discussions with landowners should be conducted without disclosing the extent of the delegations and redelegations of authority to accept counteroffers. However, during negotiations on individual tracts, the landowners must be advised that, in the event of condemnation, the deposit will be in an amount no less than the approved appraised value, since the question of value cannot be resolved by negotiations. It must further be made clear that this advice is not in the nature of a threat, but is an explanation of the statement of policy directed by the Congress and the law. The negotiator will also inform each owner that offers and counteroffers made during negotiations are made without prejudice in the event of condemnation. The negotiator will make a notation on the Negotiator's Report to the effect that he has so informed the owner.

(g) *Obtaining the Written Counteroffer; Preparation of Negotiator's Report.* If the negotiator considers that a counteroffer in excess of the approved appraised value is in the amount which should be considered for acceptance, the counteroffer will be reduced to writing on ENG Form 42, Offer to Sell Real Property, or on ENG Form 2970, Offer to Sell Easement, and be properly executed by the landowner. In such cases, a complete written record of negotiations with respect to each tract or ownership, as appropriate, will be maintained by means of ENG Form 3423, Negotiator's Report, Part I. This record will state the chronological history of negotiations, all elements considered in evaluating the landowner's final counteroffer, and the justification for such recommendation in accordance with § 644.84. The justification will be fully recorded in ENG Form 3423A, Negotiator's Report, Part II, which is a separate page of this report, and which will be removed in the Office of the Chief of Engineers prior to submitting the counteroffer assembly to higher authority for approval. Final action on the counteroffer, either by the Secretary of the Army, the Chief of Engineers or under the delegated authority to Division and District Engineers, will be entered on this record as soon as that information is available.

§ 644.84 Counteroffers.

(a) *Consideration of Counteroffers.* In negotiations with landowners, if agreement cannot be reached with a landowner as to the purchase price established by the appraisal, the lowest price demanded by the landowner may be considered by the Division and District Engineer, and the Chief of the Real Estate Division, on the basis of the following factors:

(1) *Variations in Appraisals.* In the usual case, the Corps will have the opinion of only one appraiser with respect to the market value of the particular tract of land. It must be recognized that the opinion of a second equally competent appraiser might be higher or lower than that of the appraiser who appraised the property. Hence in considering counteroffers of landowners, Division and District Engineers should keep in mind that two equally competent appraisals may reflect reasonably divergent opinions of value as to the same property. Instances requiring two appraisals are covered in § 644.82(d).

(2) *Built-in Costs, Prior Counteroffers, Settlements and Liability Risks of Proceeding to Trial.* It is recognized that there are certain Government administrative costs and liability risks involved when property is condemned by the United States and the land value is judicially determined. These items are definite in character but the attendant costs will vary. "Built-in" costs of proceeding to trial include, but are not limited to, the following items: Salaries of all Government personnel participating in trial preparation, pre-trial hearings, and the actual trial; cost of an additional appraisal(s); witness fees of contract appraisers employed by the Corps of Engineers or the Department of Justice; travel costs of all Government personnel and consultants participating in trial preparation, pre-trial hearings, and the actual trial; and cost of preparing trial documents and exhibits. Consideration should also be given to prior counteroffers which have been accepted and settlements approved prior to trial. "Liability risks" of proceeding to trial are the amount of the anticipated award over and above the appraised value, taking into consideration probable testimony on behalf of the Government and the landowners, as well as the history of condemnation awards in the Federal court jurisdiction in which the lands are located, and the amount of interest on a deficiency judgment which would result from the anticipated award. Serious consideration of the above factors may justify a recommendation for authority to accept a counteroffer which otherwise would appear to liberal.

(3) *Non-Compensable Elements of Value.* Elements of value based on consequential damages or speculative values, as defined by the Federal courts, may not be recognized in considering a landowner's counteroffer. However, even though a landowner's counteroffer might include non-compensable items of value, favorable consideration of the counteroffer may be given if it can be justified on the basis of variances in appraisals, built-in costs, and liability risks of proceeding to trial.

(4) *Value of Reserved Items.* The salvage value of improvements and the value of crops and/or timber reserved by the landowners, as provided in § 644.86 (g), (h), and (i), will not be included in the amount of the counteroffer in determining the excess of counteroffers over appraised values when applying the dollar and percentage limitations in the delegations of authority to Division and District Engineers for acceptance of counteroffers. The determination of the excess will be made on the basis of the appraised value of the interests being acquired (including the value of the reserved items) compared to the cash payment which will be made to the landowner if the Government accepts his counteroffer. However, this method of analyzing the counteroffer is intended for use only in determining the limitations of authority. The overall transaction must be in the interest of the United States and not afford an unwarranted windfall to the vendor.

(b) *Application and Limits of Delegated Authority.* The negotiating procedures outlined herein will apply to all acquisitions by the Corps of Engineers for the Army (military and civil), Air Force, Department of

Energy (DOE), National Aeronautics and Space Administration (NASA), and other Federal agencies which utilize the services of the Corps for acquisition of real estate. Delegations of authority to Division and District Engineers and to the Chiefs of their Real Estate Divisions to accept offers in excess of the appriased valuation have been made. Offers which do not exceed the approved appraised value may be accepted by authorized Division and District personnel regardless of the amount. Other offers will be handled as outlined in the paragraphs which follow.

(c) *Exercise of Delegated Authority.* The approval of a counteroffer over the appraised value, but within the authority redelegated to Divisions and Districts, will be evidenced by the Division Engineer, the District Engineer, the Chief of the Real Estate Division, or the incumbent of the position to which redelegations have been made, in one of the following manners:

(1) Manually accepting, on behalf of the United States, the offer to sell, as provided in § 644.87; or

(2) Manually executing a dated notation of approval of the purchase price, to be placed in the tract file, preferably on the original of the Negotiator's Report (§ 644.83(g)).

(d) *Submission of Counteroffers to the Chief of Engineers.* Recommendations for the grant of authority to accept counteroffers which are considered reasonable, but which cannot be accepted by the Division Engineer, the District Engineer, or the Chief of the Real Estate Division, within the limitations of delegated authority, will be submitted to HQDA (DAEN-REA) WASH DC 20314 for consideration. Negotiator's Reports, prepared in accordance with § 644.83(g) will accompany this submission; the contents thereof need not be repeated in the transmittal letter or in forwarding indorsements. The assembly will consist of the forwarding correspondence and the Negotiator's Report, with any additional material needed to support the recommendation of the Division and District Engineer. An analysis should be made of this offer as compared with other counteroffers accepted for the project, as well as with results in condemnation cases settled before trial. Signed offers will not be forwarded unless they contain deviations requiring approval by the Chief of Engineers. Appraisal reports are helpful and may be necessary reference for proper consideration of the recommendation. In the event the appraisal report was approved by HQDA (DAEN-REA), the forwarding letter should refer to the approval correspondence and data. It will not be necessary to enclose copies of the appraisal report. Where only a portion of an ownership is required, information should be furnished in the Negotiator's Report or in the transmittal correspondence (1) as to whether or not the remainder portion is considered to be an uneconomic remnant and (2) if so, as to whether or not an offer was made to acquire the entire property. Further, a statement is required as to whether or not it is considered that the acquisition will have any adverse effect on the acquisition of the remaining land required for the project.

§ 644.85 General Negotiation Procedures.

(a) *Provisions of Military Construction Appropriation Act.*

(1) Section 108 of the Military Construction Appropriation (MCA) Act of 1978 (Pub. L. 95-101) provides that no part of the funds provided in the Act shall be used for purchase of land or easements in excess of the value as determined by the Corps of Engineers, except:

(i) Where there is a determination of value by a Federal Court; or

(ii) Purchases negotiated by the Attorney General or his designee; or

(iii) Where the estimated value is less than $25,000; or

(iv) As otherwise determined by the Secretary of Defense to be in the public interest.

(2) The above wording, except for paragraph (a)(1)(iv) of this section, constitutes a limitation on accepting or submitting a recommendation for approval of a counteroffer in excess of the appraised value. Paragraph (a)(1)(iv) brings military acquisition within the general acquisition policy required under Pub. L. 91-646. Future MCA Acts should be carefully examined to determine if any limitations on acquisition have been restored.

(b) *Local Cooperation Projects.* The participation of a non-Federal agency in a federally-assisted project will be in accord with Section 221 of Pub. L. 91-611 and Subpart J (to be published). Acquisition of real property by a non-Federal agency will be in accord with Sections 210 and 305 of Pub. L. 91-646 and this chapter.

(c) *Negotiations on the Basis of Ownership; "Package-Deal" Negotiations.* (1) Normally, negotiations for all interests in all tracts which are being acquired from one parent ownership will be negotiated at one time. These tracts will usually consist of all those to which the same basic tract number has been assigned. Exceptions may be made only where negotiations for some of the tracts in a series must be accomplished to obtain possession, or for other critical reasons. Piecemeal acquisition must be avoided if at all possible.

(2) When more than one tract is operated by the owner as a unit, negotiations should take place on the two or more tracts or groups of tracts, whether or not they bear the same basic tract number.

(3) In cases where an owner insists on a "package-deal" negotiation on all tracts in the same ownership, or having at least one common owner, the negotiations will be considered as one transaction.

(4) Tracts which are in the same ownership, but which are not operated as a unit, should, unless the owner desires otherwise, be negotiated separately, on the basis of the separate appraisals which would be prepared in this type of case.

(5) Under subparagraphs (1), (2), and (3) of this paragraph, the limitations of authority to accept counteroffers will be applied to the entire transaction.

(d) *Acquisition by Condemnation if Negotiations Fail.* As soon as it is determined that a satisfactory agreement cannot be reached after full consideration of all reasonable counteroffers received, action will be promptly taken to acquire the property by condemnation proceedings, including the filing of a declaration of taking, in order to make funds available to the landowner and to maintain the project acquisition schedule. The landowner should be advised in writing, sufficiently in advance of the submission of the condemnation assembly to the Chief of Engineers, that condemnation proceedings will be recommended and the reason therefor. Condemnation assemblies will include copies of the Negotiator's Reports or other written records of negotiations. The estimated compensation to be deposited in the registry of the Federal District Court with the filing of a declaration of taking will be in the amount of the approved appraisal.

§ 644.86 Exceptions and Reservations.

(a) *General.* Prior to the enactment of Pub. L. 91-646, the Corps encompassed a very generous policy of priority leasing with respect to former owners and tenants, in order to ease the burden of people who had to relocate because of the Corps' projects. Recognizing the inadequacies of the well-intentioned attempts by acquiring agencies to make whole the former landowner or tenant, the Congress enacted Pub. L. 91-646 which was approved on January 2, 1971. It would appear that the Congress intended that such law provide for the fair and equitable treatment of persons who are displaced, without having to rely on interim measures, such as priority leasing, to ease the inevitable relocation. In House Report 91-1656, the Committee on Public Works of the House of Representatives noted the likelihood that adequate housing may not be available readily and indicated

this as its reason for including the provision in the law that satisfactory replacement housing must be available before displacement. In view of this, it is incumbent on the District Engineer to be opportune in seeking out replacement housing and to be judicious in the early relocation of owners and tenants before market changes eliminate any available supply of replacement homes. It is also essential that the District Engineer be diligent in providing the required relocation assistance advisory services and benefits authorized by the law.

(b) *Possession by Government.* It will be the objective of the District Engineer to have the premises vacated and to cause unneeded improvements to be removed at the earliest practicable date and conform to the Congressional intention expressed above. In addition to the above, reasons for this objective are:

(1) To provide for the expeditious payment of benefits to former owners and tenants;

(2) To complete administration of the actual relocation of owners and tenants in a timely manner;

(3) To avoid maintenance and security problems with respect to acquired improvements;

(4) To prevent vandalism, trespassing and poaching with respect to acquired improvements;

(5) To avoid any implication that former owners or tenants may be permitted to remain indefinitely on the federally acquired property;

(6) To cause land to be leased on the basis of the most practicable size and configuration rather than on the basis of the size of the units acquired;

(7) To permit the general public to bid for the lease of federally owned land rather than restricting the privilege of leasing to the former owner or tenant; and

(8) To avoid a backlog of incomplete actions when construction or flooding is imminent or the land is otherwise required.

(c) *Possession Reserved to Former Owners and Tenants.* It is considered that the policy of granting priority leases to former owners and tenants has been overridden by the enactment of Pub. L. 91-646. Accordingly, this policy is being phased out, and where applicable, the acquisition agreement will set forth the dates agreed upon for the vacation of the premises by the owner and tenant without commitments, express or implied, as to the leasing of the premises after such dates. Procedure for providing for vendor's continued possession after the Government's acquisition is covered in Paragraph (1) of this section.

(d) *Outstanding Rights.* (1) When the United States is acquiring title subject to outstanding rights, the offer will differentiate between:

(i) Property which the vendor is excepting or rights which he is reserving and which are created for the first time; and

(ii) Rights which third parties have acquired in the past, generally referred to as outstanding rights in third parties.

(2) Exceptions or reservations of rights which the vendor may retain, without interfering with the construction or operation of the project, will be set forth in the offer and deed by a clause following the description, beginning with the words: "Excepting * * *" or "Reserving * * *." Any other outstanding rights, subject to which the United States is acquiring title, held by third parties will be set forth in the offer and deed by a clause, following the description, beginning with words, "Said premises are conveyed subject to * * *." Negotiations with the surface owner will include the owner's interest in the subsurface, unless acquisition of a lesser interest has been authorized by directive or specific approvals. These negotiations will not include interest severed and outstanding in third parties by purchase or lease, unless the surface owner agrees to remove the outstanding interest or agrees to obtain a subordination from the holder of the outstanding interest if that is consistent with the acquisition plan. If negotiations with the surface owner are successful, an Offer to Sell will be obtained, reciting the outstanding interest in the "Subject to" paragraph of the form, unless the surface owner has agreed to remove the outstanding interest (or obtain a subordination, if appropriate), in which case the Offer to Sell must recite specifically that the surface owner is assuming this obligation. In order to carry out the requirements of this paragraph, the title evidence must be examined prior to negotiations or, in any event, prior to acceptance of the Offer to Sell.

(e) *Right to Repurchase Prohibited.* In no case will an offer be obtained in which the vendor reserves the right to repurchase the property. Such a reservation would be contrary to the Federal Property and Administrative Services Act of June 30, 1949, 63 Stat. 377, 40 U.S.C. 471, et seq.

(f) *General Reservation Guidelines.* (1) Reservations of the right to remove crops, timber, buildings, and improvements during a specified period will not be permitted without express approval of the Division or District Engineer on civil works projects, the Army or Air Force using service on military projects, or the Federal agency, if other than the Army or Air Force, for which the land is being acquired.

(2) At the time of the approval of the acquisition by the Chief of Engineers, a determination will generally have been made as to whether subsurface rights and/or water rights will be acquired or left outstanding. Acquisition will be on the basis of such determination and as outlined below. Lands will be acquired subject to minerals, oil and gas rights or other similar interests severed and outstanding in third parties by purchase or lease and as approved by the Chief of Engineers.

(3) Where it is not possible to acquire or subordinate an outstanding interest by negotiation and the interest will not interfere with the operation of the project, consideration may be given to obtaining a waiver from the Office of the Chief of Engineers on the basis of taking a calculated risk rather than resorting to condemnation (Paragraph (k) of this section). Waivers will be considered on a tract-by-tract basis or on a project segment basis. Since such waivers involve several elements of the Office of the Chief of Engineers (Civil Works or Military Construction as well as Real Estate), the basis for the calculated risk must be fully explained.

(4) Concurrently with the negotiations to acquire from the surface owner, negotiations should be opened with the owner of the subsurface rights or other interests severed and outstanding in third parties by purchase or lease and required for the project, unless these interests are held in "block ownership." Block ownership exists where a person, corporation, or other entity owns subsurface or other interests in connection with more than one surface tract and in sufficient amount for the entire interest holding to have added value, for operational or other reasons, because it is in a block ownership. In other words, block ownership exists when the acquisition of a part of the block would require the assessment of severance damage, even if the value of the interest or the amount of the severance damage would be in a nominal amount. On this basis, subsurface or other interests need not be contiguous to constitute a block ownership. Block ownership interests will not be acquired (or subordinated) piecemeal.

(5) Acquisition of the required interests, including subordination, held in block ownership should be started as soon as the extent of an operational unit is determined. As stated in Paragraph (f)(4) of this section, all interests in a tract of land should be acquired at one time or as close in time as possible. Dual acquisitions of entire areas, one for surface rights and then for subsurface interests, should be avoided and acquisition of separate interests should be scheduled to coincide.

(g) *Reservation of Buildings and Improvements.* The reservation by vendors of the right to remove buildings and improvements will be permitted under the following conditions:

(1) Where the Division or District Engineer, in civil works projects, the using service in Army and Air Force projects, or the Federal agency, if other than the Army or Air Force, for which the land is being acquired, has determined that they will not be needed for the purpose of the project;

(2) The consideration to the Government for the reservation will be an amount negotiated at not less than the appraised salvage value of the building and improvements which are reserved, and such amount will be deducted from the negotiated price at the time of negotiation prior to execution of the offer;

(3) Where a reservation is permitted, the following clause will be inserted in the offer, following the description of the land:

Excepting and reserving to the Vendor the right to remove (enter description of buildings) on or before —— 19 —, which the Vendor agrees not to relocate on other land to be acquired for the project; provided, however, that, in the event that the said buildings and improvements are not completely removed on or before said date, the right of removal shall terminate automatically, and the United States shall have a good and indefeasible title to said buildings and improvements which remain without notice to the Vendor; and provided further that, in the event said buildings and improvements are relocated on other land to be acquired for the project, the United States shall have good and indefeasible title to said buildings and improvements without notice or further compensation to the Vendor.

The date on which the buildings or improvements must be removed must be fixed so that there is no interference with contruction or carrying out the mission of the project. The date for the removal should allow a reasonable time for removal of the improvements, usually not more than 90 days, except that for valid reasons the Division or District Engineer may grant an extension of time for removal. The right to remove such buildings cannot be prolonged indefinitely and certainly such right cannot survive the limited right of possession reserved to former owners and tenants as provided in Paragraph (c) of this section.

(h) *Reservation of Growing Crops.* (1) The reservation by the owners of the right to harvest and remove growing crops should be encouraged in order to conserve land acquisition funds and to avoid the costs incident to disposal of crops by the Government, whenever there is a probability that possession of the land will not be required prior to the harvest season.

(2) Where a reservation is permitted, the following clause will be inserted in the offer, following the description of the land: "Reserving to the vendor the right to harvest all of the growing crops located on the above described land on or before —— 19—. In the event the crops are not harvested on or before said date, the right of removal shall terminate automatically, and the United States shall have a good and indefeasible title to said crops, without notice to the vendor." the date on which the crops must be removed must be fixed so that there is no interference with construction or carrying out the mission of the project.

(3) The consideration to the Government for the reservation will be an amount not less than the appraised value of the crops as of the date of surrender of possession as disclosed by an approved appraisal report, and such amount will be deducted from the purchase price at the time of preparation and execution of the offer.

(4) Where a tenant has an interest in growing crops, the value of his interest must be fixed by use of ENG Form 1564, Consent to Offer to Sell Real Property, which provides that the value of the tenant's interest, as agreed upon by the landowner and tenant, will be paid from the purchase price for the land. The use of this form not only protects the tenant but, in addition, provides a simple method for extinguishing rights which the United States is legally bound to recognize. Where a tenant wishes to reserve the right to remove crops, it must be done in the name of the landowner, and in like manner. To accomplish the foregoing, any other form is satisfactory, in lieu of ENG Form 1564, as long as closing requirements are satisfied.

(i) *Reservation of Timber.* (1) The reservation of the right to remove timber by vendors will be permitted only with the express approval of the Division or District Engineer, with the concurrence of the using service in cases other than civil works projects of the Corps of Engineers.

(2) Reservation of the right to remove timber will be handled in substantially the same manner as that described for the reservation of buildings and improvements. If owned by a third party, ENG Form 1564 will be used in the same manner as for crops unless the timber interests are held in block ownerships. The consideration to the Government for the reservation will be an amount not less than the appraised value of the timber, giving full weight to any unusual difficulty in harvesting and transporting which are caused by the size, shape and location of the stand reserved, time limitations for removal, clearing requirements over the above those normally involved in prudent harvesting, and similar factors. If necessary, the stand reserved will be re-appraised on this basis. An amount not less than this appraised value will be deducted from the purchase price at the time of preparation and execution of the offer.

(3) Where a reservation is permitted, the following clause will be inserted in the offer following the description of the land: "Reserving to the vendor the right to cut and remove on or before —— 19—, all trees in excess of —— inches in diameter at breast height (DBH) located on the above-described land. In the event the timber is not removed on or before said date, the right of removal shall terminate automatically, and the United States shall have a good and indefeasible title to said timber, without notice to the vendor."

(j) *Coal, Oil, Gas or Other Minerals.* Acquisition of land or interests therin for project purposes will usually include the subsurface as well as the surface, except in areas where minerals have more than a nominal value. When the mineral, oil and gas rights have an identifiable value or are the subject of separate estates in the land, such mineral, oil and gas rights will not be acquired except where the development thereof would interfere with project purposes, but mineral rights not acquired will be subordinated to the Government's right to regulate their development in a manner that will not interfere with the primary purposes of the project, including public access, and not be inimicable to the environment. This is covered in more detail in Subpart A. It is essential, however, in many acquisitions that the subsurface rights be acquired. In others, where these rights need not be extinguished, provision must be made in the offer the deed to subordinate such rights to project requirements, by excluding the owners of such rights from the area, or limiting exercise of such rights so that they will not interfere with the primary purposes of the project, including public access. The following guidelines are applicable in these cases:

(1) Where it has been determined that subsurface rights in the vendor, or outstanding in third parties, must be acquired, extinguished or subordinated, such arrangements will be made in the course of obtaining an offer for the surface or subsurface interests. Where the negotiations for acquisition, extinguishment or subordination of subsurface rights will be delayed, and it is considered advisable to proceed with surface acquisition to keep pace with project requirements, appropriate recommendations and justification will be submitted to HQDA (DAEN-REA) WASH DC 20314 for approval.

(2) If the owners of the surface and subsurface rights are agreeable, the

separate interests can be acquired in a single transaction by use of ENG Form 1564, Consent to Offer to Sell Real Property. This method is the most desirable one, and, if used, the purchase price in the offer will cover both the surface and subsurface interests and the offer will not be taken "subject to" the subsurface rights.

(3) Subordination of the subsurface interest based upon the value of the minerals in place and which will allow continued production by the mineral owner or lessee must be pursuant to such terms as will safeguard the Government's interest and preclude a windfall to the mineral owner or lessee. Value of the minerals in place will not exceed the recoverable portion of said minerals using agreed upon production methods. See Subpart A for detailed treatment in the section pertaining primarily to Real Estate Design Memoranda.

(4) When the third-party owner of subsurface rights refuses to enter into an agreement as contemplated in subparagraph (2) of this paragraph, the title to the surface estate may be acquired separately, and the subsurface rights outstanding in third parties acquired as a separate transaction. The offer for the acquisition of the surface estate will provide for the conveyance of all interests of the surface owner in and to the subsurface estate, as well as all surface rights, and provide for taking "subject to" the subsurface rights outstanding in third parties. In such cases, the negotiations described in § 644.83 will be conducted on the basis of the approved appraisal, less the appraised value of the outstanding subsurface rights.

(5) Where it has been determined that the subsurface rights and interests therein need not be acquired, but the owners of such rights must be excluded from the area, and the owner of the surface is the owner of the subsurface estate, the offer will contain a clause providing that he relinquish, for the period that title to the tract is vested in the Government, all rights to enter upon the lands covered by the offer or that he will limit entry and exploration in a named manner so as not to interfere with the operation of the project. If third parties own subsurface rights or interests, a similar waiver of the exercise of such rights must be procured from all third parties having any interest in the subsurface estate, whether as lessees or assignees. The waiver by third parties must be obtained at the time the offer is procured for the surface estate, unless these subsurface interests are held in block ownership.

(k) *Title Exceptions—Administrative Waivers.* (1) A distinction should be made between those title defects, objections, liens or encumbrances which, if not eliminated, might possibly defeat or adversely affect the Government's title, and those interests in the property owned by parties other than the grantor. All encumbrances, defects, and outstanding interests which cannot be waived under Paragraphs (k) (2), (3), and (4) of this section must be eliminated or a waiver of the defect secured from the Attorney General.

(2) Title may be taken subject to an outstanding third party interest which has been administratively waived. Requests for administrative waivers shall be submitted to HQDA (DAEN-REA) WASH DC 20314 for consideration, together with recommendations from Division and District Engineers. The recommendation for waiver should be coordinated with the using agency, if other than Department of the Army land (military or civil works), and should be accompanied by a certificate signed by the Chief, Real Estate Division or the Chief Appraiser, certifying that the outstanding interest has no contributory value to the estate being acquired and will not interfere with the purpose for which the property is being acquired.

(3) It has previously been administratively determined that all lands for Department of the Army (military or civil works) or Air Force projects may be acquired "subject to existing easements for public roads, public highways, public utilities, railroads and pipelines," and "to the reservations, exceptions and any other outstanding rights contained in or referred to in patents issued by the United States," and also "to water rights, claims or title to water, if any, or other similar title exceptions." A decision as to whether any of these exceptions should be eliminated is the responsibility of the Division or District Engineer, after coordination with the using service if other than the Department of the Army. If such interests are to be left outstanding, they should be included in the "subject to" clause of the Offer to Sell.

(4) Offers to Sell may be accepted subject to subsurface mineral interests owned by third parties in accordance with § 644.86(d). In such case, the "subject to" clause of the Offer to Sell should recite the specific interest which is being left outstanding. Where it is not possible to acquire or subordinate an outstanding subsurface interest by negotiations and the outstanding interest will not interfere with construction, operation or maintenance of the project, consideration may be given to obtaining a waiver from HQDA (DAEN-REA) WASH DC 20314 on the basis of taking a calculated risk rather than resorting to condemnation. Such waivers may be considered on a tract-by-tract, segment-by-segment, or project basis. Where a number of small mineral interests in a project are to be recommended for waiver, it is preferable that the recommendation be submitted on an entire project or group of segments at one time. Such a recommendation should specifically identify the subsurface mineral interests which are to be left outstanding, together with the estimated value of each interest, and should be accompanied by a map(s) on which the areas affected by the outstanding interests have been outlined. The basis for the calculated risk should be explained fully.

(l) *Possession Reserved to Vendor.*—(1) The objective in acquisition is to obtain possession for project purposes at the earliest practicable time. It is recognized, however, that there are occasions when possession by the Government may be delayed and provision must be made for continued possession by the former owner in order to meet the requirements of the Government's acquisition policy and to further soften the impact of the Government's acquisition. The retention of possession will enable the owner-occupant of farm land, or residential property, to receive his purchase money and remove improvements reserved by him, and permit occupants who may be former owners or tenants the privilege of harvesting growing crops and sufficient time to relocate to other locations. Accordingly, the Division or District Engineer may make provision for the former owner, occupant, and/or his tenant(s) to remain in possession of the land under the terms and conditions as follows:

(i) If the tract is to be acquired by direct purchase, the provision for retention will be written into the offer (ENG Form 42, ENG Form 2970, or ENG Form 1564) and will read substantially as follows: "Notwithstanding the provisions of paragraph —— of this offer, (and/or consent to option) the occupant (vendor and/or his tenant) now in possession of the property, in consideration of the protection and maintenance of the land, buildings, and structures, and protection of the property against loss by fire, waste, or other causes, to which the occupant hereby agrees, reserves the right to occupy the property until ————. Such occupancy is subject to revocation by the (Division) (District) Engineer at any time by giving —— days notice in writing to the occupant if possession of the property is required by the United States; and provided further that the vendor-occupant or his tenant will remove no improvements or timber unless otherwise provided herein."

(ii) When the tract is to be acquired by condemnation, the circumstances of the right to remain in possession, which has been established as herein-

after set forth, will be fully described in the correspondence forwarding the condemnation assembly to HQDA (DAEN-REA-C) WASH DC 20314. The retention of possession without payment of rent is directed to the benefit of the occupant of the property with some property maintenance consideration to the Government. This procedure will not be used to permit non-occupant owners a means of retaining possession without payment of rent and at the same time collect cash rents or unreserved crop rents from tenants.

(iii) When the land being acquired is utilized by the owner and/or tenant for agricultural or related purposes, a period of possession may be allowed, if consistent with project requirements, to permit the crop owner to harvest growing crops, and to avoid abrupt dislocations. The period of possession reserved in the offer, or for which request for the order of the court is deferred in declaration of taking cases, should generally be co-extensive with the crop season or the date that, by custom in the community, leases of such properties ordinarily expire: *Provided, however,* That such period does not exceed 12 months from the date title vests in the Government. Reservation of possession or delay in entry of order of possession that will interfere with the Government's requirements for use of the land will not be allowed.

(iv) In the case of owner-occupied residential property other than farm residences, possession may be permitted for a sufficient time to allow orderly relocation, but no longer than 12 months after title vests in the Government.

(v) In connection with the acquisition of commercial, industrial, tenant-occupied residential property other than residences occupied by farm tenants, and special use properties, ordinarily the procedures of reserving possession to the vendor by a clause in the offer, or deferring the right to possession under a declaration of taking proceeding, should not be utilized. In such cases, after title vests in the United States, the continued possession of the property by vendor or tenant should be formalized by an outlease from the Government. However, if in the opinion of the Division and District Engineer a reservation for possession in the offer or deferral of order of possession is desirable in certain instances from a public relations standpoint or for other compelling reasons, such cases will be forwarded to HQDA (DAEN-REA) WASH DC 20314 for consideration.

(vi) The reservation of use and occupancy in the vendor and/or tenant under the terms of the offer or deferment of possession must be based on adequate consideration to the Government. It is anticipated, however, that items such as the vendor's maintenance of the land, buildings, and structures, his protection of the property against loss by fire, waste, or other causes, and the fact that his possession can be revoked within a short period of time, will, in most instances, offset any rental for the period of the reserved occupancy or deferred possession which might otherwise be due. However, if possession is reserved by the vendor in the acquisition of commercial, industrial, and special use properties, or other type of property having a potentially high income factor, the fair rental value for the period of reserved use or deferred possession must be deducted from the agreed purchase price.

(vii) Special provisions for protection of the Government, such as those appearing in ENG Form 1366, Department of the Army Lease—River and Harbor or Flood Control Property, will be added to the reservation clause in the offer in cases where, in the opinion of the Division or District Engineer, they are necessary or desirable. If the case is not to be closed by direct purchase, the letter to the vendor notifying him of the Goverment's intention to file a declaration of taking will set forth the fact that possession is to be deferred and for what period, and will contain a statement as to the Government's expectation that the vendor will properly maintain and protect the premises, and perform such other acts (or refrain from such acts) as deemed advisable by the Division or District Engineer. Both the letter of notice and the reservation clause in the offer will provide that the right to possession may be revoked on 30 days notice to the vendor.

(2) It is recognized that farmers may experience difficulty in finding substitute farms needed for their livelihood within one year, and other owners and tenants may encounter difficulty in relocating within one year. Therefore, the District Engineer, as an exception to the procedure in paragraph (l)(1) of this section may lease properties to former owners or tenants at the fair market rental value for up to one additional year where the circumstances justify such action, and, in such event, the record will contain the reasons justifying the action. Any occupancy by the former owner or tenant beyond 12 months from the date the property was acquired by the Government will be covered by a lease and will provide payment of the fair market rental value of the property leased.

(3) The District Engineer, through channels, may request the Chief of Engineers to grant exceptions to this policy where unusual circumstances warrant such consideration. In keeping with the intent of this action, it is hoped that such cases will be minimal in number.

