AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Vol. 44—No. 18
1-25-79
PAGES
5057-5369

federal register

THURSDAY, JANUARY 25, 1979



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Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
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DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
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.)**

federal register

Area Code 202 Phone 523-5240

Published daily, Monday through Friday (no publication on Saturdays, Sundays, or on official Federal holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C., Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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rules and regulations

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

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[3410-08-M]

Title 7—Agriculture

CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION, DEPARTMENT OF AGRICULTURE

[Amendment No. 100]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1969 and Succeeding Crop Years; Soybean Endorsement

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: This rule provides the regulations for insuring soybeans effective with the 1979 crop year. The regulations outlined below incorporate a previous amendment, provide for more than one level of coverage on soybeans, amend the harvested guarantee, and extend the end of the insurance period from December 10 to December 20 in certain states to conform with current farming practices regarding the harvest period.

EFFECTIVE DATE: January 25, 1979.

FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-3325.

SUPPLEMENTARY INFORMATION: On Tuesday, November 14, 1978, there was published in the FEDERAL REGISTER a notice of proposed rule making (43 FR 52722) that proposed a revision of the regulations for insuring soybeans effective with the 1979 crop year which would—

(1) incorporate a previous amendment, (2) amend the harvested guarantee, (3) provide for more than one level of coverage on soybeans, and (4) extend the end of the insurance period from December 10 to December 20 in certain states to conform with current farming practices regarding the harvest period.

Since the revised regulations must be placed on file in the Corporation's office for the county by not later than December 15, there would not be sufficient time to provide a full 60 days for public comment. A 20-day period was provided for such comments, but none were received.

In the proposed rule, the Corporation proposed to revise and reissue the Soybean Endorsement as found in 7 CFR 401.134 (33FR 8264, June 4, 1968), to include a previous amendment providing a formula for the downward adjustment of soybean production to be counted because of poor quality due to insured causes, which became effective for the 1975 crop year (39 FR 32127, September 5, 1974).

In addition, the proposed regulations contain a provision that the harvested guarantee will be shown on the actuarial table on file in the office for the county, and that this guarantee will be reduced for any unharvested acreage. The current soybean crop insurance endorsement provides that the production guarantee as shown on the actuarial table will be increased by 1.5 bushels for any acreage on which 1.5 or more bushels are harvested. The Corporation feels this provision will be more effective administratively.

Further, the proposed regulations will provide for more than one coverage level on soybeans within a county. This change will allow the grower more flexibility in tailoring the insurance offer to meet his needs. It is anticipated that for the 1979 crop, two coverage levels as well as three price elections will be offered to soybeans growers.

Finally, the current endorsement provides that the end of the insurance period shall be December 10 in some states. Present day farming practices in some of these states indicate that the harvest period comes later than December 10, and since soybean crop insurance terminates at the time of harvest, this date has been changed in the proposed endorsement as outlined below to December 20 in such states to allow for the later harvest period. In the absence of any public comment to the contrary, the endorsement provisions outlined below are hereby published as a final rule.

FINAL RULE

Accordingly, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Soybean Endorsement, as found in 7 CFR Part 401.134, is hereby amended effective with the 1979 and succeeding crop years to read as follows:

§ 401.134 The Soybean Endorsement.

1. *Insured crop.* The crop insured shall be soybeans planted for harvest as beans, as determined by the Corporation. Unless otherwise provided on the county actuarial table, insurance shall attach only on acreage initially planted in rows far enough apart to permit cultivation, as determined by the Corporation; but, if such insured acreage is destroyed and is replanted, whether in the same manner or by broadcasting, drilling or in rows too close to permit cultivation, it shall be regarded as insured acreage and not as acreage put to another use. Insurance shall not attach on acreage on which it is determined by the Corporation that soybeans are planted for the development of hybrid seed, or planted in the same row or interplanted in rows with corn. Item (1) of the second sentence of subsection 2(c) of the policy shall not be applicable hereunder in Arkansas, Louisiana, and Mississippi.

2. *Production guarantee.* The production guarantee shall be in bushels per acre as shown on the county actuarial table and the guarantee for any unharvested acreage shall be decreased by the lesser of 3 bushels or 20 percent. Where applicable, at the time the application for insurance is made, the applicant shall elect a guarantee level from the guarantee levels shown on the actuarial table. If the insured has not elected a guarantee level, or the guarantee level elected is not one shown on the actuarial table, the guarantee level which shall be applicable, and which the insured will be deemed to have elected, shall be the guarantee level provided on the actuarial table for such purpose. The insured may, with the consent of the Corporation, elect a new guarantee level for any crop year any time before the closing date for filing applications for that year.

3. *Insurance period.* Insurance on insured acreage shall attach at the time the soybeans are planted and shall cease in the same calendar year as follows: The earliest of (1) final adjustment of a loss, (2) threshing or removal from the field, whichever occurs first, or (3) October 31 in North Dakota; December 20 in Alabama, Arkansas, Florida, Georgia, Louisiana, North Carolina, South Carolina, and Virginia; and December 10 in all other states.

4. *Claims for loss.* (a) Any claim for loss on an insurance unit shall be submitted to the Corporation on a form prescribed by the Corporation not later than 60 days after the time of loss. The Corporation reserves the right to provide additional time if it determines that circumstances beyond the control of either party prevent compliance with this provision.

(b) It shall be a condition precedent to the payment of any loss that the insured (1) establish the production of the insured soybeans on the unit, and that such loss of production has been directly caused by one or more of the hazards insured against during the insurance period of the crop year for which the loss is claimed, and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation.

(c) Losses shall be determined separately for each unit. The amount of loss with respect to any unit shall be determined by (1) multiplying the insured acreage of soybeans on the unit by the applicable production guarantee per acre, which product shall be the production guarantee for the unit, (2) subtracting therefrom the total production to be counted for the unit, (3) multiplying the remainder by the applicable price for computing indemnities, and (4) multiplying the result obtained in step (3) by the insured share. *Provided*, That if the insured fails to report all of the insurable acreage or share for the unit, the amount of loss shall be determined with respect to all of the insurable acreage and share, and in such case, if the premium computed on the basis of the insurable acreage and share exceeds the premium computed on the acreage and share shown on the acreage report, or the acreage and share when determined by the Corporation under section 3 of the policy, the amount of loss shall be reduced proportionately.

(d) The total production to be counted for a unit shall be determined by the Corporation and, subject to the provisions hereinafter, shall include all harvested production and any appraisals made by the Corporation for unharvested or potential production, poor farming practices, uninsured causes of loss, or acreage abandoned or put to another use without the consent of the Corporation: *Provided*, That the total production to be counted shall be not less than the applicable guarantee for any acreage which is abandoned, put to another use without prior written consent of the Corporation, or damaged solely by an uninsured cause.

(e) Notwithstanding any other provision of this section for determining production to be counted, the production to be counted of any harvested soybeans which have in excess of 8 percent kernel damage, as defined in the "Official Grain Standards of the United States," due to insurable causes occurring within the insurance period shall be adjusted by (1) dividing the value per bushel of the damaged soybeans as determined by the Corporation, by the market price per bushel at the local market for soybeans grading No. 2 at the time the loss is adjusted, or if the damaged soybeans have been sold, by dividing the price per bushel received by the insured by the No. 2 price on the date of sale at the local market, and (2) multiplying the result thus obtained by the number of bushels of such damaged soybeans. If the soybeans do not have in excess of 8 percent kernel damage and it is determined that the production contains a moisture content of 15 percent or more, such production shall be reduced 1.2 percent for each full percent of moisture in excess of 14 percent.

5. *Meaning of terms.* For purposes of insurance on soybeans the term:

(a) "Harvest" means the mechanical severance from the land of matured soybeans for threshing.

6. *Cancellation and termination for indebtedness dates.* For each year of the contract, the cancellation date and termination date for indebtedness are the following applicable dates immediately preceding the beginning of the crop year for which the cancellation or the termination is to become effective:

State	Cancellation date	Termination date for indebtedness
Delaware, Illinois, Indiana, Iowa, Maryland, Michigan, Minnesota, Nebraska, Ohio, and Wisconsin.	December 31.	May 10
North Dakota	December 31.	April 15
All other states	December 31.	April 30

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516.)

NOTE.—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942 and OMB Circular No. 840.

Approved by the Board of Directors on December 20, 1978.

Dated: December 20, 1978.

PETER F. COLE,
Secretary, Federal Crop Insurance Corporation.

Dated: December 22, 1978.

Approved by:

JAMES D. DEAL,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 79-2618 Filed 1-24-79; 8:45 am]

[3410-02-M]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Navel Orange Reg. 450]

[Navel Orange Reg. 449; Amdt. 1]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period January 26-Feb. 1, 1979, and increases the quantity of such oranges that may be so shipped during the period January 19-25, 1979. Such action is needed to provide for orderly marketing of fresh navel oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: The regulation becomes effective January 26, 1979, and the amendment is effective for the period January 19-25, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, (202) 447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under this marketing order, and upon other information, it is found that the limitation of handling of navel oranges, as hereafter provided, will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on January 19, 22, and 23, 1979, to consider supply and market conditions and other factors affecting the need for regulation, and recommended quantities of navel oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for navel oranges continues to be reasonably good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment

relieves restrictions on the handling of navel oranges. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 907.750 Navel Orange Regulation 450.

Order. (a) The quantities of navel oranges grown in Arizona and California which may be handled during the period January 26, 1979, through February 1, 1979, are established as follows:

(1) District 1: 800,000 cartons;

(2) District 2: 121,505 cartons;

(3) District 3: unlimited movement.

(b) As used in this section, "handled", "District 1", "District 2", "District 3", and "carton" mean the same as defined in the marketing order.

2. Paragraph (a)(1) in § 907.749 Navel Orange Regulation 449 (44 FR 3669), is hereby amended to read:

* * * * *

§ 907.749 Navel Orange Regulation.

(a) * * *

(1) District 1: 950,000 cartons;

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: January 24, 1979.

CHARLES R. BRADER,
Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-2868 Filed 1-24-79; 11:39 am]

[3410-07-M]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER P—GUARANTEED LOANS

PART 1980—GENERAL

Subpart B—Farmer Program Loans

CORRECTION

AGENCY: Farmers Home Administration, USDA.

ACTION: Correction.

SUMMARY: On January 8, 1979, the Farmers Home Administration published in the FEDERAL REGISTER at page 1720 an amendment to § 1980.154 of subpart B of Part 1980, chapter XVIII, Title 7, Code of Federal Regulations. The numbers of the subparagraphs shown as being amended in § 1980.154 should be changed from 5, 6, and 7 to (e), (f), and (h) respectively.

EFFECTIVE DATE: January 8, 1979.

FOR FURTHER INFORMATION CONTACT:

Richard Gartman, (202) 447-2091.

(7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70; delegations of authority by Dir., OEO 29 FR 14764, 33 FR 9850.)

Dated: January 15, 1979.

GORDON CAVANAUGH,
Administrator, Farmers Home Administration.

[FR Doc. 79-2690 Filed 1-24-79; 8:45 am]

[4410-10-M]

Title 8—Aliens and Nationality

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

Immigrant Visa Petitions for Adopted Alien Children; Implementation of Pub. L. 95-417

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This Final Rule Order sets forth amendments to the Service regulations pertaining to the filing of visa petitions to classify adopted alien orphan children as immediate relatives. These new regulations require that a petition filed to classify an alien orphan child as an immediate relative for the purpose of issuance of an immigrant visa must be accompanied by a valid home study by an appropriate agency, favorably recommending the adoption of the child. The new rules also set forth the requirements of the home study for alien children coming to the U.S. for adoption and for alien children adopted abroad. These rules are necessary and intended to implement recently-enacted legislation which requires a valid home study favorably recommending the adoption of the child as a prerequisite to the issuance of an immigrant visa, or approval of an immediate relative visa petition for an alien orphan child.

DATES: Effective date: January 25, 1979. Comments should be submitted on or before March 26, 1979.

ADDRESSES: Please submit written representations, in duplicate, to the Commissioner of Immigration and Naturalization, Room 7100, 425 Eye Street, N.W., Washington, D.C. 20536.

FOR FURTHER INFORMATION CONTACT:

James G. Hoofnagle, Jr., Instructions Officer, Immigration and Naturalization Service, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: On October 5, 1978, the President signed H.R. 12508 into law as Pub. L. 95-417. Section 3 of that legislation amends Section 204 of the Immigration and Nationality Act by adding a new subsection (e) which provides:

"(e) Notwithstanding the provisions of subsections (a) and (b) no petition may be approved on behalf of a child defined in section 101(b)(1)(F) unless a valid home-study has been favorably recommended by an agency of the State of the child's proposed residence, or by an agency authorized by that State to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States."

Section 101(b)(1)(F) of the Immigration and Nationality Act defines the term "child" as an orphan coming into the United States to be adopted by a United States citizen or an orphan adopted by a United States citizen in a foreign country. These orphans are classified as immediate relatives under Section 201(b) and not counted against the numerical limitations of the Act. Section 101(b)(1)(F) further provides that the Attorney General must be satisfied that proper care will be provided to the child if admitted to the United States.

In order to implement section 3 of Pub. L. 95-417, the following amendments will be made to 8 CFR 204.2(d):

1. 8 CFR 204.2(d)(1) will be amended to add the requirement that a petition filed on behalf of an orphan under section 204.1(b) must be accompanied by a valid home study favorably recommending the adoption. Also, in the second sentence of 8 CFR 204.2(d)(1) "his" will be changed to read "his/her", and in the sixth sentence, "he" will be changed to read "he/she".

2. 8 CFR 204.2(d) will be amended by adding a new subparagraph (2) captioned *"Valid Home Study,"* subdivided into subparagraphs which set out specific requirements and criteria for a valid home study for (a) a child coming to the United States for adoption and (b) for a child adopted abroad, who will subsequently immigrate to the U.S. with his/her adoptive parents.

3. Existing 8 CFR 204.2(d)(2) and (3) will be redesignated as 8 CFR 204.2(d)(3) and (4), respectively, and republished without change.

In the light of the foregoing, the following amendments are hereby made

to Chapter I of Title 8 of the Code of Federal Regulations.

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

1. 8 CFR 204.2(d)(1) is amended by revising the first sentence to read as follows:

§ 204.2 Documents.

* * * * *

(d) *Evidence required to accompany petition for orphan*—(1) *General.* A petition filed on behalf of an orphan under § 204.1(b) must be accompanied by: (i) A valid home study favorably recommending adoption, made by an agency of the state of the child's proposed residence or by an agency authorized by that state to conduct such a study; in the case of a child adopted abroad, the home study shall be made by an appropriate agency which is licensed in the United States; (ii) fingerprints on Form FD-258 of the United States citizen petitioner and spouse if married; (iii) evidence of the age and of the United States citzenship of the petitioner as provided in paragraph (a) of this section; (iv) a marriage certificate of the married petitioner and spouse if applicable, and evidence of the termination of any previous marriages; (v) proof of age of the orphan in form of a birth certificate, or, if such certificate is not available, other evidence of the orphan's birth; (vi) if the child has been adopted abroad, a certified copy of the adoption decree together with a copy of certified translation; (vii) evidence that the sole or surviving parent is incapable of providing for the orphan's care and has in writing irrevocably released the orphan for emigration and adoption, if the orphan has only one parent.

* * * * *

2. In 8 CFR 204.2(d)(1), the second sentence is amended by changing "his" to read "his/her", and the sixth sentence is amended by changing "he" to read "he/she".

3. In 8 CFR 204.2(d) a new subparagraph (2), including subdivisions (i) and (ii) is added to read as follows:

* * * * *

(d)

(2) *Valid home study.*—(i) *Child coming to the United States for adoption.* A home study for a child to be adopted in the United States is considered to be valid if it meets the following criteria. For the purposes of these regulations, the term "agency" includes both individuals and organizations. The home study must contain, but is not limited to, a factual evaluation of the financial, physical, mental and moral capabilities of the prospective parents to rear and educate the child, a detailed description of the living accommodations where the adoptive parents presently reside and a detailed description of the living accommodations in the United States where the child will reside, if known. The home study must contain or have attached to it a statement recommending the proposed adoption. The recommendation must be signed by an official of the responsible State agency in the State of the child's proposed residence, or by an official of an agency authorized by the responsible State agency; however, research, including interviewing, and the preparation of the home study may be done by an individual or group, in the United States or abroad, satisfactory to the State agency or authorized agency. When a home study contains a favorable recommendation by an agency claiming to be authorized by the responsible agency of the State of the child's proposed residence, it cannot be accepted as valid unless the District Director is satisfied that the recommending agency was authorized by the responsible State agency to conduct such a study. The authorized agency need not be located in the State of the child's proposed residence or anywhere in the United States.

(ii) *Child adopted abroad.* A home study for a child adopted abroad is considered to be valid if it meets the following criteria. For the purposes of these regulations, the term "agency" includes both individuals and organizations. The home study must contain, but is not limited to, a factual evaluation of the financial, physical, mental and moral capabilities of the prospective parents to rear and educate the child, a detailed description of the living accommodations where the adoptive parents presently reside and a detailed description of the living accommodations in the United States where the child will reside, if known. The home study must contain or have attached to it a statement recommending or approving of the adoption. The recommendation must be signed by an official of an appropriate public or private adoption agency which is licensed in any state in the United States; however, research, including interviewing, and the preparation of the home study may be done by an individual or group in the United States or abroad, satisfactory to the recommending adoption agency. The responsible state agency in any state of the United States shall be considered to be an appropriate public adoption agency which is licensed in the United States. The home study of any public or private adoption agency other than a state agency referred to above may be considered as valid only if the District Director is satisfied that the agency is licensed to perform home studies by at least one state in the United States. The District Director may require such proof of licensure as is deemed necessary. The licensed agency need not be located in the United States.

* * * * *

4. Existing 8 CFR 204.2(d)(2) and 8 CFR 204.2(d)(3), are redesignated as 8 CFR 204.2(d)(3), and 8 CFR 204.2 (d)(4), respectively.

* * * * *

(Sec. 103; 8 U.S.C. 1103 and Sec. 3 of Pub. L. 95-417 (92 Stat. 917))

These regulations are being published in accordance with section 552 of Title 5 of the United States Code, as amended by Pub. L. 93-502 (88 Stat. 1561), and the authority contained in section 103 of the Immigration and Nationality Act (8 U.S.C. 1103), 28 CFR 0.105(b) and 8 CFR 2.1.

Compliance with the provisions of section 553 of Title 5 of the United States Code as to notice of proposed rule making and delayed effective date is unnecessary and would be impracticable in this instance because expeditious publication of these rules is imperatively required to implement the provisions of section 3 of Pub. L. 95-417 which became effective on October 5, 1978.

However, in the spirit of 5 U.S.C. 553 and E.O. 12044, opportunity will be given interested parties to submit written comments, data, views, and arguments concerning the provisions of these final rules.

The Service will carefully consider all comments received and amend the rules, if warranted. Please submit all comments on or before March 26, 1979, to the Commissioner of Immigration and Naturalization at the address given at the beginning of this document.

Dated: January 19, 1979.

LEONEL J. CASTILLO,
Commissioner of Immigration and Naturalization.

[FR Doc. 79-2588 Filed 1-24-79; 8:45 am]

[4910-13-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 78-GL-12; Amdt. No. 39-3400]

PART 39—AIRWORTHINESS DIRECTIVES

Grumman G-21A Aircraft With Hartzell Propellers Installed in Accordance With Supplemental Type Certificate No. SA1-52

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the installation of a placard on Grumman G-21A "Goose" aircraft that incorporate Hartzell propellers and a governor crossfeed system installed in accordance with Supplemental Type Certificate No. SA1-52. The AD is prompted by a report of inability to restart an engine and simultaneous failure of the remaining engine. This condition could result in an unsafe forced landing on unsuitable terrain or water.

DATES: Effective January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Cornelius Biemond, Engineering and Manufacturing Branch, Flight Standards Division, AGL-217, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-4500, extension 460.

SUPPLEMENTARY INFORMATION: Certain Grumman G-21A aircraft that have been modified to incorporate Hartzell propellers in accordance with Supplemental Type Certificate No. SA1-52 utilize a propeller governor crossfeed system for emergency propeller unfeathering. The FAA has determined that incorrect use of this system can result in the inability to restart an engine and the simultaneous failure of the remaining engine. This condition could, in turn, result in an unsafe forced landing on unsuitable terrain or water. Since this condition exists on other airplanes of this same type design, an airworthiness directive is being issued which requires the installation of a placard outlining the correct use of this system on these aircraft. Concurrent with the issuance of this airworthiness directive, the FAA is preparing an advance notice of proposed rule making to determine whether further corrective action is necessary. Depending on the information received as a result of this advance notice of proposed rule making, the action required herein may be interim in nature.

ADOPTION OF THE AMENDMENT

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

GRUMMAN. Applies to all G-21A aircraft that have been modified to incorporate Hartzell propellers and governor crossfeed systems in accordance with Supplemental Type Certificate No. SA1-52, and are certificated in all categories.

Compliance required within 50 hours' time in service or 15 days, whichever occurs first, after the effective date of this AD, unless previously accomplished.

To preclude the inability to restart an engine and the simultaneous loss of the remaining engine, install the following placard adjacent to the emergency unfeather valve in full view of the pilot and operate the aircraft thereafter in accordance with these terms:

"ENGINE RESTART: ATTEMPT RESTART USING STARTER. IF UNSUCCESSFUL,

1. ADVANCE PROP CONTROL LEVER TO FULL INCREASE RPM POSITION.
2. OPEN EMERGENCY UNFEATHER VALVE".

The placard lettering must be at least ⅛ inch in height and of a contrasting color.

Equivalent modifications may be approved by the Chief, Engineering and Manufacturing Branch, FAA Great Lakes Region.

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

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

Issued in Des Plaines, Illinois on January 9, 1979.

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

[FR Doc. 79-2363 Filed 1-24-79; 8:45 am]

[4910-13-M]

[Docket No. 78-EA-91; Amdt. 39-3402]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Piper PA-38-112 type airplanes and requires an inspection of the bearing in the rudder bracket and eventual addition of bearing retention plates. The purpose of the requirement is to preclude vertical movement of the bottom rudder hinge bearing which would cause interference between the rudder fairing tip and the vertical fin.

DATE: January 31, 1979. Compliance is required as set forth in the AD.

ADDRESSES: Piper Service Bulletins may be acquired from the manufacturer at Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 11745.

FOR FURTHER INFORMATION CONTACT:

C. Kallis, Airframe Section, AEA-212, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-2875.

SUPPLEMENTARY INFORMATION: There had been reports of the bottom rudder hinge bearing becoming loose, which allowed the rudder to drop down causing interference between the rudder fairing and fin surface which results in a control problem. Since this deficiency affects air safety, notice and public procedure hereon are impractical and good cause exists for making the rule effective in less than 30 days.

ADOPTION OF THE AMENDMENT

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

PIPER: Applies to Piper Model PA-38-112 Serial Nos. 38-78A0001 thru 38-78A0348 certificated in all categories.

To prevent vertical movement of the bottom rudder hinge bearing and possible interference between the bottom surface of the rudder fairing tip and the vertical fin top surface, accomplish the following:

(a) Within the next 25 hours in service after the effective date of this AD:

(1) Deflect the rudder so that the bottom hinge is accessible.

(2) Inspect the bottom hinge bracket for a loose bearing, which will be evident by any portion of the bearing outer-race protruding below the lower surface of the bracket.

(3) If a loose bearing is indicated, install Piper Kit 763 881 or equivalent, before further flight.

(b) Within the next 50 hours of service, after the effective date of this AD, unless already accomplished, install Piper Kit 763 881 or equivalent.

(c) The affected airplane may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(d) Equivalent inspections, repairs and alterations must be approved by the Chief,

Engineering and Manufacturing Branch, FAA, Eastern Region.

(e) Upon submission of substantiating data through an FAA Maintenance Inspector the compliance times specified in this AD may be adjusted by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

Piper Service Bulletin No. 613, dated August 11, 1978, pertains to this subject.

Effective Date: This amendment is effective January 31, 1979.

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

Issued in Jamaica, New York, on January 16, 1979.

BRIAN J. VINCENT,
Acting Director, Eastern Region.

[FR Doc. 79-2564 Filed 1-24-79; 8:45 am]

[4910-13-M]

[Docket No. 18695; Amdt. No. 95-283]

SUBCHAPTER F—AIR TRAFFIC AND GENERAL OPERATING RULES

PART 95—IFR ALTITUDES

Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: February 22, 1979.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: This admendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provides for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, or contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 G.m.t.

(Secs. 307 and 1110, Federal Aviation Act of 1958 (49 U.S.C. §§ 1348 and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)); and 14 CFR 11.49(b)(3).)

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

Issued in Washington, D.C., on January 19, 1979.

JAMES M. VINES,
Chief, Aircraft Programs Division.

[4910-13-C]

§ 95.299 RED FEDERAL AIRWAY 99
is amended to read in part:

FROM	TO	MEA
Iliamna, Alas. NDB	Kachemak, Alas. NDB	6000

§95.1001 DIRECT ROUTES—U.S.
Panama Routes

Amber 12 is amended to read in part:

Watson INT, R.P.	San Andres, Columbia NDB	1500

V-18 is amended to read in part:

La Palma, R.P. VOR *10000—MRA	*Joque INT, R.P.	8000

V-29 is amended to read in part:

France, C.Z. VOR *10000—MRA	*Mandinga INT, R.P.	8000

§95.6003 VOR FEDERAL AIRWAY 3
is amended to read in part:

FROM	TO	MEA
Brunswick, Ga. VOR *3000—MRA	*Faded INT, Ga.	2000
Faded INT, Ga. *3800—MRA	*Harps INT, Ga.	2000

§ 95.6004 VOR FEDERAL AIRWAY 4
is amended to read in part:

FROM	TO	MEA
Lansi INT, Kans.	Kansas City, Mo. VOR	2800
De Soto INT, Kans. Via S alter.	Pains INT, Mo. Via S alter.	2800
Pains INT, Mo. Via S alter. *2300—MOCA	Kansas City, Mo. VOR Via S alter.	*2800
St. Louis, Mo. VOR	Troy, Ill. VOR	2400

§ 95.6006 VOR FEDERAL AIRWAY 6
is amended to read in part:

FROM	TO	MEA
Okaha, Neb. VOR *3500—MRA	*Lyman INT, Iowa	3000
Lyman INT, Iowa	Des Moines, Iowa VOR	3000
Des Moines, Iowa VOR	Iowa City, Iowa VOR	2700
Iowa City, Iowa VOR	Davenport, Iowa VOR	2600
Omaha, Neb. VOR Via S alter.	Elliott INT, Iowa Via S alter.	2800
Witts INT, Iowa Via S alter.	Des Moines, Iowa VOR Via S alter.	2700
Des Moines, Iowa VOR Via S alter.	Bussey INT, Iowa Via S alter.	2700

§95.6008 VOR FEDERAL AIRWAY 8
is amended to read in part:

FROM	TO	MEA
Seal Beach, Calif. VOR Via N alter. *2400—MOCA	Aheim INT, Calif. Via N alter.	*3000
Aheim INT, Calif. Via N alter. *10300—MCA Pomona VOR, NE-bound	*Pomona, Calif. VOR Via N alter.	4000
Omaha, Neb. VOR *3500—MRA	*Lyman INT, Iowa	3000
Lyman INT, Iowa	Des Moines, Iowa VOR	3000
Des Moines, Iowa VOR	Iowa City, Iowa VOR	2700
Iowa City, Iowa VOR	Moline, Ill. VOR	2700

§95.6009 VOR FEDERAL AIRWAY 9
is amended to read in part:

FROM	TO	MEA
Malden, Mo. VOR *2400—MOCA	Farmington, Mo. VOR	*3000
Arnold INT, Mo.	Imperial INT, Mo.	2800

§95.6010 VOR FEDERAL AIRWAY 10
is amended to read in part:

FROM	TO	MEA
Kirksville, Mo. VOR	Loamy INT, Mo.	2700
Napoleon, Mo. VOR Via W alter.	Lasso INT, Mo. Via N alter.	2800
Lasso INT, Mo. Via N alter. *2400—MOCA	Kirksville, Mo. VOR Via N alter.	*3000

§95.6012 VOR FEDERAL AIRWAY 12
is amended to read in part:

FROM	TO	MEA
Acoma INT, N.M. Via S alter.	Albuquerque, N.M. VOR Via S alter.	9000
Napoleon, Mo. VOR *MRA—4000	*Odessa INT, Mo.	2700
Boonville INT, Mo.	Columbia, Mo. VOR	2500
Boonville INT, Mo. Via S. Alter.	Jamestown INT, Mo. Via S alter.	4000
Jamestown INT, Mo. Via S alter.	Jefferson City, Mo. VOR Via S alter.	2600
Jefferson City, Mo. VOR Via S alter.	Guthrie INT, Mo. Via S alter.	3000
Guthrie INT, Mo. Via S alter.	Readsville INT, Mo. Via S alter.	4000
Henan INT, Mo. *2200—MOCA	Foristell, Mo. VOR	*2700
Foristell, Mo. VOR	Troy, Ill. VOR	2500

§95.6013 VOR FEDERAL AIRWAY 13
is amended to read in part:

FROM	TO	MEA
Razorback, Ark. VOR	Neosho, Mo. VOR	3000
Neosho, Mo. VOR	Nashe INT, Iowa	2900
Nashe INT, Mo. *3000—MRA **2100—MOCA	*Dizzi INT, Mo.	**2700
Dizzi INT, Mo. *2000—MOCA	Butler, Mo. VOR	*2600
Butler, Mo. VOR	Napoleon, Mo. VOR	2700
Napoleon, Mo. VOR	Plattsburg INT, Iowa	3000
Plattsburg INT, Iowa	Lamoni, Iowa VOR	2900
Lamoni, Iowa VOR *4300—MRA	*Wivey INT, Iowa	3000
Wivey INT, Iowa	Des Moines, Iowa VOR	3000
Lamoni, Iowa VOR Via W alter.	Des Moines, Iowa VOR Via W alter.	3000
Fort Dodge, Iowa VOR Via W alter.	Mason City, Iowa VOR Via W alter.	3000

§95.6014 VOR FEDERAL AIRWAY 14
is amended to read in part:

FROM	TO	MEA
Onsom INT, N.M. *9000–MRA	*Capro INT, N.M.	7500
Capro INT, N.M. *8000–MRA **6500–MOCA	*Winns INT, N.M.	**7500
*Nocks INT, Okla. Via S alter. *5000–MRA	Oklahoma City, Okla. VOR Via S alter.	3000
Adair INT, Okla.	Neosho, Mo. VOR	3000
Tulsa, Okla. VOR Via N alter. *2200–MOCA	Vinta INT, Okla. Via N alter.	*2600
Vinta INT, Okla. Via N alter.	Neosho, Mo. VOR Via N alter.	3000
*Pryor INT, Okla. Via S alter. *2900–MRA	Neosho, Mo. VOR Via S alter.	3000
Billings INT, Mo. Via S alter.	Springfield, Mo. VOR Via S alter.	3000
Springfield, Mo. VOR *2400–MOCA	Lanez INT, Mo.	*3000
Lanez INT, Mo.	Stout INT, Mo.	3000
Rebbs INT, Mo.	Vichy, Mo. VOR	3000
Vichy, Mo. VOR	Foristell, Mo. VOR	2900
Foristell, Mo. VOR	St. Louis, Mo. VOR	2600
St. Louis, Mo. VOR	Prairie INT, Ill.	2500

§95.6015 VOR FEDERAL AIRWAY 15
is amended to read in part:

FROM	TO	MEA
*Pryor INT, Okla. *2900–MRA	Neosho, Mo. VOR	3000
St. Joseph, Mo. VOR *2300–MOCA	Coin INT, Iowa	*2900
Coin INT, Iowa *2500–MOCA	Neola, Iowa VOR	*3000
Neola, Iowa VOR *4000–MRA	*Blencoe INT, Iowa	3000
Blencoe INT, Iowa	Sioux City, Iowa VOR	3000

§95.6016 VOR FEDERAL AIRWAY 16
is amended to delete:

FROM	TO	MEA
Yuma INT, Va. Via N alter.	Blackford, Va. VOR Via N alter.	6000
Blackford, Va. VOR Via N alter.	Dorff INT, Va. Via N alter.	6600

§95.6016 VOR FEDERAL AIRWAY 16
is amended by adding:

FROM	TO	MEA
Yuma INT, Va. Via N alter.	Glade Spring, Va. VOR Via N alter.	6000
Glade Spring, Va. VOR Via N alter.	Dorff INT, Va. Via N alter.	6600

§95.6019 VOR FEDERAL AIRWAY 19
is amended to read in part:

FROM	TO	MEA
Albuquerque, N.M. VOR Via W alter.	Santa Fe, N.M. VOR Via W alter.	9000

§95.6021 VOR FEDERAL AIRWAY 21
is amended to read in part:

FROM	TO	MEA
Seal Beach, Calif. VOR *2400–MOCA	Aheim INT, Calif.	*3000
Aheim INT, Calif. *4100–MCA Olive INT, NE-bound	*Olive INT, Calif.	5000

§95.6027 VOR FEDERAL AIRWAY 27
is amended to read in part:

FROM	TO	MEA
Shark INT, Calif. *3000–MOCA	Hodly INT, Calif.	*6000

§95.6035 VOR FEDERAL AIRWAY 35
is amended to delete:

FROM	TO	MEA
Holston Mountain, Tenn. VOR	Blackford, Va. VOR	6000
Blackford, Va. VOR	Stacy INT, Va.	6000
Blackford, Va. VOR Via E alter.	Bluefield, W. Va. VOR Via E alter.	6600
Morgantown, W. Va. VOR Via W alter.	Uniontown INT, Pa. Via W alter.	5000
Uniontown INT, Pa. Via W alter.	Quary INT, Pa. Via W alter.	4000
Quary INT, Pa. Via W alter.	Johnstown, Pa. VOR Via W alter.	5000

§95.6035 VOR FEDERAL AIRWAY 35
is amended by adding:

FROM	TO	MEA
Holston Mountain, Tenn. VOR	Glade Spring, Va. VOR	6000
Glade Spring, Va. VOR	Stacy INT, Va.	6000
Glade Spring, Va. VOR Via E alter.	Bluefield, W. Va. VOR Via E alter.	6600

§95.6037 VOR FEDERAL AIRWAY 37
is amended to delete:

FROM	TO	MEA
Elkins, W. Va. VOR	Tygar INT, W. Va.	5000
Tygar INT, W. Va.	Morgantown, W. Va. VOR	4000
Morgantown, W. Va. VOR	Ellwood City, Pa. VOR	4000

§95.6037 VOR FEDERAL AIRWAY 37
is amended by adding:

FROM	TO	MEA
Elkins, W. Va. VOR	Clarksburg, W. Va. VOR	5000
Clarkesburg, W. Va. VOR	Ellwood City, Pa. VOR	4000

§95.6037 VOR FEDERAL AIRWAY 37
is amended to read in part:

FROM	TO	MEA
Brunswick, Ga. VOR *3000–MRA	*Faded INT, Ga.	2000
Faded INT, Ga. *3800–MRA	*Harps INT, Ga.	2000

§95.6038 VOR FEDERAL AIRWAY 38
is amended to read in part:

FROM	TO	MEA
Bugel INT, W. Va.	Cerol INT, Va.	8000

§95.6048 VOR FEDERAL AIRWAY 48
is amended to read in part:

FROM	TO	MEA
Ottumwa, Iowa VOR	Burlington, Iowa VOR	2500

§95.6050 VOR FEDERAL AIRWAY 50
is amended to read in part:

FROM	TO	MEA
Pawnee City, Neb. VOR	St. Joseph, Mo. VOR	3000
New Market INT, Mo. Via S alter.	St. Joseph, Mo. VOR Via S alter.	2900
Kirksville, Mo. VOR	Quincy, Ill. VOR	2700

§95.6052 VOR FEDERAL AIRWAY 52
is amended to read in part:

FROM	TO	MEA
St. Louis, Mo. VOR	Troy, Ill. VOR	2400
Des Moines, Iowa VOR	Ottumwa, Iowa VOR	2700

§95.6062 VOR FEDERAL AIRWAY 62
is amended to read in part:

FROM	TO	MEA
Gallup, N.M. VOR	Cabzo INT, N.M.	11000

§95.6063 VOR FEDERAL AIRWAY 63
is amended to read in part:

FROM	TO	MEA
Billings INT, Mo.	Springfield, Mo. VOR	3000
Springfield, Mo. VOR	*Roach INT, Mo.	**3000
*3200–MRA		
**2500–MOCA		

§95.6065 VOR FEDERAL AIRWAY 65
is amended to read in part:

FROM	TO	MEA
New Market INT, Mo.	St. Joseph, Mo. VOR	3000
St. Joseph, Mo. VOR	Lamoni, Iowa VOR	2900

§95.6067 VOR FEDERAL AIRWAY 67
is amended to read in part:

FROM	TO	MEA
Burlington, Iowa VOR	Iowa City, Iowa VOR	*2600
*2000–MOCA		
Iowa City, VOR	Cedar Rapids, Iowa VOR	*2600
*2100–MOCA		
Cedar Rapids, Iowa VOR	*Vinty INT, Iowa	2700
*3200–MRA		
Vinty INT, Iowa	*Lyers INT, Iowa	2700
*3200–MRA		
Lyers INT, Iowa	Waterloo, Iowa VOR	2700
Waterloo, Iowa VOR	Rochester, Minn. VOR	3000

§95.6069 VOR FEDERAL AIRWAY 69
is amended to read in part:

FROM	TO	MEA
Walnut Ridge, Ark. VOR	Farmington, Mo. VOR	3000

§95.6071 VOR FEDERAL AIRWAY 71
is amended to read in part:

FROM	TO	MEA
Reeds INT, Mo.	Spoke INT, Mo.	*3000
*2500–MOCA		
Billings INT, Mo.	Springfield, Mo. VOR	
Via W alter.	Via W alter.	3000

§95.6072 VOR FEDERAL AIRWAY 72
is amended to read in part:

FROM	TO	MEA
Razorback, Ark. VOR	Reeds INT, Mo.	3200
Reeds INT, Mo.	Dogwood, Mo. VOR	*3400
*2800–MOCA		

§95.6077 VOR FEDERAL AIRWAY 77
is amended to read in part:

FROM	TO	MEA
Nocks INT, Okla.	Oklahoma City, Okla. VOR	3000
*5000–MRA		
Oklahoma City, Okla. VOR	Pioneer Okla. VOR	
Via E alter.	Via E alter.	3000
Topeka, Kans. VOR	St. Joseph, Mo. VOR	*2900
*2300–MOCA		
St. Joseph, Mo. VOR	Lamoni, Iowa VOR	2900
Lamoni, Iowa VOR	*Wivey INT, Iowa	3000
*4300–MRA		
Wivey INT, Iowa	Des Moines, Iowa VOR	3000
Newton, Iowa VOR	Waterloo, Iowa VOR	2800

§95.6083 VOR FEDERAL AIRWAY 83
is amended to read in part:

FROM	TO	MEA
Corona, N.M. VOR	Otto, N.M. VOR	9000

§95.6086 VOR FEDERAL AIRWAY 86
is amended by adding:

FROM	TO	MEA
Sheridan, Wyo. VOR	Gillette, Wyo. VOR	
Via S alter.	Via S Alter.	7000
Gillette, Wyo. VOR	Newcastle, Wyo. VOR	
Via S alter.	Via S alter.	7500
Newcastle, Wyo. VOR	Rapid City, S.D. VOR	
Via S alter.	Via S alter.	9300

§95.6087 VOR FEDERAL AIRWAY 87
is amended to delete:

FROM	TO	MEA
San Francisco, Calif. VOR	Napa, Calif. VOR	3500
Napa, Calif. VOR	Maxwell, Calif. VOR	5000

§95.6087 VOR FEDERAL AIRWAY 87
is amended by adding:

FROM	TO	MEA
San Francisco, Calif. VOR	Scaggs Island, Calif. VOR	3500
Scaggs Island, Calif. VOR	Maxwell, Calif. VOR	5000

§95.6088 VOR FEDERAL AIRWAY 88
is amended to read in part:

FROM	TO	MEA
Tulsa, Okla. VOR	Vinta INT, Okla.	*2600
*2200–MOCA		
Vinta INT, Okla.	Wacco INT, Mo.	*6500
*3000–MOCA		
Wacco INT, Mo.	Springfield, Mo. VOR	3000
Springfield, Mo. VOR	Lanez INT, Mo.	*3000
*2400–MOCA		
Lanez INT, Mo.	Stout INT, Mo.	3000
Rebbs INT, Mo.	Vichy, Mo. VOR	3000

§95.6100 VOR FEDERAL AIRWAY 100
is amended to read in part:

FROM	TO	MEA
Sioux City, Iowa	Fort Dodge, Iowa VOR	3000
Fort Dodge, Iowa	Waterloo, Iowa VOR	3000
Waterloo, Iowa VOR	Dubuque, Iowa VOR	2900

§95.6108 VOR FEDERAL AIRWAY 108
is amended to delete:

FROM	TO	MEA
Santa Rosa, Calif. VOR	Napa, Calif. VOR	4500
Napa, Calif. VOR	Crockett INT, Calif.	3000

§95.6108 VOR FEDERAL AIRWAY 108
is amended by adding:

FROM	TO	MEA
Santa Rosa, Calif, VOR	Scaggs Island, Calif. VOR	4500
Scaggs Island, Calif. VOR	Crockett INT, Calif.	3000

§95.6120 VOR FEDERAL AIRWAY 120
is amended to read in part:

FROM	TO	MEA
Bancroft INT, Iowa	Mason City, Iowa VOR	3000
Mason City, Iowa VOR	*Areda INT, Iowa	3000
*3500–MRA		
Areda INT, Iowa	*Shellrock INT, Iowa	3000
*3500–MRA		
Shellrock INT, Iowa	Waterloo, Iowa VOR	3000
Mason City, Iowa VOR	Waterloo, Iowa VOR	
Via N alter.	Via N alter.	3000

§95.6122 VOR FEDERAL AIRWAY 122
is amended to read in part:

FROM	TO	MEA
Crescent City, Calif. VOR	Refix INT, Calif.	
	SW-bound	4000
	NE-bound	8000
Refix INT, Calif.	Obrin INT, Calif.	
	SW-bound	6000
	NE-bound	8000

§95.6129 VOR FEDERAL AIRWAY 129
is amended to read in part:

FROM	TO	MEA
Davenport, Iowa VOR	Dubuque, Iowa VOR	*2900
*2300–MOCA		
Dubuque, Iowa VOR	Waukon, Iowa VOR	
Via W alter.	Via W alter.	*3000
*2400–MOCA		

§95.6132 VOR FEDERAL AIRWAY 132
is amended to read in part:

FROM	TO	MEA
Chanute, Kans. VOR	Walle INT, Kans.	*2800
*2400–MOCA		
Walle INT, Kans.	Nashe INT, Mo.	2700
Springfield, Mo. VOR	Lanez INT, Mo.	*3000
*2400–MOCA		
Lanez INT, Mo.	Int 051 M rad Springfield VOR & 260 M rad Forney VOR	3000

§95.6138 VOR FEDERAL AIRWAY 138
is amended to read in part:

FROM	TO	MEA
Fort Dodge, Iowa VOR	Mason City, Iowa VOR	3000
Mason City, Iowa VOR	Waukon, Iowa VOR	3000

§95.6140 VOR FEDERAL AIRWAY 140
is amended to read in part:

FROM	TO	MEA
Sayre, Okla. VOR	Waxey INT, Okla.	4000
Odins INT, Okla.	Kingfisher, Okla. VOR	3500

§95.6148 VOR FEDERAL AIRWAY 148
is amended by adding:

FROM	TO	MEA
Minneapolis, Minn. VOR	Hayward, Wis. VOR	*5000
*2700–MOCA		
Hayward, Wis. VOR	Ironwood, Wis. VOR	*5000
*2100–MOCA		

§95.6158 VOR FEDERAL AIRWAY 158
is amended to read in part:

FROM	TO	MEA
Mason City, Iowa VOR	Pound INT, Iowa	3000

§95.6159 VOR FEDERAL AIRWAY 159
is amended to read in part:

FROM	TO	MEA
Walnut Ridge, Ark. VOR	Dogwood, Mo. VOR	*3400
*2800–MOCA		
Dogwood, Mo. VOR	Ford DME Fix, Mo.	4000
Springfield, Mo. VOR	*Bolivar INT, Mo.	**3000
*6000–MRA		
**2400–MOCA		
Bolivar INT, Mo.	Augie INT, Mo.	*3000
*2400–MOCA		
Augie INT, Mo.	Holden INT, Mo.	2700
Napoleon, Mo. VOR	St. Joseph, Mo. VOR	3000
St. Joseph, Mo. VOR	Traig INT, Mo.	*2900
*2400–MOCA		
Omaha, Neb. VOR	*Blencoe INT, Iowa	3000
*4000–MRA		
Blencoe INT, Iowa	Sioux City, Iowa VOR	3000

§95.6160 VOR FEDERAL AIRWAY 160
is amended to read in part:

FROM	TO	MEA
Denver, Colo. VOR	Flots INT, Colo.	*7500
*7000–MOCA		
Flots INT, Colo.	Keanor INT, Colo.	8500
Keanor INT, Colo.	Wiggi INT, Colo.	9500
Wiggi INT, Colo.	Crikk INT, Colo.	12000
Crikk INT, Colo.	Sidney, Neb. VOR	7000

§95.6161 VOR FEDERAL AIRWAY 161
is amended to read in part:

FROM	TO	MEA
Oswego, Kans. VOR	Walle INT, Kans.	*3000
*2200–MOCA		
Walle INT, Kans.	Butler, Mo. VOR	2800
Butler, Mo. VOR	Napoleon, Mo. VOR	2700
Napoleon, Mo. VOR	Lasso INT, Mo.	2800
Lasso INT, Mo.	Lamoni, Iowa VOR	2900
Lamoni, Iowa	*Wivey INT, Iowa	3000
*4300–MRA		
Wivey INT, Iowa	Des Moines, Iowa VOR	3000

§95.6172 VOR FEDERAL AIRWAY 172
is amended to read in part:

FROM	TO	MEA
Linden INT, Iowa	Newton, Iowa VOR	3300
Cedar Rapids, Iowa VOR	Polo, Ill. VOR	2700

§95.6175 VOR FEDERAL AIRWAY 175
is amended to read in part:

FROM	TO	MEA
Vichy, Mo. VOR	Jefferson City, Mo. VOR	
Via W alter.	Via W alter.	*2900
*2300–MOCA		
Hillsville, Mo. VOR	Macon, Mo. VOR	2600
Macon, Mo. VOR	Kirksville, Mo. VOR	2700
Kirksville, Mo. VOR	Des Moines, Iowa VOR	2800
Des Moines, Iowa VOR	Linden INT, Iowa	2800
Linden Int, Iowa	*Manning INT, Iowa	**4000
*3900–MRA		
**2800–MOCA		
Manning INT, Iowa	Sioux City, Iowa VOR	*4000
*2800–MOCA		

§95.6177 VOR FEDERAL AIRWAY 177
is amended to delete:

FROM	TO	MEA
Wausau, Wis. VOR	Westboro INT, Wis.	3700
Westboro INT, Wis.	Union INT, Wis.	*6000
*2800–MOCA		
Union INT, Wis.	Duluth, Minn. VOR	*3500
*3000–MOCA		
Wausau, Wis. VOR	Hayward, Wis. VOR	
Via W alter.	Via W alter.	*4500
*3600–MOCA		
Hayward, Wis. VOR	Duluth, Wis. VOR	
Via W alter.	Via W alter.	3000

§95.6177 VOR FEDERAL AIRWAY 177
is amended by adding:

FROM	TO	MEA
Wausau, Wis. VOR	Hayward, Wis. VOR	*4500
*3600–MOCA		
Hayward, Wis. VOR	Duluth, Wis. VOR	3000

§95.6178 VOR FEDERAL AIRWAY 178
is amended to read in part:

FROM	TO	MEA
Vichy, Mo. VOR	Farmington, Mo. VOR	3300
Cape Girardeau, Mo. VOR	Cunningham, Ky. VOR	*2400
*1800–MOCA		

§95.6181 VOR FEDERAL AIRWAY 181
is amended to read in part:

FROM	TO	MEA
Kirksville, Mo. VOR	Lamoni, Iowa VOR	2900
Lamoni, Iowa VOR	Omaha, Neb. VOR	3000

§95.6190 VOR FEDERAL AIRWAY 190
is amended to read in part:

FROM	TO	MEA
Acoma INT, N.M.	*Albuquerque, N.M. VOR	9000
*11500–MCA Albuquerque VOR, NE-bound		

§95.6216 VOR FEDERAL AIRWAY 216
is amended to read in part:

FROM	TO	MEA
Lamoni, Iowa VOR	Ottumwa, Iowa VOR	2900
Ottumwa, Iowa VOR	Iowa City, Iowa VOR	*2600
*2000–MOCA		

§95.6219 VOR FEDERAL AIRWAY 219
is amended to read in part:

FROM	TO	MEA
Sioux City, Iowa VOR	*Gruver INT, Iowa	**4000
*5000–MRA		
**2900–MOCA		

§95.6225 VOR FEDERAL AIRWAY 225
is amended to read in part:

FROM	TO	MEA
Diddy INT, Fla.	Vero Beach, Fla. VOR	2000

§95.6234 VOR FEDERAL AIRWAY 234
is amended to read in part:

FROM	TO	MEA
Int 223 M rad Liberal VOR & 343 M rad Borger VOR	Liberal, Kans. VOR	*5700
*4600–MOCA		
Butler, Mo. VOR	Augie INT, Mo.	2700

§95.6235 VOR FEDERAL AIRWAY 235
is amended by adding:

FROM	TO	MEA
Casper, Wyo. VOR	Newcastle, Wyo. VOR	8300

§95.6238 VOR FEDERAL AIRWAY 238
is amended to read in part:

FROM	TO	MEA
Delmar INT, Mo.	Imperial INT, Mo.	3000

§95.6313 VOR FEDERAL AIRWAY 313
is amended to read in part:

FROM	TO	MEA
Malden, Mo. VOR	Cape Girardeau, Mo. VOR	*2300
*1700–MOCA		

§95.6254 VOR FEDERAL AIRWAY 254
is added to read:

FROM	TO	MEA
Douglas, Wyo. VOR	Gillette, Wyo. VOR	*10000
*7500–MOCA		
Gillette, Wyo. VOR	Miles City, Mont. VOR	*9000
*6900–MOCA		

§95.6263 VOR FEDERAL AIRWAY 263
is amended to delete:

FROM	TO	MEA
Hugo, Colo. VOR	Gill, Colo. VOR	8000

§95.6263 VOR FEDERAL AIRWAY 263
is amended by adding:

FROM	TO	MEA
Hugo, Colo. VOR	Byers INT, Colo.	8000
Byers INT, Colo.	Denver, Colo. VOR	8500

§95.6267 VOR FEDERAL AIRWAY 267
is amended to read in part:

FROM	TO	MEA
Sheds INT, Fla. Via E alter.	Bairn INT, Fla. Via E alter.	*6000
*1500–MOCA		

§95.6272 VOR FEDERAL AIRWAY 272
is amended to read in part:

FROM	TO	MEA
Sayre, Okla. VOR Via N alter.	Waxey INT, Okla. Via N alter.	4000

§95.6280 VOR FEDERAL AIRWAY 280
is amended to read in part:

FROM	TO	MEA
Onsom INT, N.M. Via S alter	*Capro INT, N.M. Via S alter.	7500
*9000–MRA		
*9500–MCA Capro INT NE-bound		
U.S. Mexican Border	El Paso, Tex. VOR	*8000
*6300–MOCA		

§95.6286 VOR FEDERAL AIRWAY 286
is amended to read in part:

FROM	TO	MEA
Derin INT, W. Va.	Okfel INT, Va.	6600
Okfel INT, Va.	Casanova, Va. VOR	6000

§95.6291 VOR FEDERAL AIRWAY 291
is amended to read in part:

FROM	TO	MEA
*Cuba INT, N.M. Via N alter.	Gallup, N.M. VOR Via N alter.	11000
*9000–MRA		
*10000–MCA Cuba INT, W-bound		

§95.6294 VOR FEDERAL AIRWAY 294
is amended to read in part:

FROM	TO	MEA
Des Moines, Iowa VOR	Nasal INT, Iowa	2700
Nasal INT, Iowa	Cedar Rapids, Iowa VOR	*2700
*2100–MOCA		
Cedar Rapids, Iowa VOR	Davenport, Iowa VOR	2600

§95.6298 VOR FEDERAL AIRWAY 298
is amended by adding:

FROM	TO	MEA
Casper, Wyo. VOR	Gillette, Wyo. VOR	8500

§95.6304 VOR FEDERAL AIRWAY 304
is amended to read in part:

FROM	TO	MEA
Int 223 M rad Liberal VOR & 343 M rad Borger VOR	Liberal, Kans. VOR	
Via W alter.	Via W alter.	*5700
*4600–MOCA		

§95.6324 VOR FEDERAL AIRWAY 324
is added to read:

FROM	TO	MEA
Crazy Woman, Wyo. VOR	Gillette, Wyo. VOR	7500

§95.6335 VOR FEDERAL AIRWAY 335
is amended to read in part:

FROM	TO	MEA
Imperial INT, Mo.	Arnold INT, Mo.	2800
Crystal City INT, Mo.	Engen INT, Ill.	*3500
*2300–MOCA		

§95.6341 VOR FEDERAL AIRWAY 341
is amended to read in part:

FROM	TO	MEA
Cedar Rapids, Iowa VOR	Dubuque, Iowa VOR	2700

§95.6345 VOR FEDERAL AIRWAY 345
is amended by adding:

FROM	TO	MEA
Eau Claire, Wis. VOR	Hayward, Wis. VOR	*4500
*2700–MOCA		
Hayward, Wis. VOR	Ashland, Wis. VOR	*3500
*2900–MOCA		

§95.6362 VOR FEDERAL AIRWAY 362
is amended to read in part:

FROM	TO	MEA
Hoche INT, Ga.	Chattanooga, Tenn. VOR	3000
Chattanooga, Tenn. VOR	Shelbyville, Tenn. VOR	4000
Shelbyville, Tenn. VOR	Nashville, Tenn. VOR	*3000
*2400–MOCA		
Bridy INT, Tenn.	Bowling Green, Ky. VOR	*3000
*2000–MOCA		

§95.6429 VOR FEDERAL AIRWAY 429
is amended to read in part:

FROM	TO	MEA
Cape Girardeau, Mo. VOR	Marion, Ill. VOR	3000

§95.6434 VOR FEDERAL AIRWAY 434
is amended to read in part:

FROM	TO	MEA
Ottumwa, Iowa VOR	Moline, Ill. VOR	2500

§95.6437 VOR FEDERAL AIRWAY 437
is amended to read in part:

FROM	TO	MEA
*Cathy INT, Ga.	Keler INT, Ga.	**3000
*5000–MRA		
**1500–MOCA		
*Keler INT, Ga.	Savannah, Ga. VOR	**3000
*5500–MRA		
**1500–MOCA		

§95.6456 VOR FEDERAL AIRWAY 456
is amended to read in part:

FROM	TO	MEA
Fort Dodge, Iowa VOR	Mankato, Minn. VOR	3000

§95.6469 VOR FEDERAL AIRWAY 469
is amended by adding:

FROM	TO	MEA
Elkins, W.Va. VOR	Tygar INT, W.Va.	5000
Tygar INT, W.Va.	Morgantown, W.Va. VOR	4000
Morgantown, W.Va. VOR	Otown INT, Pa.	5000
Otown INT, Pa.	Quary INT, Pa.	4000
Quary INT, Pa.	Johnstown, Pa. VOR	5000

§95.7072 JET ROUTE NO. 72 is amended to delete:

Peach Springs, Calif. VORTAC	Winslow, Ariz. VORTAC	18000	45000
Winslow, Ariz. VORTAC	Zuni, N.M. VORTAC	18000	45000
Zuni, N.M. VORTAC	Albuquerque, N.M. VORTAC	18000	45000

§95.7072 JET ROUTE NO. 72 is amended by adding:

FROM	TO	MEA	MAA
Peach Spring, Ariz. VORTAC	Gallup, N.M. VORTAC	18000	45000
Gallup, N.M. VORTAC	Albuquerque, N.M. VORTAC	18000	45000

§95.7020 JET ROUTE NO. 20 is amended to delete:

FROM	TO	MEA	MAA
Orlando, Fla. VORTAC	Int. 118 M rad Orlando VORTAC & 341 M rad Vero Beach VORTAC	18000	45000

§95.7020 JET ROUTE NO. 20 is amended by adding:

FROM	TO	MEA	MAA
Orlando, Fla. VORTAC	Fort Lauderdale, Fla. VORTAC	18000	45000

§95.7081 JET ROUTE NO. 81 is amended to delete:

FROM	TO	MEA	MAA
Miami, Fla. VORTAC	Orlando, Fla. VORTAC	18000	45000
Orlando, Fla. VORTAC	Barracuda INT, Fla.	18000	45000

§95.7089 JET ROUTE NO. 89 is amended by adding:

Duluth, Minn. VORTAC	U.S. Canadian Border	18000	45000

2. By amending Sub-part D as follows:

95.8003 VOR FEDERAL AIRWAY CHANGEOVER POINTS

AIRWAY SEGMENT FROM	TO	CHANGEOVER POINTS DISTANCE FROM	
V-177 is amended to delete:			
Wausaw, Wis. VOR Via W alter.	Hayward, Wis. VOR Via W alter.	46	Hayward
V-177 is amended by adding:			
Wausaw, Wis. VOR	Hayward, Wis. VOR	46	Hayward
V-148 is amended by adding:			
Minneapolis, Minn. VOR	Hayward, Wis. VOR	65	Minneapolis
V-345 is amended by adding:			
Eau Claire, Wis. VOR	Hayward, Wis. VOR	35	Eau Claire

[FR Doc. 79-2567 Filed 1-24-79; 8:45 am]

[4910-13-M]

[Docket No. 18693; Amdt. No. 1129]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

For Examination—

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

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

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

For Purchase—

Individual SIAP copies may be obtained from:

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

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

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, may be ordered from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is $135.00.

FOR FURTHER INFORMATION CONTACT:

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

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

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

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

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

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

* * * *effective April 19, 1979.*

Houston, TX—Houston Intercontinental, VOR/DME Rwy 32, Amdt. 6

* * * *effective March 22, 1979.*

Lincoln, IL—Logan County, VOR Rwy 3, Amdt. 3
Weatherford, TX—Parker County, VOR/DME Rwy 35, Original

* * * *effective March 8, 1979.*

San Jose, CA—San Jose Muni, VOR Rwy 12L/R, Amdt. 15
Marshalltown, IA—Marshalltown Muni, VOR Rwy 12, Amdt. 2
Marshalltown, IA—Marshalltown Muni, VOR Rwy 30, Amdt. 3
Willmar, MN—Willmar Municipal, VOR Rwy 10, Amdt. 7
Willmar, MN—Willmar Municipal, VOR Rwy 28, Amdt. 2
Winona, MN—Winona Municipal-Max Conrad Field, VOR Rwy 29, Amdt. 8
Winona, MN—Winona Municipal-Max Conrad Field, VOR-A, Amdt. 7
Wells, NV—Harriet Field, VOR Rwy 8, Amdt. 1
Deming, NM—Deming Muni, VOR Rwy 26, Amdt. 7
Santa Fe, NM—Santa Fe County Muni, VOR Rwy 33, Amdt. 6
Oklahoma City, OK—Wiley Post, VOR Rwy 35R, Amdt. 5, cancelled
San Juan, PR—Puerto Rico International, VOR Rwy 7 & 10, Amdt. 7
Columbia-Mt. Pleasant, TN—Maury County, VOR/DME-A, Amdt. 2
Wise, VA—Lonesome Pine, VOR Rwy 24, Amdt. 3

* * * *effective February 22, 1979.*

Kansas City, KS—Fairfax Muni, VOR-D, Amdt. 5
Flint, MI—Bishop, VOR Rwy 9, Amdt. 18
Flint, MI—Bishop, VOR Rwy 18, Amdt. 11
Flint, MI—Bishop, VOR Rwy 27, Amdt. 14
Flint, MI—Bishop, VOR Rwy 36, Amdt. 7
Kansas City, MO—Kansas City Downtown, VOR Rwy 3, Amdt. 11
Kansas City, MO—Kansas City Downtown, VOR Rwy 21, Amdt. 10
Centerville, TN—Centerville Muni, VOR Rwy 2, Amdt. 4

* * * *effective January 16, 1979.*

Laurel, MS—Hesler-Noble Field, VOR Rwy 13, Amdt. 10

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

* * * *effective April 19, 1979.*

Houston, TX—Houston Intercontinental, LOC/DME BC Rwy 32, Amdt. 4

* * * *effectuve March 22, 1979.*

Harlingen, TX—Harlingen Industrial Airpark, LOC BC Rwy 35L, Amdt. 4

* * * *effective March 8, 1979.*

Tallahassee, FL—Tallahassee Muni, LOC BC Rwy 18, Amdt. 11
New Orleans, LA—New Orleans International (Moisant Field), LOC BC Rwy 28, Amdt. 10
Grand Rapids, MI—Kent County, LOC BC Rwy 8R, Original
St. Louis, MO—Spirit of St. Louis, LOC BC Rwy 25, Amdt. 2, cancelled

* * * *effective February 22, 1979.*

Flint, MI—Bishop, LOC BC Rwy 27, Amdt. 11

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

* * * *effective April 19, 1979.*

Blanding, UT—Blanding Muni, NDB Rwy 35, Amdt. 3

* * * *effective March 22, 1979.*

Lincoln, IL—Logan County, NDB Rwy 21, Amdt. 2
Harlingen, TX—Harlingen Industrial Airpark, NDB Rwy 17L, Amdt. 1
Harlingen, TX—Harlingen Industrial Airpark, NDB Rwy 17R, Amdt. 7
Suffolk, VA—Suffolk Muni, NDB Rwy 7, Original

* * * *effective March 8, 1979.*

Marshalltown, IA—Marshalltown Muni, NDB Rwy 12, Original
Marshalltown, IA—Marshalltown Muni, NDB Rwy 12, Amdt. 4, cancelled
Bedford, MA—Laurence G. Hanscom Field, NDB Rwy 11, Amdt. 14
Taos, NM—Taos Muni, NDB-A, Amdt. 1
New York, NY—LaGuardia, NDB Rwy 22, Amdt. 10
Mt. Airy, NC—Mt. Airy-Surry County, NDB-A, Original

* * * *effective February 22, 1979.*

Flint, MI—Bishop, NDB Rwy 9, Amdt. 18

* * * *effective January 16, 1979.*

Laurel, MS—Hesler-Noble Field, NDB Rwy 13, Amdt. 3

4. By amending § 97.29 ILS-MLS SIAPs identified as follows:

* * * *effective March 22, 1979.*

Harlingen, TX—Harlingen Industrial Airpark, ILS Rwy 17R, Amdt. 5

* * * *effective March 8, 1979.*

Bedford, MA—Laurence G. Hanscom Field, ILS Rwy 11, Amdt. 17
Boston, MA—General Edward Lawrence Logan Int'l., ILS Rwy 33L, Amdt. 15
Winona, MN—Winona Municipal-Max Conrad Field, MLS Rwy 29 (Interim), Amdt. 1
Grand Rapids, MI— Kent County, ILS Rwy 8R, Original, cancelled
New York, NY—LaGuardia, ILS Rwy 22, Amdt. 13
Philadelphia, PA—Philadelphia Int'l., ILS Rwy 27L, Amdt. 2

* * * *effective February 22, 1979.*

Flint, MI—Bishop, ILS Rwy 9, Amdt. 12

5. By amending § 97.31 RADAR SIAPs identified as follows:

* * * *effective March 8, 1979.*

Greensboro, NC—Greensboro-High-Point-Winston-Salem Regional, RADAR-1, Amdt. 5

* * * *effective February 22, 1979.*

Flint, MI—Bishop, RADAR-1, Amdt .2

6. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *effective April 19, 1979.*

Houston, TX—Houston Intercontinental, RNAV Rwy 32, Amdt. 5

* * * *effective March 8, 1979.*

Greensboro, NC—Greensboro-High Point-Winston-Salem Regional, RNAV Rwy 23, Amdt. 3

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. §§ 1348, 1354(a) 1421, and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)); and 14 CFR 11.49(b)(3).)

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

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

Issued in Washington, D.C. on January 19, 1979.

[FR Doc. 79-2565 Filed 1-24-79; 8:45 am]

[6320-01-M]

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-1091; Amendment No. 1]

PART 252—PROVISION OF DESIGNATED "NO SMOKING" AREAS ABOARD AIRCRAFT OPERATED BY CERTIFICATED AIR CARRIERS

Final Rule

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., January 11, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The Board is requiring certificated air carriers to provide for the special segregation of cigar and pipe smokers. It is also requiring carriers to be able to expand no-smoking areas to accommodate all persons who wish to sit there, and to prohibit all smoking when ventilation systems are not fully functioning.

DATES: Effective: February 23, 1979. Adopted: January 11, 1979.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Associate General Counsel, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5444.

SUPPLEMENTARY INFORMATION: By EDR-306, 41 FR 44424, October 8, 1976, the Board issued a Notice of Proposed Rulemaking that would amend Part 252 of the Economic Regulations (14 CFR Part 252) to prohibit the smoking of cigars and pipes aboard aircraft operated by certificated air carriers, and to improve the segregation of cigarette smokers and nonsmokers on these aircraft. In addition, the Board expressed interest in receiving comments on a number of other possible alternatives for protecting non-smokers from exposure to tobacco smoke.

Formal comments [1] have been filed by air carriers, organizations representing the tobacco industry, antismoking groups, interested individuals and organizations, and by the Department of Health, Education, and Welfare's Office of Consumer Affairs (HEW).[2] In addition, over 31,000 letters and cards have been received from individual consumers. The comments contain a wide range of contentions and suggestions, which have been of help to the Board in reaching its decision.