(4) The following will apply with respect to advance land acquisition projects. Former owners and tenants whose properties were acquired *prior to August 1, 1972* will be allowed to remain on the property by lease on a year-to-year basis until the establishment of a land management use plan and thereafter, if the property is available for leasing, for a single five-year term. Former owners and tenants whose properties are acquired *after August 1, 1972* will be allowed to remain on the property by lease on a year-to-year basis until construction commences: *Provided,* The property is available for leasing. After construction commences, if the property is not immediately required for project purposes, such former owners or tenants will be allowed to remain on the property by lease for an additional two years. Continued possession of properties acquired after the date construction commences will be governed by the procedure outlined in paragraph (l)(1) of this section.

(m) *Schools, Cemeteries, and Facilities of State and Local Governments.*—ER 1180-1-1, Section 73, provides for the discretionary relocation by the Chief of Engineers of schools and other local governmental facilities, and acquisition of the sites under Section 111 of Pub. L. 85-500. Section 73 will be followed in the acquisition and relocation of cemeteries. Where the school was formerly a part of an abutting tract, offers for the abutting tracts will contain a clause whereby the vendor or vendors agree to quitclaim all right, title, and interest whether vested or reversionary, in and to the school site in executing the deed to the United States.

(n) *Reservations Prior to Completion of Offer.*—Where immediate possession of areas is necessary and is obtained by right-of-entry or the filing of condemnation proceedings, owners often wish to move, taking with them buildings and improvements, or wish to harvest timber or crops, prior to any offer by the Government for the sale of their land. This action is authorized only under the following conditions:

(1) Appraisals of all the land, buildings, improvements, timber, and crops of the particular tract are completed and approved.

(2) A determination is made by the Division or District Engineer that the buildings, improvements, and timber will not be needed, and the harvesting of timber or crops will not interfere with construction or operation of the project.

(3) ENG Form 1565, Agreement for Removal of Property, will be obtained

from all persons having an interest in the property to be removed. This agreement will recite the amount which the owner is willing to have deducted from the value of the tract as a whole for the right of removal, which may not be less than the appraised salvage value of the buildings, improvements and timber, and the appraised value of the crops, as set out in Paragraphs (g), (h), and (i) of this section.

(4) ENG Form 1565 will be obtained and accepted by the Division or District Engineer, or the Chief of the Real Estate Division.

(5) If an offer is obtained later, an appropriate reservation must be inserted in the Offer to Sell to reflect the prior agreement relative to reservations and removals of property and the agreed value of same.

(6) If it is necessary later to file a declaration of taking on the particular tract, a copy of the agreement (ENG Form 1565) will be forwarded with the correspondence transmitting the declaration of taking assembly for use of the Department of Justice in the court action. The agreement by its own terms will serve as a stipulation as to the amount to be deducted from the ultimate award for the right of removing buildings, improvements, timber or crops.

(o) *Loss or Damages to Improvements, Timber, or Crops*—(1) *Insurance Protection Against Risks.* The Government does not carry property insurance of any nature. Vendors, however, may be advised as to their liability for certain losses, and that insurance protection against such risks is optional. When buildings, improvements, timber, or crops on land being acquired by the United States are protected by insurance in effect when acquisition activities are initiated, the time and method of cancellation and negotiation for refund on premiums paid will be the responsibilities of the vendor. In order to avoid double payments to vendors, any amounts actually collected by vendors under the terms of the insurance policies for damage or loss occurring after acceptance of the offer by the Government will be deducted from the purchase price, regardless of when title is vested in the United States or the right to possession is exercised.

(2) *Fixing Liability*—(i) *Prior to Vesting Title in Government.* Buildings, improvements, timber, or crops on land acquired by the United States by purchase or condemnation remain the property of the vendor until title has been vested in the United States by delivery of a deed of conveyance or filing of a declaration of taking, and loss or damage thereto caused by fire, acts of God, theft or vandalism, before such vesting of title, will be borne by the vendor, except as provided below.

(ii) *Possession by Government.* When the right to possession has been exercised by the United States under an accepted Offer to Sell, condemnation proceeding, or possession has otherwise been surrendered to and accepted by the United States, losses arising from damage to buildings, improvements, timber, or crops by fire, acts of God, theft, or vandalism will be borne by the United States. If, however, prior to vesting of title, the right to possession has been exercised, or surrender has been made and accepted only to part of the property, and the vendor continues to use buildings and/or to cultivate or harvest crops or timber, such loss will be borne by the vendor as to buildings, timber or crops retained.

(iii) *Title in Government.* After title has vested, losses to buildings, timber or crops not caused by the willful act or gross negligence of vendor will be borne by the United States; provided, however, that if the vendor continues in possession of buildings, timber or crops, after title has vested, and the deed, stipulation or order of court has reserved to the vendor the right to remove such buildings, timber or crops, loss or damage thereto, both before and after removal, caused by fire, act of God, theft, or vandalism will be borne by the vendor, only to the extent of the amount deducted from the purchase price, as provided in the deed, stipulation or order of court, for the right to remove.

(p) *Other Reservations.* The following rights may be reserved to the owner wherever such reservation will be to the financial advantage of the Government and it has been determined by the Division or District Engineer that the reservation of the rights will not interfere with the operation of the project. These rights may be reserved in the Offer to Sell and in the condemnation estate but only whenever mutual agreement between the owner and the Government concerning all phases of the acquisition except just compensation has been reached, or by stipulation for settlement of condemnation cases, subject to approval of revestment, if any, by DAEN-REA.

(1) *Rights-of-Way for Stock to Water.* Reservations of rights-of-way will be permitted for watering stock, in the case of bona fide livestock operations, such as dairymen and ranchers. Such rights-of-way will be limited to a reasonable width and will not be permitted in public access and use areas. The reservations will be so worded as not to require the owners to fence the rights-of-way, but to provide that if they elect to do so, they must provide gates at satisfactory intervals to permit crossing of the rights-of-way.

(2) *Rights-of-Way for Water Pipeline for Domestic Use.* Reservations of rights-of-way for water pipelines for domestic use (household, stock watering, garden, farm yard, but excluding irrigation) may be permitted by providing for the reservation of a temporary or permanent easement.

(3) *Rights-of-Way for Water Pipline for Irrigation Use.* (i) In areas where irrigation is commonly practiced, or is of paramount importance, owners of remainder or contiguous lands will be permitted to reserve a sufficient real estate interest to place water pipelines across Government-owned lands, in order to obtain financing for irrigation development and/or in order to be assured of being able to carry on irrigation operations. In "water rights" States (prior appropriation of water rights), the reservation of such interests will be permitted only to those owners who have established water rights from the State, or who may in the future obtain such rights. When irrigation is a project purpose, such reservation must be coordinated with the Bureau of Reclamation.

(ii) Under these circumstances, a landowner may be permitted to reserve an easement and right-of-way for a water pipeline and pumping unit across the land he conveys, by appropriate provisions in the offer to sell and in the deed to the United States. In "water rights" States, this reservation will be "for the exercise of established water rights, although no right to use water is created hereby." (This phraseology is to be incorporated in the reservation.) The reservation will also include any pertinent provisions considered essential by the Division or District Engineer, such as requirement to install the pipeline underground and at a specified depth.

(iii) Reservations of this nature will also be permitted in those cases where acquisition is by condemnation. In these acquisitions, the reservation may be recited in the complaint and declaration of taking, whenever full agreement except as to just compensation has been reached, or it may permitted later by stipulation.

(iv) When the project is located in an area in which the Bureau of Reclamation is developing, or planning to develop, irrigation districts or systems, prior coordination with the Bureau will provide that copies of all deeds and final condemnation judgments which recite reservations under this subparagraph will be furnished to the local office of the Bureau. Thereafter, the Bureau of Reclamation will be responsible for supervising the exercise of the easements to insure compliance with Reclamation laws.

(v) Plans to provide for irrigation will be fully covered in the Real Estate Design Memorandum.

(4) Acquisitions in which these rights are to be reserved must, of

course, be based on an appraisal of the fair market value of the estate to be acquired. Since the appraisal would probably be made originally on the basis that there would be no reservation, revision must be prepared whenever the reservation appears to be appropriate, to reflect the reduction in severance damages or other financial advantage accruing to the Government. Consideration of counteroffers which include proposals for these reservations by the landowner will be based on and compared with the appraised fair market value of the estate proposed to be acquired. Deposits with a declaration of taking will be based on the appraised fair market value of the estate to be acquired by the condemnation action.

§ 644.87 Preparation and Execution of Offers.

(a) *Fee Acquisition Offer Form.* The use of the latest revision of ENG Form 42, Offer to Sell Real Property, is required in all authorized projects, except in those cases where agreements with the landowners can be fully reflected in an executed deed, and where the provisions of §§ 644.81(c), 644.82(a), and 664.86 are not applicable or can be fully complied with without the use of an Offer to Sell. When an agreement as to terms has been reached with the owner, or a counteroffer has been received which will be considered for acceptance or submitted for consideration by higher authority, a draft of the offer will be prepared, with particular attention to the following instructions:

(1) No changes or interlineations in the printed portions of the offer form will be permitted, unless authorized by the Chief of Engineers, except where the words "general warranty deed" are changed to another form of deed.

(2) Insert legal land description of property to be acquired, or attach description by Exhibits to be identified on page 1.

(3) The word "none" should be inserted in the blank spaces following the first and third lines, respectively, on page 2 of the offer form when title is being acquired free and clear of all rights outstanding in third parties and the vendor is not permitted to except or reserve any right or interest in the property to be conveyed to the Government.

(4) Particular attention is directed to § 644.86, regarding exceptions and reservations and outstanding rights in third parties. No exceptions or reservations of crops, timber, buildings and improvements, subsurface rights, or any other interest will be incorporated in any offer to sell unless the required approvals have first been obtained.

(5) In any case where the offer form deviates from the standard approved forms or contains any conditions, exception, or reservation contrary to these instructions, the assembly will be forwarded to HQDA (DAEN-REA) WASH DC 20314 for consideration with the recommendations of the Division and District Engineer. This may be done at the same time a counteroffer is submitted to DAEN-REA in accordance with § 644.84(d).

(6) The landowner's name will be set forth in the offer in the exact way in which it appears on record.

(7) When it is necessary for a corporate agent, fiduciary, or any person other than an individual owner to execute the offer, satisfactory evidence of the authority to act for the owner must be attached to each of the copies of the Offer to Sell.

(8) Where it is necessary to attach sheets to the offer in order to fully set forth the terms of reservations, exceptions, or outstanding rights in third parties, such additional sheets must be securely attached and initialed by all parties signing the Offer to Sell.

(9) The name and address of the person or persons to whom notice of acceptance is to be sent must be accurately set forth. The address where the landowner can be reached after he vacates the property, if different from the address to which the notice is to be sent, should be obtained.

(b) *Submission, Acceptance, and Distribution of Offers to Sell.* (1) For each purchase transaction, the original offer and four copies will be signed by the landowner and spouse, if any. A copy (5th) will be left with the landowner when the offer is obtained.

(2) Division and District Engineers, the Chiefs of the Real Estate Divisions, and the incumbents of the position to which authority is delegated as provided in § 644.84(d) are authorized to accept offers to sell for the acquisition of land or interests in land and easements, licenses, permits, or similar acquisition instruments: *Provided*, The price set forth in the instrument is within their authority to approve or has been approved in writing by higher authority. The Division or District Engineer may also delegate to Project Managers (including the heads of any field offices with responsibility for real estate acquisition) authority to execute real estate instruments by which land or interests in land are acquired by agreement with landowners, provided the consideration set forth in the instrument is within the approved appraised value or has been approved as provided in § 644.84(c). Upon approval of the offer or other instrument requiring payment to the landowner, a determination that necessary funds are available, and acceptance of the instrument under the authority contained in this subparagraph, the instrument will be numbered in conformity with existing regulations and will immediately be distributed as follows:

(i) Original offers to sell will be retained at the Division or District for site audit.

(ii) Send signed copy to vendor as provided in paragraph (b)(3) of this section below.

(iii) Attached conformed copy to title assembly.

(iv) File signed copy with project records.

(3) Upon acceptance of the Offer to Sell, the Division or District Engineer will notify the vendor by transmitting a signed copy of the contract (accepted offer) to vendor by ENG Form 53, Notice of Acceptance of Offer to Sell Real Property.

(4) Upon acceptance of the Offer to Sell, the Division or District Engineer will notify the using service, in the case of military acquisition, that the Offer to Sell has been accepted and that the Government has "the right of immediate occupancy and use of the land," subject to the terms of the accepted offer. The land should be clearly identified to the using service.

(5) Instruments which do not provide for payments to landowners will be distributed in accordance with regulations governing such cases.

(c) *Easement Acquisition Offer Form.* (1) The use of ENG Form 2970, Offer to Sell Easement, is required for the acquisition of all types of easement estates, such as flowage, spoil, drainage, road, railroad, utility, restrictive or safety (Army and Air Force), clearance (Air Force), and other required easement acquisitions, except in those cases where agreements with landowners can be fully reflected in an executed deed, and where the provisions of §§ 644.84(b) and 644.86(d) are not applicable or can be fully complied with without the use of an Offer to Sell. Pages 1 and 2 of ENG Form 2970, containing the terms and conditions of the acquisition, are standard and need no modification. The tract of land in which the particular easement will be acquired will be described in Exhibit "A," and the easement estate will be set forth in Exhibit "B" to ENG Form 2970. Division Engineers are authorized to approve deviations in ENG Form 2970 in all cases where the easement does not cost more than $500: *Provided*, That any deviation from the estates listed in Figure 5-6 of EP 405-1-2, must have the prior approval of DAEN-REA. When easements are being acquired from a vendor from whom fee is also being acquired, ENG Forms 42 and 2970 may be combined into one instrument in order to complete the entire acquisition as one transaction.

(2) In the acquisition of easements for rights-of-way for access roads, util-

ity lines, etc., which cross or encroach upon rights-of-way or property of railroad companies, public utility companies, cities, counties and States, ENG Form 893, License for Installations Upon Right-of-Way, may be accepted, at the discretion of the Division or District Engineer, provided it is determined that such companies, municipalities, counties, or States are not vested with authority to convey a perpetual easement and the granting of a license under the conditions recited in ENG Form 893 will protect the interests of the United States and grant sufficient use of the right-of-way or land for project purposes. Normally a license of this nature should be obtained for a nominal consideration. Occasionally it will be necessary to provide for the payment of a small fee to cover the licensor's engineering and administrative expenses. In such cases, the consideration for the granting of a license will not exceed $100. In cases where the licensor demands a consideration equal to the appraised value of the right to be acquired, consideration will be given to the acquisition of a perpetual easement by condemnation, if the licensor is not vested with authority to grant such an easement.

(3) The description of the tract over which an easement is being acquired should be prefaced by terminology similar to that of ENG Form 42 which makes the tract inclusive of the abutting owner's interest in contiguous roads and other easements, if any.

(4) Offer assemblies will be prepared, accepted, and distributed in the same manner as provided for fee acquisition, except that ENG Form 3422, Notice of Acceptance of Offer to Sell Easement, will be used.

(d) *Payment.* After acceptance and distribution of the offer assembly and the acquisition is ready for closing, payment will be made.

(e) *Cancellation of Contracts.* If, for any reason, it is necessary to cancel a contract for acceptance by the Government of the Offer to Sell, the cancellation will be effected by using ENG Form 1572, Agreement for Mutual Cancellation of Contract. Upon execution of this agreement by the landowner and the Division or District Engineer, or the Chief of the Real Estate Division, distribution of the original and copies of the agreement will be the same as for the accepted Offer to Sell.

(f) *Transfer of Tracts from Purchase to Condemnation.* If, at any time in the course of acquisition by purchase, it becomes apparent that acquisition by purchase will involve substantial delay or cannot be accomplished, action will be taken to acquire the land by condemnation.

(g) *Acquisition of Land by Donation.* (1) In cases where the acquisition of real property has been authorized and approved by donation, ENG Form 42, Offer to Sell Real Property, or ENG Form 2970, Offer to Sell Easement, will be entered into setting forth the terms and conditions of the donation and conveyance to the United States.

(2) The offer, when approved and accepted, will be distributed in accordance with paragraph (b)(2) of this section.

(3) Title clearance and closing of donation cases are processed in the same manner as any other fee or easement acquisition.

(h) *Vacation of Property by Landowners and Tenants*—(1) *Notice to Landowners.* From the inception of the project, landowners and tenants will be instructed to notify the Division or District Engineer or Real Estate Project Manager, in writing, as soon as they vacate their property; to turn in their keys whenever possible in order that the buildings may be kept under lock; and to keep the Division or District Engineer or Real Estate Project Office advised of any changes in address in order to expedite title clearance, payment, closing action, and the distribution of funds in condemnation proceedings. Landowners and tenants will be informed that, in order to protect their interests, they should not move from their property and that the Government will not require them to surrender possession until:

(i) They have received notice of acceptance of an offer granting the Government the right of immediate possession; or

(ii) They have been served notice of the filing of a condemnation proceeding by which the Government has obtained the right of possession.

(2) *Complete Appraisals Prior to Vacation.* Where an offer is accepted or a declaration of taking is filed, the individual tracts will have been surveyed and appraised. In condemnation proceedings for possession, there may be cases in which individual tract surveys and appraisals will not have been completed at the time the condemnation proceeding is filed. In such cases, landowners and tenants will not be required to surrender possession, and buildings and improvements will not be removed or destroyed in the conduct of construction work, until individual appraisals have been completed and photographs have been procured.

(3) *Inspection of Property.*—(i) As soon as a landowner or tenant gives notification that he is vacating his property, or as soon as this information is obtained from any other source, the District Engineer will immediately have a member of his staff make a personal inspection of the property and execute ENG Form 1567, Report on Vacation of Property. The inspection will be made with a view of determining whether all buildings, improvements, and crops on the land to be acquired, as listed in the appraisal report, are still on the land and in substantially the same condition as they were on the date of the appraisal.

(ii) Where buildings, improvements, and crops have been removed under a reservation in the offer, an appropriate entry will be made in paragraph (3) of ENG Form 1567.

(iii) Where buildings, improvements, and crops have been removed or destroyed in the conduct of construction work on the project, an appropriate entry will be made in paragraph (3) of ENG Form 1567.

(iv) It will be determined whether or not the land is wholly unoccupied and vacant and whether there is evidence of present use thereof for farming and other operations.

(v) The original report will be retained in the real estate project files. The second copy will be held for the use of the closing attorneys on purchase cases, or for the use of the local representative of the Department of Justice in condemnation cases.

(i) *Public Relations.* One of the most difficult problems encountered in the real estate activities of the Department of the Army, particularly from a public relations standpoint, is that of the sudden dislocation of families, tenants as well as owners, and the relocation of these families. Special attention, therefore, will be given to their problems.

(j) *Payment of Relocation Assistance and Acquisition.* Pub. L. 91-646 provides for reimbursement of certain expenses incurred by owners and tenants who are displaced as the result of Federal and federally-assisted programs. Payment of relocation assistance benefits and certain costs incurred by the vendor in transfer of title to the Government and certain litigation expenses incurred by the owner is provided for under that Act.

§ 641.88 Other Acquisition.

(a) *Acquisition From Other Federal Departments and Agencies.*—(1) *Transfers.* Transfers will be obtained from other Government agencies after issuance of real estate directives. Muniments of title will be obtained from the transferring agency, if possible, and be forwarded to HQDA (DAEN-REP) WASH DC 20314, with the original transfer letter or document. Title 10 U.S.C. 2571 authorizes transfer of real property within the Department of Defense (10 U.S.C. 2662).

(2) *Permits.* Upon receipt of a proper request from an authorized command, service or agency, Division or District Engineers and the Chiefs of the Real Estate Divisions are authorized to obtain, accept, and renew permits from other Government departments

or agencies for the temporary (five years) use of land (except public domain for Air Force) and buildings. The use of over 500 acres of public domain land must have prior approval by the Assistant Secretary of Defense (MRA&L) pursuant to Department of Defense Directive 4165.12.

(b) *Withdrawal of Public Domain Lands and Right-of-Entry Permits for Temporary Use.* (1) Withdrawal of public domain lands will be necessary if a site is selected for construction and/or there is a continuing military use. Except in time of war, withdrawals in excess of 5,000 acres for military use must be by authority of an Act of Congress (Pub. L. 85-337, 43 U.S.C. 156).

(2) Requests for withdrawal of public domain land will be made to the appropriate State or Regional Supervisor of the Bureau of Land Management (BLM), Department of the Interior, by the Division or District Engineer, pursuant to 43 CFR Part 295, as soon as a real estate directive is issued.

(i) If use the of land is needed promptly to meet a construction deadline or for other use, the request for withdrawal will contain this information, and the BLM supervisor will be requested to expedite submission of his report to BLM in Washington, and to publish the proposed withdrawal in the FEDERAL REGISTER as soon as possible.

(ii) A copy of the request will be forwarded to HQDA (DAEN-REA) WASH DC 20314 (with a copy to HQ, USAF (PRER), WASH DC 20330, on Air Force projects), with request for assistance in obtaining issuance of the Public Land Order in time to meet construction or military use deadline.

(3) Pursuant to authority of 43 U.S.C. 416, requests for withdrawal of public domain lands may also be made to the appropriate State or Regional BLM Supervisor by the Division or District Engineer for the reservation of those public domain lands which will eventually be required for authorized Civil Works projects, in order to proceed with planning phase work and to prevent adverse private entry thereon. Such action will permit administrative jurisdiction to remain with the present Government agency for continued utilization not in conflict with the eventual purpose of the project. A copy of the request will be furnished to DAEN-REA.

(4) If a withdrawal is requested, the BLM supervisor cannot grant a permit to use the area; however, permits can be obtained for survey and exploration purposes, since these do not involve construction or military use of the land.

(5) Necessary rights-of-way will be obtained under the authority of Section 507, Pub. L. 94-579, approved October 21, 1976.

(c) *Acquisition of Outstanding Rights on Public Domain*—(1) *Acquisition of Possessory Rights to Mining Claims.* (i) Upon issuance of a real estate directive to extinguish outstanding mining interests in the public domain, and notification that the Bureau of Reclamation (BLM) has withdrawn the public domain from appropriation under the public land laws and the public mining and leasing laws, the Division or District Engineer will, if necessary to obtain possession for construction or other project purposes, recommend to the Chief of Engineers the filing of a complaint in an eminent domain proceeding, based on a perimeter description of the project, and the obtaining of an order of immediate possession. Thereafter, the Division or District Engineer will promptly determine the possessory mining claims within the area withdrawn, and he is authorized to acquire such claims for either a nominal sum or an amount not to exceed the combined estimated costs of obtaining a detailed appraisal report and having the validity of the claim investigated by the BLM. This authority is limited to $1,000 per claim.

(ii) If an offer to settle is made on the basis provided in Paragraph (c)(1)(i) of this section, and is not satisfactory to the possessory mineral owner, the Division or District Engineer will request the BLM to investigate the validity of the claim. In such case, under Comptroller General Decision B-143921, the District Engineer is authorized to make an agreement with the BLM for reimbursement of the following:

(A) Examination of the claim itself and assembling of the evidence to support the claim of invalidity.

(B) The presentation of the evidence, the cross-examination of witnesses for the mining claimant and other related expenses (Subpart A).

(iii) The Corps of Engineers is not authorized to reimburse the BLM for hearing of the evidence and the rendering of the decision as to the validity of the mining claim.

(iv) If determined to be valid, claims will be appraised and an offer will be made to the owner at the approved appraised value. BLM is authorized to determine value of the claims and the Division or District Engineer may wish to arrange with BLM to perform this service on a reimbursable basis. In the event the offer based on the approved appraisal is not acceptable to the owner, and a reasonable settlement cannot be effected by negotiation, the Division or District Engineer will forward a report to HQDA (DAEN-REA) WASH DC 20314 with recommendation as to whether the claim should be acquired by declaration of taking or be left outstanding. Those cases in which occupants were dispossessed under the order of immediate possession, referred to in Paragraph (c)(1)(i) of this section, will be given priority attention in all phases of the procedure set out herein, including preparation and submission of declaration of taking assemblies in appropriate instances.

(2) *Acquisition of Grazing Rights.* (i) Grazing rights in the public domain are granted pursuant to the provisions of a series of Congressional acts commonly referred to as the Taylor Grazing Act, 43 U.S.C. 315 et seq. Section 315q of this Act provides as follows: "Whenever use for war or national defense purposes of the public domain or other property owned by or under the control of the United States prevents its use for grazing, persons holding grazing permits or licenses and persons whose grazing permits or licenses have been or will be cancelled because of such use shall be paid out of the funds appropriated or allocated for such project such amounts as the head of the department or agency so using the lands shall determine to be fair and reasonable for the losses suffered by such persons as a result of the use of such lands for war or national defense purposes. Such payments shall be deemed payment in full for such losses. Nothing contained in this section shall be construed to create any liability not now existing against the United States." It is emphasized that payments under this Section are administrative; further that this Section applies only to military projects.

(ii) Upon issuance of a real estate directive to acquire or terminate grazing rights in the public domain or other property owned or controlled by the United States and notification that the Government department controlling such lands has granted a right-of-entry or transferred the lands to the Departments of Army or Air Force, the Division or District Engineer will initiate action to acquire or terminate such grazing rights as authorized by the real estate directive.

(iii) Appraisals will be prepared in accordance with Subpart B and the guidelines set forth in Comptroller General Decision No. B-132774, dated October 9, 1957.

(iv) Discussions with landowners concerning acquisition of a ranch unit will be conducted in accordance with the procedures for fee acquisition.

(v) Offers will be prepared, accepted, and distributed as provided in § 644.87.

(vi) Title procurement and title clearance relating to the acquisition of title to any fee lands within the ranch unit will be the same as in any other fee acquisition. In preparing title evidence covering leasehold interests, a search of the records will be made by

the Division or District Engineer Office and ENG Form 909, Attorney's Preliminary Certificate of Title, will be prepared. In connection with the search of the records, it should be noted that Federal grazing privileges may be pledged or encumbered with mortgages.

(d) *Acquisitions Under Provisions of Relocation Contracts.* (1) When land or interests therein, including subordination of minerals, required for project purposes are acquired under the provisions of relocation agreements negotiated in accord with Section 73, ER 1180-1-1, it will be necessary to procure title evidence covering such land and interests. If the value of interests so acquired is not otherwise determinable for compliance with § 664.84, said value will be determined by the Division or District Engineer by means of a memorandum appraisal to be retained in the tract file. While this type of acquisition does not involve the closing procedure set forth in § 644.70, so much of the title assembly described as is applicable, plus an executed or certified true copy of the relocation contract, will be used in the examination and approval of the title. The disposition of final title assemblies will be governed by § 644.71.

(2) The procedures described in §§ 644.81 through 644.88 do not apply to the extinguishment of outstanding rights, including subordination of easements and similar interests, under the provisions of relocation contracts, as differentiated from the acquisition of land or easements, or the subordination of oil, gas, and other mineral rights, to be utilized for project purposes.

(e) *Acquisition By Exchange.*—(1) *Military.* The authority to acquire land by exchange for military projects is provided in 10 U.S.C. 2672, and in the Military Construction Authorization Act passed each year. As an example Sections 601 and 702, Pub. L. 95-82, August 1, 1977, the Military Construction Authorization Act, 1978, provides in part, that "the authority to acquire real estate or land includes authority to make surveys and to acquire land, and interests in land (including temporary use), by gift, purchase, exchange of Government-owned land, or otherwise." Title 10 U.S.C. 2662a-4 provides that a transfer of real property owned by the United States to another Federal agency or another military department or to a state must be reported to the Committees on Armed Services if the estimated value of the property is more than $50,000. A prerequisite to any acquisition by exchange is authority for the acquisition.

(2) *Civil Works.* The authority to exchange land or other Government property for private lands or property in execution of an authorized river and harbor or flood control work or improvement is found in 33 U.S.C. 558b and 558b-1.

(3) *Coordination with the Office of Managment and Budget (OMB).* OMB requests that each proposal to use Government-owned property in a land acquisition exchange be cleared with the appropriate Associate Director of OMB. Disposal actions where exchange through the authority of the General Services Administration or specific legislation is envisioned will be cleared with OMB prior to filing a disposal report pursuant to 10 U.S.C. 2662. A draft letter to the Associate Director, Office of Management and Budget will be submitted to HQDA (DAEN-REA) WASH DC 20314 stating the requirement for the new acquisition, the description of the property to be excessed, its estimated fair market value, and a justification for the exchange of that property as constituting its highest and best use. OMB clearance will be required before disposal reports outlining exchange proposals are filed with the Congress.

Involuntary Acquisition by the United States

§ 644.101 General.

This Section describes procedures of the Corps of Engineers relating to the involuntary acquisition of land and interests in land on the basis of a physical appropriation or use by the United States. It is applicable to all Division and District Engineers having real estate responsibilities.

§ 644.102 Examples of Involuntary Acquisitions.

While the Secretary of the Army and Secretary of the Air Force have no authority to acquire interests in real property except under express authorization and appropriation made by Congress, the Government may, nevertheless, in the performance of an authorized act involuntarily acquire an interest in real property, for which the owner is entitled to just compensation. Whenever a plaintiff successfully prosecutes litigation which establishes that an interest in real property has been taken, the interest so taken should be confirmed in the form of a grant, wherever possible. The instrument should be recorded in the public land records and permanently retained in the real estate files, as evidence of the interest taken and as a protection against possible future claims of purchasers for value without notice. No employee or representative of the Corps of Engineers shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his property, as prescribed by Pub. L. 91-646. Examples of involuntary acquisition are:

(a) Damage to real property caused by flooding, saturation, seepage, erosion, or other causes arising out of the construction, operation, or maintenance of an authorized project.

(b) Damage as a result of overflights of aircraft.

(c) Other instances where Government actions result in a restriction of the use of property.

§ 644.103 Litigation Reports.

In those cases where a landowner files suit alleging that the Government took his property or an interest therein, a litigation report should be funished in accordance with ER 1180-1-1. Litigation reports will be submitted in quadruplicate in cases involving military installations, and in triplicate in cases involving civil works. District and Division Engineers will furnish an additional copy direct to the local United States Attorney in actions in a United States District Court. In addition to the information required by ER 1180-1-1, there will be furnished preliminary certificates of title to properties subject to the taking, covering a period of search of at least 25 years prior to initiation of the action, and indicating the date of acquisition of the plaintiff's interest. Certificates may be procured commercially, or may be prepared by a staff attorney.

(a) *Avigation Easements.* Reports on actions alleging the taking of an avigation easement should include the following information together with supporting exhibits:

(1) Permanency of the installation and its designated use;

(2) Dates of commencement of use of the runway involved and of each extension thereof;

(3) Date of commencement of takeoffs and landings by regularly assigned aircraft of the type (identify) causing the taking;

(4) Frequency and actual height of flight of the particular aircraft over some portion of plaintiff's property;

(5) Any applicable zoning regulations affecting use of the property;

(6) A drawing at an approximate scale of 1" to 400' showing the location and length of the present runway, its original length, and each extension, and also showing the location of plaintiff's property with relation to the approach-departure zone of the runway and the longitudinal distance in feet, measured along the extended center line from the end of the runway and the lateral distance measured perpendicular to the extended center line, of the plaintiff's property and of any dwellings thereon.

(7) A vertical projection of the drawing at an approximate scale 1" to 100' showing the approach-departure clear-

ance surface at the specified slope ratio and the mean sea level heights of the end of the runway and of the plaintiff's property and any dwellings thereon; and

(8) Name of the person qualified to testify concerning preparation of the drawing.

(b) *Clearance Easements.* Litigation reports on actions alleging the taking of a clearance easement will contain the following:

(1) Details of any prior acquisition of clearance easements over the same property;

(2) Statement as to any outstanding clearance easement directives, including criteria for approach and transition zones, status of negotiations, and copies of appraisal reports;

(3) Statement that all acquisition of clearance easements has been stopped, unless their prompt acquisition is necessary to provide for current flight operation; and

(4) Recommendation that there be included in the estate, in the event of settlement, provisions for the clearance of existing obstructions and prohibition against future obstructions, provided that circumstances will permit a delay in the acquistion of a clearance easement until completion of the litigation.

(c) *Appraisal Reports.* Appraisal reports will be submitted to HQDA (DAEN-REE) WASH DC 20314 after the Department of Justice has determined the date (or dates) of taking. These reports will reflect the "before" and "after" values of the property, based on the assumption that the United States acquired an easement on that date (or dates).

§ 644.104 Procurement of Deed and Title Assembly.

In any case in which the Court determines that the United States has taken an interest in real property, the Department of Justice will attempt to have included in the findings and in the judgment a precise description of the interests taken. An attempt will also be made to provide in the judgment that payment by the United States will not be required until the plaintiff has delivered a deed or other acceptable conveyance of the interest taken.

(a) *Preparation of Instrument.* Upon receipt from the Department of Justice of information as to the nature of the settlement which has been reached, a deed will be prepared, drafted in accordance with § 644.70, covering the estate provided in the judgment.

(b) *Execution and Recording of Deed.* The Division or District Engineer will obtain proper execution of the deed, record the same, procure a final certificate of title of a commercial title company or a staff attorney, and obtain a final title opinion pursuant to the provisions of the Delegation to the Department of the Army for the Approval of the Title to Lands Being Acquired for Federal Public Purposes, dated December 4, 1970, and issued by the Assistant Attorney General, Land and Natural Resources Division, Department of Justice. The title assembly and final title opinion should be forwarded to HQDA (DAEN-REA-P) WASH DC 20314, with information copy of transmittal letter to Division Engineer.

(c) *Notification to the Department of Justice.* If the recorded deed and the final certificate of title are not readily available, the Division or District Engineer will notify the Land and Natural Resources Division of the Department of Justice by letter, with a copy to the appropriate United States Attorney, that the deed has been properly executed and delivered by the plaintiff and has been entered for record in order that settlement will not be delayed.

(d) *Disposition of Final Title Assembly, Mapping, and Audit.* When a final title opinion has been obtained, the Division or District Engineer will assign a tract number to the areas in which the interest has been acquired, will add the tract to the project map, and will transmit the final title opinion and related papers to HQDA (DAEN-REA-P) WASH DC 20314. The tract will be included in the audit of the installation to which it pertains. Audits will be revised for this purpose, if necessary. The amount of the judgment received by the plaintiff will be shown in the audit assembly, with a proper notation that it represents the amount of the judgment entered in the litigation, which will be identified in the audit by its civil number, and by designation of the Court in which it was rendered. A copy or abstract of the judgment will be inserted in the District Office audit assembly, identified as follows: "Directive by judicial decree for the acquisition of Tract No. ; being an easement (or other interest), containing —— acres."

(e) *Action in Lieu of Confirmatory Deed.* Where a confirmatory deed cannot be obtained, the Division or District Engineer will obtain from the Clerk of the Court a copy of the final judgment (or an appropriately excerpted copy of the final judgment), acknowledged or properly certified to permit recordation in the local land records. The Division or District Engineer will record same and later transmit the appropriate title assembly to HQDA (DAEN-REA-P) WASH DC 20314. If the final judgment does not contain language which clearly vests title in the United States of the interest in land for which compensation was paid, request should be made of the United States Attorney to move the Court to amend the judgment to show that such title has vested.

Subpart D—Relocation Assistance Program

§ 644.121 Cross Reference.

See Part 641 of this chapter for the regulations on the relocation assistance program.

Subpart E—Homeowners Assistance Program

General

§ 644.181 Purpose.

Subpart E sets forth the rules and procedures to be followed for the administration of the Department of Defense Homeowners Assistance Program (HAP). The Homeowners Assistance Program is a special relief program designed to provide benefits to eligible homeowners to help offset real estate losses suffered as a result of certain base closure or reduction actions. It is not a procurement program and although it does provide for acquisition of dwellings under certain circumstances, there is no governmental need for such dwellings and they are acquired only for the accommodation of the applicant and must be resold by the Government. It is not a claims program in an adversary sense and there is no provision for judicial review. Therefore, in order to carry out the intent of the Congress in administering the program, it is essential that every effort be made to insure that each applicant is treated fairly and receives the maximum benefits to which he is entitled under the law as rapidly as practicable but with a minimum expenditure of time and money for administration. Reasonable doubts should be resolved in favor of the applicant.

§ 644.182 Applicability.

These procedures are applicable to the Office, Chief of Engineers (OCE), and to those U.S. Army Corps of Engineers' Division and District Engineers (Division/District) having military real estate responsibilities. This program has worldwide application; however, no properties in foreign countries may be acquired except certain property located on a base or installation. The program is applicable to members of all branches of the military services and to all Federal civilian employees of all branches of the Government of the United States except temporary employees serving under a time limitation. Nonappropriated fund employees and independent contractors and their employees are not eligible.

§ 644.183 Objective.

Section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754 (80 Stat. 1255, 1290), approved November 3, 1966, as amended, hereinafter referred to as the Act, authorizes the Secretary of Defense (S/D) to provide assistance to eligible military or civilian employee homeowners by payment of partial compensation for losses sustained in the private sale of a dwelling, by payment of the costs of judicial foreclosure, or by purchase of a dwelling by the Government. Such assistance is available to certain military personnel and civilian employees who are the owners and occupants of one- or two-family dwellings located at or near military installations ordered to be closed in whole or in part subsequent to November 1, 1964, including reductions in the scope of operations at such installations occurring after October 28, 1969: *Provided*, That the S/D finds that their service or employment at such installations has been or will be terminated as the result of the closure or reduction action, and that as a result of the actual or pending closure or reduction action there is no present market for the sale of such dwellings upon reasonable terms and conditions. Pub. L. 91-511 (84 Stat. 1204, 1225), amended the Act, effective as of October 28, 1969, to provide that consideration may be given to the cumulative effect on the local real estate market of all closure or reduction actions in the same area. Pub. L. 92-545 (86 Stat. 1135, 1150), further amended the Act, effective as of November 30, 1970, to authorize assistance to personnel at overseas bases who previously were not eligible because they were not assigned to a unit involved in the closure or reduction action and/or because they owned on-base housing. Pub. L. 93-166 (87 Stat. 661, 697), approved November 29, 1973, further amended the Act, as to closures announced after April 1, 1973, to authorize assistance to certain military and civilian personnel who were previously not eligible because they were involved in routine transfers not connected with the closure action.

§ 644.184 Responsibilities.

(a) The Director of Real Estate, OCE, acting for and on behalf of the Chief of Engineers, has been delegated authority and responsibility for the administration of this program. There has been established within the Directorate of Real Estate the Homeowners Assistance Division which constitutes a central office of control responsible for supervision, inter-agency coordination, development of policies and procedures, Congressional liaison and processing of appeals. A liaison office is maintained in the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics).

(b) Division/District having military real estate responsibility and the Chiefs of their Real Estate Divisions are hereby redelegated authority to administer, manage, and execute the Homeowners Assistance Program on behalf of all claimants in accordance with the provisions of this regulation. It is contemplated that the Division/District will dispose of all cases except appeal cases on which agreement cannot be reached with the applicant and such appeal cases must be forwarded to OCE for consideration, and, if necessary, forwarded by OCE to the Office of the Assistant Secretary of the Army (Installations, Logistics and Financial Management) (OASA (IL&FM)) for final decision.

(c) Division/District records will account for each application filed by showing that it was withdrawn; that it was settled with benefits; that it was rejected or settled without benefits, but with no appeal, or that an appeal was forwarded to OCE.

§ 644.185 Limitation.

(a) Applications for benefits under the provisions of the Act should be presented to the appropriate Division/District within three years after the public announcement or order of closure or reduction. Any application filed after this time should be submitted to HQDA (DAEN-REH-O), WASH DC 20314, with the reasons for late filing. Following such submission, a determination will be made as to whether the application can be accepted.

(b) In requesting additional information, or in sending official notifications to applicants, the use of certified mail (return receipt requested) is recommended in order that the Division/District may have a record in the form of a certified mail receipt of delivery to the applicant's latest known address.

(c) Where an applicant has failed to respond in 60 days to requests for additional information, Division/District may advise him in writing that his application is considered to be withdrawn, and of the specific time limitation within which a claim must be filed.

(d) Where it has been decided that an applicant is ineligible for benefits or where it has been decided that an applicant in the case of a private sale is eligible under the program but is not entitled to benefits and no appeal has been filed within 180 days from the date written notice of such decision was delivered to the latest known address of such applicant, the case will be considered to be closed.

(e) Where there is an eligible applicant who still owns his home and the Division/District has made a determination of the fair market value as of a date prior to the public announcement (hereinafter referred to as prior value) and has advised the applicant of the amount of the Government's offer to purchase, the applicant will be advised in the letter containing such offer that he has 30 days in which

(1) To accept the offer in writing; or
(2) To appeal in writing; or
(3) To withdraw the application.

If there is no action by the applicant within the 30-day period, the case will be considered withdrawn. If the applicant timely objects to the amount offered, or otherwise appeals, the matter will be processed in accordance with the appeal procedures. Where more favorable action can be taken on appeal, at any level of review, the applicant will be advised that he will have 30 days in which to accept the new offer or to file a new appeal which will be processed under appeal procedures.

(f) Notwithstanding the actions taken in paragraph (e) of this section, in the event an eligible applicant sells his home privately and the time limitations in paragraph (a) of this section, have not expired, his application may be processed on a private sale basis.

(g) Where an appeal has been filed, the case will be considered closed after appropriate action has been taken in conformance with the final decision made on appeal, as prescribed in the appeal procedures.

(h) Settlements made in accordance with the Act and these regulations will not be reviewed for the purpose of applying one of the other formulas for benefits without the prior specific approval of OCE. Closed cases will not be reopened without specific approval of OCE.

§ 644.186 Funding.

(a) The following revolving fund account has been established:

(1) 97X4090—Homeowners Assistance Fund, Defense.

(2) 97X4090.0122—Allocation to Army.

(b) The Department of Defense (DOD) will make available to the Department of the Army (DA) for allocation to OCE, under established procedures, funds required for administration of the program. Funds provided will be utilized for purchase or reimbursement as provided herein, as well as to defray expenses arising in connection with the acquisition, management, and disposal of such properties, including payment of principal, interest, and expenses of mortgages or other indebtedness thereon, and including the cost of staff services and contract services, cost of insurance, and other indemnities.

§ 644.187 Service and employment data.

(a) The Secretaries of the Military Departments and the Directors of Defense Agencies are responsible for disseminating information on the program, rendering assistance to applicants, receiving and verifying statements on employment in applications, and for forwarding such applications to the appropriate Division/District for processing. At installation level, the personnel officers of other Federal agencies having custody of applicant's personnel records will verify statements on employment.

(b) Fact Sheet and Application for Homeowners Assistance, DD Form 1607, have been distributed to Department of Defense installations and activities. The Fact Sheet explains the objective of the programs, the eligibility requirements, the benefits available and the procedures to be followed in seeking assistance. the application provides a format for submission of essential factual data and the type of benefits requested.

§ 644.188 Overseas Bases.

(a) Prior to the enactment of Section 601 of Pub. L. 92-545 on October 25, 1972, servicemen and civilian employees in foreign countries were covered by the program and were subject to all of the eligibility requirements of the Act, as were applicants in the United States, the only difference being that the Act precluded the acquisition of properties in foreign countries. The enactment of Section 601 of Pub. L. 92-545 kept intact existing benefits for servicemen and civilian employees in foreign countries and provided benefits to certain personnel not previously covered. Such personnel at overseas bases who sell their on-base or off-base homes at a loss, or who are unable to sell their on-base property as a result of the announced closure or reduction in scope of operations of such bases, are entitled to assistance, under the formula set forth below. In order to qualify for assistance, such personnel must relocate incident to transfer, reassignment, or involuntary termination of their employment at a time when the closure or reduction in scope of operations of the base where they were stationed or employed results in their inability to sell their property upon reasonable terms and conditions.

(b) No properties may be acquired in foreign countries except in connection with compensation for property located on an overseas base or installation. Eligible owners of such property who are unable to find a purchaser for the property may surrender their interest therein to the United States and shall be entitled to compensation in an amount equal to (1) 90 percent of the sum of the purchase price of the dwelling and improvements, and all costs of ownership, including interest on notes, utilities, and service, maintenance and insurance, less (2) the total of all housing allowances received from the Government during ownership or occupancy of the dwelling, and all rents or other benefits collected: *Provided, however,* That the maximum compensation will in no event exceed 90 percent of the unamortized portion of the cost of the property, including improvements, at the time ownership was terminated, as reflected in the amortization schedule, if any, relating to such property. In the case of private sale of property located on base, the foregoing formula will also be applied, except that in computing benefits due the applicant the sale price will be deducted together with the other items specified in subparagraph 1 of this paragraph.

(c) Benefits available in connection with off-base property are limited to private sale relief, consisting of the difference between 95 percent of the fair market value of such property before the closure or reduction announcement and the fair market value thereof at the time of sale or the sale price, whichever is greater. No overseas off-base property may be acquired by the Government.

§ 644.189 Records and Reports.

Homeowners Assistance Docket Sheet, ENG Form 4153, will be used by Division/District to record actions taken after receipt of applications. The foregoing forms will be used as a document for the preparation of punched cards for reporting purposes. Detailed instructions are set forth in Chapter 14, EP 405-1-2. Reporting requirements for RCS DAEN-RE-12 are incorporated in ER 405-1-11.

PROCEDURE

§ 644.190 Announcement of Base Closure or Reduction.

(a) Immediately upon announcement at DOD level or locally of a closure or reduction action, Division/District will take the following actions in anticipation of the filing of applications for homeowners assistance:

(1) Contact the respective base personnel offices within their jurisdictions to apprise those offices of the availability of HAP benefits and to establish the proper degree of liaison;

(2) Obtain from the base personnel offices an indication of the number of homeowners involved and the specific locations of their homes;

(3) Prepare estimates indicating the number of applications for homeowners assistance that may be expected, as well as estimates of the number of homeowners that may be expected to be eligible under the program. Eligibility estimates may be based on the general marketability of homes in the area, the concentration of homes in specific areas, the time phasing for personnel movement and other available information. A detailed study of market conditions is not necessary at this time. Based on information obtained in Paragraphs (a) (1) and (2) of this section, determination may be made concerning the extent of publicity that should be given to the homeowners assistance benefits. For example, if it appears the closure or reduction action will not result in economic losses in the sale of homes, it would be inappropriate to emphasize to the homeowners the availability of benefits.

(b) Upon completion of the preliminary investigation and study of potential impact, with respect to a new closure or reduction action announcement, APP C, ER 405-1-11 prescribes that an Installation Closure Potential Impact Report (RCS DAEN-RE-21) will be prepared and forwarded. The report contains the following information and is furnished to HQDA (DAEN-REH-O) WASH DC 20314, within 60 days from the date of public announcement:

(1) Estimated number of military and civilian personnel affected, segregated by rank or grade level.

(2) Estimated number of homeowners in each category.

(3) Estimated number of personnel involved in routine transfers affected by closure or realignment action.

(4) Real estate market conditions.

(c) With respect to a new closure or reduction action announcement, action will be taken immediately to obtain and assemble current market data with respect to the activity of the real estate market prior to the closure or reduction action announcement in the general area of the affected bases. The scope of such action will be commensurate with the anticipated work load as determined by the Division/District. Such data should be filed for future reference. It will be useful in the processing of applications at a later date when it will be necessary to compare the pre-base closure market with the market at the time of the applicant's sale, relocation or foreclosure. This should not be construed as a request for a detailed market data impact study nor is it recommended that individual appraisals be made at this time. A substantial collection of current sales data should provide sufficient data upon which the preclosure market may be estimated. An excellent source of sales data is the local Board of Realtor's Multiple Listing by cards or sheets. These cards or sheets include a photograph of the house, a brief physical description and the asking price. It is essential that the selling price be obtained and set forth

on the card. If a multiple service is not available, similar data sheets on sales should be compiled. Other sources of data are local realtors, mortgage brokers, assessment officers, county courthouse records and utility companies. A determination at the time of the announcement as to whether or not applicants can sell upon reasonable terms and conditions would be premature; however, if there are early closure reduction and phaseout dates, it is highly probable that such determination will be necessary at an early date. When such a determination is required, it is proposed that it be made from a simple market analysis, plus a sampling of appraisals covering the initial applications received which should indicate the trend of the market. An elaborate and costly impact study is not required and should not be made.

§ 644.191 Review of Application.

(a) In order to be eligible for HAP benefits, an applicant must meet all pertinent requirements of the Act. Sections 644.193 through 644.203 refer to most of the basic requirements of Section 1013 (a) and (b) of the Act. In view of the inter-relationship between the paragraphs, they should be read together for proper understanding. Insofar as practicable, subjects are treated in the chronological order contained in the Act so that the processing of an application may be discontinued without unnecessary work if an applicant fails at any point to meet one of the basic requirements of the Act.

(b) Division/District, upon receipt of an application will assign a number to it; however, applications in connection with installations located in another Division/District will not be assigned a number but will be forwarded immediately to the Division/District having jurisdiction (a number, once assigned, will not be reassigned regardless of the disposition of the application).

§ 644.192 Closure or Reduction Action Determination.

A closure or reduction action, as contemplated by the Act, is defined as a publicly announced action by the Department of Defense or by a component thereof, at headquarters or local level, which, (a) involves a complete or partial closure of a military base or installation, or (b) involves a reduction in the scope of operations at a military base or installation. In addition, where any publicly reported governmental statement or action can reasonably be interpreted by base personnel and the public as indicating that a closure or reduction action is imminent, such statement or action will be regarded as a closure or reduction announcement within the meaning of the Act. Any reasonable doubt as to whether a closure or reduction action has been announced will be resolved in favor of the applicant.

§ 644.193 Base Closure Action "In Whole."

A base closure "in whole" is defined as an action announced publicly by the Department of Defense or by a component thereof, which involves one of the following:

(a) The complete closing of a military base or installation, or

(b) The termination of all existing functions (other than caretaker) at a military base or installation.

§ 644.194 Base Closure Action "In Part."

A base closure "in part" is defined as an action announced publicly by the Department of Defense or by a component thereof, which involves one of the following:

(a) The termination of a separate and distinct mission or function at a military base or installation, or

(b) The permanent relocation of a military unit from an installation, other than from an installation which includes in its basic mission the support or "homeporting" of various military units, and historically has experienced repeated and sharp fluctuations in aggregate personnel strength.

(c) In addition to the above, there must be one of the following:

(1) The permanent or indefinite closing of all or part of the physical plant at a military base or installation, or

(2) A change in use from one Defense component to another of all or part of the physcial plant at a military base or installation, coupled with a significant drop in personnel for a period of six months or more, or

(3) A change in use from one mission or function to another, of all or part of the physical plant at a military base or installation, coupled with a significant drop in personnel for a period of six months or more. A significant drop in personnel is considered as occurring where the aggregate of Federal personnel (military and civilian) displayed in consequence of the announced closure was a significant part (one percent or more) of the total area employment at the time of the announcement.

§ 644.195 Reduction in the Scope of Operations.

A reduction in the scope of operations is defined as an action publicly announced by the Department of Defense or by a component thereof which involves the elimination of military or Federal civilian personnel from a military base or installation and yet does not necessarily involve, as in the case of a closure action, the termination of any mission or function, the permanent relocation of any military unit, or the permanent closing of all or part of the physical plant.

§ 644.196 Eligibility—Service or Employment Certification.

Upon a determination that the applicant was involved in a base closure or reduction action, the Division/District will ascertain that the personnel officer has properly certified the application as to service or employment. If the application is incomplete, timely action will be taken to return it to the personnel officer for proper completion, prior to the further processing thereof. If the certification is satisfactory, the application will be checked for compliance with the other requirements of the Act.

§ 644.197 Any Property Improved With a One- or Two-Family Dwelling.

(a) The applicant must be or have been the owner of a one- or two-family dwelling situated at or near the military base or bases announced for closure or reduction. A one- or two-family dwelling which is located on a farm or on other large acreage would include only such land as would reasonably constitute a residential property within the area. Land owned by the applicant which does not adjoin his residence normally will not be considered a part of the residential premises. Whether an additional adjoining lot should be included as part of the residential premises will depend on whether it is, in fact, a part of the residential premises and was used as such, and whether it can be severed readily and can be disposed of economically without disproportionately affecting the disposal of the residential premises. The method generally used within the area for selling and purchasing residential premises will be considered. Notwithstanding the foregoing, the applicant should not be left with a lot which is less than the size required for a home, similar to those in the area, or which would be considered unmarketable except as part of the adjoining residence. These are judgment factors to be determined and applied to individual cases by the Division/District.

(b) To qualify for consideration, the property must include a dwelling unit which constitutes an improvement in the usual sense as of the date of the closure or reduction action announcement. It must be, or have been, an integral part of the property. Individual apartments in condominium or cooperate ownership may qualify. Generally, trailers would not qualify; however, trailers would qualify if demounted and permanently attached to owned land or land held under a long-term lease or if they are otherwise determined to be real property. The Act refers to "any property improved with

a one- or two-family dwelling"; therefore, property would include land as well as improvements.

(c) Where the Division/District determines that the improvements on the property (in connection with which a qualified applicant has filed an application) have been damaged after the closure or reduction action announcement to the extent of 75 percent or more or have been destroyed by fire, flood, and/or other like casualty, the applicant will be entitled to benefits only on the basis of a private sale. The Government will not purchase the applicant's land. In such event, his benefits will be computed as follows:

(1) Find the prior value of the land and improvements in the undamaged condition.

(2) Find the current value of the land and improvements in the undamaged condition.

(3) Multiply the prior value (1) by 95 percent and deduct (2); this will be the amount of benefits to be paid to the applicant.

(d) Where the Division/District determines that the improvements have been damaged after the closure or reduction action announcement to the extent of 25 percent or less by fire, flood, and/or other like casualty, the applicant shall be notified that he may elect to receive benefits on the basis of a private sale, as computed above, or he may sell the property to the Government on the following basis: Multiply the prior value (paragraph (c)(1) of this section) by 90 percent and deduct therefrom the amount or percent of damage calculated on the current value in the undamaged condition.

(e) Where the Divison/District determines that the improvements have been damaged after the closure or reduction action announcement by fire, flood, and/or other like casualty more than 25 percent but less than 75 percent the applicant shall be notified that he may receive benefits on the basis of a private sale, as computed above, that the purchase of his property by the Government will require the approval of OCE. If the applicant desires to sell his property to the Government, the Division/District will make appropriate recommendations and include information from the Regional Office of the Federal Housing Administration (FHA) as to whether the property would be acceptable for sale. If the FHA will not accept the property, Division/District should include a disposal plan.

§ 644.198 Location of Property "at or near" the Installation.

A property within 20 miles of an installation will be considered to be "at or near" that installation. Properties at a greater distance will be considered to be "at or near": *Provided*, That the applicant actually lived in the property and commuted daily to his place of work during the period immediately prior to his transfer, *or* during the period immediately prior to his being ordered into on-post housing.

§ 644.199 Termination as Result of Closure or Reduction Action.

The applicant must meet one of the eligibility requirements set forth below:

(a) Must be a non-temporary Federal employee whose employment at or in connection with the base, has been or will be terminated as a result of the closure or reduction action.

(b) Must be a serviceman whose service at or in connection with the base has been or will be, terminated as a result of the closure or reduction action.

(c) An applicant's employment or service at the base or installation which has been ordered to be closed or reduced must be or have been terminated as a consequence of the closure or reduction action. An applicant may be considered as having his employment or service terminated as a consequence of the closure or reduction action if he is eligible under the other requirements of the Act and if:

(1) Subsequent to public announcement of the closure action, or within six months prior thereto:

(i) He elects to retire.

(ii) He elects not to re-enlist in the military service.

(iii) He voluntarily resigns from a position which will be abolished.

(iv) He is transferred and his position or assignment is scheduled for eventual termination as a result of the closure or reduction action.

(v) He elects to accept other employment in lieu of transfer at a location beyond normal commuting distance; or

(2) He is transferred overseas unaccompanied by dependents within 15 months prior to public announcement of the closure or reduction action.

(d) In addition to the above, servicemen and Federal employees assigned or employed at or near bases announced for closure after 1 April 1973, who are required to relocate due to transfer, reassignment, or involuntary termination of employment for reasons other than the closure action, are entitled to program benefits, subject to their meeting other prescribed eligibility requirements.

§ 644.200 Time of Employment or Service at Base.

Applicant must meet *one* of the qualifications set forth in Paragraphs (a), (b), or (c) of this section:

(a) Must be or have been a serviceman or Federal employee assigned to or employed at or near the installation or activity at the time of the public announcement of the closure or reduction action; or

(b) Must be or have been a serviceman or Federal employee who transferred from such installation or activity, or who was terminated as an employee as a result of reduction-in-force within six months prior to public announcement of the closure or reduction action; or

(c) Must be or have been a serviceman or Federal employee transferred from the base on an unaccompanied overseas tour within 15 months prior to the public announcement of the closure or reduction action.

§ 644.201 Owner-Occupant.

The applicant must meet one of the requirements set forth in Paragraphs (a) or (b) of this section:

(a) Must be or have been a serviceman or Federal employee who was the owner-occupant of the dwelling at the time of the public announcement of the closure or reduction action; or at the time of transfer or termination as a result of a reduction-in-force within six months prior to the said public announcement; or at the time of transfer from the installation on an overseas tour unaccompanied by dependents within 15 months prior to the said public announcement.

(b) Must be or have been a serviceman or Federal employee who vacated the owned dwelling as a result of having been ordered into on-post housing during a six-month period prior to the closure or reduction action announcement.

(c) A serviceman or Federal employee may be considered an owner of property without regard to the technical form or description by which an ownership interest is evidenced: *Provided*, That, consistent with local practices and procedures, the applicant can be shown substantially to have the rights and duties of a person with an ownership interest in the property. Depending on relevant circumstances, for example, an applicant may be eligible who holds title to a long-term ground lease rather than to the fee or who is the buyer under a long-term executory purchase contract; but one whose interest is that of a mere security holder, whether by mortgage, deed of trust, or otherwise, shall not be eligible. An applicant may be eligible notwithstanding that title or other ownership interest is in the joint or exclusive name of a spouse. A serviceman or Federal employee who was the owner of a dwelling may be considered to have been the occupant although he was temporarily absent therefrom if his temporary absence was for a

valid governmental purpose, such as temporary duty, and he would have returned to the house except for the closure or reduction action.

§ 644.202 Relocation or Financial Hardship.

Applicant must meet *one* of the requirements set forth in Paragraphs (a) or (b) of this section:

(a) Must be or have been a serviceman or Federal employee who, as a consequence of the closure or reduction action, was required to relocate because of a military transfer or because of the acceptance of employment beyond a normal commuting distance from the base. For purposes of satisfying this requirement, the applicant must be relocated to a new place of service or employment which is more than 20 miles from the dwelling to which assistance is sought *and* further from the dwelling in terms of commuting time than the base or installation announced for closure or reduction. Applicants listed in § 644.199(c)(1) who resigned, retired or chose not to reenlist and who moved beyond a reasonable commuting distance from the base, are ipso facto considered to have accepted employment beyond a normal commuting distance from the dwelling for which compensation is sought, as required by Section 1013(b), second proviso, Pub. L. 89-754.

(b) Must be a serviceman or Federal employee who, as a consequence of the closure or reduction action, is unemployed, not as a matter of personal choice, and who is able to demonstrate such financial hardship that he is unable to meet the mortgage payments and related expenses. Financial hardship due to being unemployed in the area of the closed installation is a determination that must be made by the Division/District where the applicant is unemployed not as a matter of personal choice and as a result of base closure. The applicant may be considered so unemployed even though offered, prior to termination, a comparable position at another location beyond normal commuting distance. In support of the hardship allegation, the applicant is required to state why employment is not available or has not been accepted, the amount and frequency of all income, nature and amounts of debts, and number and amount of all installment payments, including mortgage payments in arrears. Where current income for a period of 90 days next preceding the date of application is less than the current enforceable obligations against the applicant, including the mortgage payments, it may be determined that unemployment and financial hardship, as required by the Act, has been established. It is pointed out that this determination is to be based upon the relationship between income and obligations. The financial worth of the applicant need not be taken into account. In making the hardship determination, doubtful cases should be resolved in favor of the applicant.

(c) Each applicant requested to furnish supporting information to establish financial hardship will be furnished an appropriate notification of the provisions of the Privacy Act of 1974 (5 U.S.C. 552a).

§ 644.203 Qualifying.

(a) In the event an applicant fails to meet any of the essential requirements of the program as set forth in the preceding paragraphs, there will be no further action taken on the application except to notify the applicant in writing of this fact and to advise him of his right to appeal.

(b) Where the applicant meets the essential requirements of the preceding paragraphs, action with respect to the application will be taken as hereinafter set forth.

§ 644.204 Housing Market Area.

The housing market area is defined as an area in which dwelling units are in competition based on available transportation facilities, local commuting habits and preferences, and the pattern of urban development, taking into account the location of the homes of the employees affected by the closure or reduction action.

§ 644.205 Market Impact Zone.

The market impact zone is defined as a residential district or subdivision within the market area or a category of homes by prices which is sufficiently impacted by a base closure action to enable homeowners to qualify for assistance. Such a zone could be the area contained within a circle surrounding the base, the radius of which is the distance between the base and the applicant's property. It is recognized that in many cases only a portion of a market area, or homes in a certain price bracket will be significantly affected by a base closure action.

§ 644.206 Determination of Economic Impact.

(a) A basic requirement of the Act is that there be no present market for the sale of the applicant's property upon reasonable terms and conditions, as a result of the actual or pending closing of the base or installation in whole or in part, or as a result of the reduction in the scope of operations at such base or as the result of such action and other similar actions in the same housing market area or market impact zone. It is basic to this provision of the Act that there be a causal relationship between the lack of a market for the sale of a home upon reasonable terms and conditions, and the actual or pending closure or reduction action(s). Where the Division/District determines that the lack of a market for the sale of a home upon reasonable terms and conditions is the result of the actual or pending closure or reduction action(s), there is no need to make further determinations such as the relationship between the number of Federal personnel spaces displaced and the total area employement. Where, however, the Divsion/District is unable to establish a clear causal realtionship between a closure or reduction action(s) and a decline in value, it will be determined that the decline in market values is the result of the actual or pending closing of the base or installation where the decline took place susequent to the closure or reduction action(s), and where the aggregate of Federal personnel spaces (military and civilian) displaced in consequence of the announced closure or reduction action(s) was a significant part (one percent or more) of the total area employment at the time of the announcement. Division/District will consider total declines in market values without attempting to ascertain what portion of such declines are attributable to factors other than closure or reduction action(s). The area involved in the term "total area employment" should be determined by the Division/District. As a general guideline, the total employment area might be considered to be an area bounded by points representing the average distance traveled by the majority of employees commuting to work at the base.

(b) Requirements of Section 1013(a)(3) of the Act will be met if the causal relationship has been established as provided in paragraph (a) of this section, and if:

(1) Subsequent to the closure or reduction action announcement there is a decline in market values of five percent or more within the market area, or within the included market impact zone as to properties within that zone, based on findings of a Federal agency, a special market survey, or a pattern of area appraisals. Individual real property appraisals will suffice pending establishment of an area pattern or other valid evidence.

(2) As to any particular property, the applicant is unable to dispose of his property to a responsible purchaser for the amount of the outstanding mortgages, after reasonable efforts to do so. In such case, the applicant must show evidence of efforts to sell privately. Such evidence may include such things as newspaper advertisements and listing with brokers. Where, however, a property is mortgaged immediately prior to the announcement

in a sum in excess of prior fair market value, failure to dispose of the property for the aggregate of the mortgage debt will not provide a basis for determining that there is no market upon reasonable terms and conditions as to that property.