On consideration of the comments and other related material in the record and of the Board's open meetings on August 11, 1977, November 23, 1977, September 7, 1978, and January 4, 1979 we have decided to adopt some parts of the rule proposed by EDR-306, but to withdraw the detailed proposals relating to carrier administration. We are adopting the following provisions: Special segregation of cigar and pipe smokers, and such other procedures as may be necessary to avoid exposing persons seated in no-smoking areas to smoke from cigars and pipes; a no-smoking area for each class of service and for charter service; a no-smoking area must consist of at least two rows of seats; a sufficient number of seats in the no-smoking areas of the aircraft to be made available to accommodate all persons who wish to be seated in such areas, and specific provision for expansion of no-smoking areas to meet passenger demand; special provisions to ensure that if a no-smoking section is placed between smoking sections, that the non-smoking passengers are not unreasonably

[1] Formal comments are multi-copy comments submitted in conformity with Part 302 of the Board's Rule of Practice.

[2] A list of those filing comments is attached hereto as an appendix.

burdened; and that carriers must take measures to prevent smoking in no-smoking areas and to enforce their rules with respect to segregation of passengers.

Our decision here reflects two basic principles that governed enactment of the present smoking rule: (1) That U.S. air carriers have a duty to eliminate, to the extent practicable, their passengers' involuntary breathing of other people's smoke, and (2) that Board involvement in the administrative and enforcement aspects of smoking rules should be kept to the minimum. At the time we adopted Part 252, we found that the carrier obligations to provide "adequate service" and to establish and observe "reasonable practices" [3] required them to provide segregated seating of smokers and non-smokers (ER-800, effective July 10, 1973, 38 FR 12207, May 10, 1973). On the basis of the present record, we now find that there should be improved segregation of cigar and pipe smokers from non-smokers and other provisions that ensure that there will be no smoking when ventilation systems are not fully functioning. We also are making it clear that seats in the no-smoking section must be available to all who wish to be seated there.

In reaching these conclusions, we have considered the contentions of carriers, tobacco interests, and some individuals, that any expansion or strengthening of Part 252 is unnecessary. Carriers urged, in support of this argument, that decreases in the number of complaints to them show that the present system is working well. The Tobacco Institute argued that responses to the 1971 Federal Administration (FAA)-HEW flight survey which we cited in ER-800 show that a majority of aircraft passengers either smoke or do not object to smoking and that the present rule protects all but the most sensitive or vocal non-smokers. Some comments opposed any additional regulation as an interference with management at a time when the climate of opinion favors less regulation.

Assertions of a reduction in complaints to carriers are, for the most part, vague and unsupported. The Board has consistently received a substantial number of informal complaints concerning smoking on U.S. scheduled carriers.[4] Furthermore, the record in this rulemaking alone contains thousands of complaints from persons who find the present system unsatisfactory, and the Bureau of Enforcement has prosecuted 48 smoking violations on the basis of third party complaints since Part 252 was adopted. The FAA-HEW survey referred to by the Tobacco Institute showed that in 1971, 39% of surveyed MAC (Military Airlift Command) passengers and 54% of surveyed domestic passengers asked for corrective action with respect to smoking.[5] The Tobacco Institute offered no current statistics in support of its statement of majority preferences and such general statistics as are available do not tend to substantiate it.[6] Neither the 132,000 signatures on the Tobacco Institute's petition [7] nor the more than 25,400 individual communications favoring either a ban on all smoking or a ban on cigars and pipes [8] conclusively demonstrate the preference of the majority of airline passengers.

Some of the comments raise questions as to the application of smoking rules in foreign air transportation and their effect on the competitive position of U.S. air carriers. The Air Transport Association (ATA) argues that because EDR-306 cited section 404(a) of the Act as authority, the proposed rules would not apply in foreign air transportation. This contention is without merit. While paragraph 1 of section 404(a) relates to interstate and overseas air transportation, paragraph 2 of section 404(a) specifically relates to foreign air transportation. Part 252 applies, and the proposed amendments would apply, to all direct air carriers certificated under section 401 of the Act, and to interstate, overseas and foreign air transportation performed by those carriers.

Pan American contends that restrictions on cigar and pipe smoking would injure its competitive position in that passengers desiring to use these forms of tobacco would turn to foreign air carriers. We do not consider, however, that the available experience supports this contention. Carriers that already ban cigars and pipes do not appear to have been adversely affected. Pacific Southwest noted public acceptance of its ban. Trans International, having had a ban in effect since before the enactment of Part 252, has had ample opportunity to change its rule, if that appeared economically desirable. Northwest has banned cigars and pipes for more than 4 years, with evidently no unfavorable effects on its competitive position.[9] For similar reasons, we do not expect a decrease in the use of air transportation on domestic short haul flights, as suggested in an individual comment. According to Pan American's June 1977 Bulletin on file with the Board, in fact, Pan American itself has already "normally" limited smoking to cigarettes, permitting cigar and pipe smoking only if other passengers are not annoyed.[10]

The Connecticut Health Commissioner suggested that Part 252 be extended to apply to all airlines not now covered, including foreign air carriers. Since American citizens traveling in foreign air transportation are, however, generally free to use U.S. air carriers, we find no present need for such an extension of Board smoking rules.

Cigars and Pipes

On review of all the comments and other material before us, we find that there is a substantial distinction between cigar and pipe smoke on the one hand and cigarette smoke on the other. Submitted and cited literature indicated that in test situations, smoking of cigars produces more pollutants

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[3] Section 404(a)(1) of the Federal Aviation Act of 1958 provides, "It shall be the duty of every air carrier to provide and furnish interstate and overseas air transportation, * * * to provide safe and adequate service, * * * in connection with such transportation; to establish, observe, and enforce * * * just and reasonable * * * practices relating to such air transportation * * *.

(2) It shall be the duty of every air carrier * * * to establish, observe, and enforce * * * just and reasonable * * * practices relating to foreign air transportation * * *."

[4] These figures for the years 1973-77 were, respectively; 229, 291, 125, 225 and 369. In the first nine months of 1978, the Board received 477 informal complaints.

[5] 38 FR 12208, May 10, 1973.

[6] 1975, *Adult Use of Tobacco*, HEW, June 1976, is the most extensive recent study of smoking habits and attitudes. It shows that in 1975, 39% of adult males and 29% of adult females were smokers. There was a slight decrease in the proportion of adult (over 21) cigarette smokers between 1970 and 1975, and a marked rise in the percentage of persons who expressed a desire for additional smoking restrictions. In 1975, 70% of 12,010 persons interviewed (including more than half of the smokers) agreed that the smoking of cigarettes should be allowed in fewer places than it then was. The comparable figure for 1970 was 57%.

[7] This petition, prepared by the Tobacco Institute and presented to travelers in 41 airports by temporary workers it employed, stated: "The undersigned believe that each smoking and non-smoking airline passenger deserves equal comfort, service, freedom from engine noise and access to exits, and that this can best be achieved by separately seating smokers and non-smokers across the aisles from each other."

The Institute cites signatures to its petition as showing that signers regard the present rule as discriminating against smokers and oppose any further regulation. The question of discrimination in the present rule was considered at the time of its enactment (ER-800, p. 16, 38 FR 12209) and requires no further discussion here.

[8] Tabulation of single copy comments as of April 13, 1977, indicated that some 1,450 individuals supported a ban on cigars and/or pipes, about 23,950 supported a ban on all smoking, and about 6,800 supported the *status quo, i.e.*, segregation of smokers, with or without improvements.

[9] While opposing a Board ban, Northwest did so only on the grounds that it would constitute government interference with carrier management.

[10] While this agency's concern is with the field of air transportation, we have also considered arguments addressed to the effect of Board action on the tobacco industry and its role in the economy. Any possible effect of our action here appears to be minimal.

that the smoking of cigarettes.[11] While fewer tests appear to have been run on pipe smoking, several authorities place pipes and cigars in the same category with respect to relative production of pollution.[12] A few comments, both formal and informal, would have us distinguish between cigars and pipes, on the grounds that pipes are less offensive to non-smokers. Allegheny's rule makes a distinction, banning cigars and permitting pipes "only if the cabin is pressurized, well-ventilated and the smoke does not offend anyone." However, cigar and pipe smoke have important similarities and we find that they should be treated together for our purposes here.

Pollution due to smoking is derived from both mainstream and sidestream smoke.[13] Cigar and pipe smokers, since they generally inhale less than cigarette smokers, produce a composite of sidestream smoke and relatively unfiltered mainstream smoke.[14] In addition, cigars and pipes are usually kept burning for longer periods of time than cigarettes, which produces a relatively large quantity of sidestream smoke—frequently stated to contain more noxious elements than mainstream smoke.[15] Comments in this rulemaking, as well as cited published articles, note the relative alkalinity of cigar and pipe smoke—a factor suggested as a reason for lack of inhalation by the smoker himself. They also frequently describe this type of smoke as thicker, more voluminous, more difficult to dissipate, and more offensive in its odor.

The record shows that a substantial number of persons on aircraft experience more distress from cigar and pipe smoke than from cigarette smoke. A majority of flight attendants responding to an ASH survey stated that they were more affected by cigars and pipes than by cigarettes.[16] Many letters to the Board refer to particular difficulties, such as nausea, experienced as a result of exposure to cigar and pipe smoke. A number of organizations and individuals filing comments on EDR-306 favored a ban of this type of tobacco.[17] The Secretary of Health, Education and Welfare, in a letter to the Board dated January 11, 1978, noted the "particularly obnoxious" effect of cigar and pipe smoke, and fully supported the proposed amendments of Part 252. (EDR-306, 41 FR 44424, October 8, 1976)

Existing carrier bans and restrictions in themselves indicate that carriers have found cigar and pipe smoke particularly annoying to passengers.[18] Trans International Airlines, one carrier having such a ban, pointed out that it was adopted because of passenger complaints prior to enactment of Part 252. Furthermore, in opposing the original enactment of Part 252, carriers criticized the fact that a cited questionnaire failed to distinguish cigar, cigarette, and pipe smoke. As stated in ER-800, the carriers implied that if the question of restricting smoking had been broken down by type of smoke, most passengers would be in favor of restricting cigars and pipes.[19]

Comments by carriers, tobacco interests and some individuals urged that the net effect of cigars and pipes is less than that of cigarettes because they are less frequently smoked. While no current statistics were offered, it is fair to assume that fewer cigars and pipes are smoked on aircraft, and that this is true even in the absence of carrier restriction.[20] But cigars and pipes evidently cause more severe distress when they are smoked. While no scientific tests of relative pollution produced by cigars, pipes and cigarettes have taken place in the aircraft environment, there is sufficient basis for distinguishing cigar and pipe tobacco.[21] Accordingly, there is no need to postpone Board action.

HEW's recent survey based on interviews of 12,000 adults shows that 18% of the men interviewed smoked cigars and 12% pipes. *Adult Use of Tobacco*—1975, *supra*, note 6

Carriers, tobacco interests and some individuals also urged that while cigar and pipe smokers may not be "addicted," smoking is important to their comfort and special restrictions would deprive them of "adequate service" and discriminate against them vis-a-vis both cigarette smokers and non-smokers. We do not agree. "Adequate service" to smokers does not include a right to impose smoke on the many people who are adversely affected by it. A rule or practice which restricts a particularly objectionable kind of smoke without placing an unreasonable burden on those it restricts does not unjustly discriminate. We believe that carriers should be able to devise arrangements permitting use of cigars and pipes on aircraft while providing the additional protection we here require. If it proves to be impossible, in some circumstances, to permit cigar

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[11] Carbon monoxide generated by one cigar is said to be double that of three cigarettes smoked simultaneously. Epstein, "The Effects of Tobacco Smoke Pollution on the Eyes of the Non-Smoker", Paper Presented to Third World Conference on Smoking and Health, June 4, 1975, New York, p. 2.

See also Brunnemann and Hoffman, "Chemical Studies on Tobacco Smoke", Journal of Chromotographic Science, 12(2) February 1974 pp. 70-75 and Harke, The Problem of Passive Smoking, *Munchener Medizinishche Wochenschrift* 112(51) 2328-2334, December 18, 1970 cited and tabulated in Chapter 4, Health Consequences of Smoking, 1975, Department of Health, Education and Welfare.

[12] Epstein, *supra*, note 11; Steinfeld, "Health Consequences of Smoking", Talk presented June 2, 1975, Third World Conference on Smoking and Health, New York; Doyle, "Pipe and Cigar Smoking—is it Safe?", American Lung Association Bulletin, March 1974. And see "Report of an Expert Group", *Practitioner* 210 (1259): 645, 651, May 1973.

[13] Mainstream smoke emerges from the tobacco product after being drawn through the tobacco during puffing, whereas sidestream smoke rises from the burning cone of tobacco. The two kinds of smoke contribute different concentrations of many substances to the atmosphere. *The Surgeon General's Report on The Health Consequences of Smoking*, (HEW), 1975, Chapter 4 at p. 92.

[14] Surgeon General's 1972 Report, 72 Cong. Rec. Vol. 118 (May 4, 1972); Epstein, *supra* note 11; Steinfeld, *supra* note 12.

[15] See Epstein and Steinfeld, *supra* notes 11 and 12, respectively.

[16] The Cigar Association contends that this survey is irrelevant because the question here is one of effect on passengers. While flight attendants are generally exposed to smoke for longer periods, we think it clear that the effects of different types of tobacco on attendants is relevant to their effects on other persons.

[17] In addition to petitioners ASH and Paul R. Kaiser, ACAP (Aviation Consumer Action Project), GASP, San Francisco (Group Against Smoking Pollution), the Association of Flight Attendants, the American Lung Association, the Commissioner of Health for Connecticut, the Chicago Heart Association, Pacific Southwest Airlines, the Office of Consumer Affairs (HEW), and many individuals filing both formal and informal comments favored a ban on cigars and pipes.

[18] According to manuals on file with the Board, five carriers (Northwest, Pacific Southwest, Trans International, Wien Consolidated, and World Airways) ban cigars and pipes; Allegheny bans cigars and permits pipes "only if the cabin is pressurized, well-ventilated and the smoke does not offend anyone"; North Central bans cigars and pipes on Convairs, permitting them on DC-9s as long as they are not objectionable to nearby passengers. Pan American, Alaska, Piedmont and United all have special provisions with respect to cigars and pipes. The ATA states that most carriers permit cigar and pipe smoking only until a neighboring passenger objects.

[19] 38 FR 12208.

[20] The study sample cited throughout ER-800 showed that of 3,073 passengers on MAC flights, 1,604 smoked; 28 of these smoked cigars and 37, pipes. Of 265 passengers on domestic flights in the sample, 83 smoked; five of these smoked pipes and one, cigars; ER-800, p. 6, 38 FR 12208.

[21] The Interstate Commerce Commission recently adopted a rule which imposes special restrictions on cigars and pipes, limiting their use to private sleeping cars and to cars which have been designated as smoking areas in their entirety. (49 CFR 1124.21(b)(4).) That agency's Administrative Law Judge found that pipe and cigar smoke is a "substantially more lasting and obnoxious imposition on 'passive smokers' than cigarette smoke," that the carbon monoxide content of cigar and pipe smoke is about twice that found in cigarette smoke, and that since these materials tend to be burned for longer periods of time per usage they also tend to generate more pollutants per smoking incident. 351 ICC 883, 917 (March 20, 1976).

and pipe smoking without exposing other unwilling passengers to this smoke (or should carriers prefer to adopt their own rules prohibiting cigar and pipe smoking, regardless of circumstances) then we believe that the cigar or pipe smoker's desire for this type or degree of comfort must yield.[22]

We have also considered and rejected ATA's assertions that a cigar or pipe smoker would regard a ban on his smoking in a "smoking" area as unreasonable, and that his attitude would lead to enforcement problems. ATA offered no evidence that carriers already banning or restricting cigars and pipes experience such problems.[23] ATA stated that most air carriers already require their personnel to request that cigars or pipes be extinguished if a passenger in an adjacent area objects. There is no reason to foresee that particular enforcement problems will result from the special protection we here require.

We find that additional protection from cigar and pipe smoke is important to "adequate service" and to "reasonable practices." Since our policy in this area is to impose the minimum amount of regulation consistent with ensuring that these statutory requirements are met, the rules we adopt will permit the largest possible measure of carrier discretion and initiative in providing that protection. A flat ban would have the obvious advantage of administrative simplicity but at this time, we prefer to limit our prescription. Our final rule with respect to cigar and pipe smoke will therefore be generally phrased, leaving carriers free to devise the best methods for ensuring that their passengers are not subjected to involuntary inhalation of cigar and pipe smoke.

Carriers may decide that different arrangements for additional protection are required in different configurations, but where further segregation of cigar and pipe smokers would effectively protect other passengers, these smokers must be seated in the portion of the smoking area that is most distant from no-smoking. In cases where this seating arrangement would not suffice to accomplish our stated objective, carriers must take other or additional protective measures. For example, in a forward first class compartment where the smoking area itself is small, additional segregation of cigar and pipe smokers may not in itself offer real protection to either first class non-smokers or coach non-smokers seated directly behind first class. In these circumstances, carriers might adopt the practice of permitting use of cigars and pipes only after expressly ascertaining that passengers in the adjacent area do not object. We cite only this one example since the carriers themselves are in the best position to know what steps are needed to achieve such additional segregation in varying situations. Should any carrier prefer to avoid the administrative problems that additional segregation inevitably entails by the simple expedient of imposing a complete ban on cigars and pipes, the Board would, as previously stated, regard such a ban as reasonable.

No-Smoking Areas

Section 252.2 already provides that each carrier shall adopt procedures to "insure that a sufficient number of seats in the 'no-smoking' areas of the aircraft are available to accommodate persons who wish to be seated in such areas." The proposed amendment would emphasize this requirement by inserting the word "all" before "persons," and by specifying that carrier procedures shall include "specific provision for expansion of the no-smoking area to meet passenger demand."

Pan American commented that, while it previously expanded and contracted no-smoking and smoking areas to accommodate preferences on particular flights, it has now abandoned that practice in favor of a system of "semi-permanent" zones. It requested either a determination that this new system is lawful, or an amendment of Part 252 to make it lawful. On consideration of all of the comments, we have decided to deny the request, and to adopt this aspect of the amendment as proposed.[24]

Pan American argued that expansion of the no-smoking area to accommodate persons desiring no-smoking seats is impractical on down-line stops, and that this is especially true on multi-stop international flights where other factors (*e.g.*, facilities for children, seat positions for disabled persons) are important, and problems are compounded by language difficulties. Pan American stated that expanding and contracting zones and reallocating seating assignments created confusion in these circumstances. After continuing complaints and pending enforcement proceedings, it adopted a new system of semi-permanent zones under which it does not adjust the "no-smoking" area for each flight, but rather, on the basis of periodic passenger surveys, designates a percentage of seats as no-smoking. The current percentage is 62%, adjusted to include whole rows. Variations from this "norm" are said to be accommodated in vacant seats and by assigning "don't cares" to seats in smoking or no-smoking areas, as the situation requires. Pan American asserts that smoking complaints have dropped markedly under its new system,[25] that it regards the system as compliance with Part 252, and that in view of the competitive international situation it should have leeway to determine how best to discharge its obligations under the rule.

Pan American appears to have given considerable attention to the smoking problem and to have made a substantial effort to determine passenger preferences. It has also been enterprising and practical in its use of "don't cares." However, insofar as it fails to expand its no-smoking area to accommodate every passenger who wishes to be in it, Pan Am is not in compliance with Part 252. Problems of implementing Part 252 on multi-stop flights were recognized and discussed at the time of its adoption.[26] We consider it important that access to a seat in the no-smoking area not be dependent on the point of boarding. While the requirements of Part 252 may be in some respects more burdensome in foreign air transportation, for many non-smokers the availability of a seat in a no-smoking area is most important on the longer flights that foreign air transportation is likely to involve.

We are not proposing, as suggested by some comments, to prescribe any fixed percentage of seats for no-smoking areas. Carriers may themselves adopt such percentages, provided the requirements of Part 252 are met, but we prefer to leave them as much operating flexibility as possible. We are, however, adopting the proposal in EDR-306 that any no-smoking area consist of at least two rows of seats, since in our judgment a section of only one row could not constitute an adequate no-smoking "area."

Pacific Southwest objected to the proposed amendment as discrimina-

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[22] See ER-800 at p. 16, 38 FR 12207, 12209. And see *National Association of Motor Bus Owners* v. *U.S.*, 370 F. Supp. 408 (D.D.C. 1974) upholding the ICC's action in requiring segregation of smokers and non-smokers and confining smokers to 20% of the capacity of buses. (This figure has subsequently been raised to 30%.)

Gasper v. *Louisiana Stadium and Exposition District*, 418 F. Supp. 716 (E.D. La. 1976) cited by the Tobacco Institute, is not to the contrary. There the court dismissed an action to enjoin the Stadium District from allowing smoking during events in the Superdome. The court found no violation of any constitutional right and expressed the view that this type of adjustment of individual liberties is better left to the people, acting through legislative bodies, than to the courts. Our decision here rests on the statutory requirements of the Federal Aviation Act. Furthermore, the Act establishes the Civil Aeronautics Board as a regulatory agency having quasi-legislative functions.

[23] Pacific Southwest, in fact, comments that the public has accepted its ban.

[24] We are not, however, adopting that portion of proposed section 252.2 which would require that "no-smoking" areas consist of a minimum of two rows.

[25] Pan American asserts that in 1976, it received "only" 85 non-smoker complaints related to seat assignment.

[26] ER-800, p. 21, 38 FR 12210.

tory and suggested an alternative that would provide for accommodation of the majority of both smoking and no-smoking passengers. We have rejected this proposal as inconsistent with the basic purpose of Part 252: the protection of all those who wish to be seated in no-smoking areas.

The Board therefore adopts its proposed clarification of section 252.2 by amending the regulation to specifically require the accommodation of all who wish to be seated in the no-smoking areas.

We are also adding language to emphasize that carriers must ensure that if they place a no-smoking section between two smoking sections, the non-smoking passengers are not unduly burdened. EDR-306 had proposed banning such "sandwiching" of non-smokers. Some evidence and argument was presented by the carriers to the effect that in certain aircraft configurations, placing the smoking section at each end of a compartment would result in better isolation of non-smokers from smoke. We are not deciding the merits of that question at this time. In light of the complaints that have been made by non-smokers concerning sandwich configurations, however, we wish to place a special burden on carriers who use them to be sure that they can justify their usage.

Ban on Smoking When Ventilation Systems Not Fully Functioning

Many of the comments in Docket 29044 dealt with the merits of aircraft ventilation systems. There was considerable disagreement as to their effectiveness. Airlines asserted that air was completely replaced or cleaned at least every three minutes,[27] while other commenters argued that the ventilation system merely recirculates smoke. In view of the carriers' reliance on these systems to protect passengers from smoke, however, we have concluded that smoking should be prohibited whenever they are not operating at maximum capacity and efficiency.

Several comments asserted that in current practice, ventilation systems are not operated at full capacity for reasons of energy conservation, or because of special problems with particular aircraft.[28] ASH has asserted, on the basis of complaints made to it, that smoking is sometimes permitted when aircraft are waiting for takeoff and that at these times airflow mechanisms are relatively ineffective. It is our judgment that at times when ventilation is cut back for any reason, and non-smoking passengers denied the protection of fully operating systems, smoking should be prohibited. A new § 252.2a is added to prohibit smoking when the ventilation systems are not fully functioning.

Enforcement and Administration

Section 252.3 now requires each carrier to take such action as is necessary to insure that smoking is not permitted in no-smoking areas, and to enforce its rules with respect to segregation of passengers. EDR-306 proposed to spell out a number of detailed procedures to be required of carrier employees. The proposals would specify such matters as the time and content of announcements concerning the right to a seat in a no-smoking area and the steps to be followed in cases where a passenger is in violation of smoking rules. Some aspects of the proposals were opposed by the carriers, while ASH and others favoring restrictions on smoking suggested additional requirements. The Airline Pilots Association asked that the Board make clear that pilots are not responsible for enforcement of smoking rules.

On review of the record and comments, we have decided not to issue the changes proposed in this area, but instead to issue a broadly-worded rule requiring carriers to do what is necessary to prevent smoking in no-smoking areas and to enforce their segregation rules. We are not undertaking to dictate the allocation of responsibilities among crew members by air carriers. Our declining to act does not imply that the Board regards present standards of enforcement as satisfactory. There was a large number of letters complaining of lack of carrier diligence in this respect. They indicate that carrier employees should be given more explicit instructions, so that each person desiring a seat in a no-smoking area will be accommodated and effective separation will be provided. The decision to issue a broad rule at this time reflects our preference for leaving administrative details to the carriers, with the expectation that they will voluntarily achieve more effective enforcement. We will of course take more direct action in the future, which could include civil penalties, if we find carrier enforcement to be unsatisfactory.

Accordingly, the Civil Aeronautics Board amends Part 252 of the Economic Regulations (14 CFR Part 252), effective February 23, 1979, by adding new §§ 252.1a and 252.2a and amending §§ 252.1, 252.2 and 252.3, so that the whole part reads as follows:

PART 252—PROVISION OF DESIGNATED "NO-SMOKING" AREAS ABOARD AIRCRAFT OPERATED BY CERTIFICATED AIR CARRIERS

Sec.

252.1 Applicability.
252.1a Special segregation of cigar and pipe smokers.
252.2 No-smoking areas.
252.2a Ban on smoking when ventilation systems not fully functioning.
252.3 Enforcement.
252.4 Manual containing company rules for smoking by passengers aboard aircraft.
252.5 Board may modify manual rules to conform them to the provisions of this part.

Authority: Secs. 204(a), 404(a), and 407, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 760, 766; 49 U.S.C. 1324, 1374 and 1377.

§ 252.1 Applicability.

This part establishes rules for the smoking of tobacco aboard aircraft. It applies to each direct air carrier that holds a certificate of public convenience and necessity, authorizing the transportation of persons, issued pursuant to Section 401 of the act (hereafter called "carriers"). Nothing in this regulation shall be deemed to require such carrier to permit the smoking of tobacco aboard aircraft.

§ 252.1a Special segregation of cigar and pipe smokers.

Carriers shall adopt and enforce rules providing for special segregation of cigar and pipe smokers, and for such other procedures as may be necessary to avoid exposing persons seated in no-smoking areas to smoke from cigars and pipes.

§ 252.2 No-smoking areas.

Carriers shall ensure that non-smoking passengers are not unreasonably burdened by breathing smoke and to that end shall provide at a minimum:

(a) A no-smoking area for each class of service and for charter service;

(b) A no-smoking section of at least two rows of seats;

(c) A sufficient number of seats in the no-smoking areas of the aricraft for all persons who wish to be seated there;

(d) Specific provision for expansion of no-smoking areas to meet passenger demand; and

(e) Special provisions to ensure that if a no-smoking section is placed between smoking sections, the non-smok-

[27] ATA asserted that there is a complete change of air every 2 or 3 minutes on modern jets. Continental stated that under normal operating conditions the air is replaced or cleaned every 3 minutes in the DC-10 and even faster in the 727-200 and claimed that a study it undertook in 1973 shows that any forward or aft smoke flow is limited to a maximum of one row forward or aft of the smoking passenger.

[28] The Office of Consumer Affairs (HEW) indicated that some Boeing 747 ST models fly with less than total ventilation capacity to conserve energy and stated that older models of the Boeing 747 often require that systems be turned off in order to permit take-off within acceptable distance limitations. Both ACAP and ASH refer to reduced use of compressors.

ing passengers are not unreasonably burdened.

§ 252.2a Ban on smoking when ventilation systems not fully functioning.

Carriers shall adopt and enforce rules prohibiting the smoking of tobacco whenever the ventilation system is not fully functioning. A ventilation system shall be considered fully functioning only when all parts are in working order and operating at the capacity designed for normal service.

§ 252.3 Enforcement.

Each carrier shall take such action as is necessary to ensure that smoking is not permitted in no-smoking areas and to enforce its rules with respect to the segregation of passengers in smoking and no-smoking areas.

§ 252.4 Manual containing company rules for smoking by passengers aboard aircraft.

Each air carrier subject to this part shall maintain an employees manual containing company rules for smoking by passengers aboard aircraft. Two copies of such manual shall be filed with the Bureau of Pricing and Domestic Aviation, and revisions and amendments shall be filed within 15 days following adoption by the company.

§ 252.5 Board may modify manual rules to conform them to the provisions of this part.

If the Board finds that any company rule set forth in the manual is at variance with any provision of this part, the Board may by order modify such company rule to the extent necessary to conform the rule to the provisions of the part.

(Secs. 204(a), 404(a), and 407, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 760, 766; (49 U.S.C. 1324, 1374 and 1377).)

PHYLLIS T. KAYLOR,
Secretary.

APPENDIX

AIR CARRIERS

Air Transport Association of America (on behalf of Alaska Airlines, Allegheny Airlines, American Airlines, Braniff Airways, Delta Air Lines, National Airlines, Eastern Airlines, Frontier Airlines, Hughes Airwest, Northwest Airlines, Ozark Air Lines, Pan American World Airways, Piedmont Aviation, Southern Airways, United Airlines, Western Airlines, and Wien Air Alaska.)
Continental Air Lines
Northwest Airlines
Pacific Southwest Airlines
Pan American World Airways
Trans International Airlines

ORGANIZATIONS FAVORING SMOKING RESTRICTIONS

ASH
ACAP
American Lung Association
BANS (Ban all Nicotine Sources)
Chicago Heart Association
The Church of Jesus Christ of Latter-Day Saints
Commissioner of Health for Connecticut
District of Columbia Lung Association
GASP (Calgary Chapter)
GASP (Santa Barbara Chapter)
GASP (San Francisco Chapter)
German Physicians' Council on Smoking and Health
Listen (a Journal of Better Living)
Right to Breathe
Seventh Day Adventists

ORGANIZATIONS OPPOSING SMOKING RESTRICTIONS

Associated Tobacco Manufacturers
Cigar Association of America
Dibrell Bros.
Kentucky Farm Bureau Federation
National Association of Tobacco Distributors
North Carolina Commissioner of Agriculture
Retail Tobacco Dealers of America

ORGANIZATIONS WITH GENERAL INTEREST IN AIR TRANSPORTATION

Airline Passengers' Association
The Air Line Pilots Association, International
Association of Flight Attendants
The Travel Advisor

FEDERAL GOVERNMENT AGENCY

Department of Health, Education and Welfare (Office of Consumer Advocate)

INDIVIDUALS

Andrew Bass, Sherill S. Duncan & Steven W. Stone
Conrad A. Bauer and Betty L. Bauer
Albert F. Beitel
Charles M. Bowman
Senator Edward W. Brooke
Gary S. Carter
Elizabeth Curry (petition)
Linda Donaldson
L. John Eichner
Sheldon L. Epstein, Esq.
Leonard Finegold
Dorothy Hammert
H. W. Krueger
Jay Lavenson
Marion J. Neufeld
Dennis Odom
Dr. Steven J. Ojala
Willard J. Phelps, Jr.
Stanely Protegal
Rogert W. Rochat, M.D.
R. D. Sherrod
Paul Speier
Johannes Stuart
John P. Traylor
Joseph Valasek

[FR Doc. 79-2579 Filed 1-22-79; 1:13 pm]

[6320-01-M]

SUBCHAPTER B—PROCEDURAL REGULATIONS

[Reg. PR-193; Amdt. No. 51]

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Filing of Documents; Correction

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., January 19, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Editorial amendment.

SUMMARY: The CAB is correcting a drafting error in the general rules on filing of documents (14 CFR 302.3(c)). The second sentence of this paragraph was inadvertently deleted by a previous amendment.

DATES: Effective: February 14, 1979. Adopted: January 19, 1979

FOR FURTHER INFORMATION CONTACT:

M. Candace Fowler, Bureau of Consumer Protection, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, 202-673-5158.

SUPPLEMENTARY INFORMATION: This editorial amendment is issued pursuant to the delegation of authority from the Board to the General Counsel in 14 CFR 385.19. Procedures for review of this amendment are set forth in Subpart C of Part 385 (14 CFR 385.50 through 385.54).

AMENDMENT

The Board hereby restores the second sentence of 14 CFR 302.3(c), *Rules of Practice in Economic Proceedings*, so that the paragraph reads as follows:

§ 302.3 Filing of documents.

* * * * *

(c) *Number of copies.* Unless otherwise specified, an executed original and nineteen (19) true copies of each document required or permitted to be filed under these rules shall be filed with the Docket Section, except that an original and five (5) copies of third-party complaints, answers, documents dealing with discovery, and motions addressed to an administrative law judge may be filed in proceedings under Subpart B—Rules Applicable to Economic Enforcement Proceedings. The copies need not be signed but the name of the person signing the document, as distinguished from the firm or organization he represents, shall also be typed or printed on all copies

below the space provided for signature.

* * * * *

(Sec. 204, Federal Aviation Act of 1958, as amended, 72 Stat. 743 (49 U.S.C. 1324).)

By the Civil Aeronautics Board.

PHILIP J. BAKES, Jr.,
General Counsel.

[FR Doc. 79-2609 Filed 1-24-79; 8:45 am]

[8010-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. SIPA-83]

PART 300—RULES OF THE SECURITIES INVESTOR PROTECTION CORPORATION

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission has approved rules submitted by the Securities Investor Protection Corporation ("SIPC") establishing, for the purpose of SIPC protection, the various separate capacities in which a customer may hold more than one account, each eligible for the maximum amount of SIPC protection. In order that the general public be given notice of, and access to, these and future SIPC rules which have force and effect as if promulgated by the Commission, such rules will be published in the FEDERAL REGISTER and the Code of Federal Regulations ("CFR").

EFFECTIVE DATE: October 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert J. Millstone, Senior Special Counsel, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, (202) 755-8777.

SUPPLEMENTARY INFORMATION: The Commission, on October 20, 1978, approved the Series 100 and Series 200 Rules of SIPC, which were published for comment in Securities Investor Protection Act Release Numbers SIPC-70 and SIPC-71 at 43 FR 30953 (July 18, 1978). SIPC provides certain protection to customers of member broker-dealers which experience financial difficulty. The approved rules are entitled "Accounts of 'Separate' Customers of SIPC Members," and "Accounts Introduced by Other Brokers or Dealers," respectively. The Series 100 Rules set forth the manner for determining which accounts maintained by a customer with a member of SIPC will be deemed separate customer accounts for purposes for SIPC protection. The Series 200 Rules provide the standards under which a securities account that is carried on a fully disclosed basis by a SIPC member will be extended SIPC protection separate from that which is provided an account maintained directly by that member for the same customer.

These rules have been adopted under procedures established by the Securities Investor Protection Act (the "SIPC Act"), which gives SIPC authority, subject to Commission approval, to promulgate rules in certain areas. That authority which is patterned after the rulemaking authority given to self-regulatory organizations by the Securities Exchange Act of 1934, requires SIPC rules to be filed with the Commission and published for comment. Following publication, the Commission, within certain time limits, must approve the rules or institute proceedings to determine whether the rules should be disapproved.

In considering whether to approve rules submitted by SIPC, Section 3(e)(2)(D) of the SIPC Act provides that the Commission "shall approve a proposed rule change if it finds that such proposed rule change is in the public interest and is consistent with the purposes of [the SIPC Act]." Section 3(e)(2)(D) also provides that "any proposed rule change so approved shall be given force and effect as if promulgated by the Commission."

The effect of SIPC's rules is unique. SIPC is not an agency or establishment of the United States Government[1] but is empowered to promulgate rules that, upon Commission approval, have the force and effect of Commission rules—that is, rules which affect all persons and not just SIPC members. In contrast, the rules of self-regulatory organizations directly bind only persons who voluntarily submit to the organizations' jurisdiction.

In order that the general public be given the same notice of, and access to, SIPC rules as other rules of general applicability, the text of SIPC rules having force and effect as if promulgated by the Commission will be published in the CFR as well as in the FEDERAL REGISTER. To that end a new Part 300 of Chapter II of Title 17 of the CFR is established as follows:

PART 300—RULES OF THE SECURITIES INVESTOR PROTECTION CORPORATION

ACCOUNTS OF "SEPARATE" CUSTOMERS OF SIPC MEMBERS

Sec.
300.100 General.
300.101 Individual accounts.

[1] Section 3(a)(1)(A) of the SIPC Act.

Sec.
300.102 Accounts held by executors, administrators, guardians, etc.
300.103 Accounts held by a corporation, partnership or unincorporated association.
300.104 Trust accounts.
300.105 Joint accounts.

ACCOUNTS INTRODUCED BY OTHER BROKERS OR DEALERS

300.200 General.
300.201 Accounts introduced by same or different broker or dealer.

AUTHORITY: Sec. 3, 84 Stat. 1636, as amended; 15 U.S.C. 78ccc.

NOTE.—The numbers to the right of the decimal points correspond with the respective rule numbers of the rules of the Securities Investor Protection Corporation (hereinafter referred to as "SIPC").

EXPLANATORY NOTE.—Pursuant to section 3(e)(2)(D) of the Securities Investor Protection Act of 1970 (hereinafter referred to as "the Act"), the Securities and Exchange Commission (hereinafter referred to as "the Commission") shall approve a proposed rule change submitted by the Securities Investor Protection Corporation if it finds that such proposed rule change is in the public interest and is consistent with the purposes of the Act, and any proposed rule change so approved shall be given force and effect as if promulgated by the Commission. The rules of this Part 300 have been so approved.

ACCOUNTS OF "SEPARATE" CUSTOMERS OF SIPC MEMBERS

§ 300.100 General.

(a) For the purpose of sections 9(a)(2) and 16(12) of the Securities Investor Protection Act (hereinafter referred to as "the Act"), these rules will be applied in determining what accounts held by a person with a member of SIPC (hereinafter called a "member") are to be deemed accounts held in a capacity other than his individual capacity.

(b) Accounts held by a customer in different capacities, as specified by these rules, shall be deemed to be accounts of "separate" customers.

(c) A "person" as ued in these rules includes, but is not limited to, an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, or a government or political subdivision thereof.

(d) The burden shall be upon the customer to establish each capacity in which he claims to hold accounts separate from his individual capacity.

§ 300.101 Individual accounts.

(a) Except as otherwise provided in these rules, all accounts held with a member by a person in his own name, and those which under these rules are deemed his individual accounts, shall be combined so as to constitute a single account of a separate customer.

(b) An account held with a member by an agent or nominee for another

person as a principal or beneficial owner shall, except as otherwise provided in these rules, be deemed to be an individual account of such principal or beneficial owner.

§ 300.102 Accounts held by executors, administrators, guardians, etc.

(a) Accounts held with a member in the name of a decedent or in the name of his estate or in the name of the executor or administrator of the estate of the decedent shall be combined so as to constitute a single account of a separate customer.

(b) An account held with a member by a guardian, custodian, or conservator for the benefit of a ward or for the benefit of a minor under the Uniform Gifts to Minors Act or in a similar capacity shall be deemed to be held by such guardian, custodian, or conservator in a different capacity from any account or accounts maintained by such person in his individual capacity.

§ 300.103 Accounts held by a corporation, partnership or unincorporated association.

A corporation, partnership or unincorporated association holding an account with a member shall be deemed to be a separate customer distinct from the person or persons owning such corporation or comprising such partnership or unincorporated association if on the filing date it existed for a purpose other than primarily to obtain or increase protection under the Act.

§ 300.104 Trust accounts.

(a) A trust account held with a member shall be deemed a "qualifying trust account" if it is held on behalf of a valid and subsisting express trust created by a written instrument. No account held on behalf of a trust that on the filing date existed primarily to obtain or increase protection under the Act shall be deemed to be a qualifying trust account.

(b) A qualifying trust account held with a member shall be deemed held by a separate customer of the member, distinct from the trustee, the testator or his estate, the settlor, or any beneficiary of the trust.

(c) Any account held with a member on behalf of a trust which does not meet the requirements of paragraph (a) of this rule shall be deemed to be an individual account of the settlor of the trust on behalf of which the account is held.

§ 300.105 Joint accounts.

(a) A joint account shall be deemed to be a "qualifying joint account" if it is owned jointly, whether by the owners thereof as joint tenants with the right of survivorship, as tenants by the entirety or as tenants in common, or by husband and wife as community property, but only if each co-owner possesses authority to act with respect to the entire account.

(b) Subject to paragraph (c) of this rule, each qualifying joint account with a member shall be deemed held by one separate customer of the member.

(c) All qualifying joint accounts with a member owned by the same persons shall be deemed held by the same customer so that the maximum protection afforded to such accounts in the aggregate shall be the protection afforded to one separate customer of the member

(d) A joint account with a member which does not meet the requirements of paragraph (a) of this rule shall be deemed to be an individual or qualifying joint account of the co-owner or co-owners having the exclusive power to act with respect to it.

ACCOUNTS INTRODUCED BY OTHER BROKERS OR DEALERS

§ 300.200 General.

A person having one or more accounts cleared by the member on a fully disclosed basis for one or more introducing brokers or dealers is a customer of the member and shall be protected with respect to such account or accounts without regard to the protection available for any other account or accounts he may have with the member.

§ 300.201 Accounts introduced by same or different broker or dealer.

All accounts of a person which are introduced by the same broker or dealer shall be combined and protected as the single account of a separate customer, unless such accounts are maintained in different capacities as specified in §§ 300.100-300.105; accounts introduced by different brokers or dealers shall be protected separately.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 17, 1979.

[FR Doc. 79-2623 Filed 1-24-79; 8:45 am]

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. 4993]

PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL FLOOD HAZARD AREAS

Communities With No Special Hazard Areas

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator, after consultation with local officials of the communities listed below, has determined, based upon analysis of existing conditions in the communities, that these communities would not be inundated by the 100-year flood. Therefore, the Administrator is converting the communities listed below to the Regular Program of the National Flood Insurance Program without determining base flood elevations.

EFFECTIVE DATE: Date listed in fourth column of List of Communities with No Special Flood Hazards.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard W. Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh St., S.W., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: In these communities, there is no reason not to make full limits of coverage available. The entire community is now classified as zone C. In a zone C, insurance coverage is available on a voluntary basis at low actuarial nonsubsidized rates. For example, under the Emergency Program in which your community has been participating the rate for a one-story 1-4 family dwelling is $.25 per $100 of coverage. Under the Regular Program, to which your community has been converted, the equivalent rate is $.01 per $100 of coverage. Contents insurance is also available under the Regular Program at low actuarial rates. For example, when all contents are located on the first floor of a residential structure, the premium rate is $.05 per $100 of coverage.

In addition to the less expensive rates, the maximum coverage available under the Regular Program is significantly greater than that available under the Emergency Program. For

example, a single family residential dwelling now can be insured up to a maximum of $185,000 coverage for the structure and $60,000 coverage for contents.

Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program.

The effective date of conversion to the Regular Program will not appear in the Code of Federal Regulations except for the page number of this entry in the FEDERAL REGISTER.

The entry reads as follows:

§ 1915.8 List of Communities With No Special Flood Hazard Areas

State	County	Community name	Date of conversion to regular program
California	Monterey	City of Soledad	Nov. 30, 1978
Michigan			
	Oakland	City of Hazel Park	Nov. 30, 1978
Michigan	Oakland	City of Pleasant Ridge	Nov. 30, 1978
Pennsylvania	Berks	Borough of Laureldale	Nov. 30, 1978
Pennsylvania	Lebanon	Borough of Mt. Gretna	Nov. 30, 1978
Pennsylvania	Butler	Borough of Slippery Rock	Nov. 30, 1978
Michigan	Wayne	City of Garden City	Dec. 29, 1978

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2118 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. 4994]

PART 1915—IDENTIFICATION AND MAPPING OF SPECIAL FLOOD HAZARD AREAS

Communities with Minimal Flood Hazard Areas

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator, after consultation with local officials of the communities listed below, has determined, based upon analysis of existing conditions in the communities, that these communities' Special Flood Hazard Areas are small in size, with minimal flooding problems. Because existing conditions indicate that the area is unlikely to be developed in the forseeable future, there is no immediate need to use the existing detailed study methodology to determine the base flood elevations for the Special Floor Hazard Areas. Therefore, the Administrator is converting the communities listed below to the Regular Program of the National Flood Insurance Program (NFIP) without determining base flood elevations.

EFFECTIVE DATE: January 25, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard W. Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh St., S.W., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: In these communities, the full limits of flood insurance coverage are available at actuarial, non-subsidized rates. The rates will vary according to the zone designation of the particular area of the community.

Flood insurance for contents, as well as structures, is available. The maximum coverage available under the Regular Program is significantly greater than that available under the Emergency Program.

Flood insurance coverage for property located in the communities listed can be purchased from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program. The effective date of conversion to the Regular Program will not appear in the Code of Federal Regulations except for the page number of this entry in the FEDERAL REGISTER.

The entry reads as follows.

§ 1915.9 List of Communities with Minimal Flood Hazard Areas

State	County	Community name
Kentucky	Logan	City of Auburn
New Jersey	Atlantic	City of Estell Manor
New Jersey	Camden	Borough of Oaklyn
Pennsylvania	Lancaster	Township of Upper Leacock
Maine	Penobscot	Town of Holden
Maine	Oxford	Town of Stow
Maine	Piscataquis	Town of Wellington
Texas	Coryell	City of Copperas Cove
Texas	Morris	City of Naples
Texas	Bowie	City of New Boston
Texas	Montague	City of Nocona
Utah	Davis	City of Sunset
Alabama	Colbert	Town of Littleville
Alabama	Madison	Town of New Hope
Alabama	Macon	Town of Notasulga
Alabama	Morgan	City of Trinity
New Jersey	Camden	Borough of Magnolia
Pennsylvania	Cambria	Township of Susquehanna
South Carolina	Spartanburg	Town of Campobello
South Carolina	Spartanburg	Town of Inman
South Carolina	Spartanburg	Town of Pacolet Mills
South Carolina	Florence	Town of Quinby
South Carolina	Spartanburg	Town of Woodruff
Arkansas	Lonoke	City of Carlisle
Missouri	Miller	Town of Eldon
Oklahoma	Kiowa	Town of Mountain View
Texas	Hays	City of Kyle
Texas	Bowie	City of Maud
Alabama	Madison	City of Madison
Maryland	Dorchester	Town of Eldorado
Maryland	Frederick	Town of Myersville
Maryland	Dorchester	Town of Vienna
Maryland	Frederick	Town of Woodsboro
New Jersey	Cumberland	Township of Hopewell
Ohio	Hamilton	City of Mt. Healthy
Ohio	Lake	Village of Perry
Pennsylvania	Lehigh	Borough of Alburtis
Pennsylvania	Allegheny	Borough of Avalon
Pennsylvania	Allegheny	Borough of Bellevue
Pennsylvania	Mifflin	Township of Bratton
Pennsylvania	Allegheny	Borough of Churchill
Pennsylvania	Lancaster	Borough of Millersville
Pennsylvania	Northumberland	Township of Washington
Tennessee	Roane	City of Kingston

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2119 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4404]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Hamden, New Haven County, Conn.

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 Hamden, New Haven County, Connecticut. 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 Hamden, New Haven County, Connecticut.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Hamden, New Haven County, Connecticut are available for review at the Planning Office, Hamden, Connecticut.

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 Hamden, New Haven County, Connecticut.

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
Mill River	100 feet Downstream Connolly Parkway.	40
	1,200 feet Downstream of Skiff Street.	45
	150 feet Upstream of Skiff Street.	48
	500 feet Downstream of Whitney Avenue.	53
	100 feet Downstream of Dixwell Avenue.	56
	100 feet Upstream of Wilbur Cross Parkway.	59
	3,300 feet Upstream of Wilbur Cross Parkway.	62
	100 feet Downstream of Ives Street.	71
	500 feet Downstream of Clarks Pond Dam & Bridge.	76
	400 feet Upstream of Clarks Pond Dam & Bridge.	81
	1,000 feet Downstream of Mt. Carmel Avenue.	85
	100 feet Upstream of Mt. Carmel Avenue.	89
	250 feet Downstream of Axelshop Pond Dam.	94
	400 feet Upstream of Axelshop Pond Dam.	97
	500 feet Downstream of Tuttle Avenue.	100
	200 feet Upstream of Tuttle Avenue.	103
	1,500 feet Downstream of Confluence with Butterworth Brook.	106
	200 feet Downstream of River Road.	106
	100 feet Upstream of River Road.	109
	750 feet Downstream of Confluence with Willow Brook.	111
	450 feet Upstream of Confluence with Willow Brook.	116
	2,150 feet Upstream of Confluence with Willow Brook.	123
	3,850 feet Upstream of Confluence with Willow Brook.	128
Shepard Brook	100 feet Downstream of Wilbur Cross Parkway.	49
	50 feet Upstream of Wilbur Cross Parkway.	56
	250 feet Downstream of Dixwell Avenue.	63
	120 feet Downstream of Dixwell Avenue.	73
	Just Upstream of Dixwell Avenue.	83
	1,000 feet Downstream of Sanford Street.	85
	200 feet Downstream of Sanford Street.	89
	100 feet Upstream of Sanford Street.	95
	50 feet Downstream of Conrail.	100
	Just Upstream of Conrail.	106
	250 feet Downstream of Dam (Dam located 550 feet Downstream of Meyer Wire Company).	111
	100 feet Downstream of Dam (Dam located 550 feet Downstream of Meyer Wire Company).	115
	400 feet Upstream of Dam (Dam located 550 feet Downstream of Meyer Wire Company).	120
	300 feet Upstream of Meyer Company Entrance.	125
	60 feet Downstream of of Sherman Avenue.	130
	150 feet Upstream of Sherman Avenue.	135
	500 feet Upstream of Sherman Avenue.	140
	1,000 feet Upstream of Sherman Avenue.	147
Eaton Brook	80 feet Downstream of Whitney Avenue.	99
	450 feet Upstream of Whitney Avenue.	101
	80 feet Downstream of Conrail.	103

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Just Upstream of Conrail.	113
	30 feet Upstream of Dam, 590 feet Downstream of Todd Street.	114
	300 feet Downstream of Todd Street.	115
	40 feet Upstream of Todd Street.	120
	200 feet Upstream of Todd Street.	125
	550 feet Upstream of Todd Street.	135
	900 feet Upstream of Todd Street.	145
	1,230 feet Upstream of Todd Street.	155
	1,560 feet Upstream of Todd Street.	165
	1,900 feet Upstream of Todd Street.	175
	2,200 feet Upstream of Todd Street.	185
	2,500 feet Upstream of Todd Street.	195
	2,850 feet Upstream of Todd Street.	205
	3,220 feet Upstream of Todd Street.	215
	50 feet Downstream of Shepard Avenue.	220
	Upstream face of Shepard Avenue.	223
	160 feet Upstream face of Shepard Avenue.	225
	640 feet Upstream face of Shepard Avenue.	235
	1,150 feet Upstream face of Shepard Avenue.	245
	100 feet Downstream of Hill Field Road.	255
	30 feet Downstream of Hill Field Road.	258
	80 feet below Confluence with Brookdale Stream.	273
	130 feet above Confluence with Brookdale Stream.	278
	330 feet above Confluence with Brookdale Stream.	283
	100 feet Downstream of Johnson Road.	287
	100 feet Upstream of Johnson Road.	293
	250 feet Upstream of Johnson Road.	295
	900 feet Upstream of Johnson Road.	305
	80 feet Downstream of Choate Road.	315
	20 feet Downstream of Choate Road.	320
	100 feet Upstream of Choate Road.	322
	300 feet Downstream of Westwood Road.	330
	100 feet Downstream of Westwood Road.	335
	30 feet Downstream of Westwood Road.	340
	50 feet Upstream of Westwood Road.	343
Brookdale Stream.	At Confluence with Eaton Brook.	275
	270 feet Downstream of Johnson Road.	285
	120 feet Downstream of Johnson Road.	287
	130 feet Upstream of Johnson Road.	292
	80 feet Downstream of Still Hill Road.	296
	40 feet Downstream of Still Hill Road.	300
	Just Upstream of Still Hill Road.	304
Willow Brook	At Confluence with Mill River.	114
	70 feet Upstream of Willow Street.	115
Jepp Brook	At Confluence with Willow Brook.	116
	590 feet Upstream of Confluence with Willow Brook.	120
	900 feet Upstream of Confluence with Willow Brook.	123
	350 feet Downstream of Conrail.	127
	Just Downstream of Brookdale Avenue.	131
	1,100 feet Upstream of Brookdale Avenue.	137
	80 feet Downstream of River Road.	145
	100 feet Upstream of River Road.	150
	420 feet Upstream of River Road.	160
	750 feet Upstream of River Road.	170
	1,050 feet Upstream of River Road.	180
	100 feet Downstream of Jepp Pond Dam.	185
	75 feet Downstream of Jepp Pond Dam.	190
	50 feet Downstream of Jepp Pond Dam.	195
	20 feet Downstream of Jepp Pond Dam.	200
	1,300 feet Upstream of Jepp Pond Dam.	205
	100 feet Downstream of a Dam, 200 feet Downstream of Chatterton Way.	208
	60 feet Downstream of a Dam, 200 feet Downstream of Chatterton Way.	213
	40 feet Downstream of a Dam, 200 feet Downstream of Chatterton Way.	218
	Just Downstream of a Dam, 200 feet Downstream of Chatterton Way.	223
	100 feet Upstream of a Dam, 200 feet Downstream of Chatterton Way.	229
	120 feet Upstream of Chatterton Way.	234
	550 feet Upstream of Chatterton Way.	240
	900 feet Upstream of Chatterton Way.	245
	950 feet Downstream of Still Hill Road.	250
	550 feet Downstream of Still Hill Road.	255
	250 feet Downstream of Still Hill Road.	260
	Just Upstream of Still Hill Road.	265
Farm Brook	200 feet above Corporate Limit.	35
	150 feet Downstream of Woodin Street.	38
	100 feet Upstream of Woodin Street.	41
	1,100 feet Upstream of Woodin Street.	43
	850 feet Downstream of Brook Street.	45
	300 feet Downstream of Brook Street.	49
	Just Downstream of Brook Street.	51
	500 feet Upstream of Brook Street.	55
	150 feet Downstream of Footbridge.	59
	200 feet Upstream of Footbridge.	64
	300 feet Downstream of Gilbert Avenue.	68
	Just Upstream of Gilbert Avenue.	70
	Just Upstream of Wilbur Cross Parkway.	72
	3,500 feet Upstream of Lane Street.	74
West Branch Farm Brook.	At Confluence with Farm Brook.	72
	700 feet Upstream of Morgan Drive.	73
	Just Upstream of Clover Circle.	73
	At Leonard Drive	74
	250 feet Upstream of Sanquist Circle.	75
	500 feet Upstream of Sanquist Circle.	76

(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.)

NOTE: In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community amendments of 1978, P.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: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2120 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4405]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Newtown, Fairfield County, Conn.

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 Newtown, Fairfield County, Connecticut. 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 Newtown, Fairfield County, Connecticut.

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

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 Newtown, Fairfield County, Connecticut.

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
Housatonic River	Upstream side of Interstate 84.	109
	Upstream side of Glen Road.	109
	Downstream of Shepaug Dam.	109
Pootatuck River	Just upstream of Walnut Tree Hill Road.	110
	Just upstream of Rocky Glen Dam No. 1.	179
	Just upstream of Black Bridge Road.	181
	Just upstream of Rocky Glen Dam No. 2.	207
	Upstream side of foot bridge 1,430 downstream of Main Street.	221
	Upstream side of Main Street.	236
	250 feet upstream of Interstate 84 culvert at confluence with Tom Brook.	248
	Upstream side of Mile Hill Road.	258
	Upstream side of Gauging Station bridge.	276
	Upstream side of Pecks Turkey Hill Road.	317
	Just upstream of Conrail.	338
	Upstream side of Route 25.	340
	Upstream side of Weir 670 feet downstream from Cold Spring Road.	400
	100 feet upstream of Cold Spring Road.	404
	Just upstream of Meadow Brook Road.	405
	Upstream side of Huntingtown Road.	432
	Southern corporate limit.	461
Halfway River	Just upstream of Route 34.	126
	Just upstream of Jordan Hill Road.	213
Deep Brook	Upstream side of access road to treatment plant.	265
	Upstream side of Conrail.	326
	125 feet upstream of Mile Hill Road.	366
	50 feet upstream of Route 25.	391
	50 feet upstream of Elm Drive.	396
	Just upstream of Deep Brook Road.	410
	35 feet upstream of Boggs Hill Road.	449
Lewis Brook	Just upstream of Huntingtown Road.	429
	Upstream side of Maltbie Road.	469
	Just upstream of Hattertown Pond Dam.	523
	Just upstream of Barlow Road.	540
	Just upstream of dam 620 feet downstream of Hattertown Road.	622
	Upstream side of Hundred Acres Road.	629

(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).)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P. 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: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2121 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4407]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Jacksonville, Morgan 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 Jacksonville, Morgan 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 Jacksonville, Morgan County, Illinois.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Jacksonville are available for review at the City Hall, Jacksonville, 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 Jacksonville, Morgan 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
Mauvaisterre Creek.	Just downstream of Diamond Street.	568
	Just upstream of Oak Street.	570
	75 feet upstream of Myrtle Street.	574
	60 feet downstream of State Street.	575
	50 feet upstream of Norfolk & Western Railway.	578
	Just downstream of Henry Street.	583
	100 feet upstream of Brooklyn Avenue.	586
	50 feet downstream of Spillway.	587
	50 feet upstream of Spillway.	595
	Eastern Corporate Limit (State Route 104).	597
Town Brook	Confluence with Mauvaisterre Creek.	579
	50 feet upstream of East Street.	581
	Just downstream of West Street.	584
	100 feet downstream of Lincoln Avenue.	587
	65 feet upstream of Lincoln Avenue.	592
	65 feet upstream of Morton Avenue.	594
	Just downstream of Massey Lane.	601
Tributary No. 1	50 feet upstream of Sandusky Street.	570
	2,750 feet upstream of Sandusky Street.	578
	500 feet downstream of West Walnut Street.	579
	140 feet downstream of Walnut Street.	583
	100 feet upstream of Walnut Street.	592
	50 feet downstream of Norfolk & Western Railway.	594
	75 feet upstream of Norfolk & Western Railway.	602
	950 feet upstream of Harmony Drive.	614
Tributary No. 2	Just downstream of Township Road No. 2200.	596
	Eastern Corporate Limit	598

(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).)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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. 79-2122 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4368]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Village of Morton 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 Morton 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 Morton 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 Morton Grove are available for review at the Village Hall, 6300 Lincoln Avenue, Morton 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 Village of Morton 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. 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.	Just Upstream of Oakton Street.	620
	Just Downstream of Dempster Street Railroad.	621
	Northern Corporate Limits.	622
West Fork of North Branch Chicago River.	Northern Corporate Limits.	622

(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).)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2123 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4370]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Wheaton, Du Page County, Ill.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for se-

lected locations in the City of Wheaton, Du Page 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 Wheaton, Du Page County, Illinois.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Wheaton are available for review at the City Hall, 303 Wesley Street, Wheaton, 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 Wheaton, Du Page 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 dtum
Spring Brook	Just Upstream of Essex Road.	720
	1,135 feet Upstream of Essex Road.	721
	1,240 feet Upstream of Essex Road.	722
	2,350 feet Upstream of Essex Road, between Corporate Limits.	723
	125 feet Upstream of Creekside Drive, near Sewage Disposal Plant.	724
	210 feet Upstream of Creekside Drive, near Footbridge.	724
	50 feet Upstream of Aurora Way.	725
	Just Downstream of Warrenville Road.	728
	200 feet Upstream of Hawthorne Lane.	730
	Just Downstream of Elm Street.	731
Winfield Creek	240 feet Upstream of Schaffner Road.	722
	Just Downstream of Beverly Lane.	726
	1,200 feet Upstream of Beverly Lane.	727
	65 feet Downstream of Manchester Road.	729
	105 feet Upstream of Union Avenue.	731
	85 feet Downstream of Prairie Path.	731
	180 feet Upstream of Prairie Path.	732
	Just Upstream of Ellis Avenue Extended.	732
	50 feet Downstream of Main Street.	732
	160 feet Upstream of Main Street.	733
	Just Downstream of Cole Avenue.	736
	105 feet Upstream of Cole Avenue.	739
	100 feet Downstream of Paddock Avenue.	740
	105 feet Upstream of Paddock Avenue.	744
	100 feet Downstream of Geneva Road.	745
Winfield Creek Tributary.	95 feet Downstream of Cole Avenue.	734
	65 feet Upstream of Cole Avenue.	736
	750 feet Downstream of Geneva Road.	739
	Just Downstream of Geneva road.	744

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: January 5, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2124 Filed 1-24-78; 8:45 am]

[4210-01-M]

[Docket No. FI-4371]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Woodstock, McHenry 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 Woodstock, McHenry 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 Woodstock, McHenry County, Illinois.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Woodstock are available for review at the City Hall, 121 West Calhoun Street, Woodstock, 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 Woodstock, McHenry 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
Selver creek	Corporate Limits, Wicker Street.	868
	Melody Lane	876
	900 feet Upstream of Seminary Avenue.	881
	Corporate limits, St. Johns Road.	881
	Water Plant Access Road.	882
	McHenry Avenue	882

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: January 5, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2125 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4032]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Concord, Middlesex County, Mass.

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 Concord, Middlesex 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 Concord, Middlesex County, Massachusetts.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Concord are available for review at the Town Planner's Office, Town House, Concord, 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 Concord, Middlesex 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
Concord River	North Corporate Limit	120
	600 feet Upstream of Lowell Road.	121
Sudbury River	Confluence with Concord River.	121
	Main Street	121
	Sudbury Road	122
	Fitchburgh Turnpike	122
	Southeast Corporate Limit.	122
Assabet River	Confluence with Concord River.	121
	Route 2	122
	Upstream Side of Boston and Maine Railroad Bridge.	123
	Upstream Side of Main Street (Route 62).	124
	At Conrail	125
	Upstream Side of Pine Street.	126
	Upstream Side of Damondale Dam.	131
	150 feet Upstream of Main Street at West Corporate Limit.	134
Sawmill Brook	At Confluence with Concord River.	120
	250 feet Downstream of Monument Street.	120
	Upstream Side of Monument Street.	132
	1,100 feet Upstream of Monument Street.	132
Mill Brook	At Confluence with Concord River.	120
	100 feet Downstream of Lang Street.	120
	Upstream Side of Lang Street.	123
	100 feet Downstream of Main Street.	124
	Main Street	128
	Cambridge Turnpike	129
Tributary 1 (South of Boston and Maine Railroad Between the Sudbury River and Route 2).	Confluence with Sudbury River.	121
	20 feet Upstream of Coolidge Road.	124
	Main Street	128
	Route 2	128
Dakins Brook	Confluence with Assabet River.	121
	Upstream of Lowell Street.	127
	1,000 feet Upstream of Barnes Hill Road.	127
Spencer Brook	Confluence with Assabet River.	121
	Downstream of Barrett's Mill Road.	121
	900 feet Upstream of Barrett's Mill Road.	125
Nashoba Brook	Just Upstream of Warners Pond Dam.	124
	800 feet Upstream of Route 2.	125
Fort Pond Brook	Concord Reformatory Service Bridge.	125
Tributary 2 (South of Boston and Maine Railroad Between Assabet River and Route 2).	Baker Avenue	123
	50 feet Downstream of Middle Road.	127
	50 feet Upstream of Middle Road.	130
	Route 2	130

(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).)

NOTE: In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2126 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4335]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Village of Beverly Hills, Oakland County, Mich.

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 Beverly Hills, Oakland 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 Village of Beverly Hills, Oakland County, Michigan.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of Beverly Hills are available for review at the City Hall, Beverly Hills, 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 Village of Beverly Hills, Oakland 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
Rouge River	Southern Corporate Limit.	665
	Upstream side of Lasher Road.	670
	Upstream side of Riverview Road.	674
	2300 feet Upstream from Riverview Road.	675
	580 feet Downstream from 13 Mile Road at Footbridge.	677
	790 feet Upstream from 13 Mile Road.	680
	1795 feet Upstream from 13 Mile Road.	681
	2690 feet Upstream from 13 Mile Road at Walkway Bridge.	684
	Upstream side of Evergreen Road.	694
	580 feet Upstream from Evergreen Road.	695
	Upstream side of Dam 700 feet Downstream from Riverside Drive.	701
	Upstream side of Riverside Drive.	702
	2100 feet Upstream from Riverside Drive at Corporate Limit.	703
North Branch of Rouge River.	Confluence of Rouge River.	692
	Downstream side of Dam 500 feet below Evergreen Road.	693
	Upstream side of Dam above Evergreen Road.	701

(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).)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P. 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: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2127 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4346]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Gibraltar, Wayne County, Mich.

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 Gibraltar, Wayne 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 City of Gibraltar, Wayne County, Michigan.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Gibraltar are available for review at the City Hall, Gibraltar, 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 City of Gibraltar, Wayne 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, International Great Lakes datum
Detroit River	North corporate limit	576
	South corporate limit	576
Frank & Poet Drain.	South Gibraltar Road	576
	Just downstream of McLouth Steel Railroad entry.	576
	Just upstream of McLouth Steel Railroad entry.	579
	Just downstream of Detroit & Toledo Shoreline Railroad.	579
	Just upstream of Detroit & Toledo Shoreline Railroad.	580
	Just upstream of Conrail.	581
	Just upstream of Vreeland Road.	581
Brownstown Creek.	South Gibraltar Road	576
	Just downstream of Middle Gibraltar Road.	576
	700 feet upstream of Middle Gibraltar Road.	577
	Just upstream of Conrail at Quarry Lake.	579
	Confluence with Marsh Creek.	580
	2,000 feet downstream of Fort Street.	580
	Just downstream of Fort Street.	583
Marsh Creek	Just downstream of Conrail.	580
	Just upstream of Conrail.	581
	Just downstream of Fort Street.	583
Division A	Confluence with Brownstown Creek.	579
	Confluence with Frank & Poet Drain.	580
Division B	Confluence with Brownstown Creek.	579
	350 feet upstream from Brownstown Creek.	581
	Confluence with Frank & Poet Drain.	581

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: January 5, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-2128 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4347]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS,

Final Flood Elevation Determination for the City of Lapeer, Lapeer County, Mich.