(c) In addition to paragraph (b) of this section, if a causal relationship to the base closure can be shown, there will be considered to be compliance with the requirement of Section 1013(a)(3) of the Act, if:

(1) As to a particular property, the applicant is unable to sell his property after reasonable efforts to do so and the said property is foreclosed; or

(2) As to a particular property, the applicant, after reasonable effort has not been able to sell his home and is willing to convey his property to the Government for 90 percent of its prior value; or

(3) There is a determination by OCE that because of the peculiar circumstances of the case there is considered to be lack of market for the sale of the applicants' homes as a result of the closure or reduction action(s). An example of such a case would be where a group of homes larger than the local market can absorb in a reasonable length of time has been placed on the market, resulting in a stagnant market, thereby distorting the normal appraisal techniques of estimating value through comparable sales and leaving the homeowner with little choice other than to retain his home or to sell to a speculator. Where such a situation is encountered, Division/District Engineers should take prompt action to report the matter to OCE with applicable comments and recommendations.

(d) In the event the Division/District, after analyzing all market data and the appraisals covering the initial applications received, determines that the requirements of Section 1013(a)(3) of the Act have not been met and plans to deny all applications on the basis of no impact in a housing market area, the Division/District Engineer will submit his findings and recommendations to OCE for review prior to taking any action thereon.

§ 644.207 DD Form 1607, Application for Homeowners Assistance.

Inasmuch as DD Form 1607 does not provide all of the information required to process the application, Figures 7-1, 2, and 3 in EP 405-1-2 are proposed letters to applicants requesting supplemental information. The letters may be considered to be guidelines and may be amended as deemed appropriate. Figure 7-4 (EP 405-1-2) is a Privacy Act Information Statement which should be furnished to the applicant on all occasions when information is requested from such applicant.

§ 644.208 Applications Filed Requesting Government Purchase Before Impact is Known.

(a) Closure or reduction action announcements often contain items with imminent action dates. Many applicants will be faced with a shortage of time between notice of termination of their service or employment and their relocation. A problem may arise with respect to HAP applications wherein the Government is requested to buy the applicant's home soon after a closure or reduction action is announced and, at the time of the filing of the application, there is no evidence of adverse real estate market impact as a result of the closure or reduction action. In such a case, the application cannot be approved until it can be ascertained that as a result of the closure or reduction action there is "no market for the sale of the applicant's dwelling upon reasonable terms and conditions." Potential applicants should be advised that in the early stages of a closure or reduction action, the impact on the housing market may be very slow in appearing. Indicators, such as sales prices, increased inventory and decrease in sales, may be inconclusive for some time as to whether there is a depressed or stagnant market. The applicant's experience in trying to sell his property may be the best early indication of the lack of a market. Until there is evidence of an adverse impact, or a stagnant real estate market, the applicant must be advised that the Government cannot acquire his dwelling.

(b) An applicant who decides to appeal within 180 days after he is notified that his application has been denied because of no impact, faces the possibility that the market may not change within the time required for consideration of his appeal and that his appeal will, therefore, have to be denied. In view of the fact that there may be an impacted real estate market at a later date as a result of the closure or reduction action, the applicant should be given the opportunity to appeal or to withdraw his application without prejudice to his right to resubmit it at a later date. If the applicant does not respond within the 180-day period or if the applicant should appeal and be denied, Division/District Engineers may make recommendations to OCE on an individual case basis for reopening such cases in the event there is a later adverse impact on the market which might result in favorable action in the applicant's case.

§ 644.209 Real Estate Appraisals.

(a) In cases where the applicants satisfy all other eligibility requirements, individual real property appraisals will be prepared by staff or contract appraisers as guides to the determinations of fair market values. Care should be exercised to avoid the expense of appraisals which are elaborate or more detailed than is necessary to provide the limited data necessary for this program. It is to be noted that in this program no property will be acquired through condemnation proceedings. Existing FHA, VA, and other valid appraisals should be used in lieu of ordering new appraisals where such existing appraisals were prepared within an acceptable time frame. As an exception to Subpart B, the brief appraisal format set forth as Figure 7-6, or a reasonable variation thereof, will be used in this program. Substantial savings can be realized in the use of a short form appraisal format. Where there is an appeal as to value, a full appraisal will be made unless the matter can be resolved at the Division/District level. Substantial differences between the "before" appraisal and the applicant's purchase price should be fully explained, as well as substantial differences between the "after" appraisal and the applicant's selling price, if an amount other than the selling price is used to determine benefits. To the extent possible, staff appraisals should be obtained.

(b) Division/District offices should not offer to furnish the applicant with a copy of the appraisal report but the applicant will be notified of the determined valuations of his properties so that he may be fully informed in the event he desires to appeal such valuations. If the applicant requests a copy of the appraisal report, it will be furnished to him.

(c) Except as set forth in this Subpart E, HAP appraisal matters will be handled as set forth in Subpart B.

§ 644.210 Determination of Fair Market Value (FMV).

The Act requires that determinations be made of the fair market value (FMV) of applicants' homes as of a date prior to the announcement and in many cases at the time of sale. The Division/District will make determinations of FMV using the real estate appraisal report, FHA and VA loan commitment documents and any pertinent information contained in the record which relates to the value of the applicant's property.

(a) The FMV prior to the public announcement will be determined as of a date immediately prior to the announcement, or as close to the announcement as such value can reasonably be determined. However, if it is established that the imminent closure of the base was known to the public prior to the official announcement, the applicant should not be penalized for the resultant downward trend of real property values between the time

of the actual public knowledge of the closing and the time of the official announcement.

(b) If the applicant has made a reasonable effort to sell his property within the time frame allotted to him by the circumstances of his transfer and relocation and there are no cogent reasons to believe that the transaction misrepresents the fair market value of the applicant's property at the time of the transaction, then the sales price should be used as the "after" value. The applicant should be given the advantage of any reasonable doubt. Although the sales price normally will be used as the "after" value, it must be recognized that some applicants may make poor bargains and sell their homes at prices substantially below the current market value for comparable properties. Since it is not intended under this program to provide compensation for losses occasioned by failure to obtain the current market price, such an applicant's benefit may have to be determined on an "after" value greater than his sale price. When this is done, the record should contain cogent reasons in support of the "after" value.

(c) As an aid in the administration of this program, the Division/District is authorized to use as the "prior" FMV an amount not to exceed 110 percent of the estimated prior FMV shown in the appraisal report, when he determines that the circumstances in the individual case justify such action. The specific reasons supporting such action will be made a part of the record and the responsible official will include a statement in the record that the prior FMV was determined in accordance with the Act and delegations of authority. This authority may be exercised either in the initial processing of the application or when the matter is reviewed on appeal. It is intended that an eligible applicant will be afforded initially that amount of benefits to which he is entitled and that this authority will not be used as a bargaining tool in order to settle the applicant's appeal.

§ 644.211 Reasonable Effort to Sell.

The term "reasonable effort to sell," or similar phrases throughout this chapter, must be related to the time the applicant has available to him (by direction of his employer or by personal choice) to sell his property. If he makes plans to relocate promptly, he should not be encumbered by a requirement to hold property on the market beyond a desirable time considering his relocation plans. This should not be considered to be encouragement for a private sale below the apparent market value, but should be considered an accommodation to the applicant to facilitate his move by sale to the Government at 90 percent of prior value.

BENEFITS—PRIVATE SALE AND FORECLOSURE

§ 644.212 Benefits—Private Sale.

(a) An eligible applicant may be reimbursed in connection with the private sale of his home in an amount not in excess of 95 percent of the prior FMV, less the FMV of the property at the time of sale, or the sales price, whichever is greater. Care must be exercised to assure that no commitment is made to an applicant as to the granting of assistance in the absence of a finding of market impact. The applicant must show that he has made a reasonable effort to obtain the maximum price for the property. Applicants should be encouraged to obtain a release from the VA or the FHA of their liability in the case of assumption of their loan by their purchaser.

(b) For purposes of determining compensation for losses sustained in a private sale, fair market value at the time of sale as contemplated by Section 1013(c) of the Act will be the fair market value at the time of sale, or the sales price, whichever is greater, less the amount of the closing costs, sales expenses, and "mortgage points" customarily paid by the seller in the area in connection with the sale of a one- or two-family home. Allowance of the real estate sale expenses may not duplicate any sale expenses paid or payable under Public Law 89-516 (80 Stat. 323, 324) in the case of certain civilian employees who have a permanent change in their duty station.

(c) Section 1013(c) of the Act provides in part that cash payment as compensation for losses sustained in a private sale shall not be made in any case in which the property is encumbered by a mortgage loan guaranteed, insured, or held by a federal agency unless such mortgage loan is paid, assumed by a purchaser satisfactory to such federal agency, or otherwise fully satisfied at, or prior to, the time such cash payment is made. The Veterans Administration has determined that it will consider the present titleholder to be the "purchaser" for the purposes of this program. There have been some difficulties and some delays in obtaining the approval by FHA and VA of the subsequent purchaser. Each application should be completely processed, as provided below, even though settlement may be delayed or precluded because of the failure of the federal agency to certify the subsequent purchaser as satisfactory:

(1) If the applicant is found to be ineligible or it has been determined that no benefits will accrue to him, no contact will be made with FHA or VA as to the acceptability of a subsequent purchaser. The applicant will be notified that he is ineligible or that he is not entitled to benefits. If no appeal is filed, the case will be considered closed. If an appeal is filed, the case will be handled under the appeals procedures.

(2) If the applicant is found to be eligible and agrees to accept the benefits offered, the Division/District will request the FHA or VA to advise whether the subsequent purchaser has been approved. If such approval is not forthcoming, or the FHA or VA declines to approve the subsequent purchaser, the applicant will be advised that payment cannot be made to him until FHA or VA approves the subsequent purchaser. Sufficient funds will be allocated to provide for payment to such applicant at a later date, in the event the subsequent purchaser should be approved by the FHA or VA.

§ 644.213 Benefits—Foreclosure.

(a) Foreclosure actions may be treated as foreclosures or as prior sales. However, where the applicant has sold the property and final settlement has been made on the basis of an actual sale the case may not be reopened in the event of a subsequent foreclosure.

(b) Where the foreclosure costs are to be paid or reimbursed by the Government, the Division/District will verify all facts as necessary with court officials, judgment holders, and claimants before making payment.

§ 644.214 Benefits—Deed in Lieu of Foreclosure.

Where an applicant has conveyed his home by deed in lieu of foreclosure, the case will be treated as a private sale.

§ 644.215 Benefits—Private Sale or Foreclosure Basis.

(a) Upon determination of the benefits to which an applicant is entitled, based on private sale or payment or reimbursement of foreclosure costs, the applicant will be notified by letter as to such benefits and asked to advise concerning acceptance of the benefits most advantageous to him. He will be informed by the Division/District in specific detail how the benefits were determined, including the estimated valuations, and advised of his right to appeal any decision which he feels is adverse to his interest and the appeal procedure to be followed. Where applicable, an information copy of the letter to the applicant will be furnished to the regional office of the VA or FHA.

(b) Upon receipt of notification of acceptance of benefits by the applicant, necessary documentation will be made and checks will be issued to the appropriate parties as provided in this pamphlet.

(c) If the application is processed as a private sale and payment is made to the applicant, the applicant is thereafter precluded from being eligible for foreclosure benefits. In the event of little or no benefits under the private sale formula, and where no foreclosure has occurred, an eligible applicant will be apprised of the foreclosure benefits available under the law and will be given the opportunity to withdraw his application, without prejudice to his right to resubmit it at a later date within the three-year time period limitation, if he desires to handle the matter in this manner.

BENEFITS—ACQUISITION

§ 644.216 Acquisition by the Government.

(a) An eligible applicant who owns his home may elect to sell the property to the Government and to receive, as the purchase price thereof, an amount not to exceed 90 percent of prior FMV or the amount of the outstanding mortgages. Purchase by the Government does not involve a displacement within the meaning of Pub. L. 91-646 (84 Stat. 1894) and Pub. L. 91-646 has no application.

(b) An eligible applicant who still owns his home should be advised of the acquisition procedures and of the estimated time to complete the acquisition. The applicant should also be made aware:

(1) That the election to sell his home to the Government is voluntary, must be made within 30 days after he has been advised as to the "prior" fair market value, subject to a right of appeal with respect to the amount of the prior value, and that the Government will take title only by a direct purchase transaction since condemnation is not authorized.

(2) That if he retains title to the property he will not be eligible for homeowners assistance.

(3) That in the event he sells his home privately he is entitled to receive private sale assistance under the formula set forth in the law.

(4) That the Government will determine benefits and that all possible aid will be given to afford him the full benefits authorized by the Act.

§ 644.217 Assumption of Primary Mortgage.

When the applicant's home is purchased, the agreement between DOD and the Department of Housing and Urban Development (HUD) contemplates that the primary mortgage will be assumed by the Government and that other mortgages will be paid off as part of the closing of the purchase transaction. The primary mortgage will not be prepaid unless approval is obtained from HUD (FHA) or from HQDA (DAEN-REH-O) WASH DC 20314. It is considered that where the Government has assumed and agreed to pay the mortgage indebtedness, the benefits accorded by the Act are fulfilled, even though the primary mortgage is left outstanding and the applicant may not technically be released from his obligations thereunder.

§ 644.218 Closing and Settlement Costs—Arrearages.

(a) The applicant is responsible for making mortgage payments up until the date of purchase by the Government and the Government will assume no responsibility if the applicant fails to make such payments and there is a foreclosure. However, in connection with the acquisition the Government will reimburse the applicant on a prorated basis for mortgage interest; penalty charges, if any; and taxes and hazard insurance premiums, due after the date of the applicant's relocation or date of his application, whichever is later. The applicant is reimbursed for the principal portion of mortgage payments by being paid for his equity in the property at time of settlement; caution should be exercised to assure that no duplicate payment is made in this respect. The applicant is, of course, responsible for payment of outstanding judgments, liens, and encumbrances, including levied or pending public improvement assessments. To the extent that the applicant receives a payment, such as rental income, or other benefits from use of the property after filing his application, or the date of his relocation, whichever is later, an appropriate adjustment will be made by the District/Division Engineer. Closing and settlement costs are borne by the Government.

(b) The amount of the outstanding mortgages as contemplated by Section 1013(c) will be the total amount which the applicant, as the mortgagor, owes pursuant to the mortgage agreement(s). This will include taxes, hazard insurance, and interest and penalty charges which have accrued and have been added to the total indebtedness, as adjusted to provide for the costs for which the applicant is responsible, as set forth in paragraph (a) of this section.

§ 644.219 Preparation of Offer to Sell.

If the applicant elects to sell the property to the Government, the applicant and spouse will execute an offer to sell the property reflecting the terms and conditions of the proposed sale. ENG Form 42 appropriately modified or other form may be used for this purpose. It is not necessary to submit the revised form of offer to the Chief of Engineers for consideration prior to acceptance. Provision in the offer for mortgage assumption by the Government should conform to local law. Provision for the prorating of real estate taxes should conform to local custom.

§ 644.220 Preparation of Lands Representative's Report.

A complete written record of contacts with the applicant will be prepared and signed by the lands representative. Part I of ENG Form 3423, Negotiators Report, may be used for this purpose. This record will state the chronological history of the contacts made and all elements considered in evaluating the various elections available. Final action on the applicant's offer will be entered on this record as soon as that information is available.

§ 644.221 Acceptance and Distribution of Offer to Sell.

(a) For each purchase transaction the original and four copies will be signed by the applicant and spouse, if any. A copy will be left with the applicant when the offer is obtained.

(b) Division and District Engineers, and the Chiefs of their Real Estate Divisions are authorized to accept offers to sell incident to the acquisition of land under the Homeowners Assistance Program.

(c) When the offer is approved, funds determined to be available and the instrument accepted, the offer will be appropriately numbered and distributed immediately as follows:

(1) Original signed offer to project file.

(2) One signed copy to the applicant.

(3) Signed copy to title assembly.

(4) Signed copy to F&A Officer.

§ 644.222 Occupation of Property.

(a) Under agreement with DOD, FHA will assume custody of the properties for management and disposal immediately upon vesting of title. Arrangement should be made with the applicant and the tenant if the property is rented, for the transfer of possession of the property to the Government. Ordinarily, possession should be given at the time title is vested in the United States. An agreed possession date should be incorporated in the offer. The applicant should arrange with his tenant to vacate the property by the time agreed upon. FHA desires that the property be vacant at the time it receives custody.

(b) If circumstances require, applicants and their tenants may be permitted to remain in possession after title is transferred to the United States: *Provided, however,* prior approval is obtained from the local FHA insuring agency which will assume custody of the property, in which case the hazard insurance of the owner will be continued at his expense during the period of such occupancy.

§ 644.223 Other Outstanding Rights.

Rights of third parties in the property, other than those discussed above, will be left outstanding: *Provided,* That this is consistent with good real estate practices in the community and will not prejudice the marketability of the property, such as easements for public highways and utilities. Mineral and water rights may also fall within this category. Restrictive covenants of the types held to be against public policy may be waived; however, other types of restrictive covenants must be satisfied or removed by the owner unless they are of a nature which will not prejudice the marketability of the property.

§ 644.224 Administrative Waiver.

Division and District Engineers, and/or the Chiefs of their Real Estate Divisions, will determine whether any outstanding right or interest in the property should be administratively waived. Inclusion of such outstanding right or interest in the "subject to" clause of the accepted offer will be evidence of this determination. If they are to be waived, it is important that they be included in the "subject to" clause.

§ 644.225 Hazard Insurance.

(a) Properties to be acquired by the United States will usually be covered by hazard insurance. The owner should be advised that any improvements on the land remain his property until title has been vested in the United States by delivery of the deed and loss or damage thereto caused by fire, acts of God, theft, or vandalism, before such vesting of title will be borne by him. The purchase contract will reflect the owner's responsibilities in this respect.

(b) After title has vested, losses to improvements not caused by the willful act or gross negligence of the owner will be borne by the United States. The Government will not carry insurance of any nature on the property except to the extent hereinafter explained. The time and method of cancellation and negotiation for refund of premiums paid will be the responsibilities of the owner.

(c) When FHA receives custody of the property, it will advise the mortgagee that the insurance coverage should be canceled and that the United States does not intend to carry insurance of any nature on the property. If FHA is unable to arrive at an arrangement with the mortgagee in this regard, FHA will obtain a property insurance policy in an amount equivalent to the unpaid balance of the mortgage which the Government has assumed and agreed to pay. FHA will then advise the mortgagee that he may cancel the existing property insurance policy or release it to the former owner for cancellation. Any unearned premiums will be the property of the former owner. Insurance claims arising after agreement between the applicant and the Government must be assigned to the Government.

§ 644.226 Title Evidence, Title Clearance and Closing.

The procedures governing the procurement of title evidence, title clearance and closings for fee acquisitions by purchase as set forth in Subpart C will apply generally to acquisition of properties under the Homeowners Assistance program, except as otherwise provided herein. If a survey showing the location of the building on the homesite is available from the lender or other source at little or no cost, it should be included as part of the title evidence in each case. Where reasonable grounds exist for the belief that some irregularity in title might be disclosed by a survey, one should always be obtained by the Division/District and included.

§ 644.227 Preliminary Title Evidence.

When determination is made that an applicant is eligible for assistance and he has elected to sell the property to the Government, preliminary title evidence for the property will be obtained from the applicant or his mortgagee and furnished to the title company in an effort to reduce costs in obtaining preliminary title opinions.

§ 644.228 Closings.

(a) Closing of the purchase transaction will be accomplished in accordance with the terms of the accepted offer.

(b) All mortgages against the property which the Government has assumed and agreed to pay by the terms of the accepted offer, except the first or primary mortgage, will be paid off and released of record expeditiously after delivery of deed conveying the property to the United States. Normally, this payoff occurs as a part of the closing transaction but after delivery of deed.

(c) The mortgagee may be holding an escrow account on behalf of the applicant to be used for the payment of taxes, mortgage insurance premium and hazard insurance premium as they become payable. Negotiation for refund of amounts paid to this account will be the responsibility of the applicant.

§ 644.229 Notification of Conveyance of Title to FHA.

(a) On the date title to the property vests in the United States, the Division/District will notify FHA in writing to assume custody of the property. FHA Form No. 1174 will be used. The property will not be entered on property acquisition or inventory records of the Corps. The notification, together with the keys, will be furnished to the local FHA insuring office which will have the actual management of the property with a copy to the Assistant Commissioner-Comptroller, Federal Housing Administration, Department of Housing and Urban Development, Washington, D.C. 20412, ATTN: Acquired Home Property Section. In addition, FHA should be advised that the deed, title evidence and related papers will be furnished as soon as they are available.

(b) The notification will include the following information:

(1) Appropriate application identification number.

(2) Property location (Street, Number, City, County, State, and Zip Code).

(3) Legal description.

(4) Date title transferred to United States.

(5) Name and address of Government's grantor.

(6) Name and address of mortgagee and unpaid balance owing on mortgage.

(7) Whether property is vacant. If occupied, indicate if lease is written or oral, term, amount of monthly rent, date through which rent is paid and to whom paid and name of tenant.

(8) General condition of property.

(9) Tax information.

(10) Other pertinent information as appropriate.

§ 644.230 Disposition of Final Title Assembly.

Immediate action should be taken by Division/District to furnish necessary evidence showing the Government's title to the local FHA area office having jurisdiction over resale of the respective property involved. This evidence will consist of:

(a) A copy of the deed to the Government,

(b) The preliminary title policy, and

(c) The Attorney's certificate as to vesting of merchantable title in the United States. The final title policy, updated through the date of recordation of the deed, will be sent to the local FHA Area Office as soon as available. At the same time as preliminary title documents are sent to FHA, an information copy of the letter of transmittal will be furnished this office, HQDA (DAEN-REH-O) WASH DC 20314, together with a copy of the deed of conveyance and a copy of the attorney's certificate of title.

§ 644.231 FHA Forms.

FHA Forms No. 1174 (Notification of Military Acquisition) and No. 1173 (Transmittal of Recorded Deed and

Title Assembly—Military Acquisition) because of their limited use have been approved for local reproduction.

APPEALS

§ 644.232 Appeals Policy.

Section 1013(f) of the Act provides that the provisions of the Act shall be administered in conformance with the requirements contained therein and under such conditions and regulations as the Secretary of Defense may prescribe, and all determinations and decisions made pursuant to such regulations shall be final and conclusive and shall not be subject to judicial review.

§ 644.233 Authority.

Among other things, the S/D delegated to the S/A authority to establish an appeals procedure, with responsibility for final action assigned to a designated component of the Department of the Army. Pursuant thereto, and in conformity with implementing regulations prescribed by the S/D, the appeal procedure in this Section has been established and authority to take final action on appeals has been vested in the Assistant Secretary of the Army (Installations, Logistics and Financial Management).

§ 644.234 Appeal Procedure.

(a) The appeal procedure contained in this Section is summarized as follows:

(1) The applicant may file an appeal from a decision denying his application, or from a decision which the applicant believes to be in error as contrary to fact or not in conformance with the provisions of the Act. Any written objection by an applicant to a decision made on his case or to an offer of benefits will be considered to be an appeal. Although the Division/District may reply to the applicant explaining the Government's position, the applicant will be advised, nevertheless, that his written objection is considered to be an appeal and that it will be processed in accordance with the established appeal procedure unless the applicant formally withdraws his objections.

(2) The appeal will be considered at the District level and will be reviewed at the Division and OCE level and a determination will be made at each level as to whether or not favorable action can be taken. An appeal which has been forwarded to a higher echelon of review may not be settled at a lower echelon without the concurrence of the highest echelon to which the appeal has been transmitted.

(3) If favorable action cannot be taken, the appeal will be forwarded by OCE to the Assistant Secretary of the Army (IL & FM) for further review and for final decision.

(b) The requirements of the Administrative Procedure Act do not apply to appeals filed under the Act.

§ 644.235 Applicant's Appeal.

(a) An applicant may appeal because of an unfavorable decision as to his eligibility for benefits, or he may appeal because he believes that the benefits offered are insufficient. Each applicant will be notified of the decision made on his application and the reasons for such action. It is anticipated that if applicants are fully informed of the reasons for the decision, the number of appeals will be reduced.

(b) The letter to the applicant notifying him of the decision will contain the following minimum information:

(1) As appropriate, a reference to, or a quotation of, the provision of the Act which is involved in the decision or offer of benefits.

(2) The reasons for the decision.

(3) Notification to the applicant of his right to file an appeal. He should be advised that if he believes the decision is in error because it is not in accord with the facts or the provisions of the Act, he may file an appeal with the Division/District or with the Chief of his Real Estate Division in writing within 180 days from the date of notice of such unfavorable decision and, if he files an appeal, he should identify the errors, state the reasons for the appeal and submit whatever information he desires in support of his appeal. He should also be advised that his appeal will be considered by the District Engineer and reviewed by the Division Engineer and the Chief of Engineers and, if favorable action cannot be taken, it will be submitted to the Assistant Secretary of the Army (IL & FM) for final decision.

(c) The applicant's reply to the letter notifying him of the decision in his case will be construed broadly as constituting an appeal from such decision.

§ 644.236 Processing of Appeals.

(a) Appeals will be processed through channels to HQDA (DAEN-REH-A) WASH DC 20314. Inasmuch as the appeal is based upon a decision by the District Engineer which is considered by the applicant to be adverse to his interest, an opportunity is afforded at each level of review to find in favor of the applicant and to settle the appeal. An attempt will be made to resolve the matter at each level of review as provided in paragraph (d) of this section. If a proposed solution is acceptable to the applicant and the matter is resolved to the satisfaction of the applicant, the matter will be considered a review of an appeal and a withdrawal from appeal status.

(b) After receipt of the appeal, the errors cited by the applicant and the additional information furnished by him in support of his appeal will be investigated promptly by the Division/District. The investigation will be as extensive as required to define clearly the basis for the appeal and to produce information required for its consideration. Upon completion of the investigation, the information submitted with the application will be reconsidered, together with the information obtained as a result of the investigation and a determination made whether favorable action can be taken. A report of the investigation and consideration will be prepared which will include a brief outline of the basis of the application for assistance; the initial decision by the Division/District from which the applicant has appealed; the basis for the applicant's appeal; pertinent information necessary to determine the merits of the appeal; the scope of the investigation and of the consideration of the appeal; the decision on the appeal and the reasons in support thereof. The report will contain the following headings: Applicant's claim for assistance; decision on applicant's appeal; summary of findings on appeal; conclusions and reasons; and recommendations. The applicant will be notified if favorable action can be taken. If favorable action cannot be taken, no communication will be sent to the applicant except that, at the applicant's specific request, he will be advised of the status of his appeal; the appeal will be forwarded to higher authority for review; and the report will become part of the appeal assembly, referred to below.

(c) Where there is an appeal as to value and a brief appraisal report has been used in the initial consideration of the case, consideration should be given to obtaining a full appraisal prior to forwarding the appeal assembly, unless it is being recommended that the matter be settled administratively by OCE.

(d) Where favorable action on the appeal cannot be taken by the Division/District, an appeal assembly will be prepared in sufficient copies to provide one copy for the next higher level of review and two copies (including original papers where available) for submission to OCE. The copy of the appeal containing the original papers will be returned to the Division/District after a decision on the appeal has been reached. The appeal assembly will have a jacket cover or heavy paper backing with a suitable fastener at the top. It will consist of the following items which will be assembled in the order shown below with such variations or additions as the circumstances required:

(1) Investigation and consideration report.

(2) Written appeal and amendments.

(3) Application with attachments.
(4) Approved market impact study, or reference thereto where one has been submitted previously.
(5) Appraisal report.
(6) Pertinent correspondence in chronological order.
(7) Copy of closure announcement or pertinent extract therefrom.
(8) Any other documents or information which have a significant bearing on applicant's claim for assistance.

§ 644.237 Review of Appeal by the Division Engineer.

The purpose of this review is to insure that:
(a) The initial decision was in accord with the facts, the provisions of the Act and existing regulations.
(b) The applicant was properly notified why favorable action could not be taken on his application; that he has filed an appeal from this decision and has submitted all of the information he intends to submit in support thereof.
(c) The District Engineer's decision on the appeal is supported by the record.
(d) The appeal assembly contains the necessary information in support of the decision and has been assembled as stated in this Section.

§ 644.238 Action on Appeal by the Division Engineer.

Action by the Division Engineer will be taken as expeditiously as possible. If the Division Engineer concurs in the recommendation, additional comments and recommendations, together with the reasons and supporting documents, if appropriate, will be forwarded to OCE. If the Division Engineer does not concur in the District Engineer's recommendation, the matter will be returned to the District Engineer for further consideration or for a directed solution.

§ 644.239 Review of Appeal by OCE.

The appeal will be reviewed by OCE. Any deficiency in the appeal assembly will be corrected. If the position of the Division/District is not concurred in, the appeal will be returned for further consideration or for a directed solution. If the position of the Division/District is concurred in, a proposed letter to the applicant denying his application will be sent to the Assistant Secretary of the Army (IL&FM) with the recommendation that it be signed and returned to OCE for dispatch to the applicant.

§ 644.240 Action by the Assistant Secretary of the Army (IL&FM).

Final decision on appeals will be made by the Assistant Secretary of the Army (IL&FM) based on recommendations received from OCE. In the event the recommendations are not approved, the appeal will be returned to OCE for further consideration. If the recommendations are approved, the letter to the applicant denying his appeal will be signed by the Assistant Secretary of the Army (IL&FM) and returned to OCE for dispatch to the applicant. This will constitute a final decision on the applicant's appeal.

§ 644.241 Final Action by OCE.

Where the Assistant Secretary of the Army (IL&FM) has not approved OCE recommendations or appeal, the matter will be reconsidered and, if possible, objections resolved at OCE level. Otherwise, the pertinent correspondence will be returned to the Division Engineer with appropriate instructions for further action to be taken. Where the Assistant Secretary of the Army (IL&FM) has approved the recommendations, the letter to the applicant signed by the Assistant Secretary of the Army (IL&FM) will be dispatched by OCE; the pertinent correspondence, including a copy of the appeal assembly with original papers, will be forwarded to the Division Engineer for recording and filing; and the case will be considered closed.

§ 644.242 Dissemination of Decisions.

Decisions by the Assistant Secretary of the Army (IL&FM), with respect to appeals, will not be published by OCE. Except as authorized by OCE, Division/District will not refer to such decisions in letters sent to other applicants when notifying them that favorable action cannot be taken on their applications.

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federal register

MONDAY, JANUARY 15, 1979
PART III



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

■

RECOMBINANT DNA RESEARCH

Meeting; Proposed Actions Under Guidelines

[4110-08-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

RECOMBINANT DNA ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20014, on February 15-16, 1979, from 9:00 a.m. to 5:00 p.m.

The entire meeting will be open to the public for consideration of:

Lower Eukaryote Host-Vector Systems
Prokaryote Host-Vectors Other Than *E. coli* K-12
Amendment of Guidelines
Exemptions for organisms that exchange genetic information
E. coli phage-vector systems
EK2 host-vector systems
HV2 *Saccharomyces cerevisiae* host-vector system
Review of protocols for required containment levels
Criteria for and the handling of characterized clones
Requests for lowering of containment levels on the basis of characterization of clones
Other matters requiring necessary action by the Committee.

Attendances by the public will be limited to space available. Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee, National Institutes of Health, Building 31, Room 4A52, telephone 301-496-6051, will provide materials to be discussed at the meeting, rosters of committee members and substantive program information. A summary of the meeting will be available at a later date.

Dated: January 3, 1979.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc. 79-1090 Filed 1-12-79; 8:45 am]

[4110-08-M]

RECOMBINANT DNA RESEARCH

Proposed Actions Under Guidelines

AGENCY: National Institutes of Health.

ACTION: Notice of proposed actions under the NIH Guidelines for Recombinant DNA Research.

SUMMARY: This notice sets forth proposals for actions to be taken under the 1978 NIH Guidelines for Research Involving Recombinant DNA Molecules [FEDERAL REGISTER of December 22, 1978 (43 FR 60108)]. Interested parties are invited to submit comments concerning these proposals. After consideration of these proposals and comments by the NIH Recombinant DNA Advisory Committee (RAC) at its February 15-16, 1978 meeting, the Director of the National Institutes of Health will issue decisions on these proposals in accord with the Guidelines.

DATE: Comments must be received by February 14, 1979.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities, Building 31, Room 4A52, National Institutes of Health, Bethesda, Maryland 20014. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Additional information can be obtained from Drs. Michael Resnick or Stanley Barban, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20014, (301) 496-6051.

SUPPLEMENTARY INFORMATION: The National Institutes of Health will consider the following changes and amendments in the Guidelines for Research Involving Recombinant DNA Molecules, as well as actions under these guidelines.

1. The RAC has recommended that Sections III-B-2 and III-C-5 include cloning "into a lambdoid phage vector." The relevant paragraphs will read:

Section III-B-2. *Return of DNA segment to Non-HV1 host of origin* * * *

* * * For a prokaryote which does not exchange genetic information with *E. coli* (Host B), the following type of experiment may be carried out without Host B having been approved as a HV1 host: DNA from Host B may be inserted *into a lambdoid phage vector or* into a vector from a certified EK2 host-vector system and propagated in *E. coli* K-12 under the appropriate containment conditions [see Section III-A-1-b-(2)]. Subsequently, this recombinant DNA may be returned to Host B and propagated in Host B under P1 conditions. [43]

Section III-C-5. *Fungal or Similar Lower Eukaryotic Host-Vector Systems* * * *

* * * In addition to the experiments described above, the following experiments may be carried out without the eukaryotic host (Host C) having been approved as an HV1 host: DNA from Host C may be inserted *into a lambdoid phage vector or* into a vector from a certified EK2 host-vector system and propagated in *E. coli* K-12 under the appropriate containment conditions [see Section III-A-1-(a)-(5)]. Subsequently, this recombinant DNA may be returned to Host C and propagated there under P1 conditions. [43] * * *

This change has been recommended because the greater flexibility afforded with non-EK2 lambdoid phage vectors does not in any way compromise safety or containment in the final host. The continued requirement for EK2 plasmid vectors insures that this cloning procedure is used for self-cloning into the final host with a minimal introduction of *E. coli* genetic information.

2. The RAC has also recommended that this type of experiment be permitted in higher eukaryotes. The following section would be added to the Guidelines:

III-C-6. *Return of DNA Segments to a Higher Eukaryotic Host of Origin.* DNA from a higher eukaryote (Host D) may be inserted into a lambdoid phage vector or into a vector from a certified EK2 host-vector system and propagated in *E. coli* K-12 under the appropriate containment conditions [see Section III-A-1]. Subsequently, this recombinant DNA may be returned to Host D and propagated under conditions of physical containment comparable to P1 and appropriate to the organism under study. [2A]

3. The RAC has recommended that Section III-C-2 concerning invertebrate host-vector systems be divided into two parts. The first part III-C-2-a would retain the present wording of this section; the second part III-C-2-b would enable the use of nonviral vectors. Section III-C-2 would therefore be as follows:

III-C-2. *Invertebrate Host-vector Systems*

III-C-2-a. *Insect viral vectors.* As soon as information becomes available on the host range restrictions and on the infectivity, persistence, and integration of the viral DNA in vertebrate and invertebrate cells, experiments involving the use of insect viruses to propagate DNA sequences will be evaluated by NIH on a case-by-case basis [45] and will be conducted under the recommended physical containment conditions. (See Section IV-E-1-b-(3)-(c))

III-C-2-b. *Nonviral vectors.* Organelle, plasmid, and chromosomal DNAs may be used as vectors. DNA recombinants formed between such vectors and host DNA, when propagated only in that host (or a closely related strain of the same species), are exempt from these Guidelines (see section I-E). DNA recombinants formed between

such vectors and DNA from cells other than the host species require P1 physical containment for invertebrate cells in culture since invertabrate cells in culture inherently exhibit a very high level of containment. Experiments which require the use of whole animals will be evaluated by NIH on a case-by-case basis. [45]

4. Similar to proposal 3. above, the RAC recommended that a comparable statement be added to Section III-C-1 on vertebrate host-vector systems. This new sub-section would be as follows:

III-C-1-f. *Nonviral vectors.* Organelle, plasmid, and chromosomal DNAs may be used as vectors. DNA recombinants formed between such vectors and host DNA, when propagated only in that host (or a closely related strain of the same species), are exempt from these Guidelines (see Section I-E). DNA recombinants formed between such vectors and nonviral DNA from cells other than the host species require only P1 physcial containment for cells in culture since vertebrate cells in tissue culture inherently exhibit a very high level of containment. Recombinants involving viral DNA or experiments which require the use of whole animals will be evaluated by NIH on a case-by-case basis [45].

5. *Lower eukaryotes as host-vector systems.* (A complete report concerning these proposals is available from the Office of Recombinant DNA Activities.) The fungi *Neurospora crassa* and *Saccharomyces cerevisiae* have been examined by the RAC for their suitability as host-vector systems under Section II-D-2 and III-C-5 of the Guidelines. The following describes conditions for their proposed use as HV1 and HV2 systems:

a. *N. crassa* and *S. cerevisiae* as HV1 systems. Specified strains of *N. crassa* which have been modified to prevent aerial dispersion and unmodified laboratory strains of *S. cerevisiae* are acceptable as HV1 systems based on their natural containment. The following *N. crassa* strains can be used:

(1) *inl* (inositolless) strains 37102, 37401, 46316, 64001 and 89601,

(2) *csp-1* strain UCLA37 and *csp-2* strains FS 590, ULCA101 (these are conidial separation mutants)

(3) *eas* strain UCLA191 (an "easily wettable" mutant)

Unmodified laboratory strains of *N. crassa* can be used in experiments that require the HV1 level of containment provided that these are carried out at physical containment one level higher than required for HV1. However, if P3 physical containment is specified for HV1, this level is considered adequate for unmodified *N. crassa*. For P2 physical containment, special care must be exercised to prevent aerial dispersal of macroconidia.

b. *S. cerevisiae* as an HV2 system. Biological containment of yeast is a product of several factors: (a) probability of encounter of the host-vector with a wild type yeast outside the laboratory; (b) the abundance of wild type strains able to mate with a laboratory strain; (c) the frequency of mating under the dilute conditions simulating natural environments; (d) the reduction in mating frequency conferred by the sterility mutations; (e) the stability of the cloned segment and its vector; (f) the survival and growth ability of the host relative to wild types.

The following data are to be supplied in support of a candidate *S. cerevisiae* for HV2 certification:

(1) Genotype of the strain, description of the vectors and selective markers to be used, the nature and stability of the mutation(s) contributing to sterility and the mode of construction of the strain.

(2) The frequency of mating (in a worst case analysis under optimal conditions) with a fertile strain of opposite mating type.

(3) Relative growth rates of the candidate strain and suitable industrial wild types, separately and in mixed culture. (The specification of industrial strains reflects the rarity of *S. cerevisiae* in nature under non-domesticated conditions.)

(4) Data on the stability and maintenance of the cloned segment and vector in non-selective media.

(5) Measurement of the relative ability (in a worst case analysis) of fertile parents of the sterile HV2 candidate to mate at low cell density compared to optimal conditions.

(6) An experimental estimate of the frequency of transfer of a model cloned segment (in a worst case analysis, again with a fertile strain) to a non-mating, industrial strain, after prolonged cultivation in mixed culture.

Changes of auxotrophic selective markers in host and vector, or change in mating type allele, are trivial modifications not requiring certification, provided the level of sterility is not decreased. Certified EK2 *E. coli* vector DNA or fragments thereof can be used in HV2 *S. cerevisiae*.

c. Equivalence of lower eukaryote HV systems with those of *E. coli*. In accord with Section III-B-1, host-vector systems which have been approved as HV1 systems may be used under P2 containment conditions for shotgun experiments with phages, plasmids, and DNA from nonpathogenic prokaryotes which do not produce polypaptide toxins.[34] For other classes of recombinant DNA experiments with these HV1 systems, except for the cloning of complete genomes of eukaryote viruses, the *S. cerevisiae* and *N. crassa* HV1 systems and *S. cerevisiae* HV2 systems may be used at the physical containment levels applicable to EK1 and EK2 systems, respectively. Experiments involving complete genomes of class 1 eukaryote viruses will require P3 + HV2 containment levels. Other eukaryote viruses are to be handled on a case-by-case basis.[45]

6. *Proposed S. cerevisiae HV2 system.* A proposal from Dr. David Botstein of the Massachusetts Institute of Technology and Dr. Ronald Davis of Stanford University for a *S. cerevisiae* HV2 system based on the mating type nonspecific sterile mutation VC9 will be considered by the RAC. The proposal is available from the Office of Recombinant DNA Activities.

7. *Prokaryotes other than E. coli as host-vector systems.* (Complete reports concerning these proposals are available from the Office of Recombinant DNA Activities.) Various bacterial species have been examined by the RAC for their suitability as host-vector systems under Section II-D-2 of the Guidelines. The following describes conditions for their proposed use as HV1 systems or for experiments involving species that exchange DNA.

a. *Bacillus subtilis* related species that have been shown to exchange chromosomal DNA will be included under the exemption category of Section I-E-4 of the 1978 Guidelines. Any recombinant DNA molecules that are composed entirely of DNA segments from one or more of the organisms listed below and to be propagated in any of the organisms listed below are exempt from the Guidelines. (This list is to be separate from that which already exists in Appendix A for exchangers with *E. coli*.)

Bacillus subtilis
Bacillus licheniformis
Bacillus pumilus
Bacillus globigii
Bacillus niger
Bacillus nato
Bacillus amyloliquefaciens
Bacillus aterrimus

b. *Streptomyces* species that have been shown to exchange chromosomal DNA will be included under the exemption category of Section I-E-4 of the 1978 Guidelines. Any recombinant DNA molecules that are composed entirely of DNA segments from the following pairs of species listed below and to be propagated within the pair are exempt from the Guidelines.

S. aureofaciens x *S. rimosus*
S. aureofaciens x *S. coelicolor*
S. grisues x *S. coelicolor*
S. grisues x *S. cyaneus*
S. grisues x *S. venezuelae*
S. lividans x *S. coelicolor*
S. rimosus x *S. coelicolor*
S. parvulus x *S. coelicolor*
S. fradiae x *S. bikiniensis*

c. Asporogenic mutant derivatives of *B. subtilis* can be accepted as the host component of an HV1 system. These derivatives must not revert to sporeformers with a frequency greater than 10^{-7}; data confirming this requirement must be presented to NIH for certification. The following plasmids are accepted as the vector components of certified *B. subtilis* HV1 systems: pUB110, pC194, pS194, pSA2100, pE2194, pT127, pUB112, pC221, pC223.

d. *Non-HV1 Systems.* Section III-B-3 states: "Containment levels for other classes of experiments involving on-HV1 systems may be approved by the Director, NIH * * *." This section is to be amended by addition of the following:

In those cases where genetic exchange has not been demonstrated between two bacterial species A and B, neither of which is pathogenic for man, animals, or plants, recombinant DNA experiments involving only A and B can be conducted under P3 containment.[2A]

8. It has been recommended that Sections III-A-1-a(1) and (2), which designate the containment levels for experiments involving the shotgun cloning of DNA from primates and other mammals, be amended to include P3 + EK1 as an alternative to the present P2 + EK2 containment. This option already appears in other sections of the Guidelines. These sections would read as follows:

III-A-1-a-(1). *Primates.* P2 physical containment + an EK2 host-vector or P3 + EK1. Any lowering of containment below these levels (i.e., for purified DNA or characterized clones) cannot be made solely by an institutional biosafety committee but requires NIH approval. (See Section IV-E-1-b-(3).)

III-A-1-a-(2). *Other Mammals* P2 physical containment + an EK2 host-vector or P3 + EK1.

Dated: January 4, 1979.

DONALD S. FREDRICKSON, M.D.,
Director,
National Institutes of Health.

[FR Doc. 79-1091 Filed 1-12-79; 8:45 am]

[4110-08-M]

RECOMBINANT DNA RESEARCH

Proposed Actions Under Guidelines

AGENCY: National Institutes of Health.

ACTION: Notice of proposed actions under the NIH Guidelines for Recombinant DNA Research:

SUMMARY: This notice sets forth proposals for actions to be taken under the 1978 NIH Guidelines for Research Involving Recombinant DNA Molecules [FEDERAL REGISTER of December 22, 1978 (43 FR 60108)]. Interested parties are invited to submit comments concerning these proposals. After consideration of these proposals and comments by the NIH Recombinant DNA Advisory Committee (RAC) at its February 15-16, 1978 meeting, the Director of the National Institutes of Health will issue decisions on these proposals in accord with the Guidelines.

DATE: Comments must be received by February 14, 1979.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities, Building 31, Room 4A52, National Institutes of Health, Bethesda, Maryland 20014. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Additional information can be obtained from Drs. Michael Resnick or Stanley Barban, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20014, (301) 496-6051.

SUPPLEMENTARY INFORMATION: The National Institutes of Health will consider the following actions under the Guidelines for Research Involving Recombinant DNA Molecules.

1. *Prokaryote host-vector systems.* Proposals from Dr. Stanley Cohen of Stanford University and Dr. Gary Wilson of the University of Rochester to allow:

a. cloning in *Bacillus subtilis*, under P2 conditions, of DNA derived from *E. coli* K-12 and *Streptomyces coelicolor* using NIH-approved *Staphylococcus aureus* plasmids as vectors;

b. cloning in *B. subtilis*, under P2 conditions, of DNA derived from either *E. coli* K-12 or *Saccharomyces cerevisiae* using NIH-approved EK2 plasmid vectors;

c. cloning in *Streptomyces coelicolor*, under P2 conditions, of DNA from *Bacillus subtilis*, *E. coli* K-12, and from *Staphylococcous aureus* plasmid vectors which have been approved for use in *Bacillus subtilis*. Any plasmid indiginous to *Streptomyces coelicolor* or able to replicate in that host by natural biological mechanisms may be used as a vector.

2. *A proposed lambda bacteriophage EK2 vector.* A proposal from Dr. John M. Tabor and Dr. Vernon C. Bode of Kansas State University for the use of the vector λgt *Aamal Lam* 439 *Oam*29. $\lambda\beta$ as an EK2 vector will be considered by the RAC. The proposal is available from the Office of Recombinant DNA Activities.

Dated: January 5, 1979.

DONALD S. FREDERICKSON, M.D.,
Director,
National Institutes of Health.

[FR Doc. 79-1092 Filed 1-12-79; 8:45 am]

Federal Register

MONDAY, JANUARY 15, 1979
PART IV



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

■

IMPLEMENTATION OF THE COASTAL ENERGY IMPACT PROGRAM

Proposed Administrative Procedures Regarding Grants and Credit Assistance

[3510-08-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[15 CFR Part 931]

COASTAL ENERGY IMPACT PROGRAM

Proposed Administrative Procedures

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Proposed Rule.

SUMMARY: These proposed regulations described administrative procedures to implement the Coastal Energy Impact Program, which will provide grants and credit assistance to coastal States and communities to help them deal with the impacts of coastal energy development.

DATE: March 3, 1979 deadline for submission of written comments.

FOR FURTHER INFORMATION CONTACT:

James B. Robey or Dan Hoydysh, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street NW., Washington, D.C. 20235, 202-634-4128.

SUPPLEMENTARY INFORMATION:

I. Explanatory Statement

The Coastal Energy Impact Program (CEIP) was created by the 1976 amendments to the Coastal Zone Management Act of 1972 (Pub. L. 94-370; 16 U.S.C.A. 1451, et seq.) and signed into law on July 26, 1976. The National Oceanic and Atmospheric Administration (NOAA) published proposed regulations on October 22, 1976 (41 FR 46724), interim-final regulations (42 FR 1164) on January 5, 1977, and final regulations (43 FR 7545) on February 23, 1978. The preamble to these regulations discussed the implementation of the CEIP in detail as well as issues raised and comments made during various comment periods.

On September 18, 1978, the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLAA) (Pub. L. 95-372) were signed into law significantly amending the CEIP as follows:

The authorization level for section 308(b) formula grants was raised from 50 million to 130 million dollars per fiscal year and the authorization period for these grants was extended from September 30, 1984 to September 30, 1988. The formula used to allot funds appropriated for formula grants was modified—the Outer Continental Shelf (OCS) energy activity related *new employment* factor was deleted and the weight given the remaining formula factors was modified. A ceiling of 37.5% of the total amount appropriated was established as a limit on how much any State may receive under section 308(b) in a given fiscal year. A floor of two percent of the total amount appropriated was established as a minimum that a State faced with impacts from OCS energy activity may receive in a fiscal year.

In addition section 308(b)(4)(B) was amended by deleting the requirement that other CEIP financing, i.e., credit assistance under section 308(d)(1), be *unavailable* before a State or local community can utilize formula grants for planning, developing, and implementing projects and programs necessary to provide new or improved public facilities and services required as a result of OCS energy activity. The requirement that the OCS activity that necessitates the new or improved public facilities or public services be *new or expanded* was also deleted.

NOAA is reissuing today, in proposed form, regulations to implement the CEIP as amended by the OCSLAA. In addition to the statutorily mandated amendments, these proposed regulations contain proposed improvements in CEIP operations that are being instituted on the basis of two years of operating experience.

However, two OCSLAA created CEIP amendments are not being implemented in these proposed regulations. These are: (1) The discretionary authority of the Secretary of Commerce (Assistant Administrator for Coastal Zone Management; NOAA) to promulgate by rule criteria for describing geographic areas in which public facilities and public services are presumed to be required as a result of OCS energy activity; and (2) the establishment of a new fund for the provision of grants to States to carry out their responsibilities under the OCS Lands Act. A decision whether to implement the discretionary criteria provision will be made after a thorough analysis of the implications of this change for CEIP administration. The OCS grants provision is being implemented separately from the main body of the CEIP amendments and draft regulations describing the OCS grant program will be published in the Federal Register before February 1, 1979.

NOAA has determined that publication of this document is not a major action significantly affecting the quality of the human environment and does not require preparation of an Environmental Impact Statement under the National Environmental Policy Act of 1969. NOAA also has determined that this document is not a significant regulatory action and does not require preparation of a regulatory analysis under Executive Order 12044.

II. Discussion of Major Changes to the CEIP

Subpart A—General. No substantive changes were made to this subpart. The subpart heading was renamed and other editorial changes were made to clarify the general structure of the CEIP and its objectives.

Subpart B—General Definitions. The definition of OCS energy activity was modified to more closely reflect the Congressional intent embodied in the statutory definition. The definition of *new employment, new or expanded OCS energy activity,* and *unavailability of credit assistance* were deleted because the statutorily mandated changes to the CEIP makes reference to these terms unnecessary. The definitions of *valuable, environmental resource,* and *recreational resource* were consolidated. The definition of *unavoidable* was changed to clarify the concept and to adhere to Congressional intent. Other changes in this subpart are largely editorial.

Subpart C—Basic Eligibility. The substance of this subpart is unchanged. However, the contents were restructured. The explanation of *satisfactory progress* is now a separate section (§ 931.26).

Subpart D—Planning for the Consequences of Energy Facilities. The minimum share that may be allotted to each State under section 308(c)(1) (formerly section 308(c)) has been increased to $35,000. A ceiling of 10% of the amount available in a fiscal year under section 308(c)(1) has been established as the maximum allotment that any State may received in 308(c)(1) planning grants.

The period of availability to a State of an allotment under 308(c)(1) has been reduced to one fiscal year. States must now apply for their 308(c)(1) planning allotment before the end of the fiscal year in which such funds were allotted. Allotted funds for which timely applications are not received will revert to the Assistant Administrator at the end of the fiscal year in which such funds were allotted. Funds reverting to the Assistant Administrator will generally be reallotted in the immediately following fiscal year.

The allotment process under section 308(c)(1) has been clarified. The requirement that section 308(c)(1) planning funds in any fiscal year be insufficient before section 308(b) planning funds can be accessed has been deleted.

Subpart E—Financing Public Facilities and Public Services. The producers for allotting credit assistance were clarified. The period of availability to a State of allotted credit assistance under section 308(d)(1) has been shortened. States must now submit applications by July 1 of the fiscal year in which the credit assistance was al-

lotted or risk having these funds recalled by the Assistant Administrator. However, States may request by July 1 an extension for submitting applications and the Assistant Administrator may grant such extension but now beyond January 1 of the immediately following fiscal year.

Allotted credit assistance that is recalled because it was not applied for within the prescribed time limits will be made available to *all* eligible coastal States by application. Priority of access to this recalled credit assistance will be determined by the priority in submitting a completed application. However, under exceptional circumstances, the Assistant Administrator may grant priority to a later application on the basis of immediacy of need and equity in distribution of CEIP credit assistance.

The requirement that section 308(b) grants can only be used to provide public facilities and services required as a result of "new or expanded" OCS energy activity was deleted in accordance with the OCSLAA. Public facilities and public services can now be provided under section 308(b) if they are required by ongoing OCS energy activity. In addition, the requirement that a State first use its credit assistance before accessing its formula grant allotment was removed in accordance with the OCSLAA.

Subpart F—Repayment Assistance. The changes in the subpart are largely editorial. However, the appeal procedure specified in § 931.69 was simplified. The requirement that the Administrator of NOAA will, upon request, order a formal hearing on the record to resolve disputes concerning repayment assistance was deleted as imposing an unnecessary administrative burden on NOAA. The simplified appeals process is sufficient to protect the legitimate interests of borrowers.

Subpart G—Grants for Unavoidable Losses of Valuable Coastal Environmental and Recreational Resources. The definitions of the terms *valuable, environmental resource* and *recreational resource* were consolidated to clarify the concepts of *valuable environmental* and *valuable recreational* resources. The definition of *unavoidable* was modified to comport more closely with the statutory definition. The description of the process for allotting section 308(b) formula grants (former § 931.76) has been expanded in accordance with the OCSLAA mandated changes and made into a separate subpart—Subpart K.

The procedures for allotting section 308(d)(4) Environmental-Recreational grants has been significantly modified. Funds available for allotment under section 308(d)(4) will be allotted first among those States receiving less than $400,000 in formula grants. Each State eligible for 308(d)(4) grants will receive a minimum grant equal to five percent of the amount available under section 308(d)(4) and no State may receive more than 25 percent of the amount available. If any funds remain after allotting available funds among those States receiving less than $400,000 in formula grants this remainder will be allotted among *all* coastal States eligible for section 308(d)(4) grants.

The time period during which funds allotted under section 308(d)(4) will remain available to a coastal State has been shortened to one fiscal year. Allotted funds for which applications are not received by the end of the fiscal year of allotment will revert to the Assistant Administrator at the end of such fiscal year. Funds allotted under section 308(d)(4) in fiscal year 1978 will be deemed allotted in fiscal year 1979 and will be subject to the new time period for submitting applications.

Subpart H—Lateral Seaward Boundaries. No substantive changes were made to this subpart.

Subpart I—General Provisions. Section 931.94 was modified to clarify those disbursements of CEIP funds for which the applicant will not be required to submit an environmental analysis.

Subpart J—Intrastate Allocation of Financial Assistant. The intrastate allocation process was simplified. The threshold amount that triggers a State's compliance with the "a" process was raised to $1 million in CEIP grants. The amount of credit assistance allotted to a State is no longer a factor in determining whether a State must comply with the "a" or "b" process.

Subpart K—Allotment of Section 308(b) Formula Grants. This subpart is new. It embodies the detailed procedures established by the OCSLAA for allotting formula grants among eligible coastal States.

These proposed regulations are subject to comment and modification. Written comments on the regulations should be submitted to the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, D.C. 20235. Attention Dan Hoydysh.

R. L. CARNAHAN,
Acting Assistant Administrator for Administration.

In consideration of the foregoing Part 931 is revised as follows:

Subpart A—General

Sec.
931.1 Coastal Energy Impact Program—General Description.
931.2 Objectives of the CEIP.

Subpart B—General Definitions

Sec.
931.9 Index to definitions.
931.10 Act.
931.11 Coastal zone.
931.12 Fund.
931.13 Coastal energy activity.
931.14 Significantly affected.
931.15 New or expanded coastal energy activity.
931.16 Outer Continental Shelf.
931.17 Outer Continental Shelf energy activity.
931.18 [Reserved]
931.19 Energy facility.
931.20 New or expanded energy facility.
931.21 [Reserved]
931.22 Unit of general purpose local government and unit of local government.
931.23 NOAA and OCZM.
931.24 Assistant Administrator.

Subpart C—Basic Eligibility

931.25 Eligible coastal State.
931.26 Satisfactory progress.

Subpart D—Planning for the Consequences of Energy Facilities

931.30 General.
931.31 Objectives.
931.32 Eligibility for planning assistance under this Subpart.
931.33 Allowable uses.
931.34 Limitations.
931.35 Planning inventory.
931.36 Planning need formula.
931.37 Allotment of 308(c)(1) planning grants among coastal States.
931.38 Application procedure.
931.39 reversion of funds allotted under section 308(c)(1).

Subpart E—Financing Public Facilities and Public Services

931.40 General.
931.41 Objectives.
931.42 Definitions.
931.43 Allowable uses.
931.44 Eligibility.
931.45 Credit assistance inventory.
931.46 Allotment formula.
931.47 Allotment of credit assistance.
931.48 Allotment of section 308(b) formula grants.
931.49 Recall and reversion of allotted credit assistance funds.
931.50 Application for recalled or reverted credit assistance.
931.51 Contents of credit assistance application.
931.52 Special requirements for section 308(d)(1) loans.
931.53 Special requirements for section 308(d)(2) Federal guarantees.

Subpart F—Repayment Assistance

931.60 General.
931.61 Objectives.
931.62 Definitions.
931.63 Purposes.
931.64 Sources of repayment assistance.
931.65 General eligibility.
931.66 Reports.
931.67 Review for repayment assistance.
931.68 Award of repayment assistance.
931.69 Appeal procedure.

Subpart G—Grants for Unavoidable Losses of Valuable Coastal Environmental and Recreational Resources

931.70 General.
931.71 Objectives.

Sec.
931.72 Definitions.
931.73 Allowable uses.
931.74 Eligibility.
931.75 Allotment of section 308(d)(4) Environmental-Recreational Grants.
931.76 Reversion of allotted funds.
931.77 Application procedure.
931.78 [Reserved]
931.79 Limitations

Subpart H—Lateral Seaward Boundaries

931.80 General.
931.81 Establishment of delimitation lines when agreements exists between States.
931.82 Establishment of demarcation lines when no agreement exists between States.
931.83 Establishment of delimitation lines under later compacts, agreements, or judicial decisions.
931.84 Procedures for defining delimitation lines by equidistance principles.
931.85 Formula grants impounded for disputed areas.

Subpart I—General Provisions

931.90 Allowable costs.
931.91 Administrative procedures.
931.92 Compliance with OMB Circular A-95 requirements.
931.93 Other Federal requirements.
931.94 Environmental Impact Statements.
931.95 Records.
931.96 Audit.
931.97 Recovery of funds.
931.98 Coordination with other Federal agencies.

Subpart J—Intrastate Allocation of Financial Assistance

931.110 General.
931.111 Objective.
931.112 Intrastate allocation.
931.113 Forms of assistance.
931.114 Appeal to Assistant Administrator.

Subpart K—Allotment of Section 308(b) Formula Grants

931.120 General.
931.121 Definitions.
931.122 OCS Regions.
931.123 Impacted State.
931.124 Allotment of formula grants.
931.125 Recall of formula grants.

AUTHORITY: Sec. 308, Coastal Zone Management Act of 1972 (Pub. L. 92-583, 86 Stat. 1280, U.S.C. 1451 et seq.), as amended by Pub. L. 95-372.

Subpart A—General

§ 931.1 Coastal energy impact program—General description.

The Coastal Energy Impact Program (CEIP) was established under section 308 of the Act to provide coastal States and local governments in such states with Federal financial assistance to meet certain needs that result from specified energy development activities. Such assistance includes:

(a) Grants to coastal States under subsection b(5)(B) for the study of, planning for, development of, and the carrying out of projects and programs to provide new or improved public facilities or public services required as a result of outer continental shelf energy activity;

(b) Grants under subsections (b)(5)(C) and (d)(4) for preventing, reducing, or ameliorating unavoidable losses of valuable coastal environmental or recreational resources when such losses result from coastal energy activity;

(c) Grants under subsection (c)(1) for the study of, and planning for significant economic, social, or environmental consequences in the coastal zone when such consequences result from the siting, construction or operation of new or expanded energy facilities;

(d) Credit assistance under subsections d(1) and d(2) and appropriate forms of repayment assistance under subsections d(3) and b(5)(A) to provide new or improved public facilities or public services required as a result of coastal energy activity;

(e) Grants under subsection c(2) to assist coastal States likely to be affected by outer continental shelf energy activity in carrying out their responsibilities under the Outer Continental Shelf Lands Act.

§ 931.2 Objectives of the CEIP.

(a) The principle objectives of the CEIP are:

(1) To improve and strengthen coastal zone management in the United States by providing financial assistance only for programs and projects that are in accord with the policy of the Coastal Zone Management Act and the coastal zone management objectives of the individual States.

(2) To preserve and enhance the Nation's valuable coastal recreational and environmental resources by

(i) Encouraging the timely and thorough planning for the management of adverse consequences in the coastal zone caused by energy facility siting and energy resource development; and

(ii) Encouraging coastal States and local governments to effectively exercise their responsibilities to minimize losses to valuable coastal environmental or recreational resources that result from coastal energy activity.

(3) To advance the national objective of obtaining a greater degree of energy self sufficiency by encouraging the rational and timely development of domestic coastal energy resources and energy resource transportation systems.

(4) To protect and improve the quality of the human environment in the coastal zone by providing financial assistance to coastal States and units of local government for new and improved public facilities required as a result of coastal energy activity.

(5) To provide financial assistance that is simple to administer and that permits the coastal States and units of local government a high degree of control and discretion.

(6) To assist coastal States likely to be affected by outer continental shelf energy activity in carrying out their responsibilities under the OCS Lands Act.

(b) The CEIP will be administered in a manner that will strike a balance between the major national goals of obtaining a greater degree of energy self-sufficiency and protecting the coastal environment:

(1) Only coastal energy activity necessary for the rational, timely and orderly development of the Nation's coastal energy resources will be encouraged; and

(2) Unnecessary development in the coastal zone will be discouraged by providing financial assistance only for those public facilities and public services that are actually needed because of coastal energy activity.

Subpart B—General Definitions

§ 931.9 Index to definitions.

The following listing includes important terms defined in this Part 931 of the title keyed to the section or paragraph where they are defined.

Term	*Section*
Act	931.10(a)
Assistant Administrator	931.24
Borrower	931.62
Coastal energy activity	931.13
Coastal zone	931.11
Development	931.17(d)
Eligible coastal State	931.25
Energy facility	931.19
Energy facility directly required by OCS energy activity.	931.17(b)
Exploration	931.17(c)
First landed	931.121(a)
Fiscal schedule	931.48(b)(2)
Fund	931.12
In close proximity to	931.13(d)
Joint funding	931.98(b)(1)
Loss	931.72(c)
New or expanded coastal energy activity.	931.15
New or expanded energy facility	931.20
New or improved public facility	931.42(c)
New or improved public service	931.42(d)
NOAA	931.23
OCZM	931.23
Outer Continental Shelf	931.16
Outer Continental Shelf energy activity.	931.17
Person	931.72(f)
Production	931.17(e)
Public facility	931.42(a)
Public service	931.42(b)
Section	931.10(b)
Significantly affected	931.14
Unavoidable	931.72(d)
Unit of general purpose local government and unit of local government.	931.22
Valuable environmental resource	931.72(a)
Valuable recreational resource	931.72(b)

§ 931.10 Act.

(a) The term "Act" means the Coastal Zone Management Act of 1972, as amended, (16 U.S.C. 1451 et seq).