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 Lapeer, Lapeer 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 City of Lapeer, Lapeer County, Michigan.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Lapeer are available for review at the City Hall, Lapeer, 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 City of Lapeer, Lapeer 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
South Branch Flint River.	At northern corporate limit.	812
	2,100 feet upstream of the corporate limits.	813
	Just downstream of Oregon Street.	816
	Just downstream of Conrail, near Oregon Street.	817
	Just upstream of Conrail, near Oregon Street.	819
	At confluence of Farmers Creek.	820
	Just downstream of Grand Trunk Western Railroad.	822
	Just upstream of Grand Trunk Western Railroad.	823
	At eastern corporate limit.	823
Hunters Creek	At confluence with South Branch Flint River.	823
	Just downstream of Conrail.	823
	Just upstream of Conrail.	824
	Downstream of DeMille Street.	826
	Just upstream of DeMille Street.	830
	At southern corporate limit.	831
Farmers Creek	100 feet downstream of Main Street.	822
	Just upstream of Main Street.	826
	50 feet downstream of Grand Trunk Western Railroad.	826
	Just upstream of Grand Trunk Western Railroad.	830
	At Millville Road	831

(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.)

NOTE.—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: January 5, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2129 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4337]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Township of Spaulding, Saginaw County, Mich.

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 Spaulding, Saginaw 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 Spaulding, Saginaw County, Michigan.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Township of Spaulding are available for review at the Township Hall, Spaulding, 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 Spaulding, Saginaw 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
Cass River	All flooded areas within the community.	594

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2130 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4453]

PART 1917—APPEALS PROPOSED FROM FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Goffstown, Hillsborough County, N.H.

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 Goffstown, 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 Goffstown, 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 Goffstown are available for review at the Planning Department, Town Office, Goffstown, 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 Goffstown, 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
Piscataquog River.	Downstream Corporate Limits with Manchester, New Hampshire.	167
	5,700 Feet Downstream of Henry Bridge Road.	177
	300 Feet Upstream of Henry Bridge Road.	187
	2,200 Feet Upstream of Henry Bridge Road.	197
	3,800 Feet Upstream of Henry Bridge Road.	207
	260 Feet Downstream of Glen Lake Dam.	216
	100 Feet Upstream of Glen Lake Dam.	276
	6,600 Feet Upstream of Glen Lake Dam.	276
	100 Feet Downstream of a Dam Located 450 Feet Downstream of Boston and Maine Railroad.	283

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	100 Feet Upstream of a Dam Located 450 Feet Downstream of Boston and Maine Railroad.	292
	200 Feet Upstream of Main Street.	294
	Upstream Corporate Limits with Weare, New Hampshire.	299
South Branch Piscataquog River.	At Mouth with Piscataquog River.	296
	2,700 Feet Downstream of Corporate Limits with New Boston, New Hampshire.	298
	Upstream Corporate Limits with New Boston, New Hampshire.	308
Bog Brook	At Mouth with Piscataquog River.	294
	240 Feet Downstream of New Boston Road.	303
	100 Feet Upstream of New Boston Road.	310
	1,750 Feet Upstream of New Boston Road.	320
	530 Feet Downstream of the Downstream Crossing of Bog Road.	330
	240 Feet Downstream of the Downstream Crossing of Bog Road.	340
	140 Feet Upstream of the Downstream Crossing of Bog Road.	350
	790 Feet Downstream of the Upstream Crossing of Bog Road.	360
	200 Feet Upstream of the Upstream Crossing of Bog Road.	370
	710 Feet Upstream of the Upstream Crossing of Bog Road.	380
Gorham Brook	At Mouth with Piscataquog River.	297
	210 Feet Downstream of Old Route 114.	307
	320 Feet Upstream of Old Route 114.	317
	850 Feet Upstream of Old Route 114.	327
Autumn Brook	At Mouth with Piscataquog River.	294
	20 Feet Downstream of Depot Street.	294
	20 Feet Upstream of Depot Street.	301
	50 Feet Downstream of Church Street.	305
	50 Feet Upstream of Church Street.	306
	60 Feet Downstream of North Mast Road.	306
	320 Feet Upstream of North Mast Road.	309
	1,600 Feet Upstream of North Mast Road.	314

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 24, 1978

GLORIA M. JIMENEZ
Federal Insurance Administrator.

[FR Doc. 79-2131 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4050]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Clyde, Sandusky County, Ohio

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 Clyde, Sandusky County, Ohio. 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 Clyde, Sandusky County, Ohio.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Clyde, Sandusky County, Ohio, are available for review at the Clyde City Hall, 606 South Church Street, Clyde, Ohio.

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 Clyde, Sandusky County, Ohio.

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
Raccoon Creek	North Corporate Limits.	647
	U.S. Highway 20	656
	Whirlpool Corporation Building (North Side).	658
	Factory Access Road (975 Feet Upstream from U.S. 20).	661
	Conrail	665
	Mulberry Street	667
	Vine Street	670
	Maple Street	672
	Conrail	673
	Buckeye Street	675
	South Street	676
	Limerick Road	694
Buck Creek	North Corporate Limits.	655
	State Road 101	673
	Conrail (Penn Central R.R.) Downstream Side.	675
	Conrail (Penn Central R.R.) Upstream Side.	680
	766' upstream from Conrail to Culvert Outlet.	690
	East Corporate Limits	690

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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 14, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2132 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4425]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Village of South Bloomfield, Pickaway County, Ohio

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 South Bloomfield, Pickaway County, Ohio. 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 South Bloomfield, Pickaway County, Ohio.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of South Bloomfield are available for review at the Municipal Building, 5023 South Union Street, Ashville, Ohio.

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 South Bloomfield, Pickaway County, Ohio.

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
Mud Run	Downstream Corporate Limit.	678
	Downstream Side of State Route 316.	678
	Upstream Side of State Route 316.	681
	Downstream Side of State Route 752.	681

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: January 5, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2133 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-3427]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Borough of Port Allegany, McKean County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Borough of Port Allegany, McKean County, Pennsylvania. 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 Borough of Port Allegany, McKean County, Pennsylvania.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Borough of Port Allegany, McKean County, Pennsylvania, are available for review at the Bulletin Board at the Borough Office Building, Port Allegany, Pennsylvania.

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 Borough of Port Allegany, McKean County, Pennsylvania.

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, above mean sea level
Allegheny River	U.S. Route 6	1,474
	Mill Street	1,477
Lillibridge Creek	Conrail Bridge (Upstream Side).	1,480
	Mill Street (Upstream side).	1,485
	Arnold Avenue (Upstream Side).	1,506
	Upstream Corporate Limits.	1,543

(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).

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1979, P.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: January 11, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2134 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI 4326]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Algoma, Kewaunee County, Wis.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City Algoma, Kewaunee County, Wisconsin. 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 Algoma, Kewaunee County, Wisconsin.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for for the City of Algoma are available for review at the City Clerk's Office, City Hall, 416 Freemont, Algoma, Wisconsin.

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 Algoma, Kewaunee County, Wisconsin.

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
Ahnapee River	At mouth	584
	100 feet upstream of 2nd Street.	584
	Downstream side of 4th Street.	585
	200 feet upstream of 4th Street.	586
	At upstream corporate limit.	587
Silver Creek	At confluence with Ahnapee River.	587
	Downstream of Ahnapee and Western Railroad.	587
	100 feet upstream of Perry Street.	589
	2,500 feet upstream of Perry Street.	590
	3,200 feet upstream of Perry Street.	592
	At upstream corporate limit.	593

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2135 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4387]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Village of Hales Corners, Milwaukee County, Wis.

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 Hales Corners, Milwaukee County, Wisconsin. 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 Hales Corners, Milwaukee County, Wisconsin.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of Hales Corners are available for review at the Village Hall, 5635 S. New Berlin Road, Hales Corners, Wisconsin.

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 Village of Hales Corners, Milwaukee County, Wisconsin.

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
Root River Tributary.	At Downstream Whitnall Park Drive.	734
	1000 feet Downstream of 108th Street.	756
	Just Upstream of West Forest Home Avenue.	765
	Just Upstream of West Janesville Road.	780
	Just Upstream of West Godsell Road, approximately 1500 feet Downstream of Upper Kelly Lake.	795
	Just Upstream of South Kurtz Road.	803
	130 feet Upstream of South 124th Street.	811
	Upper Kelly Lake	811
Wemp Branch	Confluence with Root River Tributary.	769
	Just Upstream of West Janesville Road.	774
	Just Upstream of West Parnell Avenue.	784
	Just Upstream of South 115th Street.	789
	At West Corporate Limits.	814
113th Street Branch.	Mouth at Wemp Branch	784
	Just Upstream of West Grange Avenue.	789
	Just Upstream of West Upham Avenue.	795
	Just Downstream of West Edgerton Avenue.	800

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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. 79-2136 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4536]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Pierce, Weld County, Colo.

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 Pierce, Weld County, Colorado. 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 Pierce, Colorado.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Pierce, Weld County, Colorado, are available for review at City Hall, 240 Main Street, Pierce, Colorado.

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 Pierce, Colorado.

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
Spring Creek	Main Street—100 feet upstream of centerline.	5,033
	Corporate limit—60 feet downstream of centerline of Rowe Avenue.	5,040
Spring Creek Overflow.	Weld County Road 88—100 feet upstream of centerline.	5,017
	Main Street—100 feet upstream of centerline.	5,037
	Rowe Avenue—150 feet downstream of centerline.	5,044

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2137 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4487]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of East Hartford, Hartford County, Conn.

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 East Hartford, Hartford County, Connecticut. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the na-

tional flood insurance program (NFIP).

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

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of East Hartford are available for review at the Town Hall, 740 Main Street, East Hartford, Connecticut.

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 East Hartford, Hartford County, Connecticut.

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
Connecticut River.	At southern corporate limit.	29
	At northern corporate limit.	31
Burnham Brook....	At northern corporate limit.	31
	Just downstream of King Street.	31
	50 feet upstream of King Street.	33
	800 feet upstream of King Street.	34
	260 feet downstream of U.S. Route 5.	37
	100 feet upstream of U.S. Route 5.	41
	40 feet downstream of the Conrail Bridge.	42
	Just upstream of Conrail Bridge.	46
	Approximately 2,930 feet downstream of University Avenue.	50
	Just upstream of bridge, 1,100 feet downstream of University Avenue.	58
	Just upstream of University Avenue.	61
	Just upstream of Alps Drive.	66
	Just upstream of Yale Road.	68
	1,450 feet upstream of Yale Road.	70
	2,300 feet upstream of Yale Road.	79
Hockanum River...	Mouth at Connecticut River.	29
	Just upstream of dam, 425 feet downstream of Forbes Street.	38
	Just upstream of dam, 50 feet downstream of Forbes Street.	50
	Just upstream of dam, 500 feet upstream of Forbes Street.	60
	Just upstream of Scotland Road.	63
	Just upstream of Footbridge, 1,250 feet downstream of Walnut Street.	64
	Just upstream of Walnut Street.	66
	Just upstream of dam, 2,000 feet upstream of Walnut Street.	73
	3,450 feet upstream of Walnut Street.	73
Pewterpot River....	Mouth at Keeney Cove..	29
	Just upstream of Glastonbury-East Hartford Expressway.	32
	Just upstream of bridge, 200 feet upstream of Brewer Street.	35
	3,250 feet upstream of Brewer Street.	38
	260 feet downstream of South Branch confluence.	43
	At confluence of South Branch.	49
	850 feet upstream of South Branch confluence.	49
	Approximately 915 feet downstream of Forbes Street.	53
	130 feet downstream of Forbes Street.	55
	Just upstream of Forbes Street.	59
	770 feet upstream of Forbes Street.	59
	Just upstream of Bridge, 2,250 feet upstream of Forbes Street.	66
	4,100 feet upstream of Forbes Street.	68
Willow Brook.....	Mouth at Connecticut River.	29
	Just upstream of dam, 1,150 feet upstream of Main Street.	33
	Just downstream of the Pratt and Whitney Aircraft Corporation culvert.	33
	Just upstream of the Pratt and Whitney Aircraft Corporation culvert.	44
	Just upstream of the Rentschler Field culvert.	46
	Just upstream of Silver Lane.	48
	Just downstream of Cumberland Drive culvert.	49
	Just downstream of the footbridge, 340 feet upstream of Cumberland Drive.	50
	Just upstream of the footbridge, 550 feet downstream of Ginger Lane.	53
	Just downstream of the Willow Brook Diversion Structure.	55
	800 feet upstream of the Willow Brook Diversion Structure.	57
	100 feet downstream of the shopping center access road.	59
	Just upstream of the shopping center access road.	63
	Just upstream of Forbes Street.	72
	1,100 feet upstream of Forbes Street.	76
Porter Brook.....	At the downstream corporate limits.	29
	475 feet downstream of Forbes Street.	29
	Confluence of Hills Pond Branch.	42
	1,200 feet upstream of Forbes Street.	43
	1,750 feet downstream of Hill Street.	45
	900 feet downstream of Hill Street.	49
	Just upstream of Hill Street.	53
	4,780 feet upstream of Hill Street.	58
	2,150 feet downstream of Farnham Drive branch confluence.	61
	Just upstream of Farnham Drive branch confluence.	70
Hills Pond Brook ..	Mouth at Porter Brook..	42
	1,250 feet downstream of the culvert near Gourman Park.	45
	Just upstream of the culvert near Gourman Park.	55
	600 feet upstream of the culvert near Gourman Park.	55
Farnham Drive Branch.	Mouth at Porter Brook..	70
	1,150 feet upstream of the mouth at Porter Brook.	76
	Just downstream of the Mulcahy Drive culvert.	82
	Just upstream of Oak Street.	101
	800 feet upstream of Oak Street.	101
South Branch.....	Mouth at Pewterpot River.	49
	Just upstream of Roxbury Road.	52
	Just upstream of Forbes Street.	58
	1,500 feet upstream of Forbes Street.	59

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Just upstream of dam, 1,150 feet downstream of Brewer Street.	73
	Just upstream of Brewer Street.	80
	Just upstream of bridge, 800 feet upstream of Brewer Street.	84
	Just upstream of footbridge, 500 feet downstream of Grande Road.	90
	Just upstream of Grande Road.	98
	Just upstream of bridge, 500 feet downstream of Oak Street.	101
	130 feet downstream of Oak Street.	103
	Just upstream of Oak Street.	114
	600 feet upstream of Oak Street.	114

(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.)

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

Issued: January 3, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2138 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4328]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determinations for the City of Kellogg, Shoshone County, Idaho

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 Kellogg, Shoshone County, Idaho. 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 Kellogg, Idaho.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Kellogg, Shoshone County, Idaho, are available for review at City Hall, 323 Main Street, Kellogg, Idaho.

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 Kellogg, Idaho.

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
South Fork Coeur D'Alene River.	Interstate 90—100 feet*..	2,276
	New Street—20 feet*.....	2,285
	Hill Street—100 feet*.....	2,300
	Division Street North—50 feet*.	2,308

*Upstream of centerline.

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

NOTE.—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: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2139 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4306]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Pinehurst, Shoshone County, Idaho

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 Pinehurst, Shoshone County, Idaho. 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 Pinehurst, Idaho.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Pinehurst, Shoshone County, Idaho, are available for review at City Hall, North Division Street, Pinehurst, Idaho.

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 Pinehurst, Idaho.

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
Pine Creek	Most Downstream Corporate Limits.	2205
	Main Street Bridge (140 feet upstream from centerline).	2220
	Most Upstream Corporate Limits (approximately 1200 feet upstream of Ohio Avenue Bridge).	2253

(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).

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2140 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4308]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of St. Maries, Benewah, County, Idaho

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 St. Maries, Benewah County, Idaho. 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 St. Maries, Benewah County, Idaho.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of St. Maries, Benewah County, Idaho, are available for review at City Hall, 602 College Avenue, St. Maries, Idaho.

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 St. Maries, Benewah County, Idaho.

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
St. Joe River	Highway 95 Alternate Bridge-100 feet*.	2139
St. Maries River	Chicago, Milwaukee, St. Paul and Pacific Railroad Bridge-10 feet*.	2139
	State Highway 3 and Alternate 95 Bridge-10 feet*.	2140

*Upstream of centerline.

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

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2141 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4461]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Chicago Heights, 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 City of Chicago Heights, Cook County, Ill. 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 Chicago Heights, Cook County, Ill.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Chicago Heights, Cook County, Illinois, are available for review at the Chicago Heights City Hall, 1601 Chicago Road, Chicago Heights, 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 Chicago Heights, 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
Thorn Creek	Confluence w/Tributary C North of Joe Orr Road.	625
	Downstream Corporate Limit at Joe Orr Road.	630
	Halsted Road	639
	Chicago Road	647
	14th Street	650
	15th Street	652
	16th Street	654
	Penn Central	658
	E J & E Railroad	663
	Chicago Heights Corporate Limits at Spillway for Sauk Lake.	665
Tributary "B" of Thorn Creek at Route 1 Cutoff.	Confluence w/Thorn Creek.	640
	State Route 1 (One)	640
	Reigle Road 6646	
	Dixie Highway	649
	Tenth Street	652
	Meadow Lane	654
Butterfield Creek	Kuechler Avenue Extended.	632
	Ashland Avenue Extended.	634

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: January 3, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2142 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4493]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Harvard, McHenry 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 Harvard, McHenry 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 Harvard, McHenry County, Illinois.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Harvard are available for review at the City Hall, Harvard, 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 Harvard, McHenry 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
Mokeler Creek	1,450 feet Downstream of Route 173 at Western Corporate Limit.	911
	400 feet Downstream of Route 173 at Sewage Disposal Pond.	914
	660 feet Downstream of Eastmann Street.	917
	60 feet Upstream of Eastmann Street.	921
	Just Downstream of Marengo Parkway.	923
	130 feet Upstream of Marengo Parkway.	924
	100 feet Upstream of Route 173, second crossing.	928
	50 feet Upstream of U.S. Route 14.	930
	50 feet Downstream of Jefferson Street.	931
	70 feet Upstream of Jefferson Street.	933
	200 feet Downstream of Chicago & Northwestern Railroad.	935
	75 feet Upstream of Chicago & Northwestern Railroad.	937
	120 feet Downstream of Kennedy Drive (Eastern Corporate Limits).	937

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amend-

ments 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: January 3, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2143 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-3947]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of West Chicago, Du Page 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 West Chicago, Du Page 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 West Chicago, Du Page County, Illinois.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of West Chicago, Du Page County, Illinois, are available for review at the City Hall, 475 Main Street, West 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 City of West Chicago, Du Page 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 Branch Du Page River.	Downstream Corporate Limits.	707
	State Route 38, Roosevelt Road (Upstream).	707
	Upstream Corporate Limits.	708
Kress Creek	McChesney Road (Upstream).	740
	Footbridge at Corporate Limits (Downstream).	741
	State Route 38, Roosevelt Road.	745
	Downs Drive (Upstream).	747
	Western Drive (Upstream).	748
	Indian Boundary Road, Corporate Limits (Upstream).	750
	Industrial Drive, Corporate Limits (Upstream).	753
	Chicago and Northwestern Railroad Spur (Upstream).	754
Unnamed Tributary of Kress Creek.	Downstream Corporate Limits.	733
	Parking lot bridge (Upstream).	735
	Town Road bridge (Upstream).	737
	Private Road (Upstream).	744
	Burlington Northern Railroad (Downstream).	748
	Fenton Road	750
	Industrial Drive 343 feet downstream of Geneva Road.	753
	Chicago and Northwestern Railroad Bridge (Upstream).	757
	Chicago and Northwestern Railroad Spur 2,904 feet upstream of Geneva Road.	759

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: January 5, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2144 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4463]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Charlestown, Clark 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 City of Charlestown, Clark 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 City of Charlestown, Clark County, Indiana.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Charlestown, Clark County, Indiana, are available for review at the Charlestown City Hall, 701 Main Street, Charlestown, 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 City of Charlestown, Clark 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
Pleasant Run	Corporate Limits (Downstream).	543
	Spring Street	566
	Reed Street (Downstream).	573
	Reed Street (Upstream).	578
	Monroe Street	594
	Corporate Limits (Upstream).	603

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: January 3, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2145 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4269]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for East Baton Rouge Parish, La.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in East Baton Rouge Parish, Louisiana. 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 East Baton Rouge Parish, Louisiana.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for East Baton Rouge Parish, Louisiana, are available for review at Municipal Building, 300 North Boulevard, Baton Rouge, Louisiana.

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 East Baton Rouge Parish, Louisiana.

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
Amite River	Bayou confluence with Manchac.	18
	Confluence with Jones Creek.	31
	Interstate Highway 12	40
	U.S. Highway 190	42
Baker Canal-Upper Cypress Bayou-South Canal-Upper White Bayou.	U.S. Highway 61 South	63
	City of Baker, downstream corporate limits.	73
	City of Baker, upstream corporate limits.	79
	McHugh Road	81
	Lower Zachary Road	90
Upper White Bayou.	Lower Zachary Road	90
	Louisiana State Highway 64.	93
	Louisiana State Highway 19.	98
	Port Hudson-Pride Road	105
Bayou Duplantier.	Lee Drive	27
Bayou Fountain	Confluence with Selene Bayou.	15
	Gardere Lane	18
	Ben Hur Road	20
	Bob Pettit Drive	24
Bayou Fountain North Branch.	Confluence with Bayou Fountain.	20
	West Parker Boulevard	21
Bayou Fountain South Branch.	Confluence with Bayou Fountain.	24
	South Stadium Road	25
South Canal Diversion.	Confluence with Comite River.	73
	Dyer Road	75
	Plank Road	82
	Confluence with White Bayou.	83
Wards Creek	Highland Road	18
	Pecue Lane	21
	Siegen Lane	24
	Essen Lane	31
	Interstate Highway 12	35
	Clay Cut Road	45
	Government Street	48
Blackwater Bayou.	Confluence with Comite River.	53
	Hooper Road	57
	1.5 miles upstream of Hooper Road.	63
Clay Cut Bayou	Parish Road	27
	Jefferson Highway	29
	Airline Highway	30
	Siegen Road	32
	Inswold Road	34
Comite River	Illinois Central Railroad	42
	Joor Road	52
	Hooper Road	55
	Comite Drive	65
	Dyer Road, downstream side.	75
Dawson Creek	Perkins Road, downstream crossing.	26
	Perkins Road, upstream crossing.	27
	College Avenue extended.	29
Elbow Bayou	Confluence with Bayou Fountain.	19
	Illinois Central Railroad (upstream side).	20
	Ben Hur Road	21
Hurricane Creek	Confluence with Comite River.	48
	Joor Road	49
	Maribel Drive	49
	Brookstown Drive	52
	Lorraine Street	52
Jones Creek	Confluence with Amite River.	31
	Jones Creek Road	35
	Woodland Bridge Boulevard.	39
	Interstate Highway 12	40
	Old Hammond Highway	41

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Sherwood Forest Boulevard.	43
	Mollylea Drive	46
Jones Creek	Monterrey Boulevard	49
	Airline Highway	52
	Lobdell Extension	54
Lively Bayou	Old Hammond Highway	41
	Flannery Road (upstream crossing).	43
	Florida Boulevard	43
	Illinois Central Railroad	46
Lower Cypress Bayou.	Hooper Road	54
	Plank Road	57
	Thomas road	63
	Greenwood Park Road (North).	64
	Lavey Lane	65
Lower White Bayou.	Confluence with Comite River.	61
	Comite Road	65
	Pettit Road	70
	Plank Road	71
	Bentley Drive	76
North Branch Wards Creek.	Confluence with Wards Creek.	29
	Interstate Highway 12	34
	Jefferson Highway	35
	Old Hammond Highway	39
	Goodwood Boulevard	44
	Florida Boulevard	52
	Fernwood Drive	53
Lively Bayou Tributary.	Goodwood Boulevard	41
	Locksley Drive	42
	Florida Boulevard	45
	Tams Drive	47
	Choctaw Drive	48
Weiner Creek	Confluence with Jones Creek.	39
	Sherwood Forest Boulevard.	41
	Stanley Aubin Drive	45
	Janice Street	46
	Interstate Highway 12	50
Knox Branch	Confluence with Jones Creek.	34
	Harrells Ferry Road	35
Jacks Bayou	Tiger Bend Road	29
	Sherwood Forest Boulevard.	41
Monte Sano Bayou.	Airline Highway	54
	Harding Boulevard	55
	Eighth Street	61
	Fourth Street	62
	Confluence with Gibbens Lateral.	64
	Scotlandville Lateral	
	Interstate Highway 110	55
	Badley Road	55
	Stitt Street	56
	Fraternity Street	57
Scotlandville Avenue.		62
South Airport Lateral.	Confluence with Monte Sano Bayou.	55
	0.80 mile upstream of confluence with Monte Sano Bayou.	63
North Airport Lateral.	Confluence with Gibbons Lateral.	64
	0.75 mile upstream of confluence with Gibbens Lateral.	66
Robert Canal	Joor Road	49
	Greenwell Street	50
	Matthews Street	50
	Silverleaf Avenue	51
	Glenoaks Drive	52
Hollywood Lateral	Confluence with Wildwood Lateral.	53
	Plank Road	53
	Confluence with Monte Sano Bayou.	54
Wildwood Lateral	Lorraine Street	52
	St. Gerald Avenue	52
	Confluence with Hollywood Lateral.	53
East Lateral Cypress Bayou.	Gibbens Road	63
	Baker Corporate Limits	63
West Lateral Cypress Bayou.	Confluence with Cypress Bayou.	63
	Baker Road	65
	Rafe Mayer Road	67
Gibbens Lateral North.	Confluence with Cypress Bayou.	61
	Gore Road	63
	320 feet north of Blount Road.	65
South Lateral	Confluence with Cypress Bayou.	58
	Plank Road	61

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 16, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2146 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4520]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Township of Bangor, Bay County, Mich.

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 Bangor, Bay 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 Bangor, Michigan.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Township of Bangor, Bay County, Michigan, are available for review at Township Hall, 3921 Wheeler Road, Bay City, 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 Bangor, 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 feet, national geodetic vertical datum
Kawkawlin River	Detroit and Mackinac Railroad*.	585
	State Park Road*	585
	Euclid Avenue, 100 feet upstream from centerline.	586
	Upstream Corporate Limits.	588
Saginaw Bay	Confluence with Kawkawlin River.	585
Saginaw River	Confluence with Saginaw Bay.	585
	Detroit and Mackinac Railroad*.	585

*At centerline.

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

Note.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2147 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4271]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Township of Frankenlust, Bay City, Mich.

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 Frankenlust, Bay City, 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 Frankenlust, Bay City, Michigan.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Township of Frankenlust, Bay County, Michigan, are available for review at Township Hall, 2401 Delta Road, Bay City, 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 Frankenlust, Bay City, 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
Saginaw River	Hotchkiss Road—20 feet*.	585
	Upstream Corporate Limits.	586
Saginaw River West Channel.	Confluence with Dutch Creek.	585
Dutch Creek	Euclid Road—40 feet*	585
	Minnesota Highway 84—50 feet*.	585
Squaconning Creek.	Ziegler Road—20 feet*	585
	Southbound Interstate Highway 75—50 feet*.	586
	Minnesota Highway 84—100 feet*.	588
	Bay Valley Road—20 feet*.	589
	Four Mile Road—20 feet*.	593
	Hotchkiss Drive—100 feet*.	596
Squaconning Creek Secondary Channel.	Minnesota Highway 84—50 feet*.	588
Kochville and Frankenlust Drain.	Delta Road—20 feet*	591
	Amelith Road—50 feet**	602
	Kloha Road—10 feet*	604
	Machinaw Road—10 feet**.	606
Klauss Drain	Footbridge—10 feet*	594
	South Campus Drive—50 feet*.	598
	Delta Road—50 feet*	604

* Upstream of centerline.
** Downstream of centerline.

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

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2148 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4336]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Township of Saginaw, Saginaw County, Mich.

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 Saginaw, Saginaw 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 Saginaw, Michigan.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Township of Saginaw, Saginaw County, Michigan, are available for review at Administrative Offices, 4980 Shattuck Road, Saginaw, 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 Saginaw, Saginaw 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
Tittabawassee River.	Center Road—50 feet*....	595
	Conrail—10 feet*	597
	Gratiot Road—10 feet*...	598
	State Street—50 feet*.....	601
	Tittabawassee Road—30 feet*.	604
Unnamed Tributary to the Tittabawassee River.	Midland Road (State Highway 47)—30 feet*.	601
	Hospital Road—30 feet*.	601

*Upstream of centerline.

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

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2149 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4523]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Blaine, Anoka County, Minn.

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 Blaine, Anoka County, Minnesota. 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 Blaine, Minnesota.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Blaine, Anoka County, Minnesota, are available for review at City Hall, 9150 Central Avenue, N.E., Blaine, Minnesota.

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 Blaine, Minnesota.

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
County Ditch 39....	4th Street Northeast-50 feet*.	893
	Jefferson Street Northeast—100 feet*.	894
County Ditch 41 (Sand Creek).	University Avenue—25 feet*.	889
	Jefferson Street Northeast—25 feet*.	890
County Ditch 60 (Branch 1).	Main Street downstream crossing—50 feet**.	890
	Main Street (upstream crossing)—at centerline.	897
County Ditch 60 (Branch 2).	Paul Parkway—50 feet*..	895
	Duke Drive—50 feet*	895
County Ditch 17....	University Avenue—50 feet*.	892
	U.S. Highway 10—100 feet*.	895
	Quincy Street Northeast—50 feet*.	901
Pleasure Creek	University Avenue—50 feet*.	897
	99th Avenue Northeast—at centerline.	897
Rice Creek.....	85th Street Northeast—50 feet*.	885
Tributary to Rice Creek.	Flowerfield Road—50 feet*.	885
Laddie Lake	From crossing of western shoreline and corporate limit to 50 feet west along corporate limit.	905
Blaine Pond	50 feet outward from shoreline.	885

*Upstream of centerline.
**Downstream of centerline.

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

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2150 Filed 1-24-79; 8:45 am]

[4210-01—M]

[Docket No. FI-4035]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Lake Elmo, Washington, County, Minn.

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 Lake

Elmo, Washington, County, Minnesota. 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 Lake Elmo, Minnesota.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Lake Elmo, are available for review at City Hall, Lake Elmo, Minnesota.

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 Lake Elmo, Minnesota.

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
Eagle Point Lake Fork.	50 feet upstream of Kevin Avenue North.	901
	Levee Road	901
	Upstream side of Ivy Avenue North.	905
	Upstream side of 28th Street North.	908
	75 feet upstream of Stillwater Boulevard North.	921
Lake Elmo	East of Lake Elmo Avenue North.	889
Downs Lake	Northwest of the intersection of Manning Avenue North and 20th Street.	893
Lake Jane	North of 45th Street North.	925
Sunfish Lake	North of Stillwater Boulevard.	894
Lake Olson and Lake De Montreville.	50th Street North	931

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2151 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4273]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Springfield, Brown County, Minn.

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 Springfield, Brown County, Minnesota. 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 Springfield, Minnesota.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Springfield, Brown County, Minnesota, are available for review at City Hall, 2 East Central, Springfield, Minnesota.

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 Springfield, Minnesota.

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
Cottonwood River.	Most Downstream Corporate Limits.	1017
	Cass Avenue Bridge-at centerline.	1020
	Most Upstream Corporate Limits.	1021

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2152 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4276]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for Hinds County, Miss.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Hinds County, Mississippi. 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 Hinds County, Mississippi.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Hinds County, Mississippi, are available for review at Chancery Court Building, 316 South President Avenue, Jackson, Mississippi.

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 Hinds County, Mississippi.

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
Bakers Creek	Champion Hill Road—100 feet*.	208
	Lancaster Road—10 feet*.	217
	Natchez Trace Parkway—100 feet*.	242
	North Midway Road—10 feet*.	251
	Illinois Central Gulf Railroad Spur Line—100 feet*.	280
	McRaven Road—10 feet*.	294
Bakers Creek Tributary 1.	Illinois Central Gulf Railroad—10 feet*.	246
	Airport Road—50 feet*	251
	Snake Creek Road—10 feet*.	259
	Dunn-Pease Road—10 feet*.	294
Big Creek	Interstate Highway 55—10 feet*.	262
	Old U.S. Highway 51—10 feet*.	268
	Davis Road—10 feet*	287
	Broadwater Road—10 feet*.	314
	Raymond Road—10 feet*.	329
	North Siwell Road—10 feet*.	341
	Brookview Drive—10 feet*.	351
	Mississippi Highway 8—50 feet*.	364
Big Creek Tributary 1.	Siwell Road—20 feet*	285
	Private Road 1st crossing—100 feet*.	312
	Private Road 2nd crossing—10 feet*.	326
Big Creek Tributary 3.	Gore Road—10 feet*	314
	Parks Road—100 feet*	323
	Springridge Road—10 feet*.	332
Bogue Chitto	Natchez Trace Parkway 1st crossing—10 feet*.	250
	Cynthia Road—10 feet*.	254
Bogue Chitto Tributary 1.	Magnolia Road—10 feet*	256
	North Side Drive—10 feet*.	272
	Vicksburg Road—40 feet*.	302
Hanging Moss Creek.	County Line Road—10 feet*.	340
Harris Creek	Interstate Highway 55 (upstream lane)—10 feet*.	269
	Old U.S. Highway 51—10 feet*.	271
Pearl River	Confluence with Cany Creek.	268
Rhodes Creek	Fortner Road—10 feet*	266
	West Frontage Road—100 feet*.	273
	Old U.S. Highway 51—100 feet*.	280
Smith Creek	McRaven Road—100 feet*.	256
	Wells Road—10 feet*	266
	Springridge Road—20 feet*.	280
	North Siwell Road—100 feet*.	326
Smith Creek Tributary 1.	State Highway 18—100 feet**.	293
	State Highway 18—100 feet*.	303
Smith Creek Tributary 2.	Confluence with Smith Creek.	310
Smith Creek Tributary 3.	Confluence with Smith Creek Tributary 1.	291
Snake Creek	Herrin Road—10 feet*	218
	Natchez Trace Parkway—40 feet*.	244
	Raymond-Clinton Road—10 feet*.	261
	State Highway 18—10 feet*.	278
Trahon Creek	Old Byram Road—10 feet*.	264
	Interstate Highway 55—100 feet*.	273
	Terry Road—10 feet*	275
	Forest Hills Road—100 feet*.	298
Trahon Creek Tributary 1.	Interstate Highway 55—150 feet*.	264
	Henderson Road—50 feet*.	321
Vaughn Creek	Georgetown Road—100 feet*.	265
	Illinois Central Gulf Railroad—10 feet*.	275
	Old U.S. Highway 51—10 feet*.	276
	Interstate Highway 55—100 feet**.	282
	Interstate Highway 55—100 feet*.	286

*Upstream of centerline.
**Downstream of centerline.

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

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2153 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4531]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Unincorporated Areas of Warren County, Miss.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Warren County, Mississippi. 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 Warren County, Mississippi.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Warren County are available for review at the County Offices, Vicksburg, Mississippi.

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 Warren County, Mississippi.

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
Mississippi River	Downstream county boundary.	96
	Upstream county boundary.	110
Yazoo River	At mouth of Yazoo Canal.	102
	At Kings Ferry	104
	Confluence of Little Sunflower River.	106
Hatcher Bayou	Just downstream of the U.S. Route 61 bridge located downstream of the Stouts Bayou confluence.	101
	Just upstream of the Illinois Central Gulf Railroad bridge located downstream of the Stouts Bayou confluence.	105
	Just upstream of the U.S. Route 61 bridge located just upstream of the Hatcher Bayou Tributary No. 1 confluence.	115
	2,850 feet downstream of the confluence of Durden Creek.	116
	Just upstream of Halls Ferry Road.	136
	At confluence of Hatcher Bayou Tributary No. 4.	145
	Just upstream of Lee Road.	164
	At confluence of Hatcher Bayou Tributary No. 8.	177
	Just upstream of Warriors Trail.	182
	Just upstream of the Illinois Central Gulf Railroad bridge located upstream of Warriors Trail.	189
	Just upstream of the south entrance to the Warren Central High School.	202
	3,700 feet upstream of the south entrance to the Warren Central High School.	204
Hatcher Bayou Tributary No. 1.	Confluence with Hatcher Bayou.	114
	At the City of Vicksburg-Warren County boundary line located 3,540 feet upstream from mouth.	120
	5,175 feet upstream of mouth.	141
Hatcher Bayou Tributary No. 3.	At confluence with Hatcher Bayou.	134
	At confluence of Hatcher Bayou Tributary No. 3B.	138
	Just upstream of Halls Ferry Road.	166
	3,700 feet upstream of Halls Ferry Road.	176
	6,340 feet upstream of Halls Ferry Road.	195
Hatcher Bayou Tributary No. 3A.	At confluence with Hatcher Bayou Tributary No. 3.	133
	Just downstream of Halls Ferry Road.	133
	400 feet upstream of Halls Ferry Road.	135
	100 feet upstream of Greenbriar Drive.	144
	2,400 feet upstream of Greenbriar Drive.	152
Hatcher Bayou Tributary No. 3B.	At confluence with Hatcher Bayou Tributary No. 3.	138
	630 feet upstream of confluence with Hatcher Bayou Tributary No. 3.	138
	2,220 feet upstream of confluence with Hatcher Bayou Tributary No. 3.	145
Hatcher Bayou Tributary No. 3C.	At confluence with Hatcher Bayou Tributary No. 3.	161
	1,000 feet upstream of confluence with Hatcher Bayou Tributary No. 3.	162
	2,850 feet upstream of the confluence with Hatcher Bayou Tributary No. 3.	169
Hatcher Bayou Tributary No. 4.	At confluence with Hatcher Bayou.	145
	1,580 feet upstream of confluence with Hatcher Bayou.	146
	1,700 feet upstream of Lee Road.	167
	1,200 feet downstream of Warriors Trail.	188
	520 feet upstream of Warriors Trail.	214
Hatcher Bayou Tributary No. 4A.	At confluence with Hatcher Bayou Tributary No. 4.	185
	530 feet upstream of confluence with Hatcher Bayou Tributary No. 4.	185
	160 feet downstream of State Highway 27.	198
	50 feet upstream of State Highway 27.	206
Hatcher Bayou Tributary No. 5.	Confluence with Hatcher Bayou.	148
	2,300 feet upstream of the confluence with Hatcher Bayou.	148
	3,750 feet upstream of the confluence with Hatcher Bayou.	153
	100 feet upstream of New Street.	198
	Just upstream of Inglewood Street.	214
Hatcher Bayou Tributary No. 6.	Confluence with Hatcher Bayou.	155
	1,425 feet upstream of the confluence with Hatcher Bayou.	155
	600 feet downstream of New Street.	171
	130 feet upstream of New Street.	189
	Just downstream of East Indiana Avenue.	202
	210 feet upstream of East Indiana Avenue.	207
Hatcher Bayou Tributary No. 7.	Confluence with Hatcher Bayou.	168
	1,050 feet upstream of the confluence with Hatcher Bayou.	168
	Just upstream of State Highway 27.	197
Hatcher Bayou Tributary No. 8.	At confluence with Hatcher Bayou.	177
	Just downstream of Warriors Trail.	178
	100 feet upstream of Warriors Trail.	181
	50 feet downstream of the Illinois Central Gulf Railroad bridge.	184

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	100 feet upstream of Illinois Central Gulf Railroad.	195
Stouts Bayou	Confluence with Hatcher Bayou.	109
	1,000 feet upstream of the confluence with Hatcher Bayou.	110
	100 feet downstream of Rifle Range Road.	110
	Just upstream of Rifle Range Road.	115
Durden Creek	Vicksburg corporate limit south of Porters Chapel Road.	159
	2,100 feet upstream of Porters Chapel Road.	180
	4,650 feet upstream of Porters Chapel Road.	194

(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.)

NOTE.—In accordance with Section 7(o)4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: January 3, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2154 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4312]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determinations for the City of Belt, Cascade County, Mont.

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 Belt, Cascade County, Montana. 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 Belt, Montana.

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

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 Belt, Montana.

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
Belt Creek	Bridge Street—20 feet upstream of centerline.	3,510

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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. 79-2155 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4313]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Eureka, Lincoln County, Mont.

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 Eureka, Lincoln County, Montana. 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 Eureka, Montana.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Eureka, Lincoln County, Montana, are available for review at Town Hall, Eureka, Montana,

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 Eureka, Lincoln County, Montana.

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
Tobacco River.....	Dewey Avenue Bridge—20 feet upstream of centerline.	2562
	Upstream corporate limits at station 20800.	2588

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2467 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4314]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Libby, Lincoln County, Mont.

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 Libby, Lincoln County, Montana. 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 Libby, Montana.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Libby, Lincoln County, Montana, are available for review at City Hall, 603 Mineral Avenue, Libby, Montana.

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 Libby, Lincoln County, Montana.

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
Flower Creek	Sixth Street Bridge—100 feet*.	2078
	U.S. Highway 2 Bridge—80 feet*.	2082
	Private Bridge—100 feet*.	2087
	Footbridge—30 feet*	2118
	Balsam Street Bridge—20 feet*.	2141
Kootenai River.....	State Highway 37—50 feet*.	2057

* Upstream of centerline.

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

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2468 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4357]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Colden, Erie County, N.Y.

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 Colden, Erie County, New York. 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 Colden, Erie County, New York.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Colden, Erie County, New York, are available for review at the Colden Town Hall, Route 240, Colden, New York 10433.

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 Colden, Erie County, New York.

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
West Branch Cazenovia Creek.	Downstream Town boundary.	942
	State Route 240—1st crossing upstream of Town boundary.	944
	Burr Road	969
	State Route 240—1st crossing downstream of Heath Road.	1,055
	Heath Road	1,059
	State Route 240—1st crossing upstream of Heath Road.	1,077
	Chessie System Bridge	1,083
	Farm bridge south of Village of Colden.	1,121
	Murray Road—upstream side.	1,169
	Upstream Town boundary.	1,191

(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).

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: January 3, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2469 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4358]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Village of Lancaster, Erie County, N.Y.

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 Lancaster, Erie County, New York. 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 Lancaster, Erie County, New York.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of Lancaster, Erie County, New York, are available for review at the Department of Public Works, 5200 Broadway, Lancaster, New York.

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 Lancaster, Erie County, New York.

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 Part 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
Cayuga Creek	Penora Street	649
	Aurora Street	655
	Lake Avenue	664
	Courd Park Dam	671
	Upstream Corporate Limits.	672
Plum Bottom Creed.	Confluence w/Cayuga Creek.	653
	Central Avenue	661
	Clark Street	663
	Holland Avenue	670
	Court Street	677
	Upstream Corporate Limits.	680
Spring Creek	Confluence with Plum Bottom Creek.	662
	Contail Bridge	676
	Court Street	683
	Upstream Corporate Limits.	688

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: January 3, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2470 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4428]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Township of Hatfield, Montgomery County, Pa.

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 Hatfield, Montgomery County, Penn-

sylvania. 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 Hatfield, Montgomery County, Pennsylvania.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Township of Hatfield, Montgomery County, Pennsylvania, are available for review at the Township Building of Hatfield, School Road and Chestnut Streets, Hatfield, Pennsylvania.

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 Hatfield, Montgomery County, Pennsylvania.

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
West Branch Neshaminy Creek.	Downstream Corporate Limits (Upstream County Line Road).	272
	Upstream Old Bethlehem Pike.	278
	Upstream Lexington Road.	285
	Upstream Orvilla Road..	295
	Upstream Souderton Pike.	327
	Upstream Bergey Road..	335
	Upstream Hallowell Corporation Road.	346
Colmar Tributary.	Upstream Walnut Street	276
	Upstream Conrail.....	281
	Upstream Old Bethlehem Pike.	293
Unionville Tributary.	Upstream Trewigtown Road.	292
	Downstream Trewigtown Road.	285
	Upstream Lexington Road.	301
	Downstream Orvilla Road.	309
	Upstream Orvilla Road..	314
	Upstream Corporate Limits (Downstream County Line Road).	345
Tributary to Unionville Tributary.	Confluence with Unionville Tributary.	314
	Upstream Corporate Limits (Downstream County Line Road).	343
Lansdale Tributary.	U. S. Route 463 (Hatfield Valley Road).	291
	Upstream Schwab Road.	297
	Upstream Huffel Road...	308
	Upstream Oak Park Drive.	311
	Upstream Orvilla Road..	326
North Hatfield Tributary.	Downstream Corporate Limits.	304
	Upstream Maple Avenue	308
	Upstream School Road...	323
	Downstream Unionville Pike.	330

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: January 3, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2471 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4430]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Township of Middletown, Bucks County, Pa.

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 Middletown, Bucks County, Pennsylvania. 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 Middletown, Bucks County, Pennsylvania.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Township of Middletown, Bucks County, Pennsylvania, are available for review at the Middletown Township Building, 700 New Rodgers Road, Levittown, Pennsylvania.

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 Middletown, Bucks County, Pennsylvania.

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
Neshaminy Creek	Township Corporate Limits.	23
	Upstream Hulmeville Corporate Limits.	35
	U.S. Route 1 Upstream	48
	Conrail	51
	Brownsville Road Upstream.	60
	Langhorne Corporate Limits Downstream.	69
	Langhorne Corporate Limits Upstream.	71
	Bridgeton Pike Downstream.	73
	Conrail (Reading R.R.) Upstream.	86
Mill Creek	Township Corporate Limits at Newportville Road Upstream.	48
	Frosty Hollow Road Upstream.	63
	Forsythia Cross Downstream.	70
	Trenton Road Upstream	77
	New Rodgers Road Upstream.	84
	I-95 Upsteam	87
	U.S. Route 1 Upstream	91
	Flower Mill Road Upsteam.	103
	Old Lincoln Highway Downstream.	126
	Bristol Pike Downstream.	146
Queen Anne Creek.	Township Corporate Limits Downstream.	48
	Township Corporate Limits Upstream.	58

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: January 3, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2472 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4378]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Borough of Mifflintown, Juniata County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Borough of Mifflintown, Juniata County, Pennsylvania. 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 Borough of Mifflintown, Juniata County, Pennsylvania.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Borough of Mifflintown, Juniata County, Pennsylvania, are available for review at the Mifflintown Borough Building, Mifflintown, Pennsylvania.

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 Borough of Mifflintown, Juniata County, Pennsylvania.

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
Moist Run	Front Street (Upstream/ Downstream).	444
	Main Street/William Penn Highway (Upstream/ Downstream).	444
	Cross Street (30 feet downstream of bridge).	444
	At Cross Street Bridge	448
Juniata River	Confluence of Moist Run.	444
	Bridge Street (Upstream/ Downstream).	444
	Northern Corporate Limits—about 1,050 feet upstream of Bridge Street bridge.	444

(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).

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: January 3, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2473 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4379]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Borough of Osborne, Allegheny County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Borough of Os-

borne, Allegheny County, Pennsylvania. 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 Borough of Osborne, Allegheny County, Pennsylvania.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Borough of Osborne, Allegheny County, Pennsylvania, are available for review at the Sewickley Public Library, Board and Thorn Streets, Sewickley, Pennsylvania.

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 Borough of Osborne, Allegheny County, Pennsylvania.

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
Ohio River	Downstream Corporate Limits.	716
	Upstream Corporate Limits.	717

(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).

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

Issued: January 3, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2474 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4472]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Burrillville, Providence County, R.I.

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 Burrillville, Providence County, Rhode Island. 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 Burrillville, Providence County, Rhode Island.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Burrillville, Providence County, Rhode Island, are available for review at the Burrillville Town Hall, Harrisville, Rhode Island.

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 Burrillville, Providence County, Rhode Island.

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
Branch River	Downstream Corporate Limits.	255
	Victory Highway (Downstream).	260
	Victory Highway (Upstream).	268
	Nasonville Dam (Downstream).	270
	Nasonville Dam (Upstream).	273
	Mohegan Dam (Downstream).	277
	Mohegan Dam (Upstream).	284
	Glendale Dam (Upstream).	299
	State Route 102 (Bridge).	300
	Victory Highway (Upstream).	301
	Oakland Dam (Downstream).	305
	Oakland Dam (Upstream).	308
	Confluence of Clear River.	310
Clear River	Victory Highway (Downstream).	311
	Victory Highway (Upstream).	314

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	State Route 102 (Bridge).	315
	Sweets Hill Road (Downstream).	323
	Sweets Hill Road (Upstream).	326
	Harrisville Dam (Downstream).	326
	Harrisville Dam (Upstream).	335
	Sherman Road	338
	School Street	341
	State Route 107	345
	Railroad Avenue	348
	State Route 107 (Downstream).	362
	State Route 107 (Upstream).	366
	Confluence of Pascoag River.	366
	Centennial Street	368
	Premier Worsted Dam (Approximately 350 feet downstream).	369
	Premier Worsted Dam (Upstream).	375
	Green's Shoddy Mill Dam (Downstream).	381
	Green's Shoddy Mill Dam (Upstream).	392
	North Road	395
	Laurel Ridge Avenue	407
	Pendercast Dam (Approximately 700 feet downstream).	413
	Pendercast Dam (Upstream).	423
	Warner Lane	427
	East Wallum Lake Road (Downstream).	442
Hepachet River	Confluence with Branch River.	310
	Mapleville Dam (Approximately 250 feet Downstream).	313
	Mapleville Dam (Upstream).	319
	Cooperhill Road	320
	Gilleran Mill Dam (Approximately 300 feet downstream).	325
	Gilleran Mill Dam (Upstream).	338
	Gazza Road	340
Pascoag River	Confluence with Clear River.	366
	Grove Street	367
	Dam 1,500 feet upstream from Grove Street (Approximately 100 feet downstream).	389
	Dam 1,500 feet upstream from Grove Street (Upstream).	403
	State Route 107	408
	Dam 200 feet upstream from State Route 107 (Approximately 100 feet downstream).	408
	Dam 200 feet upstream from State Route 107 (Upstream).	415
	State Route 107 (Upstream).	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).

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: January 3, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2474 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4435]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of University Park, Dallas County, Tex.

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 University Park, Dallas County, Texas. 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 University Park, Dallas County, Texas.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of University Park, Dallas County, Texas, are available for review at the Secretary's Office of University Park, 3800 University Boulevard, Dallas County, Texas 75205.

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 University Park, Dallas County, Texas.

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
Turtle Creek	Just downstream of Vassar Drive.	538
Stream 6A2	Just upstream of Turtle Creek Boulevard.	542

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

Issued: January 3, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2476 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4217]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for Carbon County, Utah

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

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

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

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Carbon County, Utah, are available for review at Carbon County Courthouse, Price, Utah.

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 Carbon County, Utah.

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
Price River	3rd West Street*	5506
	Bridge (Near Trailer Park)**.	5551
	Bridge (Near Trailer Park)*.	5561
	U.S. Routes 6 and 50	5687
	Denver Rio Grande Western Railroad**.	5965
	Denver Rio Grande Western Railroad*.	5978
Cardinal Wash	U.S. Highway 6 and 50* Airport Road Bridge.	5482
Meads Wash	Fourth South Street**	5512
	Fourth South Street*	5529
Spring Glen Wash	Main Street Bridge*	5780
Spring Canyon	Corporate Limits of Helper, Utah (downstream crossing).	5922
	Corporate Limits of Helper, Utah (upstream crossing).	5958

*Upstream side.
**Downstream side.

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 16, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2477 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4384]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determinations for the City of Port Orchard, Kitsap County, Wash.

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 Port Orchard, Kitsap County, Washington. 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 Port Orchard, Washington.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Port Orchard, Kitsap County, Washington, are available for review at City Hall, 216 Prospect Street, Port Orchard, Washington.

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 Port Orchard, Washington.

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
Blackjack Creek (Lower Reach).	Confluence with Sinclair Inlet.	10
Blackjact Creek (Upper Reach).	Washington State Highway 16—175 feet upstream of centerline.	168
Ross Creek	1,260 feet west of intersection of Melcher Street and Pottery Avenue at corner of corporate limits near Ross Creek.	49
Sinclair Inlet	Areas adjacent to the shore.	10

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: January 8, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2478 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4325]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Poulsbo, Kitsap County, Wash.

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 Poulsbo, Kitsap County, Washington. 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 Poulsbo, Washington.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Poulsbo, Kitsap County, Washington, are available for review at City Hall, 127 Jensen Way, Poulsbo, Washington..

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 Poulsbo, Kitsap County, Washington.

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
Liberty Bay	Intersection of Sixth Avenue South and Holm Street—100 feet south.	10
	Intersection of Sommerseth Street and Third Avenue South—150 feet west.	10

(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.)

NOTE.—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: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2479 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4290]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of Pullman, Whitman County, Wash.

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 Pullman, Whitman County, Washington. 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 Pullman, Washington.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Pullman, Whitman County, Washington, are available for review at City Hall, 325 Paradise Street, Southeast, Pullman, Washington.

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 Pullman, Whitman County, Washington.

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
South Fork Palouse River.	State Street Bridge—70 feet*.	2338
	Kamiaken Street Bridge—30feet*.	2344
	Spring Street Bridge—60 feet*.	2350
	Koppels Farm Bridge—40 feet*.	2358
	Trailer Creek Bridge—30 feet*.	2365
Missouri Flat Creek.	State Street—10 feet*	2337
	Grand Street—60 feet*	2344
	Burlington Northern Railroad Bridge 75A—50 feet*.	2356
	Stadium Way—40 feet*	2364
Airport Road Creek.	State Highway 270—70 feet*.	2405

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Airport Road—70 feet*...	2424
Wawawai Creek.....	U.S. Highway 195—120 feet*.	2426
	Private Access—120 feet*.	2439
Dry Fork Creek.....	Union Pacific Railroad—40 feet*.	2342
	West Main Street—20 feet*.	2352
	McKenzie Street—80 feet*.	2362
	South Street—10 feet*....	2374
	Rossiter Street—30 feet*	2401
	Cemetary Road—40 feet*.	2441
	2nd Private Road—100 feet*.	2477
Paradise Creek	State Highway 270—50 feet*.	2366
	2nd crossing Union Pacific Railroad Bridge—50 feet*.	2382
	3rd crossing Union Pacific Railroad Bridge—30 feet*.	2397
	5th crossing Union Pacific Railroad Bridge—20 feet*.	2429
	5th Private Road—20 feet*.	2442

*Upstream of centerline.

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

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: October 24, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2480 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4386]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the City of South Bend, Pacific County, Wash.

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 South Bend, Pacific County, Washington. 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 South Bend, Pacific County, Washington.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of South Bend, Pacific County, Washington, are available for review at City Hall, 1st and Willapa Streets, South Bend, Washington.

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 South Bend, Washington.

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
Willapa River	Intersection of First Street and Central Avenue.	11
	Intersection of Monroe Street and Oregon Avenue.	11
	Intersection of First Street and Washington Street.	11

(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.)

NOTE.—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: January 8, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2481 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-2913]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Town of Colton, Whitman County, Wash.

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 Colton, Whitman County, Washington. 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 Colton, Whitman County, Washington.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Colton, Whitman County, Washington, are available for review at the Colton Post Office, 507 Steptoe Street, Colton, Washington.

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 Colton, Whitman County, Washington.

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 feet above mean sea level
Union Flat Creek..	Downstream Corporate Limit (Upstream Side).	2,533
	Steptoe Street (Upstream Side).	2,538
	Depot Street (Upstream Side).	2,540
	Upstream Corporate Limit (Upstream Side).	2,541

(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).

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: January 3, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2482 Filed 1-24-79; 8:45 am]

[4210-01-M]

[Docket No. FI-947]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination for the Township of Rockaway, Morris County, N.J.

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 Rockaway, Morris County, New Jersey. 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 Rockaway, Morris County, New Jersey.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Township of Rockaway, Morris County, New Jersey, are available for review at the Municipal Building, 19 Mount Hope Road, Rockaway, New Jersey.

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 Rockaway, Morris County, New Jersey.

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
Rockaway River....	Mill Brook	540
	Dover Rockaway Road	546
	Upstream Corporate Limits.	549
Beaver Brook.....	Ford Road	523
	Hibernia Brook	524
	Meridan Road	556
Hibernia Brook.....	Hewlett-Packard Driveway.	528
	Meridan-Lyonsville Road.	528
	Private Road	532
	Hibernia Road	539

(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.)

NOTE.—In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.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: January 12, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2483 Filed 1-24-79; 8:45 am]

[4830-01-M]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7591]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Source of income of certain dividends from a DISC

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the source of income of certain dividends from a

domestic international sales corporation (DISC). Changes to the applicable law were made by the Tax Reform Act of 1976. These regulations provide the public with the guidance needed to comply with that Act. The regulations affect all DISCs and all taxpayers who are shareholders of DISCs.

DATE: The regulations are effective generally for taxable years beginning after December 31, 1975.

FOR FURTHER INFORMATION CONTACT:

Diane L. Renfroe of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 29, 1978, the FEDERAL REGISTER published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 861 (a) (2) (D) of the Internal Revenue Code of 1954 (43 FR 38599) relating to the source of income of certain DISC dividends. These amendments were proposed to conform the regulations to changes made by sections 1063, 1065, and 1101 of the Tax Reform Act of 1976 (90 Stat. 1525). One written comment on the proposed amendments was received. No public hearing was requested or held. The written comment suggested minor changes in the form of the proposed amendments but not in the substance. After consideration of this comment, these amendments are adopted by this Treasury decision.

THE TAX REFORM ACT OF 1976

The Tax Reform Act of 1976 (90 Stat. 1525) added two new categories of deemed distributions from a DISC to its shareholders and expanded a previously existing category. Under a new section 995 (b) (1) (D) 50 percent of the taxable income of a DISC attributable to military property is deemed to be distributed to its shareholders. Under a new section 995 (b) (1) (E) the taxable income of a DISC for the taxable year attributable to base period export gross receipts is also deemed to be distributed. Under section 995 (b) (1) (F) (ii) and (iii) illegal bribes and kickbacks, and amounts relating to an international boycott are now considered part of the deemed distribution under that section.

SINGLE RULE

These amendments revise paragraph (a) (5) (iii) (*b*) of § 1.861-3 to set forth a rule for determining the source of these new categories of deemed distributions. They provide one single rule for determining the source of income of deemed distributions under section 995 (b) (1) (D), (E), and (F).

RULES UNCHANGED

These amendments do not change the rules set forth in § 1.861-3 (a) (5) (i) for determining the source of income of deemed distributions under section 995 (b) (1) (A), (B), and (C). Nor do they change the rule set forth in § 1.861-3 (a) (5) (iv) for determining the source of income of dividends that reduce accumulated DISC income under § 1.996-3 (b) (3). These amendments move a definition from § 1.861-3 (a) (5) (iii) (*a*) to § 1.861-3 (a) (5) (ii) (*c*) in order to permit a more simple reference to the defined concept. The references to the concept are accordingly shortened each place they appear in § 1.861-3 (a) (5).

EXAMPLE ADDED

These amendments also add a comprehensive example of how the source of income of all deemed distributions under section 995 (b) (1) is determined.

DRAFTING INFORMATION

The principal author of this regulation is Diane L. Renfroe of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, the proposed amendment to 26 CFR Part 1 as published in the FEDERAL REGISTER (43 FR 38599) on August 29, 1978, is adopted without change.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: January 15, 1979.

DONALD C. LUBICK,
Assistant Secretary of the Treasury.

The amendments to 26 CFR 1 are as follows:

Section 1.861-3 is amended as follows:

1. Paragraph (a)(5)(i)(*a*), (iii), and (v)(*b*) are revised.

2. Paragraph (a)(5)(ii) is amended by adding a new (*c*) preceding the flush material.

3. Paragraph (a)(5)(iv) is amended as follows:

a. (*a*) is amended by deleting "described in subdivision (iii)(*a*) of this subparagraph" and inserting the words "nonqualified export" between the words "is attributable to" and "taxable income".

b. The first sentence of (*b*) is amended by deleting "described in subdivision (iii)(*a*) of this subparagraph", inserting the words "nonqualified export" between the words "is attributable to" and "taxable income", deleting the word "such" that is between the words "attributable to" and "taxable income" and inserting in its place "nonqualified export".

4. Paragraph (a)(5)(vi) is amended as follows:

a. Example 1(a) is amended by deleting "giving rise to gross receipts which are not qualified export receipts" from the third sentence, inserting the words "nonqualified export" in that sentence between the words "and $1,000 of" and "taxable income", deleting "50 percent" from the last sentence and inserting in its place "$9,500/$19,000".

b. Example 1(b) is amended by deleting "had no taxable income described in subdivision (iii)(*a*) of this subparagraph." from the first sentence, inserting in its place "did not have any nonqualified export taxable income.", deleting "from transactions which gave rise to gross receipts which are not qualified export receipts (as described in subdivision (iii)(*a*) of this subparagraph)" from the last sentence, and inserting the words "nonqualified export" in the last sentence between the words "attributable to" and "taxable income".

c. Example (2) is amended by deleting the period at the end of the last sentence and inserting in its place "*i.e.*, $1,000×$9,500/($19,450-450).".

d. Example (3)(a) is amended by deleting "had no taxable income described in subdivision (iii)(*a*) of this subparagraph." from the third sentence, inserting in its place "did not have any nonqualified export taxable income.", deleting "described in subdivision (iii)(*a*) of this subparagraph" from the last sentence, and inserting the words "nonqualified export" in the last sentence between the words "attributable to" and "taxable income".

e. Example (3)(e) is amended by deleting "described in subdivision (iii)(*a*) of this subparagraph" from the flush material, and inserting "nonqualified export" in the flush material between the words "*i.e.*, $1,000—$587.50, of" and "taxable income."

f. A new Example (4) is added.

5. Paragraph (d) is amended by adding a sentence after the first sentence. The revised and added provisions read as follows:

§ 1.861-3 **Dividends.**

(a) *General.* * * *

(5) *Certain dividends from a DISC or former DISC*—(i) *General rule.* A dividend described in this subparagraph is a dividend from a corporation that is a DISC or former DISC (as defined in section 992(a)) other than a dividend that—

(*a*) Is deemed paid by a DISC, for taxable years beginning before January 1, 1976, under section 995(b)(1)(D), and for taxable years beginning after December 31, 1975, under section 995(b)(1) (D), (E), and (F) to the extent provided in subdivision (iii) of this subparagraph or * * *

* * * * *

(ii) *Definitions.* * * *

(c) "Nonqualified export taxable income" means the taxable income of a DISC from any transaction which gives rise to gross receipts (as defined in § 1.993-6) which are not qualified export receipts (as defined in § 1.993-1) other than a transaction giving rise to gain described in section 995(b)(1)(B) or (C). * * *

(iii) *Determination of source of income for deemed distributions, for taxable years beginning before January 1, 1976, under section 995(b)(1)(D) and for taxable years beginning after December 31, 1975, under section 995(b)(1) (D), (E), and (F).* (*a*) If for its taxable years a DISC does not have any nonqualified export taxable income, then for such year the entire amount treated, for taxable years beginning before January 1, 1976, under section 995(b)(1)(D) and for taxable years beginning after December 31, 1975, under section 995(b)(1) (D), (E), and (F) as a deemed distribution taxable as a dividend will be treated as gross income from sources without the United States.

(*b*) If for its taxable year a DISC has any nonqualified export taxable income, then for such year the portion of the amount treated, for taxable years beginning before January 1, 1976, under section 995(b)(1)(D) and for taxable years beginning after December 31, 1975, under section 995(b)(1) (D), (E), and (F) as a deemed distribution taxable as a dividend that will be treated as income from sources within the United States shall be equal to the amount of such nonqualified export taxable income multiplied by the following fraction. The numerator of the fraction is the sum of the amounts treated, for taxable years beginning before January 1, 1976, under section 995(b)(1)(D), and for taxable years beginning after December 31, 1975, under section 995(b)(1) (D), (E), and (F) as deemed distributions taxable as dividends. The denominator of the fraction is the taxable income of the DISC for the taxable year, reduced by the amounts treated under section 995(b)(1) (A), (B), and (C) as deemed distributions taxable as dividends. However, in no event shall the numerator exceed the denominator. The remainder of such dividend will be treated as gross income from sources without the United States.

* * * * *

(v) *Special rules.* For purposes of subdivisions (iii) and (iv) of this subparagraph—

(*a*) * * *

(*b*) The portion of any deemed distrubution taxable as a dividend, for taxable years beginning before January 1, 1976, under section 995(b)(1)(D) and for taxable years beginning after December 31, 1975, under section 995(b)(1) (D), (E), and (F) or amount under § 1.996-3(b)(3) (i) through (iv) that is treated as gross income from sources within the United States during the taxable year shall be considered to reduce the amount of nonqualified export taxable income as of the close of such year.

(vi) *Illustrations.* * * *

Example. (*a*). (a) Z is a corporation which uses the calendar year as its taxable year and which elects to be treated as a DISC beginning with 1972. W is its sole shareholder. At the end of the 1976 Z has previously taxed income of $12,000 and accumulated DISC income of $4,000, $900 of which is attributable to nonqualified export taxable income. In 1977, Z has $20,050 of taxable income from qualified export receipts, of which $550 is from gross income from producer's loans described in section 995(b)(1)(A); Z has $950 of taxable income giving rise to gross receipts which are not qualified export receipts, of which $450 is gain described in section 995(b)(1)(B). Of its total taxable income of $21,000 (which is equal to its earnings and profits for 1977), $1,000 is attributable to sales of military property. Z has an international boycott factor (determined under section 999) of .10, and made an illegal bribe (within the meaning of section 162(c)) of $1,265. The proportion which the amount of Z's adjusted base period export receipts bears to Z's export gross receipts for 1977 is .40 (see section 995(e)(1)). Z makes a deemed distribution taxable as a dividend of $1,000 under section 995(b)(1)(G) (relating to foreign investment attributable to producer's loans) and actual distributions of $32,000.

(b) The deemed distributions of $550 under section 995(b)(1)(A) and $450 under section 995(b)(1)(B) are treated in full under subdivision (i) of this subparagraph as gross income from sources within the United States.

(c) Under these facts, Z has also made the following deemed distributions taxable as dividends to W under the following subdivisions of section 995(b)(1):

(D)	$500, i.e., ½×$1,000.
(E)	7,800, i.e., .40×[$21,000-$(550+450+500)].
(F)(i)	5,850, i.e., ¾×[$21,000-$550+450+500+7,800)].
(ii)	585, i.e., $5,850×.10
(iii)	1,265
Total	16,000

(d) The portion of the total amount of these deemed distributions ($16,000 that is treated under the subdivision (iii)(*b*) as gross income from sources within the United States is computed as follows:

(1) The amount of nonqualified export taxable income is $500, i.e., taxable income giving rise to gross receipts which are not qualified export receipts ($950) minus gain described in section 995(b)(1) (B) or (C) ($450).