(b) The term "section" or "subsection" means a section or subsection of the Coastal Zone Management Act of 1972, as amended, unless it is clear

from the context that some other meaning is intended.

§ 931.11 Coastal zone.

The term "coastal zone" is that area of land and water whose boundaries are determined by a State under § 920.11 of this chapter for purposes of the development of a coastal zone management program under section 305, or under § 923.11 of this chapter for purposes of administering a coastal zone management program under section 306, or as part of a management program which is consistent with the policies set forth in section 303. Such boundaries must be approved by the Assistant Administrator.

§ 931.12 Fund.

The term "Fund" means the Coastal Energy Impact Fund established under section 308(h).

§ 931.13 Coastal energy activity.

(a) The term "coastal energy activity" is limited to the following activities:

(1) Any Outer Continental Shelf energy activity;

(2) Any transportation, conversion, treatment, transfer, or storage of liquefied natural gas; or

(3) Any transportation, transfer, or storage of oil, natural gas, or coal (including, but not limited to, by means of any deepwater port, as defined in section 3(10) of the Deepwater Ports Act of 1974 (33 U.S.C. 1502(10)).

(b) An activity is a "coastal energy activity" only to the extent that:

(1) The conduct, support, or facilitation of such activity requires and involves the siting, construction, expansion or operation of any equipment or facility; and

(2) The Assistant Administrator determines that a technical requirement exists which necessitates that such siting, construction, expansion, or operation be carried out in, or in close proximity to, the coastal zone of any coastal State.

(c) Such technical requirements are limited to:

(1) Dependency on coastal waters;

(2) Safety;

(3) Proximity to oil or natural gas fields;

(4) Location of markets;

(5) Federal siting regulations or decisions;

(6) Type and amount of required land; and

(7) Competitive uses for any environmental or recreational resource affected by such siting, construction, expansion, or operation.

(d) The siting, construction, expansion, or operation of any equipment or facility shall be "in close proximity to" the coastal zone of any coastal State if such coastal zone has been or is likely to be significantly affected by such siting, construction, expansion, or operation.

§ 931.14 Significantly affected.

The coastal zone of a coastal State is "significantly affected" by the siting, construction, expansion, or operation of an energy facility if such siting, construction, expansion, or operation:

(a) Causes or is likely to cause population changes in the coastal zone;

(b) Changes or is likely to change employment patterns in the coastal zone, including those in fishing and tourism;

(c) Damages or threatens to damage any valuable environmental or recreational resources in the coastal zone, including air, water or noise quality;

(d) Increases or threatens to increase risks to public safety and real property in the coastal zone.

§ 931.15 New or expanded coastal energy activity.

(a) The term "new or expanded coastal energy activity" means any coastal energy activity if the siting, construction, expansion, initial operation, or replacement, in whole or in part, of any equipment or facility required by the conduct, support, or facilitation of such activity takes place after July 26, 1976.

(b) The term "expansion" includes both the physical expansion of a facility and the expansion of the output of the facility.

(c) The term "initial operation" is intended to include the case in which a previously operating but then idle energy facility is reactivated after July 26, 1976.

§ 931.16 Outer Continental Shelf.

The term "Outer Continental Shelf" or "OCS" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters, as defined in 43 U.S.C. 1301, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

§ 931.17 Outer Continental Shelf energy activity.

(a) The term "Outer Continental Shelf energy activity" means:

(1) Any exploration for, or any development or production of, oil or natural gas from the Outer Continental Shelf; or

(2) The siting, construction, expansion or operation of any new or expanded energy facilities that are directly required by such exploration, development or production.

(b) The term "directly" required by Outer Continental Shelf energy activity refers to a new or expanded energy facility that has a technical requirement that necessitates its location in or in close proximity to the coastal zone and is:

(1) Any equipment or facility used primarily in the exploration for or the development, production or transportation of any oil or natural gas from the Outer Continental Shelf; or

(2) Any facility or equipment used primarily for the manufacture, production or assembly of equipment, machinery, or devices that are necessary to and ordinarily used in the exploration for, or development or production or transportation of oil or natural gas from the Outer Continental Shelf. Such equipment and facilities include but are not limited to:

(i) Gas processing and treatment plants

(ii) Platform fabrication yards

(iii) Pipe coating yards

(iv) Service bases

(v) Marine pipelines

(vi) Drilling rigs and drill ships

(vii) Production platforms

(viii) Offshore terminals

(ix) Marine repair and maintenance facilities

(x) Oil storage terminals

(c) The term "exploration" means the process of searching for oil or natural gas, including (1) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of oil or natural gas, and (2) any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after such discovery which is needed to delineate any reservior and to determine whether to proceed with development and production.

(d) The term "development" means those activities which take place following discovery of oil or natural gas in paying quantities, including geophysical activity, drilling, platform construction, and operation of all onshore support facilities, and which are for the purpose of ultimately producing the oil and gas discovered.

(e) The term "production" means those activities which take place after the successful completion of any means for the removal of oil or natural gas, including such removal, field operations transfer of oil or natural gas to shore, operation monitoring, maintenance, and work-over drilling.

§ 931.18 [Reserved]

§ 931.19 Energy facility.

(a) The term "energy facility" means any equipment or facility which is or will be used primarily:

(1) In the exploration for, or the developoment, production, conversion, storage, transfer, processing, or transportation of, any energy resource; or

(2) For the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in the activities described in paragraph (a)(1) of this section.

(b) The term includes:

(1) Electric generating plants, including those involving fossil or biomass fuels, nuclear power, direct solar energy, ocean thermal energy conversion, tidal or wave power, wind power, or geothermal energy, and associated transmission systems;

(2) Petroleum refineries and associated facilites;

(3) Gasification plants;

(4) Facilities used for the transportation, conversion, treatment, transfer, or storage of liquefied natural gas;

(5) Uranium enrichment or nuclear fuel processing facilities;

(6) Coal storage, transportation or transfer facilites;

(7) Drilling rigs, platforms, subsea completions, and subsea production systems;

(8) Construction yards for platforms and exploration rigs, pipe coating yards, bases supporting platforms and pipeline installation, and crew and supply bases;

(9) Oil and gas storage facilities;

(10) Marine pipeline systems;

(11) Oil and gas processing facilities;

(12) Transportation systems connecting any of the facilities in this section with primary transportation systems;

(13) Facilities, including deepwater ports, for the transfer of petroleum;

(14) Facilities for geopressurized gas; and

(15) Terminals which are associated with any of the foregoing.

§ 931.20 New or expanded energy facility.

The term "new or expanded energy facility" refers to an energy facility whose siting, construction, expansion, initial operation, or replacement, in whole or in part, takes place after July 26, 1976.

§ 931.21 [Reserved]

§ 931.22 Unit of general purpose local government and unit of local government.

(a) The term "unit of general purpose local government" means:

(1) Any political subdivision of any coastal State that (in whole or in part) is located in or has authority over any portion of such State's coastal zone; or

(2) Any political subdivision of any coastal State that is located within a political subdivision of such coastal State that (in whole or in part) is located in or has authority over any portion of such State's coastal zone; or

(3) Any special entity created by such coastal State or political subdivision that (in whole or in part) is located in or has authority over any portion of such State's coastal zone.

(b) The term "unit of general purpose local government is limited to those entities described in paragraph (a) of this section that:

(1) Have authority to levy taxes or establish and collect user fees or planning districts with no taxing power; and

(2) Provide any public facility or public service that is financed in whole or in part by taxes or user fees.

(c) The term "unit of local government" means any unit of general purpose local government, as defined in paragraphs (a) and (b) of this section, or any agency recognized or designated as an areawide or regional comprehensive planning and development agency pursuant to Office of Management and Budget Circular A-95, under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, or under Title IV of the Intergovernmental Cooperation Act of 1968.

§ 931.23 NOAA and OCZM.

(a) The acronym "NOAA" means the National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(b) The acronym "OCZM" means the Office of Coastal Zone Management of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

§ 931.24 Assistant Administrator.

The term "Assistant Administrator" for Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

Subpart C—Basic Eligibility

§ 931.25 Eligible coastal State.

(a) No coastal State is eligible to receive any financial assistance under this part unless such State.

(1) Has a management program which has been approved under section 306;

(2) Is receiving a grant under sections 305(c) or (d); or

(3) Is making, in the judgment of the Assistant Administrator, satisfactory progress toward the development of a management program which is consistent with the policies set forth in section 303.

(b) No eligible coastal State can receive an allotment under this part unless the Governor of such State has designated a State agency or agencies or in the case of assistance under section 308(c)(2) a responsible official:

(1) To apply for financial assistance under section 308;

(2) To assure, to the maximum extent practicable, that financial assistance provided under section 308 is apportioned, allocated, and granted to units of local government within such State on a basis which is proportional to the extent to which such units need such assistance; and

(3) To receive and administer section 305 grants pursuant to § 920.42 of this chapter, to receive and administer section 306 grants pursuant to § 923.23 of this chapter, or to administer a State coastal management program which is consistent with the policies set forth in section 303.

(i) In the event the coastal State is implementing a management program approved under section 306, all applications for financial assistance under section 308 shall be reviewed for consistency with the State's management program by the State agency administering the State's coastal management program in accordance with the requirements of section 307(d).

(ii) In the event the coastal State is developing a management program pursuant to section 305 or in a manner consistent with the policies of section 303, all applications for financial assistance under section 308 shall be reviewed for compatibility with the State's developing coastal management program by the State agency developing the management program.

(c) While preferable in terms of coordination, it is not required that a single entity perform all three functions stated in paragraph (b) of this section. The State coastal zone management agency designated pursuant to paragraph (b)(3) need not be the agency performing one or both of the functions required by paragraphs (b)(1) and (2) of this section. However, in the event different entities are designated under paragraphs (a) (1), (2), and (3), one agency must be designated to assure coordination with the others.

§ 931.26 Satisfactory progress.

(a) The Assistant Administrator shall judge that a State is making satisfactory progress toward the development of a management program consistent with the policies set forth in section 303 if one of the following conditions is met:

(1) A coastal State has exhausted its eligibility for program development funding under section 305 without achieving program implementation approval under section 306, but is still pursuing development and implementation of a management program consistent with the policies set forth in section 303; or

(2) A coastal State's eligibility for program funding under section 305 or section 306 has been suspended, but the State is making adequate efforts to reacquire eligibility under sections 305 or 306 and still pursuing develop-

ment of a management program consistent with the policies set forth in section 303; or

(3) A coastal State is otherwise pursuing a comprehensive managment program which is consistent with the policies set forth in section 303 and for good cause shown is not developing or implementing such program under sections 305 or 306.

(b) The phrase "consistent with the policies set forth in section 303" refers to a management program which incorporates:

(1) Policies which provide for the preservation, protection, development, and, where possible, the restoration or enhancement of the resources of the State's coastal zone;

(2) Provisions which insure wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values, as well as to needs for economic development. Such provisions shall include, but are not limited to:

(i) Identification of a coastal zone which is capable of being delineated and which is subject to management under the program;

(ii) Identification of permissible land and water uses for the area within the coastal zone;

(iii) Procedures for assuring that land and water uses of regional and national benefit are not arbitrarily restricted or excluded in policies or management of mechanisms developed pursuant to the State's program;

(iv) State and local legal authorities and organizational structures sufficient to effectuate management over identified land and water uses within the coastal zone; and

(v) Coastal zone water pollution and air pollution control consistent with the requirements of the Clean Water Act, as amended, and the Clean Air Act, as amended.

(3) An opportunity for Federal agencies having interest affecting the State's coastal zone to participate in the development of the State's management program and have their views adequately considered; and

(4) An opportunity for local governments, State and regional agencies, commercial and industrial groups, and the general public to participate in the development of the State's management program and have their views adequately considered.

Subpart D—Planning for the Consequences of Energy Facilities

§ 931.30 General.

This subpart sets forth the objectives of providing planning assistance to coastal States under sections 308(c)(1) and 308(b) and its allowable uses. It also describes procedures for alloting section 308(c)(1) moneys among eligible coastal States and for applying for financial assistance under sections 308(c)(1) and 308(b). Procedures for the allotment of section 308(b) assistance are described in Subpart K.

§ 931.31 Objectives.

The objectives of assistance under this subpart are:

(a) To assist coastal States and units of local government in the study of and planning for any economic, social, or environmental consequence which has occurred, is occurring, or is likely to occur in such State's coastal zone as a result of the siting, construction, expansion, or operation of new or expanded energy facilities;

(b) To encourage rational, timely, and thorough planning for and the management of the impacts from energy resource development;

(c) To help coastal States and units of local government:

(1) Plan for the provision of public facilities and public services required as a result of OCS energy activity; and

(2) Apply to specific locations and energy facilities the energy facility planning and impact management process included in State coastal zone management programs under section 305(b)(8).

§ 931.32 Eligibility for planning assistance under this subpart.

(a) A coastal State is eligible for financial assistance if it meets the basic eligibility requirements of Subpart C.

(b) A unit of local government may apply for assistance through its State.

§ 931.33 Allowable uses.

(a) Allowable uses of section 308(c)(1) grants under this subpart includes:

(1) Planning for economic, social, or environmental consequences of new or expanded energy facilities, coastal energy activities, or OCS energy activities significantly affecting the coastal zone, including:

(i) Analysis of government or private industry siting, licensing, or leasing policies and related data and information;

(ii) Devising strategies for the public purchase of land or the establishment of other enforceable land-use controls for lands upon or near which energy development is to take place;

(iii) Devising methods of protecting environmental or recreational resources threatened by the siting, construction, operation, or expansion of new or expanded energy facilities; or

(iv) Conducting risk management studies, hazard analyses, emergency contingency planning and coordination studies, and assessments of mitigating measures for maintaining or improving public safety threatened by the siting, construction, expansion, or operation of new or expanded energy facilities.

(2) Planning for the consequences of a specific new or expanded energy facility significantly affecting the coastal zone, including: (i) Study of and planning for economic, social, or environmental consequences of the siting, construction, expansion, or operation of a new or expanded energy facility such as:

(A) Changes in population;

(B) Changes in employment patterns, including those in fishing and tourism;

(C) Changes in demand for public facilities, public services, and housing;

(D) Local price inflation;

(E) Changes in patterns of tax and user fee revenues or intergovernmental transfers;

(F) Effects of fishing, tourism, and other economic resources;

(G) Effects on beaches, dunes, air quality, water quality, or other environmental or recreational resources;

(H) Shoreline erosion;

(I) Ecological effects; and

(J) Effects on public safety.

(ii) Conducting analyses required for state or local regulatory decisions related to energy facilities, including licenses, leases, permits, and zoning ordinances;

(iii) Performing cost/benefit analyses or otherwise comparing the consequences of alternative energy facility sites or types;

(iv) Devising strategies for recovering compensation from appropriate parties for any adverse effects caused by the energy facility involved;

(v) Forecasting employment, population, public facility and public services needs and costs, and tax or user-fee revenues;

(vi) Planning for the public facilities eligible for financing under Subpart E of this part, including engineering feasibility;

(vii) Study of and planning for the secondary consequences, including environmental and economic consequences, of alternative types and sites of public facilities eligible for financing under Subpart E of this part; and

(viii) Study of and planning for the consequences of the phasing out of energy facilities.

(3) Carrying out projects necessary to administer assistance under section 308, including:

(i) Collecting data and analyzing information required by § 931.94 for environmental impact assessment;

(ii) Designing and carrying out an intrastate allocation process as described in Subpart J of this part; and

(iii) Paying other reasonable costs of administering assistance under section 308.

(b) Allowable uses of section 308(b) grants under this subpart include:

(1) Those allowable uses given in paragraph (a) of this section if they are necessary to provide new or improved public facilities and public services required as a result of OCS energy activity; and

(2) Architectual and engineering services for the design and construction of projects eligible for funding under sections 308(b)(5) (B) and (C).

Incorporated in limitations section.

§ 931.34 Limitations.

(a) Grants awarded to a coastal State under section 308(c)(1) may not exceed 80 percent of the actual cost of the study or planning. States may use in-kind contributions as the non-Federal matching share in accord with Office of Management and Budget Circular A-102.

(b) Although the use of section 308(c)(1) planning assistance must be related to new or expanded energy facilities there is no requirement that the use of this planning assistance be tied to the specific energy facilities listed on the planning inventory described in § 931.35 because it is recognized that the planning inventory will not in all cases capture every new or expanded energy facility.

(c) Section 308(c)(1) and 308(b)(5)(B) planning assistance may not be used:

(1) To develop the general planning process for energy facilities required of state management programs under section 305(b)(8); or

(2) For general energy studies or plans divorced from actual, proposed, or likely new or expanded energy facilities, coastal energy activities, or OCS energy activities.

(*Comment.* According to the Act, States may use section 305 grants to develop the general planning process for coastal energy facilities required under section 305(b)(8)).

§ 931.35 Planning inventory

(a) At the end of each fiscal year the Assistant Administrator will compile an inventory of new or expanded energy facilities that have significantly affected the coastal zone, are significantly affecting the coastal zone, or are likely to significantly affect the coastal zone of that State.

(b) The purpose of the planning inventory is:

(1) To identify those significant social, environmental or economic consequences in the coastal zone that may be prevented, ameliorated or controlled through proper study and planning; and

(2) To provide a basis for estimating the relative planning need among coastal states eligible to receive financial assistance under section 308(c)(1).

(c) To assure that the planning inventory reasonably reflects actual planning need, new or expanded energy facilities that significantly affect the coastal zone will be placed on the planning inventory only if:

(1) A major State or Federal permit has been applied for to site, construct, expand or initially operate such facility;

(2) The Assistant Administrator determines on the basis of reasonable evidence submitted by the eligible coastal State that such facility is likely to be sited, constructed, expanded or initially operated in the near future; or

(3) Such facility is projected to be required as a result of a lease sale scheduled by the Department of Interior to occur within the three fiscal years immediately following the fiscal year for which the inventory is compiled.

(d) To assure an equitable distribution of financial assistance among coastal States, facilities shall not be placed on the planning inventory or shall be removed from the planning inventory if:

(1) Such facility began operating in the fiscal year for which the inventory is compiled;

(2) Such facility has been on the inventory for a total of four fiscal years; or

(3) The Assistant Administrator determines that the study of or planning for the consequences of such facility is no longer required.

(e) The Assistant Administrator may allow facilities to remain on the inventory for more than four fiscal years if the state can demonstrate that such inclusion is necessary to prevent significant impacts on the coastal zone.

§ 931.36 Planning need formula.

(a) *Planning Need Factors.* The Assistant Administrator will establish for various types of energy facilities planning need factors approximating the social, economic and environmental consequences associated with each facility type. These need factors will be reviewed each fiscal year in light of the best available information concerning the effects associated with and characteristics of the various energy facility types.

(b) *Planning Need Formula.* The Assistant Administrator will develop a formula for estimating the need to plan for the social, economic and environmental consequences associated with a new or expanded energy facility. This planning need formula will take into account the planning need factors established under paragraph (a) of this section. The planning need formula will be reviewed each fiscal year and modified as appropriate.

§ 931.37 Allotment of 308(c)(1) planning grants among coastal States.

(a) Funds available in a fiscal year under section 308(c)(1) shall consist of:

(1) Funds appropriated to the Fund for section 308(c)(1) purposes for that fiscal year;

(2) Funds allotted in previous fiscal years under section 308(c)(1) reverting to the Assistant Administrator under § 931.39 because they were not applied for by the recipient coastal State within the time periods allowed by that section;

(3) Funds allotted in previous years under section 308(c)(1) recalled under section 931.97 because such funds were expended for unauthorized uses; and

(4) Funds from any other sources that may be used in that fiscal year under 308(c)(1).

(b) The Assistant Administrator shall allot available funds among eligible coastal States according to the following procedures:

(1) *State Review.* Before computing an allotment for any fiscal year, the Assistant Administrator will provide eligible coastal States with:

(i) The inventory of new or expanded energy facilities (planning inventory) described in § 931.35; and

(ii) The planning need factors and the planning need formula described in § 931.36. The States will have 30 days to submit comments to the Assistant Administrator who will revise the inventory, factors, or formula as appropriate.

(2) *Minimum Share.* The Assistant Administrator may allot to each eligible coastal State an equal minimum share. This minimum share will be an amount which, at the Assistant Administrator's discretion, is considered sufficient to allow the recipient State to effectively practicipate in the CEIP. However, the minimum share will not exceed $35,000.

(3) *Formula Share.* The funds remaining after the minimum shares are subtracted from the total amount available will be allotted on the basis of planning need equivalencies as follows:

(i) A planning need equivalency for each new or expanded energy facility on the planning inventory will be calculated by applying the planning need formula to each facility. A State's planning need equivalency will be the sum of the planning need equivalencies of all facilities on that State's planning inventory.

(ii) Each State's formula share will equal the product of:

(A) The funds remaining; and

(B) The ratio of that State's planning need equivalency to the sum of the planning need equivalencies of all States.

(4) *Allotted Share.* An eligible coastal State's allotment of section 308(c)(1)

funds will be the sum of the minimum share and the formula share except that a State's allotted share may not exceed 10% of the total amount available.

(i) If the sum of the minimum share and the formula share exceeds 10% of the amount available under section 308(c)(1), the allotment of such State shall be reduced to an amount equal to 10% of the amount available. Any excess funds obtained by reducing State allotments to 10% of the amount available will be redistributed among the other eligible coastal States in proportion to their planning need equivalencies.

(ii) If after reducing any State's allotment under subparagraph (4)(i) of this paragraph it is not mathematically possible to redistribute the excess funds without exceeding the 10% ceiling, the redistribution of such excess funds will be carried out without regard for the ceiling.

§ 931.38 Application procedure.

(a) To assure that assistance under this subpart is awarded in the fiscal year of allotment, applications must be submitted by June 1 of that fiscal year.

(b) Applications for planning assistance under section 308(c)(1) and section 308(b) must contain the following certifications and information:

(1) A certification by the State agency designated under § 931.25(b)(2) that the planning assistance has been allocated within the State in accord with the intrastate allocation process described in subpart J of this part;

(2) A certification by the State agency designated under § 931.25(b)(3) that the planning assistance will be used in a manner that is compatible with the State's developing, or consistent with the State's approved, coastal zone management program;

(3) A showing, if the application for assistance has not been submitted to the Project Notification and Review System established by OMB Circular No. A-95 (Part I), that a memorandum of agreement for coordinating planning under section 308 with areawide comprehensive planning has been consummated with appropriate areawide clearinghouses in the State's coastal zone, pursuant to Part IV, Attachment A, of OMB Circular A-95; and

(4) A brief description of the activity or activities to be performed indicating the relationship to allowable uses under § 931.33.

(c) In addition, applications for section 308(b) grants must contain such adequate assurances as are required by § 931.97(a).

(d) It is the Assistant Administrator's intent to process completed applications within 45 days of receipt.

§ 931.39 Reversion of funds allotted under section 308(c)(1).

(a) Allotted funds for which applications are not received by the end of the fiscal year in which such funds were allotted will revert to the Assistant Administrator at the end of that fiscal year.

(b) Allotted funds for which applications are received within the fiscal year in which they were allotted will remain available to the State until awarded. Allotted funds for which applications are disapproved or withdrawn will remain available for reapplication by the State until the end of the fiscal year or for 60 days after such disapproval or withdrawal whichever is later. If a substitute application is not submitted for these funds before the end of the fiscal year or before the 60 day time period expires, such funds will revert to the Assistant Administrator at the end of the fiscal year or at the end of the 60-day period.

(c) Funds reverting to the Assistant Administrator under this section will be reallotted as soon as practicable among eligible coastal States according to the procedures of this subpart.

Subpart E—Financing Public Facilities and Public Services

§ 931.40 General.

This subpart sets forth the objectives for providing assistance to coastal States and units of general purpose local government under sections 308(d)(1) and (2) and 308(b), (5)(B) and (C) and its allowable uses. This subpart also describes the procedures for allotting credit assistance among coastal States, and for applying for credit assistance under sections 308(d)(1)(2), formula grants under section 308(b).

§ 931.41 Objectives.

The objectives of assistance under this subpart are:

(a) To help coastal States and units of general purpose local government finance new or improved public facilities and public services needed because of coastal energy activity;

(b) To provide front-end financing that can be expected to be repaid later from revenues generated by the coastal energy activity;

(c) To assure that necessary development in coastal areas is consistent with State coastal zone management objectives, the safeguarding of valuable national coastal environmental and recreational resources, and public safety; and

(d) To discourage unnecessary development in the coastal zone by providing assistance only for those public facilities and public services actually needed because of coastal energy activity.

§ 931.42 Definitions.

(a) The term "public facililty" includes, but is not limited to, the following facilities to the extent that they are financed by any State or unit of general purpose local government; that they meet the requirements of Subpart I of this part; and that they do not primarily serve industrial facilities, except if the public facilities are wholly owned by a unit of general purpose local government and if industrial user charges from the facilities will be a primary source of revenue to repay the loan received or obligation guaranteed under this subpart.

(1) *Education.* Day care centers; primary, secondary, and general vocational schools, including portable classrooms and temporary facilities; school equipment; libraries, including books and equipment;

(2) *Environmental protection.* Facilities and equipment used to monitor or control air and water quality or noise standards, to insure the continued viability of fish, wildlife, and land resources, to prevent or control erosion; land acquisition for environmental protection;

(3) *Government administration.* Facilities and equipment essential for general government administration;

(4) *Health care.* Emergency medical facilities and equipment, including ambulances; clinic and hospital buildings and equipment; alcohol and drug abuse centers; emergency shelter and sanitary facilities;

(5) *Public safety and law enforcement.* Detention centers, police equipment and stations, fire stations and firefighting equipment, fire training centers, animal control facilities, communication facilities and equipment, and rescue facilities and equipment;

(6) *Recreation.* Facilities and equipment for amateur sports and performing arts, community recreational centers, local parks and playgrounds, acquisition of parkland or beaches or of public access to such land or beaches;

(7) *Transportation.* Street and street lighting, roads, bridges, road maintenance equipment, parking associated with public facilities, docks, air and water navigation aids, canals and navigation facilities, air terminals in remote areas, mass transit including bus and ferry systems;

(8) *Public utilities.* Electric generating plants and distribution systems; natural gas distribution systems; solid waste collection systems; waste collection and treatment systems, including drainage; water supply systems; and telephone systems.

(b) The term "public service" means any service authorized by law to be provided by a State or unit of general purpose local government to the extent that:

(1) It is financed by the State or unit of general purpose local government;

(2) It meets the requirements of Subpart I of this part; and

(3) It does not primarily serve industrial facilities unless industrial user charges will be a primary source of revenue to repay the loan received or obligation guaranteed under this subpart.

(c) A public facility is considered "new or improved" if it is constructed, expanded, or renovated after July 26, 1976.

(d) A public service is considered "new or improved" if the proposed type or increased level of service was not offered in the fiscal year before the application for assistance for such service.

§ 931.43 Allowable uses.

(a) Credit assistance available from the Fund under sections 308(d) (1) and (2) is to be used to finance new or improved public facilities and public services that are required as a result of coastal energy activity.

(b) Grant assistance under section 308(b) is to be used for the development of, and the carrying out of projects and programs necessary to provide new or improved public facilities and public services that are required as a result of OCS energy activity.

§ 931.44 Eligibility.

(a) To be eligible for allotments and assistance from the Fund under sections 308(d) (1) or (2) or from formula grants under section 308(b), a coastal State must meet the basic eligibility requirements of Subpart C.

(b) A unit of general purpose local government may apply for assistance through its State.

§ 931.45 Credit assistance inventory.

(a) At the end of each fiscal year, the Assistant Administrator will compile for each eligible coastal State an inventory of new or expanded coastal energy activities.

(b) The purpose of this inventory is:

(1) To identify new or expanded coastal energy activities that have caused, are causing, or are likely to cause a need for new or improved public facilities and public services; and

(2) To provide a basis for estimating the relative need for credit assistance among eligible coastal States.

(c) To assure that the credit assistance inventory reasonably reflects actual need for new or improved public facilities and public services, a new or expanded energy activity will be placed on the inventory only if the Assistant Administrator determines that such activity is likely to necessitate new or improved public facilities or public services, and

(1) A major State or Federal permit has been approved to conduct such activity; or

(2) Such activity is described in exploration plans or production and development plans approved by the Department of the Interior; or

(3) The Assistant Administrator, based on reasonable evidence submitted by the State, determines that such activity is likely to be carried out in the near future.

(d) To assure an equitable distribution of credit assistance among coastal States, a coastal energy activity will not be placed on the inventory or will be removed from the inventory in a fiscal year if such activity:

(1) Was on the inventory in any preceding fiscal year; and

(2) The Assistant Administrator determines that adequate credit assistance was allotted to a coastal State as a result of such activity.

§ 931.46 Allotment formula

(a) The Assistant Administrator will develop a formula for allotting moneys appropriated under section 308(d)(1) and (2). Such formula will be based on, and limited to, the following factors:

(1) The number of additional individuals who are expected to become employed in new or expanded coastal energy activity and will reside in the coastal State;

(2) The new population in the coastal State associated with such energy activity; and

(3) The standardized unit costs for new or improved public facilities and public services required as a result of such expected employment and related new population.

(b) The Administrator will periodically review and, if appropriate, revise this formula on the basis of the best available data concerning the need for public facilities and services created by coastal energy activity.

§ 931.47 Allotment of credit assistance.

(a) *State Review.* Before computing an allotment for any fiscal year, the Assistant Administrator will provide eligible coastal States with:

(1) The inventory of coastal energy activities (credit assistance inventory) described in § 931.45;

(2) Data on new employment and related new population for each activity on the credit assistance inventory; and

(3) The allotment formula described in § 931.46. Coastal States will have 30 days to submit comments on this information to the Assistant Administrator who will revise the inventory, employment and population data, and formula as appropriate.

(b) *Allotment Computation.* After the State review described in paragraph (a) a public facility and public service need factor will be calculated for each activity on the credit assistance inventory by applying the allotment formula to the activity. A State's need factor will be the sum of the need factors for all activities on that State's credit inventory. A State's allotment of credit assistance will equal the product of:

(1) The amount appropriated under section 308(d)(1) and (2); and

(2) The ration of that State's public facility and public service need factor to the sum of the public facility and public service need factors of all States.

§ 931.48 Allotment of section 308(b) formula grants.

The annual allotment of formula grants among coastal States is described in Subpart K.

§ 931.49 Recall and reversion of allotted credit assistance funds.

(a) This section applies only to credit assistance funds allotted under § 931.47

(b) Allotted funds for which applications are not received by July 1 of the fiscal year in which such funds were allotted may be recalled by the Assistant Administrator 30 days after notification of the State agency designated in § 931.25(b)(1). If, before the expiration of the 30-day notification period the State requests an extension for submitting applications, the Assistant Administrator may grant such extension. However, the time for submitting applications will not be extended beyond January 1 of the following fiscal year.

(c) A request for extension must contain the following information:

(1) The name of the expected applicant for the credit assistance;

(2) The use to which the assistance would be put;

(3) The amount of funding to be requested;

(4) The date an application is expected to be submitted; and

(5) An explanation of why the project is required as a result of coastal energy activity.

(d) Allotted funds for which neither an application nor a request for extension is received by the end of the fiscal year in which such funds were allotted will revert to the Assistant Administrator at the end of that fiscal year.

(e) Allotted funds for which timely applications are received will remain available to the State until awarded. Allotted funds for which applications are disapproved will remain available for reapplication by the State until the end of the fiscal year or for 90 days after such disapproval or withdrawal.

§ 931.50 Application for recalled or reverted credit assistance.

(a) Funds recalled by or reverting to the Assistant Administrator under §931.49 will be available to all eligible coastal States by application according to the procedures of this section.

(b) Coastal States may submit applications for loans at any time.

(c) Priority among loan applications will be based on the priority in submitting a completed application.