(2) $500×($16,000/$[21,000-(550+450)]) =$400.

The remainder of these distributions, $15,600 ($16,000 minus $400), is treated under subdivision (iii)(*b*) of this subparagraph as gross income from sources without the United States.

(e) The earnings and profits accounts of Z at the end of 1977 are computed as follows:

	Total earnings and profits	Previously taxed income	Accumulated DISC income attributable to taxable income from transactions which give rise to gross receipts which— Are qualified export receipts	Are not qualified export receipts
(1) Balance: Jan. 1, 1977	$16,000	$12,000	$3,100	$900
(2) (Earnings and profits for 1977, before actual and sec. 955(b)(1)(G) distributions	21,000	17,000	3,900	[1]100
(3) Balance: Dec. 31, 1977	37,000	29,000	7,000	1,000
(4) Distribution under sec. 995(b)(1)(G)		1,000	(875)	[2](125)
(5) Balance	37,000	30,000	6,125	875
(6) Actual distribution	(32,000)	(30,000)	(1,750)	[3](250)
(7) Balance: Jan. 1, 1978	5,000		4,375	625

[1]The total of nonqualified export taxable income ($500) minus the portion of such income, under subdivision (iii)(*b*) of this subparagraph, deemed distributed pursuant to section 995(b)(1)(D), (E), and (F) ($400), as computed under (d)(2) of this example.

[2]Under subdivision (iv)(*b*) of this subparagraph, $1,000/$8,000×$1,000.

[3]Under subdivision (iv)(*b*) of this subparagraph, $1,000/$8,000×$2,000 (amount of actual distribution that reduces accumulated DISC income).

* * * * *

(d) *Effective date.* * * * For purposes of paragraph (a)(5) of this section, any reference to a distribution taxable as a dividend under section 995(b)(1)(F) (ii) and (iii) for taxable years beginning after December 31, 1975, shall also constitute a reference to any distribution taxable as a dividend under section 995(b)(1)(F) (ii) and (iii) for taxable years beginning after November 30, 1975, but before January 1, 1976. * * *

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 79-2546 Filed 1-24-79; 8:45 am]

[4910-14-M]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 77-246]

PART 128—REGULATED NAVIGATION AREAS

Regulated Navigation Areas, Great Lakes

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes three seasonal Regulated Navigation Areas in the Great Lakes. In Grays Reef Passage the channel is subject to ice buildups in the winter so that a vessel, not escorted by an icebreaker, could easily become beset by ice and be forced aground. The potential for loss of life, loss of or damage to the vessel, and damage to the environment justifies empowering the Captain of the Port, Sault Ste. Marie to close this area to navigation when weather conditions indicate it is necessary. In the Mackinac Island and Bois Blanc Island Areas natural ice bridges form in waters linking the islands and the mainland while at the same time the ice on the lake prevents the use of small vessels for travel to and from the mainland. Consequently, the island residents depend on the ice bridges for access to the mainland. The passage of larger vessels through this area breaks up the ice bridges. This amendment empowers the Captain of the Port, Sault Ste. Marie to close these areas to navigation during appropriate times of the year.

EFFECTIVE DATE: This amendment is effective on February 28, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. D. W. Ziegfeld, U.S. Coast Guard, Office of Marine Environment and Systems, Room 7315, Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 426-1934.

SUPPLEMENTARY INFORMATION: On August 17, 1978, the Coast Guard published the proposed rule in the FEDERAL REGISTER (43 FR 36486). Interested persons were invited to submit comments on or before October 2, 1978. No comments were received. The proposal is therefore being adopted without change.

DRAFTING INFORMATION

The principal persons involved in drafting this Regulation are: Mr. D. W. Ziegfeld, Project Manager, Office of Marine Environment and Systems, and Lt. G. S. Karavitis, Project Attorney, Office of Chief Counsel.

The Coast Guard has evaluated this rule under the Department of Transportation Policies for improving Government Regulations published on March 8, 1978 (43 FR 9582). Because of the existence of alternative routes for navigation, minimal increase in cost to shipping interests is expected.

In consideration of the foregoing, a new § 128.901 is added to Part 128 of Title 33 of the Code of Federal Regulations to read as follows:

§ 128.901 Great Lakes Winter Navigation.

(a) *Lake Huron.* The following are Regulated Navigation Areas:

(1) The waters of Lake Huron known as South Channel between Bois Blanc Island and Cheboygan, Mich.; bounded by a line north from Cheboygan Crib Light (LL 1340) at latitude 45°39.8′ N., longitude 84°27.6′ W.; to Bois Blanc Island at latitude 45°43.7′ N., longitude 84°27.6′ W., and a line north from the mainland at latitude 45°43.0′ N., longitude 84°35.5′ W.; to the western tangent of Bois Blanc Island at latitude 45°48.7′ N., longitude 84°35.5′ W.

(2) The waters of Lake Huron between Mackinac Island and St. Ignace, Mich. bounded by a line east from St. Ignace Ferry light (LL-1387) at latitude 45°52.2′ N., longitude 84°43.0′ W.; to Mackinac Island at Latitude 45°52.2′ N., longitude 84°39.0′ W.; and a line east from the mainland at latitude 45°53.2′ N., longitude 84°43.5′ W.; to the northern tangent of Mackinac Island at latitude 45°53.2′ N., longitude 84°38.8′ W.

(b) *Lake Michigan.* The following is a Regulated Navigation Area. The waters of Lake Michigan known as Grays Reef Passage bounded by a line from Grays Reef Light (LL-2006) at latitude 45°46.0′ N., longitude 85°09.2′ W.; to White Shoals Light (LL-2003) at latitude 45°50.5′ N., longitude 85°08.1′ W.; to a point at latitude 45°49.2′ N., longitude 85°04.8′ W.; thence to a point at latitude 45°45.7′ N., longitude 85°08.7′ W.; thence to the point of beginning.

(c) *The regulations.* The Captain of the Port, Sault Ste. Marie, will close and open these regulated navigation areas as ice conditions dictate. Under normal seasonal conditions only one closing each winter and one opening each spring are anticipated. Prior to the closing or opening of these regulated navigation areas, the Captain of the Port must give interested parties, including both shipping interests and island residents, not less than 72 hours notice of the action. No vessel may navigate in a regulated navigation area which has been closed by the Captain of the Port. Under emergency conditions, the Captain of the Port may authorize specific vessels to navigate in a closed regulated navigation area.

(Sec. 2, Pub. L. 95-474, 92 Stat. 1471, 49 CFR 1.46(n)(4).)

J. B. HAYES,
Admiral, U.S. Coast Guard, Commandant.

JANUARY 18, 1979.

[FR Doc. 79-2632 Filed 1-24-79; 8:45 am]

[4910-14-M]

[CGD 11-79-01]

PART 165—SAFETY ZONES

Establishment of Safety Zone Around LPG Vessel Fern Valley in Los Angeles Harbor

AGENCY: Coast Guard DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Coast Guard Safety Zone Regulations establishes a safety zone around the LPG Vessel Fern Valley during the period of its arrival, transit, mooring and cargo transfer of liquified petroleum gas in the waters of Los Angeles Harbor. This zone has been instituted to provide exceptional degree of safety and control for the duration of this operation from the estimated time of arrival on January 12, 1979 until approximately January 15, 1979.

EFFECTIVE DATE: This amendment becomes effective on January 12, 1979 and remains in effect until the vessel departs Los Angeles Harbor or until January 25, 1979, whichever is earlier.

For further information contact LTJG G. S. JOHNSON, Port Operations Officer, Captain of the Port, Los Angeles-Long Beach, 165 North Pico Avenue, Long Beach, CA 90802, (213) 590-2315.

SUPPLEMENTARY INFORMATION: This safety zone is being enforced by representatives of the Captain of the Port Los Angeles-Long Beach, California. In addition, the Captain of the Port will be assisted in enforcing this safety zone by the Los Angeles Harbor Department.

As provided in the General Safety Zone Regulations (33 CFR 165.20), no person or vessel may enter a safety zone unless authorized by the Captain of the Port or the District Commander. These General Regulations and other Regulations in 33 CFR Part 165 apply to the Safety Zone established for the navigable waters within one nautical mile of the LPG Vessel Fern Valley while it is anchored outside the middle breakwater or in Los Angeles Harbor, and within 100 yards when moored at Berth 120 LA Harbor.

An opportunity to comment on this safety zone as a proposed rule has not been provided and good cause exists for making the zone effective immediately. A determination has been made that to do otherwise would be both impracticable and contrary to the public interest. In view of the imminent arrival of the LPG Vessel Fern Valley there is not sufficient time to allow an opportunity for public comment or to provide for a delayed effective date. Following these administrative procedures would prevent timely establishment of the Safety Zone and, thus would thwart the purpose of the zone.

DRAFTING INFORMATION

The principal person involved in drafting this rule is: LTJG G. S. JOHNSON, Port Operations Officer, Captain of the Port Los Angeles-Long Beach, CA.

In consideration of the above, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a § 165.110 to read as follows:

§ 165.110 11th Coast Guard District.

(a) The navigable waters within one nautical mile of the LPG Vessel Fern Valley while it is anchored outside the middle breakwater in Los Angeles Harbor, or is transiting from Anchorage to Berth 120 Los Angeles Harbor, or departing from Berth 120 until clear of Los Angeles Harbor. Vessels moored or anchored may remain so during the transit of the LPG Vessel Fern Valley unless otherwise directed by the Captain of the Port Los Angeles-Long Beach or Los Angeles Harbor Department.

(b) The navigable waters within 100 yards of the LPG Vessel Fern Valley while the vessel is moored at Berth 120 Los Angeles, CA.

(Port and Tanker Safety Act of 1978, Sec. 101, 104, 86 Stat. 427 (33 U.S.C. 1221, 1224); 49 CFR 1.46(r)(4); 33 CFR 165.10.)

L. A. ONSTAD,
Lieutenant Commander, U.S. Coast Guard, Captain of the Port, Acting, Los Angeles-Long Beach.

JANUARY 11, 1979.

[FR Doc. 79-2671 Filed 1-24-79; 8:45 am]

[7710-12-M]

Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

SUBCHAPTER D—ORGANIZATION AND ADMINISTRATION

PART 224—GROUPS AND DEPARTMENTS

Organizational Changes; Correction

AGENCY: Postal Service.

ACTION: Final rule correction.

SUMMARY: This document corrects errors appearing on page 60275 of a document published in the Wednesday, December 27, 1978 issue of the FEDERAL REGISTER (43 FR 60274).

FOR FURTHER INFORMATION CONTACT:

Neva Watson, (202) 245-4642.

In FR Doc. 78—35893 appearing at page 60274 in the issue of Wednesday, December 27, 1978, make the following corrections:

1. On page 60275, in the first column, in the paragraph numbered "1.", in the amendatory language, "§ 224.1(c)(5)(i)" should read "§ 224.1 (c)(4)(i)" and below, in the amendment, change "(5) * * *" to read "(4) * * *".

2. On page 60275, in the first column, in the paragraph numbered "2.", in the amendatory language, "§ 224.1(c)(5)(v)(B)" should read "§ 224.1(c)(4)(v)(B)" and below, in the amendment, change "(5) * * *" to read "(4) * * *".

W. ALLEN SANDERS,
Acting Deputy General Counsel.

[FR Doc. 79-2619 Filed 1-24-79; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FR 11044-1]

PART 81—AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES

Section 107 Attainment Status Designations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The purpose of this notice is to revise, correct and elaborate on the contents of a March 3, 1978 FEDERAL REGISTER notice (43 FR 8962) which provided designations of the attainment status in relation to National Ambient Air Quality Standards for the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico and the Territory of the Virgin Islands. The tables following this rulemaking indicate, on a state-by-state, pollutant-by-pollutant basis, the attainment status of every state, territory, or commonwealth in Region II. Publication of these designations fulfills the requirements of section 107(d) of the Clean Air Act, as amended.

DATE: Effective Date: January 25, 1979.

FOR FURTHER INFORMATION CONTACT:

William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10007. (212) 264-2517.

SUPPLEMENTARY INFORMATION: Section 107(d) of the Clean Air Act, as amended in August 1977, directed each state to submit to the Administrator of the Environmental Protection Agency (EPA) a list of the National Ambient Air Quality Standards attainment status designations for all areas within the state. EPA received such designations and promulgated the list of state designations, with necessary modifications, on March 3, 1978 (43 FR 8962). The states are now preparing revisions to their State Implementation Plans (SIPs) based on these promulgated designations.

Subsequent to the March 3, 1978 promulgation, the states administered by the Region II Office of EPA (New York, New Jersey, Puerto Rico and the Virgin Islands) requested that revision be made to these designations.

These requests have been reviewed by the Regional Office and discussed with the states. The designations appearing in this notice are a result of this process.

This FEDERAL REGISTER notice indicates changes in the designation and changes in geographic boundaries for some areas. All changes in designation are either from "cannot be classified" to "better than national standards" or from "does not meet primary or secondary standards" to "better than national standards". Other changes include elaboration on the designations which appeared in the March 3, 1978 notice to include a more detailed description of geographic boundaries of areas, and correction to inadvertent omissions and errors. The discussion contained in this notice is addressed specifically to designations applicable to New York, New Jersey, Puerto Rico and the Virgin Islands. A more general discussion of the 107(d) designations is contained in the September 11, 1978 FEDERAL REGISTER (43 FR 40412).

Areas designated as "cannot be classified" will be subject to further study by the states and EPA to determine, in a timely manner, the actual status of those areas.

The following discussion addresses revisions to the March 3, 1978 designations:

NEW JERSEY

Total Suspended Particulates: The cities of Camden and Jersey City were originally designated on March 3, 1978 as not meeting both primary and secondary standards for total suspended particulates (TSP). They are now redesignated an "cannot be classified" for the primary standards. The nonattainment designation for the secondary standard remains unchanged. EPA's decision to change these designations is based on a request by the State of New Jersey which cited results of a special monitoring study conducted by the State Department of Environmental Protection (NJDEP) and EPA monitoring site inspection reports. In its monitoring study, NJDEP established additional monitors adjacent to the original ones in Camden and Jersey City. Filters used for sample collection at the "new" sites were changed immediately before and after each sampling day. The original monitors were serviced as usual, with the filters being changed approximately every sixth day, thus experiencing additional exposure during non-operational periods.

In Camden, results of the monitoring study indicate potential attainment of the primary standards. In the first six months of this study, the less frequently serviced monitor (replaced every 6 days) recorded a geometric mean concentration of 84.1 ug/m³. The more frequently serviced monitor (filters changed immediately before and after sampling) indicated a geometric mean concentration of 68.5 ug/m³. The resulting difference in concentration of 15.6 ug/m³ is substantial, indicating that much of the material on the filters was collected during periods when the monitor was not operating.

Furthermore, the State reported to EPA that the Camden site was unduly influenced by construction and demolition activities since 1975. EPA has conducted an inspection of the monitoring site and found that the site is not well situated. EPA's redesignation of Camden as "cannot be classified" for the primary standards is made in view of these factors.

In the case of Jersey City, the result of the specially operated monitor showed a 7.8 ug/m³ decrease in concentration. In addition, this monitoring site is also not well situated. An EPA monitoring site inspection report indicates that the monitor is located too close to a section of the New Jersey Turnpike, causing it to be unduly influenced by the emissions from this roadway. Again, in view of these factors, EPA believes that a primary standard designation of "cannot be classified" is applicable until further studies are completed.

CARBON MONOXIDE

The City of Wildwood is redesignated as "cannot be classified." The designation of this area as "does not meet primary standards," as appeared in the March 3, 1978 FEDERAL REGISTER, was a typographical error.

In the State's original submission to EPA, a distinction was made between areas classified as "cannot be classified" and areas classified as "better than national standards." The charts which appeared in the March 3, 1978 FEDERAL REGISTER did not provide for this distinction. In addition to the City of Wildwood in the Intrastate Air Quality Contol Region, the areas which "cannot be classified" are listed below:

NEW JERSEY-NEW YORK-CONNECTICUT INTERSTATE AIR QUALITY CONTROL REGION

PASSAIC COUNTY

The City of Clifton
The City of Passaic
The Borough of Hawthorne
The Borough of North Haledon
The Borough of Haledon
The Borough of Prospect Park
The Borough of Totowa
The Borough of West Paterson
The Township of Little Falls

BERGEN COUNTY

The Borough of Elmwood Park
The Township of Saddle Brook
The Township of Rochelle Park
The Borough of Maywood
The Township of Teaneck

BERGEN COUNTY—Continued

The City of Englewood
The Borough of Englewood Cliffs
The Borough of Fort Lee
The Borough of Leonia
The Borough of Bogota
The Township of South Hackensack
The Borough of Teterboro
The Borough of Hasbrouck Heights
The Borough of Lodi
The City of Garfield
The Borough of Wallington
The Borough of Wood-Ridge
The Borough of Moonachie
The Borough of Little Ferry
The Township of Ridgefield Park
The Borough of Palisades Park
The Borough of Edgewater
The Borough of Cliffside Park
The Borough of Fairview
The Borough of Ridgefield
The Borough of Carlstadt
The Borough of East Rutherford
The Borough of Rutherford
The Township of Lyndhurst
The Borough of North Arlington

HUDSON COUNTY

Hudson County (except Jersey City)

ESSEX COUNTY

The Town of Bloomfield
The City of East Orange
The City of Orange
The Village of South Orange
The Township of Maplewood
The Town of Nutley
The Town of Belleville
The Town of Irvington

UNION COUNTY

The City of Plainfield
The Township of Union
The Borough of Kenilworth
The Township of Cranford
The Township of Clark
The Township of Hillside
The Borough of Roselle Park
The Borough of Roselle
The Township of Winfield
The City of Linden
The City of Rahway

MIDDLESEX COUNTY

The City of South Amboy
The City of New Brunswick
The Borough of Highland Park

METROPOLITAN PHILADELPHIA INTERSTATE AIR QUALITY CONTROL REGION

CAMDEN COUNTY

The City of Gloucester
The Borough of Collingswood

NEW YORK STATE

Total Suspended Particulates: At the request of the State of New York, several areas in the Niagara Frontier Air Quality Control Region and one area in the Hudson Valley Air Quality Control Region are redesignated.

In the Niagara Frontier AQCR, portions of the Buffalo waterfront, originally designated as "cannot be classified" for the primary and secondary standards are redesignated as "better than national standards". Also in the Niagara Frontier AQCR, the eastern portion of the Towns of Cheektowaga

and West Seneca and the Town of Amherst have been changed from "cannot be classified" for the secondary standard to "better than national standards" for the secondary standard. In these areas there were no contraventions of the 24-hour or annual primary or secondary standards for 1977. However, in the eastern portion of Cheektowaga, the annual secondary guideline of 60 ug/m³ was exceeded slightly (61 ug/m³).

The Village of Hoosick Falls in the Hudson Valley AQCR is changed from "does not meet secondary standards" to "better than national standards". This area has only experienced two minor contraventions (151 ug/m³ and 153 ug/m³) of the 24-hour secondary standard over the past two years. The annual geometric mean concentration was 45 ug/m³ during 1977. The monitoring site is located near an unpaved parking lot which is suspected of contributing fugitive dust to the monitoring site. Hoosick Falls has a population of less than 4,000 and does not have any significant industrial particulate emissions. Thus, the marginal air quality problem is classified as being due to "rural fugitive dust". EPA policy does not require such areas to be classified as nonattainment.

Sulfur Dioxide: The cities of Buffalo (except the southwest portion) and Lackawanna (east of South Park Avenue) are changed from a classification of "cannot be classified" to "better than national standards". Examination of the most recent air quality data (1977) show that there are no contraventions of the sulfur dioxide standards in these areas.

Carbon Monoxide: The State requested that EPA concur with its original request to redesignate as "cannot be classified" all urbanized areas which were designated as "does not meet primary standards" in the March 3, 1978 FEDERAL REGISTER. However, no additional data has been presented by the State to support its request. Based on the EPA's original review of existing air quality data and transportation data, the designations for these areas remain unchanged.

THE VIRGIN ISLANDS

Total Suspended Particulates: The designation of the southern industrial complex in St. Croix is changed from "does not meet primary or secondary standards" to "cannot be classified". Recent air quality data show the area to be attaining the primary standards. Marginal attainment of the secondary standard is also evident. However, the data EPA has received covers only a few months of sampling, which is insufficient to redesignate this area as attainment at this time. Rather than require the Virgin Islands to prepare a SIP revision, which is costly and time consuming, EPA is redesignating the southern St. Croix area as "cannot be classified" until further studies can be completed.

PUERTO RICO

Total Suspended Particulates: At the request of the Commonwealth of Puerto Rico, the designation for the northern part of Bayamon is changed by adding the classification of "does not meet primary standards" to the current classification of "does not meet secondary standards". The tables accompanying this FEDERAL REGISTER notice reflect the inclusion of the northern part of Bayamon as being contained in the Catano Air Basin (newly defined) as well as the portions of the municipalities of Catano, Toa Baja, and Guaynabo designated as "does not meet primary or secondary standards" in the March 3, 1978 FEDERAL REGISTER. The change in designation for the northern part of Bayamon has been made for the sake of consistency and is based on modeling results which show nonattainment problems in the northern part of Bayamon.

The designation for the municipality of Mayaguez has been changed from "cannot be classified" to "better than national standards" on the basis of air quality dispersion modeling results.

The boundaries of the Guayanilla Air Basin (newly defined) have been defined as containing the parts of the municipalities of Guayanilla and Peneulas designated as "does not meet secondary standards".

Sulfur Dioxide: The "cannot be classified" designation for San Juan is changed to "better than national standards" and the Catano Air Basin (newly defined) is designated as "cannot be classified". This is based on a review of modeling results by EPA and subsequent discussion and agreement with the Puerto Rico Environmental Quality Board.

Carbon Monoxide: Since the charts which appeared in the March 3, 1978 FEDERAL REGISTER made no distinction between areas classified as "cannot be classified" and areas classified as "better than national standards", those areas that are classified as "cannot be classified" are listed below:

San Juan Metropolitan Urban Area
Ponce Metropolitan Urban Area

Photochemical Oxidants: For the sake of clarification, since the charts which appeared in the March 3, 1978 FEDERAL REGISTER made no distinction between "cannot be classified" and "better than national standards" designations, the entire Puerto Rico AQCR is classified as "better than national standards".

Boundaries of Selected Nonattainment Areas.—Because the geographical boundary descriptions of areas in Puerto Rico are lengthy, the area descriptions appear here rather than on the accompanying tables.

Guayanilla Air Basin

The southwest corner of the air basin is located at the point where the line separating the municipalities of Yauco and Guayanilla terminates at the coastline adjacent to the Bahia de la Ballina, thence northerly along said line to the intersection of Route #2, thence easterly along Route #2 to the intersection of Route 132, thence northerly on Route 132 for a distance of two kilometers, thence in an easterly direction parallel to and two kilometers north of Route #2 until the line separating Penuelas and Ponce municipalities is reached, thence in a southerly direction along the line separating Penuelas and Ponce municipalities to the coastline, thence westerly along the coastline to the point and place of origin (southwest corner).

Catano Air Basin

Starting at the northerly point of the line separating San Juan municipality and Guaynabo municipality where it intersects with Bahia de San Juan, proceed in a southerly direction along said line until a point is reached in said line which is 1 kilometer north of Route #2, thence along a line which is one kilometer north and parallel to Route #2 in a westerly direction to its intersection with Route 872, thence north on Route 872 to the line which separates the municipalities of Toa Baja and Bayamon (Rio Honda), thence north along this line to the point where the confluence of Rio Honda and Rio de Bayamon departs from the line separating the two municipalities, thence north from this point of departure along the waterway to the Ensenada de Boca Vieja, thence easterly along the coastline to the point of origin.

Ponce Metropolitan Urban Area

The Ponce Metropolitan Urban Area is defined as that area which is included within the line which is identified as the limit of the area of zoning and the coastline.

San Juan Metropolitan Urban Area

Starting at the Bahia de San Juan where the line separating the municipalities of Catano and Guaynabo intersects the coastline, thence southerly along said line until it intersects the line separating the municipalities of Catano and Bayamon, thence westerly along the line separating the municipalities of Catano and Bayamon until it intersects the line separating the municipalities of Toa Baja and Bayamon, thence southerly along the line separating the municipalities of Toa

Baja and Bayamon until it intersects with the line separating the municipalities of Bayamon and Toa Alta, thence southerly along the line separating the municipalities of Bayamon and Toa Alta, until the area known as Van Scoy is reached, thence easterly along a line which is south of the areas known as Bella Vista, Cana, Monte Bello and Irlanda Heights until the line separating the municipalities of Bayamon and Guaynabo is reached, thence northerly and easterly along the line separating the municipalities of Bayamon and Guaynabo until the area known as Villa Marista is reached, thence southerly along a line which is west of the areas known as Lisette Torremolinos, Munoz Rivera, Ponce de Leon, El Alamo Guaynabo, Colimal, Colinas de Guaynabo, thence easterly along a line which is south of the areas known as Colinas de Guaynabo, Arbona, Los Choferes and Fairview until the line separating the municipalities of San Juan and Trujillo Alto is reached, thence north and east along the line separating the municipalities of San Juan and Trujillo Alto until it intersects the line separating the municipalities of Trujillo Alto and Carolina thence southerly along the line separating the municipalities of Trujillo Alto and Carolina for approximately two kilometers, thence in an easterly direction along a line which is south of the areas known as Carolina Alta, Jardines de Carolina, and Victoria Industrial Park until the area known as Lomas de Carolina is reached, thence northerly along a line which is east of the areas known as Carolina, Rosa Maria, Jose S. Quinones, Hoyo Mulas, Villa Cooperativa, Sabana Gardens, Jardines de Country Club, Vistimar and the International Airport until the coastline is reached at the Boca de Cangrejos, thence along the coast line to the point and place of origin.

NOTE: The Environmental Protection Agency has determined that this document is not a significant regulation and does not require preparation of a regulatory Analysis under Executive Order 12044.

(Secs. 107(d), 171(2), 301(a) of the Clean Air Act, as amended (42 U.S.C. 7407(d), 7501(2), 7601(a)))

Dated: January 18, 1979.

DOUGLAS M. COSTLE,
Administrator,
Environmental Protection Agency.

Part 81 of Chapter I, Title 40, of the Code of Federal Regulations is amended as follows:

Subpart C—Section 107 Attainment Status Designations

* * * * *

In §81.331, the attainment status designation table for TSP is revised to read as follows:

New Jersey - TSP

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
New Jersey-New York-Connecticut Interstate AQCR				
The City of Jersey City		X	X	
Remainder of Hudson County		X		
The City of Newark (east of the Garden State Pkwy)		X		
The City of Elizabeth		X		
The City of Linden		X		
The Borough of Carteret		X		
The Township of Woodbridge		X		
The City of Perth Amboy		X		
Remainder of AQCR				X
Metropolitan Philadelphia Interstate AQCR				
The City of Camden		X	X	
Remainder of AQCR				X
New Jersey Intrastate AQCR				
The City of Bridgeton		X		
Remainder of AQCR				X
Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR				X

New Jersey - SO_2

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
New Jersey-New York-Connecticut Interstate AQCR				X
Metropolitan Philadelphia Interstate AQCR				X
New Jersey Intrastate AQCR				X
Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR				X

In §81.331, the attainment status designation table for CO is revised to read as follows:

New Jersey - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
New Jersey-New York-Connecticut Interstate AQCR		
The City of Paterson	X	
The City of Hackensack	X	
The City of Jersey City	X	
The City of Newark	X	
The City of Elizabeth	X	
The Town of Morristown	X	
The City of Perth Amboy	X	
The Borough of Somerville	X	
The City of Asbury Park	X	
The Borough of Freehold	X	
Remainder of AQCR		X
Metropolitan Philadelphia Interstate AQCR		
The City of Trenton	X	
The City of Burlington	X	
The City of Camden	X	
The Borough of Penns Grove	X	
Remainder of AQCR		X
New Jersey Intrastate AQCR		
The City of Atlantic City	X	
Toms River (portion of Dover Township)	X	
Remainder of AQCR		X
Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR		X

New Jersey - OXIDANTS

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
New Jersey-New York-Connecticut Interstate AQCR	X	
Metropolitan Philadelphia Interstate AQCR	X	
New Jersey Intrastate AQCR	X	
Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR	X	

New Jersey - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
New Jersey-New York-Connecticut Interstate AQCR		X
Metropolitan Philadelphia Interstate AQCR		X
New Jersey Intrastate AQCR		X
Northeast Pennsylvania-Upper Delaware Interstate AQCR		X

In §81.333, the attainment status designation table for TSP is revised to read as follows:

New York State - TSP

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Niagara Frontier AQCR				
The City of Buffalo(south of I-190;except an area one-half mile inland and parallel to Fuhrman Blvd. between I-190 and Tifft Street).	X			
The City of Buffalo(south of I-190;except an area one-quarter mile inland and parallel to Fuhrman Blvd. between I-190 and Tifft Street).		X		
The City of Lackawanna	X	X		
The City of Tonawanda (west of Military Road)		X	X	
The City of Tonawanda (east of Military Road)			X	
The Town of Tonawanda (west of Military Road)		X	X	
The Town of Tonawanda (eastof Military Road)			X	
The City of Niagara Falls (south of Pine Ave., east of Hyde Park Blvd., and west of I-190)	X			
The City of Niagara Falls		X		
The Town of Niagara		X		

New York State - TSP (continued)

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Niagara Frontier (cont.)				
The City of North Tonawanda		X		
The Village of Blasdell		X		
The Town of Cheektowaga (west of Union Road)		X		
The Town of West Seneca (west of Union Road)		X		
The City of Lockport		X		
Remainder of AQCR				X
Genesee-Finger Lakes AQCR				X
Southern Tier West AQCR				
The City of Jamestown		X		
Remainder of AQCR				X
Southern Tier East AQCR				X
Central AQCR				
The City of Syracuse (south of I-690, north of Rte. 5, east of I-81, and west of Teale Ave.)	X			

New York State - TSP (continued)

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Central AQCR (cont.)				
The City of Syracuse		X		
The Village of East Syracuse		X		
The Village of Solvay		X		
Remainder of AQCR				X
Northern (Champlain Valley) AQCR				X
Hudson Valley AQCR				
The City of Albany (east of Rts. 9 and 9W)		X		
The Town of Catskill (east of Rte. 9W, except Catskill Village)		X		
Remainder of AQCR				X
New Jersey-New York-Connecticut Interstate AQCR				
The Borough of Manhattan		X	X*	
The Boroughs of the Bronx, Brooklyn, and Queens, (south of the Cross Bronx Expressway, west of the Hutchinson River Parkway and Bronx-Whitestone Bridge, west of the Whitestone Expressway, west of the Van Wyck Expressway, north of		X	X*	

* EPA designation replaces state designation.