(d) Under exceptional circumstances, the Assistant Administrator may grant priority to a latter application on the basis of:

(1) Immediacy of need;

(2) Degree of impact sought to be ameliorated;

(3) Equity of distribution of CEIP credit assistance, and

(4) Availability of other financing, including priviate sources.

§ 931.51 Contents of credit assistance application.

(A) To assure that assistance under this subpart is awarded in the fiscal year of allotment, applications must be submitted by June 1 of that fiscal year.

(b) Applications for credit assistance from the Fund or for formula grants must contain the following certifications and information:

(1) A certification by the State agency designated under § 931.25(b)(2) that the assistance has been allocated within the State in accord with the intrastate allocation process described in Subpart J of this part;

(2) A certification by the State agency designated under § 931.25(b)(3) that the assistance will be used in a manner that is compatible with the State's developing, or consistent with the State's approved, coastal zone management program;

(3) For construction projects, as defined in the Office of Management and Budget Circular A-102, factual information necessary to evaluate the project's environmental impacts, in detail sufficient to enable the Assistant Administrator to determine whether an environmental impact statement (EIS) will be required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.); and

(4) A showing that such applications for assistance have complied with the requirements of the Project Notification and Review System established by Office of Management and Budget Circular A-95 (Part I).

(c)(1) Applications for credit assistance must also contain the following information:

(i) A descrption of the coastal energy activity causing the impacts because of which the credit assistance is sought;

(ii) A description of the new or improved public facilities or public services, required as a result of coastal energy activity, for which the assistance is sought, including costs on an annualized basis;

(iii) An estimate of current levels of utilization of public facilities and public services in the borrower's jurisdiction similar to those for which credit assistance is sought; and

(iv) Appropriate fiscal schedules, including financial and economic information, required to evaluate the payback potential on the request for credit assistance. (Such fiscal schedules will include the best available historical data on the revenues and expenditures of the borrower for five years preceding the year of application.)

(2) The information contained in the fiscal schedules described in paragraph (b)(1)(iv) of this section will be used to negotiate with the borrower the terms and conditions of the loan or guarantee agreements as described in § 931.50(c) and § 931.51(f). The fiscal schedules will be used in setting the conditions under which repayment assistance will be available, as incorporated into the terms and conditions of the loan or guarantee agreements.

(3) Even when the likelihood of eventual repayment assistance seems high, the Assistant Administrator will not normally require that the borrower raise its tax rates above or alter its tax methods from those generally prevailing when the applicant is requesting repayment assistance. However, if the tax base or revenues available to the borrower are reduced for reasons unrelated to the failure of the economic activity connected with energy development, the borrower will be expected to meet its principal and interest payments according to the loan or guarantee.

(d)(1) Applications for formula grants must contain:

(i) The adequate assurance required by § 931.97(a);

(ii) A brief description of the proposed new or improved public facility or public service sufficient to enable the Assistant Administrator to verify that the facility or service is required as a result of OCS energy activity;

(iii) Environmental impact assessment data;

(iv) Copies of necessary Federal and State permit applications;

(v) A map showing the project in relation to the coastal zone.

(2) Before awarding allotted formula grants, the Assistant Administrator will:

(i) Verify the certifications and information submitted pursuant to paragraphs (a) and (d)(1)(ii) of this section;

(ii) Determine whether an environmental impact statement (EIS) will be required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and prepare an EIS when necessary.

§ 931.52 Special requirements for section 308(d)(1) loans.

(a) *Interest rate.* The interest rate shall be the current average market yield for outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturity of such loans. The Assistant Administrator may under special circumstances approve lower interests rates. The Assistant Administrator will provide to all coastal States criteria for determining under what conditions special circumstances will be found. These criteria will be updated periodically.

(b) *Eligibility.* A loan to an otherwise eligible borrower may be made even though the fiscal schedules described in § 931.51(c)(4)(iv) or other financial information does not indicate adequate coverage for debt service. Loans may be made under section 308(d)(1) to State agencies established for the purpose of financing public facilities. Such loans shall be subject to such terms and conditions as the Assistant Administrator may prescribe.

(c) *Loan agreements.* Each loan agreement will incorporate in detail the conditions of the loan including repayment assistance described in Subpart F of this part. These conditions will be binding upon the Assistant Administrator and the borrower.

(d) *Repayment schedule.* Each loan agreement will contain a mutually agreed-upon repayment schedule, which will be tailored to the repayment ability of the borrower as indicated in the fiscal schedule described in § 931.51(b)(4)(iv) or in other financial information. This repayment schedule will set forth the borrower's annual loan service (principal and interest) payments. The borrower may accelerate payment with no prepayment penalities.

(e) *Maturity of loans.* Loans will be made for a period not to exceed the normal useful life of the project. In no event will a loan, including extensions and renewals thereof, be made with a maturity exceeding 30 years from the date of the final loan closing.

(f) *Security.* Loans made under section 308(d)(1) will be secured as determined by the Assistant Administrator and in the manner customary or legally allowed under respective State statute and local government charters and ordinances for projects of the type for which credit assistance is requested. NOAA's interest may be perfected, where appropriate, by a filing under the Uniform Commercial Code as adopted by the subject State, or, in

any jurisdiction where the Uniform Commercial Code has not been enacted, by the recording of a mortgage.

(g) *Disbursement of loan funds.* Loan funds may be disbursed on a phased basis. Approval of such loan advances will be made after receipt by the Assistant Administrator of:

(i) A favorable preliminary approving opinion of bond counsel on the validity of the proposed interim and final bond or promissory note and,

(ii) Satisfactory evidence of receipt of firm construction, service, and/or supply bids as well as compliance with the other loan conditions required to be fulfilled before disbursement. Advances or partial purchases shall be made in units of not less than 25 percent spaced so as to enable the borrower to pay incurred costs as they come due. Advances must be deposited in a bank with Federal Deposit Insurance Corporation coverage, and the balances exceeding such coverage must be collaterally secured as provided in 12 U.S.C. 265.

(h) *Interim financing on loan projects.* The terms and conditions of the interim financing are subject to prior approval. Upon request the borrower, will be provided with an appropriate letter of intent to aid the borrower in obtaining interim financing from sources other than the CEIP.

(i) *Bond counsel.* The borrower shall retain bond counsel to represent it in each loan transaction. Such bond counsel must receive the prior approval of the Assistant Administrator.

§ 931.53 Special requirements for section 308(d)(2) Federal guarantees.

(a) *Eligibility.* A borrower's legal debt will be considered eligible for guarantee under this subpart, if the Secretary of the Treasury approves such debt and it meets other requirements set forth in section 308(f).

(b) *Taxable obligations.* The interest paid on any obligation which is guaranteed under section 308(d)(2) and which is received by the purchaser of such obligation (or the purchaser's successor in interest) shall be included in gross income for the purposes of chapter 1 of the Internal Revenue Code of 1954.

(c) *Interest subsidy.* The Assistant Administrator may pay out of the Fund, pursuant to the terms of the bond or other evidence of indebtedness, to the coastal State or the unit of general purpose local government issuing an obligation guaranteed under section 308(d)(2) not more than the portion of the interest on such obligation as exceeds the amount of interest that would be due at a comparable rate for loans made under section 308(d)(1) at the time the obligation is guaranteed by the Associate Administrator.

(d) *Fees for guarantees.* A fee will be levied for providing a Federal guarantee. This fee will be set on the basis of the administrative costs incurred in providing and monitoring such guarantee. The fee may be waived in the event repayment assistance (as described in Subpart F of this part) is required.

(e) *Default procedures and guarantee incontestability.* If a borrower defaults on a bond or other evidence of indebtedness guaranteed under the Fund, the holder of the bond or other evidence of indebtedness may demand, pursuant to the terms of the bond or other evidence of indebtedness, payment from the Assistant Administrator of the principal and accrued interest of the obligation in accord with section 308(f)(5)(B). The validity of such a guarantee shall be considered incontestable, except when the holder of the obligation is guilty of fraud or misrepresentation or was aware of fraud or misrepresentation at the time he purchased the obligation.

(f) *Guarantee agreements.* Each obligation guaranteed under this subpart will entail agreements setting forth in detail the conditions under which the repayment assistance described in subpart F of this part will be available. These conditions will be binding upon the borrower. In addition, all provisions in the underlying documents for obligations guaranteed under section 308(d)(2) will be subject to the approval and will contain such additional provisions as the Assistant Administrator may require.

(g) *Bond counsel.* The borrower shall retain bond counsel to represent it in each guarantee transaction. Such bond counsel must receive the prior approval of the Assistant Administrator.

Subpart F—Repayment Assistance

§ 931.60 General.

This Subpart sets forth objectives, purposes and procedures for awarding various forms of repayment assistance under sections 308)(d)(3) and 308(b)(5)(A).

§ 931.61 Objectives.

The objectives of the repayment assistance are to ensure that:

(a) Credit obligations will be modified and tailored according to ability to repay so that defaults can be avoided; and

(b) Net fiscal losses to the States or units of general purpose local government resulting from coastal energy activity will be minimized.

§ 931.62 Definitions.

The term "borrower" refers to an eligible coastal State, a special purpose agency of the State, or a unit of general purpose local government that has been awarded credit assistance under sections 308(d)(1) or (d)(2).

§ 931.63 Purposes.

(a) The purpose of repayment assistance under sections 308(d)(3)(A-C) is to assist a borrower who is temporarily unable to meet scheduled repayments of loans or guaranteed obligations.

(b) The purpose of a repayment grant under section 308(b) is to assist a borrower in meeting scheduled repayments of a guaranteed bond when the remedies of sections 308(d)(3)(A-C) are inadequate.

(c) The purpose of a repayment grant from a State's allotted credit assistance from the Fund under section 308(d)(3)(D) is to assist a borrower in meeting scheduled repayments of a loan or guaranteed obligation when the remedies of sections 308(d)(3)(A-C) are inadequate and formula grants are not available for that purpose. If the State's allotment is insufficient, a grant will be made from the Fund.

§ 931.64 Sources of repayment assistance.

(a) *Primary sources.* The primary sources of repayment assistance are modification of credit assistance terms and conditions under section 308(d)(3)(A), refinancing of a loan under section 308(d)(3)(B), or making a supplemental loan under section 308(d)(3)(C) to enable the borrower to repay principal and interest pursuant to the terms of a loan or guaranteed obligation.

(b) *Secondary sources.* If the borrower is unable to meet scheduled repayments by means of one or more of the primary sources of repayment assistance, and if the inability to repay results from a change in scope of the coastal energy activity or the related new population, the secondary sources of repayment assistance may be used to meet obligations. These secondary sources are the proceeds of the State's allotment of formula grants under section 308(b) and grants from the State's allotment of moneys from the Fund under section 308(e)(1), or directly from the Fund if the State's allotment is insufficient.

§ 931.65 General eligibility.

(a) A borrower is eligible for repayment assistance only if:

(1) It has been awarded a loan under section 308(d)(1) or a guarantee under section 308(d)(2); and

(2) It has submitted a report, as required under § 931.66, updating the information described in § 931.51(c)(1)(iv).

(b) A borrower does not have to be in default before qualifying for repayment assistance. The default of a borrower will nevertheless automatically

occasion review for repayment assistance by the Assistant Administrator.

§ 931.66 Reports.

After submitting its original credit assistance application, and until the full repayment of its loan or guaranteed obligation, the borrower shall submit periodically to the Assistant Administrator a report updating the information described in § 931.51(c). The frequency of submission of this report will be established by the Assistant Administrator in consultation with the borrower. This report should contain whatever new information the borrower has received and can document concerning the coastal energy activity and its likely effects on revenues and expenditures.

§ 931.67 Review for repayment assistance.

(a) At the request of the borrower or on the initiative of the Assistant Administrator, a review for repayment assistance will be carried out. Before the initiation of this review by the Assistant Administrator, the borrower must submit a report (described in § 931.66) updating the information described in § 931.51(c). The Assistant Administrator will examine the information and forecasts contained in the report, particularly those relating to the status and effects of the coastal energy activity involved.

(b) All terms and conditions of the loan or guarantee, as enumerated in the loan or guarantee agreements, will remain in effect pending the review for repayment assistance.

§ 931.68 Award of repayment assistance.

(a) It is the Assistant Administrator's intent to offer repayment assistance within 45 days after the request for repayment assistance described in § 931.67, if, pursuant to the terms and conditions of the loan or guarantee agreements, the borrower is found unable to meet its annual loan service payment or obligation under a guarantee in accord with its repayment schedule because the economic activity generated by the coastal energy activity and associated facilities have failed to provide adequate revenues.

(b) If the Assistant Administrator finds that any coastal State or unit of general purpose local government which is a borrower is unable to meet its obligations pursuant to a loan made under section 308(d)(1) of the Act because the actual increases in employment and related population resulting from coastal energy activity and the facilities associated with such activity do not provide adequate revenues to enable the State or unit to meet such obligations in accordance with the appropriate repayment schedule, the Assistant Administrator shall, after review of the information submitted by the State or unit pursuant to section 308(e)(3) of the Act take, subject to the special conditions contained in the loan agreement, any of the following actions:

(1) Modify appropriately the terms and conditions of such loan;

(2) Refinance such loan;

(3) Make a supplemental loan to the State or unit, the proceeds of which shall be applied to the payment of principal and interest due under such loan; and

(4) Make a grant to the State or unit the proceeds of which shall be applied to the payment of principal and interest due under such loan.

(*Comment.* The award of repayment assistance will be based only on an objective comparison of the information submitted in the updating report as described in § 931.66 with the terms and conditions of the original loan or guarantee agreements.)

(c) When the Assistant Administrator offers one of the courses of action in § 931.68(b)(1-4), the borrower may submit to the Assistant Administrator a formal acceptance of the recommended form of repayment assistance. In the case of a repayment grant from the proceeds of a State's formula grant under section 308(b) for a bond guaranteed under section 308(d)(2), the borrower shall submit this formal acceptance through the State agency designated under § 931.25(b)(1), and the acceptance shall include the adequate assurances as are required by § 931.97(a). The repayment assistance will take effect as soon as the Assistance Administrator receives the formal acceptance.

(d) If the formula grants allotted the State are insufficient for all the repayment grants recommended by the Assistant Administrator in a fiscal year, the State agency designated under § 931.25(b)(1) shall indicate which bonds it wishes to retire with the proceeds of available formula grants, giving priority to local bonds in accordance with section 308(b)(5)(A). Those borrowers whose bonds the State has indicated it cannot retire with the proceeds of formula grants may request repayment grants from the State's allotment of credit assistance and, when necessary, which will be awarded directly from the Fund. Borrowers in States that have no allotted formula grants may request the recommended repayment grants, which will be awarded from the State's allotment of credit assistance and, when necessary, directly from the Fund.

(e) If, after the review for repayment assistance, the Assistant Administrator determines that no repayment assistance is warranted, or if the borrower does not formally accept such assistance, the borrower will remain subject to the terms and conditions of the loan or guarantee and to the requirements of Subpart I of this part.

§ 931.69 Appeal procedure.

(a) Whenever a dispute arises concerning the Assistant Administrator's finding made pursuant to § 931.68(a) regarding the existence of conditions which require an offer of repayment assistance the borrower may appeal the Assistant Administrator's decision to the Administrator of NOAA by submitting a request for review to the Office of the Administrator of NOAA.

(b) The Administrator of NOAA will issue a written decision on the appeal within 60 days of the borrower's request for review.

(c) The appeal procedure provided for in paragraphs (a) and (b) of this section is intended to provide a timely and impartial forum for resolving disputes concerning repayment assistance. Such appeal procedures may be initiated by the borrower, but do not expressly or by implication limit the borrower's other remedies at law or in equity. The borrower may seek appropriate judicial relief in a court of competent jurisdiction without the consent of the Assistant Administrator or the Administrator of NOAA, and without first having exhausted the appeal procedures provided in paragraphs (a) and (b) of this section.

Subpart G—Grants for Unavoidable Losses of Valuable Coastal Environmental and Recreational Resources

§ 931.70 General.

The subpart sets forth policies and requirements for awarding environmental and recreational grants to coastal States under sections 308(b)(5)(C) and 308(d)(4), and describes the objectives for awarding these moneys, the allowable uses, the sources from which they will be drawn, and the eligibility requirements.

§ 931.71 Objectives.

The objectives for providing assistance under sections 308(b)(5)(C) and 308(d)(4) are:

(a) To help coastal States and units of local government in such States to prevent, reduce or ameliorate losses in the coastal zone of valuable environmental or recreational resources when such losses result from coastal energy activity;

(b) To ensure that the person or persons responsible for these environmental or recreational losses pay for their full cost whenever possible; and

(c) To encourage the prevention of environmental or recreational losses by providing assistance only when the losses cannot be prevented through a reasonable exercise of State or local regulatory authorities.

§ 931.72 Definitions.

(a) The term "valuable environmental resource" refers to:

(1) Areas of land or water that are or have been largely in a natural state, or whose value derives primarily from ecological considerations;

(2) Important animal and plant populations and their habitat;

(3) Air, water, or noise quality; or

(4) An area that has been designated under a State's approved coastal zone management program or other regional or local plans as either an area of particular concern or area of preservation or restoration for environmental purposes.

(b) The term "valuable recreational resource" refers to areas of land or water that have characteristics making it desirable for one or more types of recreational activities, or which have been designated under a State's approved coastal zone management program, or other regional or local plans, as an area of particular concern or area of preservation or restoration use for recreational purposes. Included are areas that have important cultural, historic or archeological significance which are essential to the well being of all citizens.

(c) The term "loss" refers to any damage to or degradation of or any threat of damage to or degradation of a valuable environmental or recreational resource, including the impairment or threat of impairment of public access to that resource and any degradation or threat of degradation of the use of a resource that may result from overcrowding.

(d) A loss of a valuable environmental or recreational resource will be considered "unavoidable" if:

(1) The loss is caused by coastal energy activity and

(i) The loss can not be attributed to an identifiable person or persons; or

(ii) The costs of reduction or amelioration of the loss cannot be directly or indirectly assessed against an identifiable person or persons because no reasonable cause of action exists for the collection of money damages; or

(2) The loss is *projected to occur* as a result of current or future coastal energy activity and funds are sought to design or implement strategies, programs or projects to prevent, reduce or ameliorate such loss.

(e) The term "person" means any individual; any corporation, partnership, association, or other entity organized or existing under the laws of any State; the Federal Government; any State, regional, or local government; or any entity of any such Federal, State, regional, or local government.

§ 931.73 Allowable Uses.

(a) Assistance is provided in sections 308(b)(5)(C) and 308(d)(4) to help States and units of local government design and implement projects to prevent, reduce or ameliorate unavoidable environmental and recreational losses resulting from coastal energy activity.

(b) Assistance for the design and implementation of projects under this subpart is intended to pay for:

(1) Protection restoration, replacement, acquisition or improvement of environmental or recreational resources to prevent, reduce, or ameliorate unavoidable environmental and recreational losses.

(2) The design and implementation of programs and strategies to prevent, reduce or ameliorate unavoidable environmental and recreational losses, including the cumulative effects of coastal energy activity.

(3) The cost differential between methods of providing a public facility required as a result of coastal energy activity which meets minimum State environmental and construction standards, and a higher cost method that further reduces an environmental loss.

§ 931.74 Eligibility.

(a) To be eligible for allotments and assistance under sections 308(b)(5)(C) and 308(d)(4), a coastal State must meet the basic eligibility requirements of Subpart C of this part.

(b) A unit of general purpose local government may apply for financial assistance from its State.

§ 931.75 Allotment of Section 308(d)(4) Environmental-Recreational Grants.

(a) Funds available in any fiscal year under subsection 308(d)(4) will be allotted among coastal States according to the procedures of this section and will consist of:

(1) Funds appropriated for section 308(d)(4) purposes for that fiscal year;

(2) Funds allotted in previous fiscal years under section 308(d)(4) reverting to the Assistant Administrator under § 931.76;

(3) Funds allotted in previous fiscal years under section 308(d)(4) and recalled under § 931.97 because such funds were expended for unauthorized uses; and

(4) Money from any other source available for section 308(d)(4) purposes.

(b) *Allotment Computation.* Available funds will be allotted first among those eligible coastal States that are receiving in that fiscal year less than $400,000 in section 308(b) formula grant allotments. This allotment will be carried out according to the procedures for allotting credit assistance under § 931.47.

(1) If after the computation of the allotment described in paragraph (b) of this section any State's allotment is less than 5 percent of the amount available, such State's allotment will be raised to 5 percent of the amount available.

(2) If after the computation of the allotment described in paragraph (b) of this section any State's allotment is greater than 25 percent of the total amount available, then such State's allotment will be reduced to 25 percent of the amount available.

(3) If after the calculations in paragraphs (b)(1) and (2) of this section the amount that would be required to be allotted exceeds the amount available, then each State's allotment will be reduced proportionally until the total allotment equals the amount available.

(4) If after the calculations in paragraphs (b)(1) and (2) of this section the amount that would be required to be allotted is less than the amount available, then such unallotted funds will be available for allotment according to the procedures of § 931.47 among all eligible coastal States.

§ 931.76 Reversion of allotted funds.

(a) Allotted funds for which applications are not received by the end of the fiscal year in which such funds were allotted will revert to the Assistant Administrator at the end of such fiscal year.

(b) Allotted funds for which applications are received within the fiscal year in which such funds were allotted will remain available to the State until awarded. Funds for which timely applications are disapproved or withdrawn will remain available for reapplication by the State for 60 days after such disapproval or withdrawal. If a substitute application is not submitted for these funds before the 60-day time period expires, such funds will revert to the Assistant Administrator at the end of the fiscal year or at the end of the 60-day period whichever occurs last.

(c) *FY 1978 Funds.* Funds allotted in fiscal year 1978 under section 308(d)(4) will be treated as if allotted in fiscal year 1979 and will be subject to the requirements of this section.

§ 931.77 Application procedures.

(a) An eligible coastal State may apply for financial assistance for the purposes set forth in § 931.74 as soon as it is notified of the amount of its 308(b) and 308(d)(4) allotments. To assure that assistance under this subpart is awarded in the fiscal year of allotment, applications must be submitted by June 1 of that fiscal year.

(b) Applications for grants under sections 308(b) and 308(d)(4) must contain the following certifications and information:

(1) A certification by the State agency designated under § 931.25(b)(2) that the assistance has been allocated within the State in accord with the in-

trastate allocation process described in subpart J of this part;

(2) A certification by the State agency designated under § 931.25(b)(3) that the assistance will be used in a manner that is compatible with the State's developing, or consistent with the State's approved, coastal zone management program;

(3) A brief description of the proposed activity or activities sufficient to enable the Assistant Administrator to verify that the activity or activities would prevent, reduce, or ameliorate an unavoidable loss of a valuable environmental or recreational resource pursuant to this subpart including an indication of how the loss is unavoidable as defined in § 931.72.

(4) For construction projects, as defined in Office of Management and Budget Circular A-102, factual information necessary to evaluate the project's environmental impacts, in detail sufficient to enable the Assistant Administrator to determine whether an environmental impact statement (EIS) will be required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.); and

(5) A showing that such applications for assistance have complied with the requirements of the Project Notification and Review System established by Office of Management and Budget Circular A-95 (Part I).

(c) Application for section 308(b) grants must also contain such adequate assurances as are required by § 931.97(a).

(d) It is the intent of the Assistant Administrator that completed requisitions and applications will be processed within 45 days of completion of the required A-95 reviews, unless the Assistant Administrator determines that an environmental impact statement is required.

§ 931.79 Limitations.

The proceeds of grants awarded under sections 308(b) and 308(d)(4) may not be used:

(a) For the prevention, reduction, or amelioration of any loss of an environmental or recreational resource that is directly attributable to the sale, lease, rental, or conversion to other uses of such resource by a State agency or unit of local government when such sale, lease rental or conversion occurred after July 26, 1976;

(b) To pay for that part of the cost of a project designed to prevent, reduce, or ameliorate the loss of a valuable environmental or recreational resource, which is incommensurate with the value of the loss;

(c) To pay for that part of the cost of a project designed to prevent, reduce or ameliorate the loss of an environmental resource which can be paid for with funds readily available from any other Federal program.

Subpart H—Lateral Seaward Boundaries

§ 931.80 General.

For the calculations of formula grant allotments under § 931.76, Outer Continental Shelf acreage and production shall be considered adjacent to a particular coastal State if such acreage and production lie on that State's side of the extended lateral seaward boundaries of that State. These extended lateral seaward boundaries of a coastal State shall be determined by delimitation lines established by the Assistant Administrator according to the procedures of this subpart. These delimitation lines are to be established solely for determining a State's adjacency to Outer Continental Shelf acreage and production for the purposes of section 308(b), and they are not intended to have application under any other law or treaty of the United States.

§ 931.81 Establishment of delimitation lines when agreements exist between States.

If a lateral seaward boundary extending to a State's seaward boundary (see the Submerged Lands Act, 43 U.S.C. 1301(b) and 1312) has been clearly defined or fixed by an inter-State compact, agreement, or judicial decision as of July 26, 1976, a delimitation line extending the lateral seaward boundary through the Outer Continental Shelf shall be based on the principles used to delimit or define the lateral seaward boundary in such compact, agreement, or decision. A copy of all such compacts, agreements, or decisions must be submitted to the Assistant Administrator before calculations of State allotments are made and before March 4, 1977.

If a portion of a lateral seaward boundary has been clearly defined or fixed by an inter-State compact, agreement or judicial decision as of July 26, 1976, a delimitation line shall be based on the principles used to delimit or define the lateral seaward boundary in such compact, agreement or decision to the extent that such principles are applicable.

§ 931.82 Establishment of delimitation lines when no agreements exist between States.

If no lateral seaward boundary, or any portion thereof, has been clearly defined or fixed by inter-State compact, agreement, or judicial decision, a delimitation line extending from the State's seaward boundary through the Outer Continental Shelf shall be established in the following manner:

(a) If, on or before August 4, 1977, a lateral seaward boundary to the State's seaward boundary is delimited or defined by an inter-State compact or agreement, the Assistant Administrator will establish a delimitation line through the Outer Continental Shelf based upon the same principles used to delimit or define the lateral seaward boundary in such compact or agreement. A lateral seaward boundary established by inter-State compact or agreement may be based on any principles which are mutually acceptable to the States involved. When such a boundary requires a measurement from a baseline, that baseline will be as defined in § 931.84(a). The lateral seaward boundary delimited or defined by such a compact or agreement, must be appropriately documented to the Assistant Administrator no later than August 4, 1977. Appropriate documentation shall include data sufficient to define the lateral seaward boundary and may include dimensionally stable base maps, geographical positions, azimuths, computations, and written descriptions.

(b) If a lateral seaward boundary is not defined or delimited by compact or agreement on or before August 4, 1977, delimitation lines will be established by the Assistant Administrator. The Assistant Administrator will extend this time period up to February 4, 1978, if the Governors of the States concerned each request such an extension. The Assistant Administrator may also at his/her discretion extend the time period for other delimitation lines which may be affected by the one for which an extension has been requested. Prior to establishing these delimitation lines, the Assistant Administrator will allow an additional 6-month period during which time the States failing to delimit or define a lateral seaward boundary may submit written arguments in support of their respective positions. After expiration of the period allowed for submission of arguments by States, the Assistant Administrator will establish the required delimitation lines according to the applicable principles of law. The procedures of this paragraph may be invoked at any time after these regulations become effective if the States concerned jointly seek a determination by the Assistant Administrator.

If the lateral seaward boundary is a matter in litigation prior to the time of delimitation by the Associate Administrator, such delimitation may be deferred by the Assistant Administrator until a final judicial decision is rendered.

(c) If after July 26, 1976, a judicial decision is rendered to clearly define or fix a lateral seaward boundary such a decision may be used by the Assistant Administrator in establishing a line of delimitation.

§ 931.83 Establishment of delimitation lines under later compacts or agreements.

If, after February 4, 1977, two or more States enter into or amend an interstate compact or agreement, in order to clearly define or fix a lateral seaward boundary, delimitation lines extending such a boundary through the Outer Continental Shelf will be based on principles used to delimit or define the lateral seawared boundary in such compact or agreement. For the purpose of calculating formula grant allotments under Subpart K, the Assistant Administrator also may accept agreements between States on the proportional sharing of formula grant funds with a specified area, without the need for agreement on a specific line. However, delimitation lines so extended or altered, and allotments so calculated, will not affect grants made previously in accord with calculations under Subpart K.

§ 931.84 Procedures for defining delimitation lines by equidistance principles.

(a) In the event that the Assistant Administrator establishes a line of delimitation based on measurement from a baseline, that baseline will be the intersection of the National Ocean Survey (NOS) low water datum of reference with the land, as described and published by the NOS on large scale nautical charts of the area, as modified by the application of the principles of the Convention on the Territorial Sea and the Contiguous Zone, as interpreted by the Ad Hoc Committee on U.S. Coastline Delimitation.

This committee, which has the responsibility to apply principles of international law and the Convention on the Territorial Sea and the Contiguous Zone in delimiting the territorial sea and the contiguous zone of the United States, will be charged with the identification of the baseline, including closing lines, on NOS charts as required to establish the baselines.

(b) If delimitation lines established by the Assistant Administrator are based on a measurement from the baseline, they shall be delineated by the NOS, which shall determine the geographic positions of these points by either graphical or analytical procedures, and document the delimitation lines for review and comment by the above Ad Hoc Committee and final approval by the Assistant Administrator.

§ 931.85 Formula grants impounded for disputed areas.

(a) That portion of a State's allotment of section 308(b) formula grants which is dependent on Outer Continental Shelf acreage and production in disputed areas, as determined by the Assistant Administrator, will be impounded in the Treasury of the United States until such time as the required delimitation lines have been established by the Assistant Administrator using the procedures outlined in § 931.82.

(b) That portion of a State's allotment of section 308(b) formula grants which is dependent on Outer Continental Shelf acreage, production and landings in areas disputed between the Federal Government and the State will be impounded in the Treasury of the United States until such time as the issue is resolved.

Subpart I—General Provisions

§ 931.90 Allowable costs.

(a) Allowable costs will be determined in accord with Federal Management Circular 74-4, Cost Principles Applicable to Grants and Contracts with State and Local Governments (34 CFR 255), the grant/loan agreement, and with the unique requirements of the Coastal Energy Impact Program. Specifically, project costs must:

(1) Be necessary and reasonable for proper and efficient administration of the program, not be a general expense required to carry out the overall responsibilities of States or units of local governments;

(2) Be authorized or not prohibited under State or local laws or regulations;

(3) Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items;

(4) Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the recipient is a part;

(5) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances;

(6) Not be allocable to or included as a cost of any other federally financed program in either the current or a prior period; and

(7) Be net of all applicable credits.

(b) Applications for assistance under this part for projects or programs to provide new or improved public facilities or for construction projects to prevent, reduce, or ameliorate unavoidable environmental or recreational losses will be subject to the following additional requirements.

(1) Design and performance standards must conform to professionally recognized national standards. Costs must be reasonable and comparable to the cost of similar work awarded through open competitive bidding in the geographic area of the project.

(2) Compensation for engineering, architectural, or similar services shall not be based on a cost plus a percentage-of-cost.

(3) The following will be allowable projects costs when necessary and reasonable for the completion of project or programs assisted under this part.

(i) Land acquisition (including less-than-fee simple), easements, and rights-of-way.

(ii) Architectural, engineering, and other necessary technical service fees.

(iii) Construction expenses, including, but not limited to, construction materials, fixtures, appurtenances, and fixed machinery and equipment.

(v) Site preparation and improvement.

(vi) Capitalized interest during construction for a project in which it is necessary or advantageous for the recipient to borrow funds to finance construction costs and where State law permits such a loan. (This is an allowable cost for section 308(d) (1) and (2) credit assistance only.)

(vii) Capitalized interest during development, only when a section 308(d) loan or guarantee has been made for the project. (The allowable amount is limited to that which is required to meet interest payments after the project is operating but before income is sufficient to provide such payment. However, such amounts will be an eligible project cost only to the extent that the recipient does not have any other funds or sources of revenue for such interest payments.)

(viii) Initial public service expenses (operating costs) including supply inventories, salaries and utilities, only when a section 308(d) loan or guarantee has been made for the project. (The allowable amount is limited to that which is required to meet these public service expenses after the project is operating but before income is sufficient to provide for such services. However, such amounts will be an eligible project cost only to the extent that the recipient does not have any other funds or sources of revenue for such public service expense.)

(4) The cost of activities conducted, or assets acquired, prior to approval of an assistance application are allowable costs only when specifically provided for in the grant or loan or agreement and to the extent that they meet the requirements set forth in paragraph (a) of this section, OMB Circular A-102 and FMC 74-4. For nonconstruction projects, such costs must have been incurred not more than three months prior to the grant start date. Purchase options for land and materials essential to the project or program may be an allowable project cost.

(5) Purchase of construction related equipment, such as dump trucks, excavation equipment and other movable equipment, will be allowable only when specifically authorized in writing.

(6) The acquisition of movable equipment essential for the maintenance of new or improved public facilities or projects that prevent, reduce or ameliorate unavoidable environmental or recreational losses is allowable.

§ 931.91 Administrative procedures.

Administrative procedures for grants and credit assistance are based to the maximum extent practicable upon Office of Management and Budget Circular, A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments" (34 CFR Part 256).

§ 931.92 Compliance with OMB Circular A-95 requirements.

(a) Preapplications, if used, and applications, for assistance for public facilities and public services and for environmental and recreational grants for construction projects are subject to the Project Notification and Review System established by Office of Management and Budget Circular No. A-95 (Part I), as implemented by regulations promulgated by NOAA, 15 CFR 905.

(b) Applications for assistance for planning under sections 308(c) and 308(b)(5)(C) and for nonconstruction projects or programs for environmental/recreational purposes under sections 308(b)(5)(C) and 308(d)(4) are not subject to Part I of OMB Circular No. A-95 if a memorandum of agreement for coordinating planning under section 308 has been executed between the state agency designated under § 931.26(a)(1) and the appropriate areawide clearinghouses in the State's coastal zone pursuant to Part IV, Attachment A, of OMB Circular No. A-95.

§ 931.93 Other Federal requirements.

Compliance with all other Federal statutory provisions and regulations which are applicable to Federal assistance programs and recipients of such assistance is a condition of CEIP assistance.

§ 931.94 Environmental Impact Statements.

(a) Under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., and the guidelines 40 CFR 1500.1 et seq., the Assistant Administrator will conduct an environmental impact assessment on each proposed use of assistance for construction projects under Subparts E and G to determine whether an environmental impact statement (EIS) will be required. Such assessment will be based on threshold criteria which will be provided in OCZM Environmental Guidelines.

(b) Assistance under Subparts D (Planning) and F (Repayment Assistance), nonconstruction projects under Subparts E and G as well as the activities listed below may be treated as separate projects for the purpose of environmental review and will not require an environmental impact analysis (EIA).

(1) Environmental studies or assessments.

(2) Administrative costs as provided for under § 931.33(2)(3).

(3) Eligible public service projects not involving physical development activity (e.g., employment, crime prevention, child care, health, drug abuse, education, welfare, or recreational needs).

(4) Eligible maintenance projects that maintain the status quo or make only minor improvements (e.g., community clean-up, tree trimming, maintaining vacant lots, boat ramps and street lighting).

(5) Public facilities and improvements which enhance or complete facilities already in place, or which replace or reconstruct without change in the use or service capacity of the item. Examples of the former are: landscaping, street furniture, equipping established parks, playground, tot lots, and passive recreation areas. Examples of the latter are: Replacement or reconstruction of streets, curbs and sidewalks, and modernization of hospitals, schools and modification of buildings for the elderly or handicapped.

(6) Rehabilitation of buildings and improvements provided that:

(i) Unit density is not changed more than 20%;

(ii) The project does not involve change in use from residential to nonresidential use or from one class of nonresidential use to another class of use;

(iii) The cost of rehabilitation is less than 75% of the total cost of replacement after rehabilitation; and

(iv) Eligible repair or replacement projects that do not change the use of the item repaired (e.g., water and sewer system, curbs and sidewalks, modification to buildings for the elderly and handicapped, repaving streets, and compliance with code enforcement to bring properties into compliance with health or zoning codes).

(c) Applicants for financial assistance to carryout activities or projects for which environmental assessments are not required are not relieved from compliance with historical preservation requirements, wetland or floodplain protection standards established by the OCZM Environmental Guidelines.

(d) All other projects under Subparts E and G of this part will require environmental review. Initial data and information on the environmental impacts of a proposed project will be provided by the potential recipient of assistance according to the OCZM Environmental Guidelines. A regional or programmatic EIS on a group of similar or related projects may be prepared if appropriate.

(e) If, before receiving notice of its allotment under Subpart E of this part, a State wishes to seek an advance determination as to whether an EIS will be required for a proposed project, such State may submit the information required under § 931.48(a)(5) to the Assistant Administrator. It is the intent of the Assistant Administrator to review the information submitted and make a determination within 45 days of receipt of such information.

§ 931.95 Records.

(a) All initial recipients of financial assistance under section 308 shall keep and preserve, and shall require each unit of local government to which it passes the assistance to keep and preserve, detailed project control records reflecting acquisitions, work progress, expenditures, and commitments, indicating in each instance their relationship to estimated costs and schedules. All recipients shall also keep and preserve such full written financial records, accurately disclosing the amount and the disposition of the assistance, together with the amounts and disposition of other funds applied to the project, program, or other undertaking, as shall adequately establish compliance with the requirements of section 308, the terms and conditions upon which such financial assistance was made, and the standards for financial managemnt systems contained in Attachment G to Office of Managment and budget Circular A-102. Such records shall be retained until:

(1) Completion of the project, program, or other undertaking for which a grant was made or used, and thereafter for a period of at least 3 years; or

(2) Full repayment of a loan or guaranteed indebtedness for which such financial assistance was provided, and thereafter for a period of at least 3 years.

§ 931.96 Audit.

The Assistant Administrator, the Secretary of Commerce, any designee of the Assistant Administrator or Secretary of Commerce, and the comptroller General shall have access for purposes of audit and examination to any records, books, documents, and papers which belong to, or are used under this part or controlled by, any recipient of the assistance or any person who entered into any transaction relating to such financial assistance and which is pertinent for purposes of determining if such financial assistance is being or was used in accordance with section 308, the terms and conditions upon which such finan-

cial assistance was made. Office of Management and Budget Circular A-102, and Federal Management Circular 74-4.

§ 931.97 Recovery of funds.

This section sets forth requirements and procedures to ensure that grant proceeds received by States may be recovered by NOAA if such proceeds have not been expended or obligated for the purposes and activities covered by the grant award approved program activities and budget, and if 308(b) grant proceeds have not been expended or obligated by the State before the close of the fiscal year immediately following the fiscal year of project award.

(a) *Adequate assurances.* (1) Each requisition for the proceeds of section 308(b) grants submitted by a State under Subparts D, E, F, or G of this part shall contain a written statement that:

(i) The State will repay to the United States the amount of an awarded grant which has been determined by the Assistant Administrator not to have been expended or obligated by the State for purposes other than those allowed by this Part; and

(ii) The State will repay to the United States the amount of any grant which has been determined by NOAA not to have been expended or obligated by the State before the close of the fiscal year immediately following the fiscal year in which the grant proceeds were awarded.

(b) *Procedures for the recovery of funds.* (1) Upon receipt from NOAA of a written request for repayment which contains a finding that the proceeds of a grant received by the State have been expended or obligated by the State for purposes other than those set forth in the grant award, and, in the case of 308(b) grant proceeds, if the funds have not been expended or obligated before the close of the fiscal year immediately following the fiscal year in which the grant proceeds were awarded, such State shall provide a written response within 15 days to either refute or admit such findings.

(2) NOAA shall make a determination that repayment by the State will or will not be required, and shall notify the State of this determination no later than 45 days from the receipt by the State of the request for repayment described in paragraph (b)(1) of this section.

(3) If NOAA determines that repayment is required, the State shall have 30 days from the date of receipt of such determination to file a request for reconsideration with NOAA or 60 days from the date of receipt of such determination to make a repayment by check in the amount stated in such determination.

(i) If the State's request for reconsideration is denied, the State shall have 15 days from the date of such denial to make a repayment by check in the amount determined to be owed to the United States.

(ii) If, as a result of the State's request for reconsideration, NOAA modifies its determination of the amount required to be repaid by the State, such State shall have 15 days from the date of such modification to make the repayment, if any, by check.

(4) If no repayment is received within the time period established by paragraph (b)(3) of this section, NOAA shall take necessary action to recover the amount due. Methods of recovery may include, but are not limited to:

(i) The modification or termination of a grant being received by such State under section 308(b);

(ii) The modification or termination of financial assistance under sections of the Act other than section 308(b);

(iii) The withholding of future financial assistance to the State under any section of the Act; and

(iv) The modification or termination of financial assistance being received by such State under other programs administered by the Department of Commerce, or the withholding of future financial assistance to such State under these programs.

(5) Actions undertaken under paragraph (b) of this section shall not in any way prejudice any rights of NOAA to pursue such other remedies as may be legally available and appropriate under the circumstances, including the referral of the claim against the State to the Department of Justice.

(c) If a State has received a written request for repayment under § 931.97(b)(1) NOAA may require such additional assurances as it finds necessary to protect the interests of the United States in the making of grants to the State.

§ 931.98 Coordination with other Federal agencies.

(a) No financial assistance for studying and planning provided under sections 308(b)(5)(B) and 308(c)(1) for public facilities and public services provided under sections 308(b)(5)(B) and (d) (1) and (2), or for environmental and recreational projects provided under sections 308(b)(5)(B) and (d)(4) shall be awarded or disbursed if other Federal funds are readily available for such purposes, unless the Assistant Administrator is assured that the Federal assistance to be received under section 308:

(1) Is to be used in addition to, and not in lieu of, any Federal funds which any coastal State or unit of local government may obtain under any other law; and

(2) Is not duplicative of other funding assistance.

(b)(1) The term "joint funding" means the coordination of multiple Federal assistance under the authority and provisions of the Joint Funding Simplification Act of 1974 (Pub. L. 93-510) in support of and consistent with the CEIP.

(2) When assistance from other Federal programs is insufficient to cover a project or when combinations of assistance from multiple Federal programs are appropriate and beneficial, States and units of local government may request joint funding by the CEIP and other Federal programs in accordance with OMB Cicular A-111, 41 FR 32040.

Subpart J—Intrastate Allocation of Financial Assistance

§ 931.110 General.

This subpart sets forth policies, requirements, and criteria required by sections 308 (e)(2) and (g)(2) and related to the intrastate allocation of financial assistance provided under section 308.

§ 931.111 Objective.

The objective of these requirements is to assure, to the maximum extent practicable, that section 308 assistance allotted to coastal States is distributed among units of local government in amounts which are proportional to need and in a manner which is equitable and expeditious.

§ 931.112 Intrastate allocation.

Each coastal State must establish a process to allocate its allotted section 308 (b), (c)(1), (d) assistance among State agencies and units of local government based on need for such assistance. This process may be periodically reviewed by the Assistant Administrator to determine whether its application results in a distribution of assistance which, to the maximum extent practicable, is proportional to need. States may amend or modify their intrastate allocation process subject to approval by the Assistant Administrator. The form of the allocation process will depend on the amount of assistance allotted to the State.

(a) States that receive in a fiscal year an allotment of $1 million or more in grants under sections 308 (b), (c)(1) and (d)(4) must develop an intrastate allocation process for that fiscal year's allotment. Such process must be approved by the Assistant Administrator and must:

(1) Indicate the State agency designated under § 931.25 which will assume the lead role for administering the process;

(2) Describe the methods and procedures used to assure direct and effec-

tive participation by affected State agencies and units of local Government throughout the development and implementation of the allocation process:

(3) Describe the methods to be used to allocate financial assistance and to evaluate and select projects based on criteria which include immediacy or severity of impacts, the fiscal capacity of units of local Government, and protection of the environment;

(4) Assure that information on the allocation of financial assistance is available to the public throughout the allocation process;

(5) Stipulate reasonable time limits for the allocation of financial assistance; and

(6) Establish a timely procedure by which units of local government may appeal to the State:

(i) the results of its allocation decisions; or

(ii) whether the State complied with the intrastate allocation process described in this section and approved by the Assistant Administrator.

(b) Those States which receive an allotment of less than $1 million in 308 grants in any fiscal year must provide under sections 308 (b), (c)(1), (d)(4) an allocation process which will be submitted along with applications and requisitions for section 308 assistance. This process will not be subject to prior approval of the Assistant Administrator. The submission by the State must describe:

(1) The methods used to evaluate and select projects and to allocate financial assistance.

(2) The methods used to provide for formal notification of, direct consultation with, and comments by, affected State agencies and units of local government in the allocation of all 308 funds.

(c) Eligible U.S. Territories are exempt from the requirements to provide an intrastate allocation process.

§ 931.113 Forms of assistance.

To the maximum extent practicable and in accord with the intrastate allocation process established pursuant to § 931.112:

(a) States that receive grants under section 308 for purposes specified in Subparts D and G of this part must pass this assistance through to State agencies and units of local government in the form of grants;

(b) States that receive grants under section 308 for purposes specified in Subparts E and F of this part must pass this assistance through to State agencies and units of general purpose local government in the form of grants;

(c) States that are allotted credit assistance under section 308 (d)(1) and (d)(2) must pass this assistance through to State agencies and units of general purpose local government using one of the following methods:

(1) State agencies may borrow to provide public facilities and public services needed to meet either State or local needs;

(2) State agencies may borrow to reloan or to grant this assistance to units of general purpose local government for public facilities and public services needed to meet local needs; or

(3) State agencies and units of general purpose local government may submit applications to the State to borrow from the Fund to provide needed public facilities and public services.

§ 931.114 Appeal to Assistant Administrator.

(a) A unit of local government may appeal to the Assistant Administrator to determine whether the State complied with the approved intrastate allocation process described in § 931.112 and approved by the Assistant Administrator. Such an appeal must be made within 30 days after the unit of local government has exhausted the appeal procedure described in § 931.112. Such an appeal will be limited to the application of the State's process and the Assistant Administrator may require additional information necessary to make an objective review and finding. The Assistant Administrator will notify the State and unit of local government of his/her findings within 45 days of the receipt of the appeal.

(b) If the Assistant Administrator finds that the State has not substantially complied with the approved process, section 308 assistance will be withheld until the State reallocates the assistance in accord with the approved process.

Subpart K—Allotment of Section 308(b) Formula Grants

§ 931.120 General.

The purpose of this subpart is to describe the procedure for allotting among eligible coastal States moneys appropriated in any fiscal year for the purposes of section 308(b).

§ 931.121 Definitions.

(a) The term "first landed" in a particular coastal State refers to oil and natural gas produced from the OCS that is first unloaded from tankers or barges within that State, or is brought to shore in pipelines that first touch nonsubmerged land and create a significant impact in that State.

(b) The term "adjacent" is defined in § 931.80.

§ 931.122 OCS Regions.

For purposes of this subpart, the coastal States will be assigned to OCS regions as follows:

(a) Region I: Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, the Commonwealth of Puerto Rico, and the Virgin Islands.

(b) Region II: Alabama, Florida, Louisiana, Mississippi, and Texas.

(c) Region III: California, Hawaii, Oregon, and Washington.

(d) Region IV: Alaska.

§ 931.123 Impacted State.

(a) For purposes of this subpart, the Assistant Administrator will determine that a State "is being or will be impacted by OCS energy activity" as follows:

(1) At the end of each fiscal year, all OCS energy activity which took place in that fiscal year will be identified.

(2) After identifying such OCS energy activity, the Assistant Administrator will identify those impacts which occurred in that fiscal year from such activity and will project those impacts that will occur as a result of such activity. Such impacts include:

(i) Any significant loss, damage, degradation of or impairment of access to any valuable recreational or environmental resource or any threat of such loss, damage, degradation, or impairment;

(ii) Any changes or threat of changes in the social, governmental or economic infrastructure in the coastal zone which would necessitate the provision of new or improved public facilities or public services;

(iii) Any demographic change or threat of change in the coastal zone which would necessitate the provision of new or improved public facilities or public services or which would degrade the quality of the human environment;

(iv) Any other adverse consequences in the coastal zone resulting from OCS energy activity that in the Assistant Administrator's determination may be remedied by granting funds under this subpart.

(b) The projection of impacts that "will" occur necessarily implies that the Assistant Administrator make anticipatory judgements that may not be supported by hard data. The Assistant Administrator will decide which States "will be impacted" within the context of the purposes for which the CEIP was established and will base the analysis of future impacts on the immediacy of impact, equity in distribution of appropriated funds, and the reasonable need for such funds.

§ 931.124 Allotment of formula grants

(a) *Eligibility.* No coastal State will receive an allotment under this subpart unless such State meets the basic eligibility requirements of Subpart C. The allotment a State receives will be the result of the calculations in paragraphs (b) through (f).

(b) *Formula Amount.* The amount payable in a fiscal year to any eligible coastal State under the formula specified in section 308(b)(2) shall be the formula amount and will be computed by the following equation:

$$\text{Formula Amount} = \left[\tfrac{1}{2}\,\frac{A}{A_T} \times TA\right] + \left[\tfrac{1}{4}\,\frac{P}{P_T} \times TA\right] + \left[\tfrac{1}{4}\,\frac{L}{L_T} \times TA\right]$$

A=The amount of OCS acreage which is adjacent to such eligible coastal State and is newly leased by the Federal government in the fiscal year immediately preceding the fiscal year in which the allotment is made.

A_T=The total amount of OCS acreage which is adjacent to all eligible coastal States and is newly leased by the Federal government in such immediately preceding fiscal year.

P=The volume of oil and natural gas produced from OCS acreage adjacent to such eligible coastal State in such immediately preceding fiscal year.

P_T=The total volume of oil and natural gas produced from OCS acreage adjacent to all eligible coastal States in such immediately preceding fiscal year.

L=The volume of oil and natural gas produced from OCS acreage which is first landed in such State in such immediately preceding fiscal year.

L_T=The total volume of oil and natural gas produced from the OCS which is first landed in all eligible coastal States in such immediately preceding fiscal year.

TA=The total amount of funds appropriated for section 308(b) purposes in the fiscal year for which the allotment is made.

(c) *Two Percent Amount.* The Assistant Administrator will allot in a fiscal year to any eligible coastal State an amount equal to 2% of the total amount appropriated in such fiscal year for section 308(b) purposes if:

(1) Such State's formula amount is less than 2 percent, but greater than zero percent, of the total amount appropriated in such fiscal year; or

(2) Such State's allotted formula amount is zero; and

(i) The Assistant Administrator determines that such State is being or will be impacted by OCS energy activity;

(ii) The Assistant Administrator determines that such State will be able to expend or commit the proceeds of such allotment in accordance with the purposes set forth in section 308(b)(5); and

(iii) Any other eligible coastal State in the same OCS region will be allotted a formula amount greater than zero.

(d) *Proportional Reduction.* If after calculating the formula amount and the 2 percent amount the total amount of funds that would be required to be allotted is greater than the total amount of funds appropriated in a fiscal year for section 308(b) purposes, the Assistant Administrator will deduct from each coastal State whose formula amount exceeds 2 percent of the amount appropriated an amount equal to the product of:

(i) The amount by which the total amount that would be required to be allotted to all eligible coastal States exceeds the total amount of funds appropriated in such fiscal year for section 308(b) purposes multiplied by;

(ii) A fraction, the numerator of which is the formula amount for such State reduced by an amount equal to 2 percent of the total amount appropriated and the denominator of which is the sum of those formula amounts that exceed 2 percent of the amount appropriated, reduced by an amount equal to the product of 2 percent of the total amount appropriated multiplied by the number of coastal States whose formula amount exceeds 2 percent of the amount appropriated

(e) *Maximum Amount.* If after the calculations performed in paragraphs (a) through (d) of this section any coastal State would receive an allotment which is greater than 37½ percent of the amount appropriated for such fiscal year, the Assistant Administrator shall reduce the amount of such States allotment to 37½ percent of such appropriated amount.

(f) *Redistribution.* Any amount not allotted by virtue of the application of paragraph (e) of this section shall be reallotted proportionally among those coastal States which at this point in the calculation receive an allotment greater than 2 percent but less than 37½ percent of the amount appropriated. For purposes of this paragraph "reallotted proportionally" means allotment in accordance with the provisions of paragraph (b) of this section except that only those States which receive an allotment greater than 2 percent and less than 37½ percent shall participate in the calculations described in that paragraph.

§ 931.125 Recall of formula grants

(a) Funds allotted under this subpart will remain available for application by the recipient coastal State until September 30, 1988. Funds not applied for by this date will be returned to the United States Treasury.

(b) Funds allotted under this subpart and which have been awarded to a State must be expended or obligated by the State by the end of the fiscal year immediately following the fiscal year in which such funds were awarded or be subject to recovery under § 931.97.

[FR Doc.79-1297 Filed 1-12-79; 8:45 am]

Federal Register

MONDAY, JANUARY 15, 1979
PART V



DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

ROTORCRAFT REGULATORY REVIEW PROGRAM

Invitation To Submit Proposals for Consideration

[4910-13—M]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Parts 27, 29, 43, 61, 91, 121, 127, 133, and 135]

[Docket No. 18689; Notice No. 79-1]

ROTOCRAFT REGULATORY REVIEW PROGRAM

Invitation to Submit Proposals for Consideration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Initiation of a Rotorcraft Regulatory Review Program and inviting interested persons to submit proposals.

SUMMARY: This notice announces the agency's Rotorcraft Regulatory Review Program and invites interested persons to submit proposals for consideration at a Rotorcraft Regulatory Review Conference. The Review Program's objective is to provide full public participation in improving and updating the rotorcraft airworthiness and operating requirements in parts 27, 29, 43, 61, 91, 121, 127, 133, and 135 of the Federal Aviation Regulations.

DATES: Proposals must be received on or before March 31, 1979.

ADDRESSES: Send proposals in duplicate to: The Rotorcraft Regulatory Review Program, Federal Aviation Administration, Flight Standards Service, Operations Review Branch, AFS-920 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Thomas G. Walenta, Safety Regulations Division. Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: 202-755-8715.

SUPPLEMENTARY INFORMATION:

Background

The Helicopter Association of America (HAA) has for several years contended that many parts of the Federal Aviation Regulations (FAR) are basically written around fixed wing airplanes which has resulted in improper and inadequate requirements for helicopter operators. The HAA, supported by the National Business Aircraft Association (NBAA), believes that the current rules need to be rewritten to more effectively reflect the unique capabilities of the helicopter, especially in light of the advancing state-of-the art for IFR certificated helicopters. In addition, numerous persons have petitioned for relief from certain parts of the FAR pertiment to helicopter operations.

The need for developing and updating criteria, standards, and procedures directed to the safe operation of helicopters has been under study and analysis by the FAA. In view of recent technological advances in helicopter design and recent operating experience with new helicopter capabilities, there is a requirement to upgrade the rules regarding the helicopter airworthiness standards and operating requirements.

The FAA wishes to obtain the participation of all interested persons in resolving the regulatory issues that may be involved. The FAA believes that the most effective procedure is the Rotorcraft Regulatory Review program announced in this notice and the dialogue that will take place during the associated Review Conference.

Accordingly, interested persons are invited to sumbit any proposal they deem appropriate to amend the regulations that fall within the scope of this Regulatory Review.

Scope of the Regulatory Review

The scope of the rotorcraft Regulatory Review Program is limited to the rotorcraft airworthiness and operating requirements in Parts 27, 29, 43, 61, 91, 121, 127, 133, and 135 of the Federal Aviation Regulations.

Improving Government Regulations

In order to implement the President's policy on improving Government regulations, agencies must consider alternative ways to deal with a problem and must analyze the economic consequences of each alternative. Thus, each proposal submitted should be supported by complete economic data expressing the costs and benefits of the rule change. Non-quantifiable impacts should also be fully stated as applicable.

Required Format and Information

Based on experience gained in previous review programs, the FAA has determined that the processing of regulatory proposals is greatly facilitated when they are submitted in a standard format and contain certain specific information.

Set forth below is a sample proposal with the format that should be used. Each proposal should include at least the following information:

1. The full name or title of the proponent or an acceptable acronym.
2. The FAR section affected.
3. A short title identifying the subject of the proposal in 10 words or less.
4. A precise description of the objective(s) of the proposal.
5. The specific regulatory language proposed to attain the objective sought.
6. The language of the current rule that the proposal would change.
7. An explanation and justification of the proposal, including answers to the following questions:

a. What is the background?

b. Why is the proposed change necessary?

c. What data, reports, records, etc., support the proposal?

d. What is the probable impact (if any) on the environment, inflation, energy consumption and the traveling public?

When more than one proposal is submitted to attain the objective sought, the information in paragraph 7 above may be stated in one of the proposals and cross-referenced in the others.

Conference Agenda

The FAA will prepare a Conference Agenda containing a compliation of the proposals submitted, including a number of FAA proposals. The Conference Agenda will be distributed to each person who has submitted a proposal or who has expressed an interest in this Regulatory Review. At that time, a Notice of Availability of the Rotorcraft Regulatory Review Conference Agenda will be issued and published in the Federal Register. The Conference Agenda will provide general information on the Conference, including Conference dates and location. The agenda will also contain detailed information on the scheduling of the proposals for discussion.

All proposals received in response to this notice will not necessarily appear in the Conference Agenda. To avoid overloading the Conference, the FAA may elect to narrow the scope of the Regulatory Review as set forth in this notice by excluding certain proposals. Proposals that are received too late, are beyond the scope of this Regulatory Review, do not follow the prescribed format, or lack the essential information previously outlined, may also be excluded, Further, the FAA will exclude proposals that are not adequately justified, would require further reserarch, or are not likely to generate fruitful discussion at the Conference.

Conference Procedures

Persons who plan to attend the Conference should be aware of the following procedures which are established to facilitate the workings of the Conference:

1. There will be no admission fee or other charge to attend and participate. However, all persons must register, either in advance or at the Conference. All Conference sessions will be

open, on a space available basis, to all persons who register. If necessary to complete the Conference Agenda, sessions may be extended to evenings or additional days. If practicable, the Conference may be accelerated to enable adjournment in less than the time scheduled.

2. One or more committees, each chaired by the FAA, will be established to discuss the proposals in the Conference Agenda.

3. All Conference sessions will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter directly. A copy of the court reporter's transcript will be docketed. In addition, the sessions may be tape recorded.

4. The FAA will not consider material presented at the Conference by participants on any issue that is not contained in the Conference Agenda. Position papers or other handout material may be accepted at the discretion of the Committee Chairperson. However, enough copies must be provided for distribution to all Conference participants.

5. Proposals appearing in the Conference Agenda will not necessarily be included in a notice of proposed rule making. The FAA will decide, after post-Conference analysis, which proposals will be revised, expanded, or accepted without change and which will be deferred or rejected. Statements made by FAA participants at the Conference should not be taken as expressing a final FAA position.

Status of the Federal Aviation Regulations Within the Scope of This Review

The latest amendments to each part of the Federal Aviation Regulations (FAR) included in the Review are as follows:

Amendments 27-16, 29-17, 43-19, 61-66, 91-154, 121-150, 127-35, 133-8, and Revised Part 135.

Pending Petitions and Other Rulemaking Activity

The following is a list of petitions and other rulemaking activity which may be included for consideration in the Review. Those which are at an advanced stage of processing may be completed independently of the Review.

(a) *Petitions for exemption.* 1. Sikorsky Aircraft seeks exemption from § 29.811(h) to allow type certification of Model S-76 without complying with the emergency exit external marking requirements (Docket No. 17403).

2. Boeing Vertol Company seeks relief from § 29.1093(b)(2) to allow type certification of Model 234 without meeting the induction system ice protection requirements for the idle power condition (Docket No. 18105).

3. Bell Helicopter Textron seeks relief from § 29.811(h) to allow type certification of Model 222 without complying with the emergency exit external marking requirements (Docket No. 18339).

4. Petroleum Helicopters, Incorporated, seeks relief from § 43.3(h) to allow properly trained pilots to remove, check, and reinstall magnetic chip detector plugs in Bell Model 206 helicopters (Docket No. 12468).

5. Aerospatiale Helicopter Corp. seeks relief from § 91.28(b)(3) to allow the issuance of a special flight authorization for the purpose of flight testing Aerospatiale-manufactured helicopters, for conducting customer crew training in the helicopter and for ferrying them for export to Canada and Mexico (Docket No. 16148).

Proposed and Final Rule Making

The proposals in the Conference Agenda and the related discussions at the Conference will be used by the FAA in developing an appropriate notice of proposed rule making which will be published in the Federal Register. This notice will provide interested persons an opportunity to comment on specific proposed amendments to the Federal Aviation Regulations. Final rules adopted pursuant to that notice will be issued after consideration of all comments received.

(Secs. 313, 601 through 605, and 608 through 610 of the Federal Aviation Act of 1958 (49 U.S.C. 1354, 1421 through 1425, and 1428 through 1430) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c).)

The Federal Aviation Administration has determined that this document is not significant in accordance with the criteria required by Executive Order 12044, and set forth in the proposed "Department of Transportation Regulatory Policies and Procedures" published in the Federal Register June 1, 1978 (43 FR 23925).

Issued in Washington, D.C. on January 5, 1979.

Quentin S. Taylor,
Acting Administrator.

Format for Proposals

The format below should be used in developing proposals for consideration during the Rotorcraft Review Conference. In addition, each proposal should be submitted on a separate page. The text should be within margins nor more than 6½ inches wide nor more than 9 inches long, so that it can be printed on 8- by 10½-inch paper.

[FR Doc. 79-1275 Filed 1-12-79; 8:45 am]

[4910-13-C] Sample Format

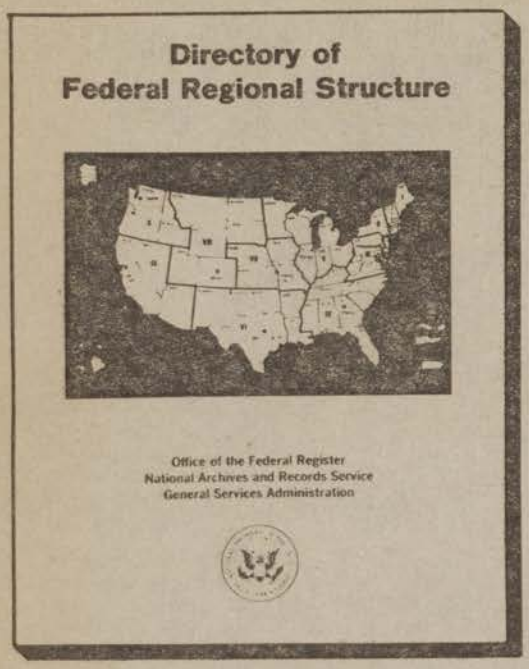
Proposal: (Leave Blank)
From: Mr. John Doe
Index: (Leave Blank)
FAR: 127.73
Subject: Proving tests.

Proposal	Current Rules
Revise § 127.73(b)(2) to read as follows:	§ 127.73 Proving tests.
§ 127.73 Proving tests.	* * * * *
* * * * *	(b) An air carrier may not operate a helicopter of a type that has been proven in commercial or extensive military service, if it has not previously used that type, or if that helicopter has been materially altered in design, unless-
(b) * * *	(1) * * *
(2) [Insert proposed language here]	(2) The Administrator specifically authorizes deviations when special circumstances make full compliance unnecessary in a particular case.
* * * * *	* * * * *

Explanation and Justification

[Outline the background, explain why the proposed change is necessary and set forth the rationale supporting the proposed change. Express the costs and benefits in quantifiable and qualitative terms. Include an estimate of the probable impact (if any) on the environment, inflation, energy consumption, and the traveling public.]

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