New York State - TSP (continued)

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
New Jersey-New York-Connecticut Interstate (cont.)				
the Southern Parkway, north of Conduit Blvd., north of Linden Blvd., north of Caton Ave., north of the Ft. Hamilton Parkway, and north of 39th Street)				
The Borough of Staten Island (south of I-278, west of Richmond Ave., and north of Arthur Kill Road as far west as Rossville Ave.)		X		
Remainder of AQCR				X

In §81.333, the attainment status designation table for SO_2 is revised to read as follows:

New York State - SO_2

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Niagara Frontier AQCR				
The City of Buffalo (an area bounded on the north by Tifft Street, on the east by Hopkins Street, on the south by the City of Lackawanna and on the west by Lake Erie)	X			
The City of Lackawanna (west of South Park Avenue)	X			
Remainder of AQCR				X
Genesee-Finger Lakes AQCR				X
Southern Tier West				X
The Town of Corning			X*	
Remainder of AQCR				X
Southern Tier East AQCR				
The Town of Bainbridge			X*	
Remainder of AQCR				X
Central AQCR				X
Northern (Champlain Valley) AQCR				X

* EPA designation replaces state designation

New York State SO_2 (continued)

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Hudson Valley AQCR				X
New Jersey-New York-Connecticut Interstate AQCR				
The Borough of Manhattan (except between 59th and 125th Sts.)			X	
The Boroughs of Brooklyn and Queens (south of the Queensborough Bridge and Queens Blvd., west of 44th St., west of I-278, and north of the Brooklyn Bridge.)			X	
The Borough of the Bronx (south of I-95 and west of I-278)			X	
Remainder of AQCR				X

New York State - CO

Designated Areas	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Niagara Frontier AQCR		
The City of Buffalo (north of the Buffalo River, Michigan Ave., and Broadway)	X*	
The Town of Cheektowaga (west of Rte. 277)	X*	
The Town of Amherst (south and west of Ellicott Creek and west of Rte. 277)	X*	
Remainder of AQCR		X
Genesee-Finger Lakes AQCR		
Monroe County (inside the area bounded by the Seabreeze Expressway, I-490, Elmwood Ave., Scottsville Road, Paul Road, Behan Road, Harvard Street, I-490, Mt. Read Blvd., (as far north as Stone Road), a straight line to the intersection of St. Paul Blvd. and Titus Avenue, and Titus Avenue)	X*	
Remainder of AQCR		X
Southern Tier West AQCR		X
Southern Tier East AQCR		X
Central AQCR		
The City of Syracuse (an area bounded by No. Salina St., Kirkpatrick St., Lodi St., Butternut St., Park St., DeWitt St., Sedgwick St., Robinson St., Sherwood Ave., Burnet Ave., the City line, East Genesee St., Basset St., Madison St., Comstock Ave., Jamesville Ave., the City Line,	X*	

*EPA designation replaces state designation

Designated Areas	Does Not Meet Primary Standards	Cannot be Classified or Better Than National Standards
Central AQCR (cont.)		
Erie-Lackawanna Railroad tracks, Glen Ave., I-81, Rte. 173, the City line, South Ave., Onondaga Ave., Bellevue Ave., Geddes St., I-690, Rte. 298, I-81, and Wolf St.)		
Remainder of AQCR		X
Northern (Champlain Valley) AQCR		X
Hudson Valley AQCR		X
The City of Troy	X*	
The Town of Waterford	X*	
The City of Watervliet	X*	
The City of Albany (east of Fuller Rd.)	X*	
The Town of Colonie (inside an area bounded by Sand Creek Road, Wolf Road, Railroad Ave., and Fuller Road).	X*	
The City of Schenectady	X*	
Remainder of AQCR		X
New Jersey-New York-Connecticut Interstate AQCR		
The Borough of Manhattan (midtown: south of 60th St. and north of 30th St., exclusive of the West Side Highway and areas west, and FDR Drive and areas east; and downtown: south of Canal St., exclusive of the West Side Highway and areas west, and FDR Drive and areas east).	X	

* EPA designation replaces state designation

Designated Areas	Does Not Meet Primary Standards	Cannot be Classified or Better Than National Standards
New Jersey-New York-Connecticut Interstate AQCR (cont.)		
The Borough of Manhattan (remainder)	X*	
The Borough of Staten Island	X*	
The Borough of Queens	X*	
The Borough of Brooklyn	X*	
The Borough of the Bronx	X*	
The City of Yonkers	X*	
The City of Mt. Vernon	X*	
Nassau County (south of the Long Island Expressway, west of the Oyster Bay Expressway, and north of the Southern State Parkway).	X*	
Remainder of AQCR		X

* EPA designation replaces state designation

New York State - OXIDANTS

Designated Areas	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Niagara Frontier AQCR	X	
Genesee-Finger Lakes AQCR	X	
Southern Tier West AQCR	X	
Southern Tier East AQCR	X	
Central AQCR	X	
Northern (Champlain Valley) AQCR	X	
Hudson Valley AQCR	X	
New Jersey-New York-Connecticut Interstate AQCR	X	

New York State - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Niagara Frontier AQCR		X
Genesee-Finger Lakes AQCR		X
Southern Tier West AQCR		X
Southern Tier East AQCR		X
Central AQCR		X
Northern (Champlain Valley) AQCR		X
Hudson Valley AQCR		X
New Jersey-New York-Connecticut Interstate AQCR		X

In §81.355, the attainment status designation table for TSP is revised to read as follows:

Puerto Rico - TSP

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Catano Air Basin**	X	X		
Guayanilla Air Basin**		X		
Municipality of Dorado			X	
Municipality of Ponce			X	
Remainder of AQCR				X

** Geographic boundary is described in the text.

In §81.355, the attainment status designation table for SO_2 is revised to read as follows:

Puerto Rico - SO_2

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Catano Air Basin**			X	
Remainder of AQCR				X

** Geographic boundary is described in the text.

Puerto Rico - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Puerto Rico AQCR		X

Puerto Rico - OXIDANTS

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Puerto Rico AQCR		X

Puerto Rico - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Puerto Rico AQCR		X

In §81.356, the attainment status designation table for TSP is revised to read as follows:

Virgin Islands - TSP

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Virgin Islands AQCR				
St. Croix (an area bounded on the west by 64°48' W longitude; on the east by 64°43' W longitude; on the north by 17°44' N latitude; and on the south by the Krause Lagoon, Limetree Bay, and the Canegarden Bay.			X	
Remainder of AQCR				X

Virgin Islands - SO_2

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Virgin Islands AQCR				
St. Croix (southern)			X*	
Remainder of AQCR				X

* EPA designation replaces state designation

Virgin Islands - CO

Designated Area	Better Than Primary Standards	Cannot Be Classified or Better Than National Standards
Virgin Islands AQCR		X

Virgin Islands - OXIDANTS

Designated Area	Better Than Primary Standards	Cannot Be Classified or Better Than National Standards
Virgin Islands AQCR		X

Virgin Islands - NO_2

Designated Area	Better Than Primary Standards	Cannot Be Classified or Better Than National Standards
Virgin Islands AQCR		X

[FR Doc. 79-2576 Filed 1-24-79; 8:45 am]

[6560-01-M]

SUBCHAPTER E—PESTICIDE PROGRAMS

[PP 6E1809/R193; FRL 1044-8]

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

Glyphosate

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

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide glyphosate on coffee beans. The regulation was requested by Monsanto Co. This rule establishes a maximum permissible level for residues of glyphosate on coffee beans.

EFFECTIVE DATE: January 25, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, DC (202/755-7013).

SUPPLEMENTARY INFORMATION: On December 5, 1978, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (43 FR 57003) in response to a petition (PP 6E1809) submitted to the Agency by Monsanto Agricultural Products Co., 800 N. Lindbergh Blvd., St. Louis, MO 63166. This petition proposed that 40 CFR 180.364 be amended by the establishment of a tolerance for combined residues of the herbicide glyphosate (*N*-(phosphonomethyl)glycine) and its metabolite aminomethylphosphonic acid in or on the raw agricultural commodity coffee beans at 1 part per million (ppm). No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.364 should be adopted without change, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before February 26, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708, 401 M St., SW, Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective on January 25, 1979, Part 180, Subpart C, § 180.364 is amended by adding a tolerance for residues of glyphosate on coffee beans at 1 ppm as set forth below.

(Section 408(e) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(e)])

Dated: January 22, 1979.

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

Part 180, Subpart C, § 180.364 is amended by alphabetically inserting coffee beans at 1 ppm in the table to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

* * * * *

Commodity:	*Parts per million*
* * * * *	
Coffee beans	1
* * * * *	

[FR Doc. 79-2677 Filed 1-24-79; 8:45 am]

[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[BC Docket No. 78-140; RM-3019]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Station in Fairbanks, Alaska; Changes made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: First report and order.

SUMMARY: This action assigns a third non-reserved FM channel to Fairbanks, Alaska. This community has shown substantial growth in recent years and a need for additional FM service. This action was initiated by a petition filed by Interior Broadcasting Corporation.

EFFECTIVE DATE: March 5, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Mark N. Lipp, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION: A separate request for a fourth non-reserved FM assignment was denied but the Commission indicated a willingness to review this matter at a later time.

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Fairbanks and North Pole,[1] Alaska; *First Report and Order* (proceeding terminated).

Adopted: January 17, 1979.

Released: January 19, 1979.

By the Chief, Broadcast Bureau:

1. Before the Commission is the *Notice of Proposed Rule Making*, 43 FR 18574, released May 2, 1978, proposing the assignment of Channel 273 to Fairbanks, Alaska, as its fourth FM channel assignment. Comments were filed by petitioner, Interior Broadcasting Corporation ("Interior") and by Prime Time of Alaska, Inc. ("Prime Time"). Reply comments were received from Interior.

2. Fairbanks (pop. 14,771 [2]) is part of the Fairbanks Census Division (pop. 45,864) in central Alaska. It has three AM stations and one noncommercial educational FM station (Station KUAC). There are two other FM channels assigned to Fairbanks—one is used at North Pole, Alaska (Station KJNP), under the 15-mile rule.[3] The other channel has a pending application (BPH-9530).

3. In response to the *Notice* both Interior and Prime Time state that they support the proposal and would apply for the channel if assigned. In addition, Prime Time urges the assignment of an additional Class C FM channel (Channel 278) to Fairbanks in order to eliminate having two applicants for one channel assignment. No additional information is supplied concerning the need for such an assignment.

4. As for the Channel 273 request for a second commercial FM service at Fairbanks, we find that sufficient justification has been provided. As stated in the *Notice*, Fairbanks has doubled in population since 1970, to become the second largest city in the State. Although the proposal represents a fourth channel assignment which would exceed our population criteria for communities under 50,000, we do not normally take into account reserved noncommercial educational assignments or channels used in other

[1] This community has been added to the caption.

[2] Population figures are taken from the 1970 Census.

[3] Under § 73.203(b), assigned channels may be used at other communities not listed in the FM Table of Assignments if within 10 miles (for Class A channels) or 15 miles (for Class B or C channels) of the community to which the requested channel is assigned.

communities pursuant to § 73.203(b). Accordingly, we would recognize the proposal as a second FM assignment falling within the Commission's standard. We also note that due to the scarcity of populated areas near Fairbanks, the preclusive impact is minimal. In addition, the need for service at Fairbanks is enhanced by the lack of outside services received.

5. We do not believe it would be appropriate to grant the request of Prime Time for a third commercial assignment for Fairbanks. The Commission's policy has been that a channel will not be assigned in an effort to avoid a comparative hearing. Rather, a separate showing of need for such channel must be provided. It has not been provided in this case and such information as is available does not now support the making of two additional assignments. The Commission would be ready to reexamine matters when and if the facts warrant. In the meantime, the request will be denied.

6. Finally, we intend to amend the FM Table of Assignments to reflect the use of Channel 262 at North Pole, Alaska, by reassigning the channel from Fairbanks to North Pole. That action must await Canadian concurrence and will be considered at a later date.

7. Canadian concurrence in the Fairbanks proposal has been obtained.

8. Accordingly, pursuant to authority contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules and Regulations, *It is ordered*, That effective March 5, 1979, the FM Table of Assignments (§ 73.202(b) of the Rules) is amended with respect to the following city:

City and Channel No.
Fairbanks, Alaska, 262, 266, 273, 284.

9. *It is further ordered*, That the request of Prime Time for assignment of Channel 278 to Fairbanks, Alaska, is denied.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 79-2620 Filed 1-24-79; 8:45 am]

[4910-59-M]

Title 49—Transportation

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

[Docket No. 74-7; Notice 4]

PART 573—DEFECT AND NONCOMPLIANCE REPORTS

Equipment Manufacturers' Delay of Effective Date

NOTE.—This document originally appeared in the FEDERAL REGISTER for Wednesday, January 24, 1979. It is reprinted in this issue to meet requirements for publication on an assigned day of the week. (See OFR notice 41 FR 32914, August 6, 1976.)

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Delay of effective date.

SUMMARY: This notice amends the effective date for the implementation of amendments to Part 573, *Defect and Noncompliance Reports*, extending its application to equipment manufacturers. The final rule on the Part 573 amendment was published on December 26, 1978 (43 FR 60165), and established an effective date of January 25, 1979. This effective date has proven, however, insufficient to complete the process of interdepartmental review of the amendment. Further, some equipment manufacturers may wish to petition for reconsideration of the amendment. Since such petitions can be received up to 30 days after publication of the regulation in the FEDERAL REGISTER and since this regulation is scheduled to become effective 30 days after publication, there may be insufficient time before that date to consider fully petitions, if any are received. For these reasons, the NHTSA extends the effective date to March 1, 1979.

This amendment is being adopted without notice and public procedure because of the impending effective date of the Part 573 amendments. Since the amendment will otherwise become effective on January 25, the agency concludes that notice and public procedure are impracticable and not in the public interest.

EFFECTIVE DATE: This amendment is effective immediately changing the December 26, 1978, FEDERAL REGISTER notice to state that Part 573 is effective on March 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. James Murray, Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-2840)

(Secs. 108, 112, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1397, 1401, 1407); secs. 102, 103, 104, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1397, 1401, 1408, 1411-1420); delegation of authority at 49 CFR 1.50)

Issued on January 18, 1979.

JOAN CLAYBROOK,
Administrator.

[FR Doc. 79-2486 Filed 1-19-79; 4:05 pm]

[7035-01-M]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Service Order No. 1353]

PART 1033—CAR SERVICE

Chicago and North Western Transportation Co., Authorized To Operate Over Tracks of Chicago, Milwaukee, St. Paul and Pacific Railroad Co. at Oshkosh, Wis.

JANUARY 22, 1979.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Service Order No. 1353).

SUMMARY: The lines of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) serving Oshkosh, Wisconsin, are inoperable because of heavy snow at this location, which is depriving industries located adjacent to the MILW tracks at this location of railroad service. Service Order No. 1353 authorizes the Chicago and North Western Transportation Company to operate over tracks of the MILW in Oshkosh in order to restore railroad service to these shippers.

DATES: Effective 4:00 p.m., January 19, 1979. Expires 11:59 p.m., January 31, 1979.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The Order is printed in full below.

Decided: January 19, 1979.

The lines of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) serving Oshkosh, Wisconsin, have become inoperable because of heavy snow. Numerous ship-

pers located adjacent to the tracks of the MILW have been deprived of essential railroad service because of the inability of the MILW to switch the industries at Oshkosh. The Chicago and North Western Transportation Company (CNW) has agreed to operate over the tracks of the MILW at Oshkosh in order to restore essential railroad service to these shippers. The MILW has consented to such use of its tracks by the CNW.

It is the opinion of the Commission that an emergency exists requiring the operation of CNW trains over these tracks of the MILW in the interest of the public; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1353 Service Order No. 1353.

(a) *Chicago and North Western Transportation Company Authorized To Operate Over Tracks of Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Oshkosh, Wisconsin.* The Chicago and North Western Transportation Company (CNW) is authorized to operate over tracks of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) at Oshkosh, Wisconsin, for the purpose of serving industries located adjacent to such tracks.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(c) *Rates applicable.* Inasmuch as this operation by the CNW over tracks of the MILW is deemed to be due to carrier's disability, the rates applicable to traffic moved by the CNW over the tracks of the MILW shall be the rates which were applicable on the shipments at the time of shipment as originally routed.

(d) *Effective date.* This order shall become effective 4:00 p.m., January 19, 1979.

(e) *Expiration date.* The provision of this order shall expire at 11:59 p.m., January 31, 1979, unless otherwise modified, changed or suspended by order of this Commission.

(49 U.S.C. (10304-10305 and 11121-11126).)

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. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-2672 Filed 1-24-79; 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.

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 929]

HANDLING OF CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

Proposed Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The proposed action is designed to assure equitable distribution of reserve base quantity and facilitate expansion of base quantities of existing cranberry growers and entry of new cranberry growers in recognition of changing market conditions.

DATE: Comments must be received on or before February 12, 1979.

ADDRESS: Comments should be filed in duplicate with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250

FOR FURTHER INFORMATION CONTACT:

For further information or a draft impact analysis contact: Charles R. Brader, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, telephone (202) 447-6393.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department is considering proposed amendment, as hereinafter set forth, of the rules and regulations (Subpart—Rules and Regulations; 7 CFR 929.101 *et seq.*) currently in effect pursuant to the applicable provisions of the amended marketing agreement and Order No. 929, as amended (7 CFR Part 929; 43 FR 29764). The order regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. This is a regulatory program effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The proposed rule provides that the committee schedule meetings to consider growers' applications for reserve base quantity by March 1 of each year. In order that the final rule governing the procedures for allocating reserve base quantity be effective by February 27, it is necessary that comments with respect to this proposal be received not later than February 12, 1979.

The proposal to amend said rules and regulations was recommended by the Cranberry Marketing Committee established under the order as the agency to administer the terms and provisions thereof.

The establishment of an annual base quantity reserve equal to 2 percent of the aggregate base quantities of growers is mandated by § 929.48(b) of the order. This reserve quantity is to be allocated 75 percent to existing growers and 25 percent to new growers. An "existing grower" is defined in the proposed rule as a person engaged in producing cranberries and who now holds a base quantity certificate, and a "new grower" as one who does not hold a base quantity certificate. The order also mandates that the committee, with approval of the Secretary, shall establish rules and procedures governing the distribution of reserve base quantity among eligible applicants. Under the proposed rule an existing grower applicant's share of the base quantity reserve would be an amount arrived at by subtracting his present base quantity from his average annual sales of the best 4 of the past 6 years. A share of the reserve for such grower applicant's new acreage would be an amount arrived at by multiplying the number of new acres by the grower's average sales per acre from established acreage for the best 4 of the past 6 years. A share of the base quantity reserve for a new grower applicant would be an amount arrived at by multiplying the grower's cranberry acreage by the average base quantity per acre for the State in which the acreage is located. If the total amount computed for growers in each category (existing or new grower) exceeds the amount of reserve base quantity available to such category, then each such grower shall receive a proportionate share of the reserve quantity available. There are approximately 900 producers engaged in the production of cranberries. Approximately 10 percent of the growers have produced and sold cranberries in excess of their base quantity during the crop years 1974-76. Also, some individuals have indicated their intention of becoming cranberry producers. The proposed action is designed to assure equitable distribution of reserve base quantity and facilitate expansion of base quantities of existing producers and entry of new producers. The proposal empowers the committee to invalidate a producer's base quantity if he does not make a bona fide effort to produce and sell cranberries. The proposal establishes criteria whereby the committee may determine whether a bona fide effort to produce and sell cranberries has been made.

The proposal is to add a new section 929.153 reading as follows:

§ 929.153 Base quantity reserve.

(a) *Establishment.* An annual reserve base quantity equal to 2 percent of total base quantities is hereby established.

(b) *Application.* Each grower who wishes to be considered for base quantity from the reserve shall file an application with the committee on a form provided by the committee not later than February 1 of any crop year. Such application shall identify the grower as either an existing grower (an "existing grower" shall mean any person who is engaged in producing cranberries and now holds a base quantity certificate) or a new grower (a "new grower" shall mean any person who does not hold a base quantity certificate nor any interest in a base quantity certificate, financial or otherwise, but may or may not be producing cranberries and shall include any grower whose acreage did not previously qualify as established cranberry acreage.) The application shall include the following information:

(1) Location of acreage,

(2) Acreage planted,

(3) Production and sales of cranberries for the preceding six-year period,

(4) Prospective production and such other information as may be required by the committee.

(c) *Disposition.* Following the closing date for filing applications, a meeting or meetings of the committee shall be held for the purpose of reviewing applications, if any, and making a determination on each request. Such meeting or meetings shall be scheduled to begin no later than March 1 of the crop year.

(1) *Existing grower.* There shall be set aside for allocation to existing growers 75 percent of the amount determined under paragraph (a) of this section. The basis for determining such share shall be determined by the following:

(i) Subtract the existing grower applicant's present base quantity from his average annual sales of cranberries produced on his acreage during the 4 years, within the immediately preceding 6-year period, in which his greatest sales were made.

(ii) With respect to such grower's new acreage, a base quantity shall be issued to each approved applicant from his base quantity share (determined by multiplying the number of new acres by average sales per acre for cranberries produced on established acreage under the grower's control and sold during the 4-year period specified in paragraph (c)(1)(i)) in an amount equal to the estimated production for that crop year. Successive increment allocations based upon an annual application by the grower shall be made until the balance of the base quantity share for that grower is exhausted. If sales from such new acreage do not attain the expected yield within six years from the time the application is approved by the committee, such grower shall receive base quantity equal to average sales from his best two years of production during the specified period.

(iii) If the total amount computed for all existing grower applicants exceeds the amount of reserve base quantity available, then the applicant's shares shall be multiplied by a factor obtained by dividing the amount of reserve base quantity available by the total amount computed for all existing grower applicants.

(2) *New grower.* There shall be set aside for allocation to new growers 25 percent of the amount determined under paragraph (a) of this section. Base quantity share shall be determined by multiplying the grower's cranberry acreage by the State average base quantity per acre. If the total amount computed for all new grower applicants exceeds the amount of reserve base quantity available, then the applicants' shares shall be multiplied by a factor obtained by dividing the amount of reserve base quantity available by the total amount computed for all new grower applicants. Base quantity shall be issued to each approved applicant from his base quantity share in an amount equal to the estimated production for that crop year. Successive increment allocations based upon an annual application by the new grower shall be made until the balance of the base quantity share for that grower is exhausted. Thereafter, the new grower may apply to the committee for additional base quantity from the proportion of the reserve allocated to existing growers. Any producer who does not reach the State average base quantity per acre within six years from the time the application is approved by the committee shall lose the "new grower" status and receive a base quantity equal to the average of his two best crops during this six-year period. All or any part of the base quantity reserved for new growers not needed to fill new grower requests, may be allocated by the committee to eligible existing growers.

(d) *Invalidation of base quantity.* The base quantity of a grower who has made no bona fide effort to produce and sell cranberries for five consecutive seasons, commencing with the 1978–79 season, may be declared invalid and cancelled at the end of the fifth season. The committee shall determine if a grower is making a bona fide effort to produce and sell cranberries based upon the producer's level of production each crop year during the five-year period and taking due account of any special factors which may have affected or may be affecting such production, including, but not necessarily limited to, frosts, disease, water shortages, bog renovation, and illness of a kind causing inability to carryout the management of his crop. The committee shall notify the grower and initiate investigations as appropriate and necessary to obtain full and complete information bearing on the subject prior to taking any action to cancel a base quantity.

(e) Each producer shall file with the committee a report by February 1 of each crop year indicating new acreage planted and sales of cranberries from such acreage.

(f) Any producer who is dissatisfied with the action of the committee pursuant to § 929.153 may appeal to the Secretary in accordance with § 929.125.

Dated: January 22, 1979.

CHARLES R. BRADER,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-2611 Filed 1-24-79; 8:45 am]

[3410-02-M]

[7 CFR Part 1004]

[Docket No. AO-160-A55]

MILK IN THE MIDDLE ATLANTIC MARKETING AREA

Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision is based on industry proposals considered at a public hearing held in October 1978. The decision would reduce the pooling requirements for distributing plants and reserve processing plants and permit a federation of cooperative associations to operate a pool reserve processing plant. The decision would also increase the number of days' milk production of a producer that may be diverted monthly to nonpool plants as pooled milk during the months of September through February. These changes are adopted in response to changed supply-demand conditions and methods of handling the market's reserve milk supplies and are necessary to assure orderly milk marketing.

DATE: Comments are due on or before February 9, 1979.

ADDRESS: Comments (five copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Clayton H. Plumb, Marketing Specialist, Diary Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6273.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing issued September 14, 1978, published September 19, 1978 (43 FR 41990).

Order Suspending Certain Provisions issued October 18, 1978, published October 23, 1978 (43 FR 49285).

Order Suspending Certain Provisions; Correction issued November 13, 1978, published November 16, 1978 (43 FR 53413).

PRELIMINARY STATEMENT

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Middle Atlantic marketing area, and of the opportunity to file written exceptions thereto. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C., 20250, by the 15th day after publication of this decision in the FEDERAL

REGISTER. The exceptions should be filed in five copies. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Philadelphia, Pa. on October 3-4, 1978, pursuant to notice thereof.

The material issues on the record of the hearing relate to:

1. Pooling standards for distributing plants.
2. Diversion provisions.
3. Pooling standards for reserve processing plants.
4. Payments by handlers for certain milk received from other Federal order markets.
5. Whether an emergency exists to warrant omission of a recommended decision.

FINDINGS AND CONCLUSIONS

1. *Pooling standards for distributing plants.* The requirements that a distributing plant must meet to qualify as a pool plant during September through February should be changed. The order now requires that a pool distributing plant must have not less than 40 percent for each month of March through August and 50 percent for each month of September through February of its receipts of milk disposed of as Class I milk during the month. This should be changed by providing that the total Class I disposition requirement be 40 percent during all months.

A federation of five dairy cooperative associations, representing approximately 75 percent of the market's producers, proposed changing the requirement that a pool distributing plant must have not less than 50 percent of its receipts of milk disposed of as Class I milk during each month of September through February. The cooperative federation proposed decreasing the 50 percent requirement to 40 percent.

The federation's witness contended that there have been recent changes in marketing conditions within the Middle Atlantic marketing area that necessitate the proposed modification of the Order 4 distributing plant performance requirements. The changed conditions referred to by the witness include a downward trend in Class I sales and Class I utilization percentage. The proponent witness pointed out that since the marketing area was expanded in 1975 there has been a significant decrease in the Order 4 Class I utilization. He noted that during 1976 and 1977, producer receipts increased while Class I sales remained at about the 1975 level, thus causing the Class I utilization percentage to decrease. He also pointed out that on May 1, 1978 a large distributing plant shifted its market affiliation from Order 4 to Order 2, the order for the New York-New Jersey market. This, he claimed, decreased the Order 4 Class I sales and further reduced the Order 4 Class I utilization percentage. The proponent witness also contended that the need for reserve milk supplies has been increasing over the years due to the changing pattern of distribution, reduced number of plants, large number of three-day holiday weekends and changing processing practices at distributing plants.

The federation's witness pointed out that due to increased supplies during the flush production months of 1976 and 1977, it was necessary to suspend the requirement that distributing plants dispose of 50 percent of their producer receipts as Class I milk. The witness stated that within the last two years four of the federation's five cooperatives and various pool plants would have had trouble pooling milk under Order 4 if there had not been timely suspensions of the pool distributing plant Class I disposition percentage. He noted that prior to these suspensions there had been several times when fluid milk handlers and individual dairy farmers had lost their pool status because of the existing pooling requirements. He contended that it is not a stable condition when order provisions must be suspended each time there is a problem in maintaining pooling status for plants and producer milk supplies.

An Order 4 proprietary handler testified in support of the proposed decrease in the distributing plant performance level for September through February. However, the handler also proposed that for the months of March through August the Class I disposition requirement for a distributing plant be decreased from the present level of 40 percent to 30 percent. The handler's witness contended that this was necessary because of the seasonal differences in Class I utilization.

The witness noted that during the periods of March through August 1976 and September 1976 through February 1977 the Order 4 Class I sales were 57.93 percent and 62.28 percent, respectively, of the receipts from producers. He also noted that the Class I utilization for the same periods a year later were 55.09 percent and 59.69 percent, respectively. He indicated that the 1976 seasonal difference in class I utilization was 4.35 percentage points and the 1977 difference was 4.60 percentage points. It was the witness' contention that these statistics clearly demonstrate a continuing trend requiring a seasonal variation in the Order 4 pooling requirement.

At the hearing and in its brief, the proponent federation supported a 40 percent year-round distributing plant performance standard, rather than one that changes seasonally. The federation contended that the 40 percent requirement adequately accommodated the needs of the reserve supplies of the market.

A producer in the market testified in opposition to any reduction in the distributing plant performance requirements. He contended that the proposal would remove the insentive for producers to control production because they would not have any problem pooling additional milk. He also contended that additional milk supplies were not needed to meet the market's Class I requirements and that any such milk would decrease the Order 4 Class I utilization and the returns to producers.

The supply-demand relationship for milk associated with the market has changed significantly since June 1975 when the marketing area was expanded. Since then, there has been a steady decline in the percent of producer milk assigned to Class I use. Until May 1978 this had occurred primarily because producer milk receipts had increased substantially while Class I use had been relatively unchanged, with the latter varying from above year-earlier levels in some months to below year-earlier levels in other months. However, on May 1, 1978 the largest distributing plant under Order 4 became regulated under Order 2. This resulted in a substantial decrease in Order 4 Class I disposition. For example, September 1976 and September 1977 Class I disposition by pool handlers were 2.3 percent and 1.4 percent, respectively, above a year earlier. However, the total Class I disposition in September 1978 [1] was 14.1 percent below September 1977. In the 5 months following April 1978, the Class I disposition averaged over 12 percent less than year-earlier levels in the same months. Also, the market's Class I utilization percentage has decreased substantially since the marketing area was expanded in 1975. The Order 4 Class I utilization percentage for June through September 1978 averaged 11.7 percentage points less than for the same months in 1975. These data clearly indicate significant changes in the market's supply-demand relationship for milk.

Increasing supplies of milk relative to Class I sales necessitated the suspension of the 50 percent Class I pooling standard for certain months during each of the last three years.

[1] Official notice is taken of the Middle Atlantic Market Administrator's Bulletin, Issue No. 10, 1978.

The 50-percent requirement was suspended for June and July 1976, May through August 1977, and again in 1978 during April through October. A suspension action reduced the 50-percent requirement to 40 percent for the months of November 1978 through February 1979. The need for the suspensions stemmed from a continuing downward trend in the Class I utilization percentage of the market. These actions were taken to prevent some distributing plants, and thus the milk of producers who regularly supply these plants, from losing pool status. A reduced pooling standard should minimize the need for such suspension actions.

As a proprietary handler's witness pointed out, there is seasonal variation in the market's Class I utilization. However, the market's Class I utilization has never dropped below 49 percent. It is therefore anticipated that a 40 percent Class I disposition requirement throughout the year will provide handlers, cooperative and proprietary alike, with a reasonable means for assuring the pooling of distributing plants.

As noted by the dairy farmer mentioned earlier, it is true that the market's Class I utilization percentage would decrease if producer milk increased without a proportionate increase in the Class I demand. This in turn would lower the Middle Atlantic weighted average price for all producer milk. However, the record evidence fails to support the witness' contention that lowering the distributing plant pooling standards would remove the incentive for producers to control production. For the reasons stated, the proposed change in the pooling standards is needed at this time and should be adopted.

2. *Diversion provisions.* The order should be amended to increase to 18 days the number of days' production of an individual producer that may be diverted to nonpool plants each month during the period of September through February.

The order now provides that a handler's total monthly diversions to nonpool plants during September through February may not exceed 25 percent of the milk delivered to the handler by dairy farmers during the month. Alternatively, up to 15 days' production of each dairy farmer may be diverted during the month to nonpool plants. No diversion limitations apply during the months of March through August.

A proprietary handler proposed that limits now applicable on diversions to nonpool plants during September through February be eliminated. In support of the proposal, the handler's spokesman stated that prevailing marketing conditions do not warrant diversion limits to nonpool plants. He indicated that while production per producer has been increasing in the Middle Atlantic procurement area, the market's total Class I sales have been decreasing. Consequently, he contended, diversions of Order 4 producer milk to nonpool plants have been rapidly increasing in connection with the need to handle the market's reserve supplies.

Proponent claimed that his distributing plant has been faced with the same supply-demand changes that have occurred marketwide. The witness stated also that approximately 50 percent of the milk he pools is presently being diverted. However, because of increasing milk production and the difficulty of maintaining Class I sales, he anticipates that his Class I utilization could drop to around 47 percent, thus increasing the proportion of his milk supply that would have to be disposed of outside his distributing plant. Proponent stated that the Order 4 diversion limits have forced milk to be received at his pool plant and then transferred when it could have been marketed more efficiently through direct delivery to a nonpool plant. He contended that the order's diversion limitations should be eliminated because of the same marketwide conditions that necessitate a reduction in the distributing plant performance requirements.

Proponent noted that if the limitations on diversions were removed, the pool plant performance requirements would still limit the amount of milk that could be diverted to nonpool plants. Since 40 percent of a handler's milk would have to be received and utilized in Class I at an Order 4 distributing plant, no more than 60 percent could be diverted.

Deletion of the limits on diversion of milk to nonpool plants was opposed at the hearing by a federation of cooperatives. A witness for the cooperatives stated that the present provisions have been adequate and will continue to be so in the foreseeable future. Removal of the diversion limits, he contended, would permit milk to be pooled for manufacturing uses on a year-round basis and not be made available for fluid use. He also contended that this should not be encouraged in the Middle Atlantic market, since many handlers need supplemental milk supplies during peak days of fluid milk demand. He stated that each year when schools reopen his cooperative must completely deplete its reserve milk supplies to fulfill requests from other handlers for supplemental milk supplies. He thus contended that if an increased proportion of the market's milk supply were to be committed for manufacturing use on a year-round basis, the availability of supplemental milk supplies for distributing plants during peak periods would be threatened.

Distributing plants need reserve milk supplies that are not used in Class I. There are certain non-Class I uses of milk at distributing plants that are unavoidable such as, shrinkage, route returns (that are dumped or used for animal feed), standardization of milk to a butterfat content that differs from the butterfat content of milk received from producers, and variation in the inventory of milk supplies in the plant.

Moreover, distributing plants tend to need significantly greater milk supplies on certain days of the week than on other days of the week to meet variations in sales to accounts such as schools and supermarkets. Most schools have no need for milk during vacations, weekends, and holidays. Supermarkets tend to have greater sales volume during the latter part of the week than during other days of the week. In addition, distributing plants tend to process milk on only four days or five days a week to accommodate to a 40-hour workweek for employees and to avoid paying overtime wage rates.

In these circumstances of daily variations in sales volume and plant processing schedules, distributing plant operators need substantially higher volumes of milk for processing on certain days of the week than on other days of the week and, therefore, prefer to schedule milk receipts at their plants to conform with such daily variation in milk requirements.

During the months when production is seasonably low and Class I sales are relatively high, it is necessary to provide assurance that milk supplies will be made available to meet the needs of fluid milk distributors. As pointed out by proponent, the performance standards for pool plants tend to limit the proportion of a handler's milk supply that can be pooled and used in other than Class I use. However, performance standards for pool plants do not necessarily insure that all the milk required by distributing plants will be made available to such plants. Qualification of a pool plant is based on monthly performance standards. The pool plant performance standards set requirements that must be met by the plant on the average over the month. However, on peak demand days during any month the market's Class I requirements are often considerably higher than the monthly average demand for Class I use. Limits on diversion of milk to nonpool plants, when set at a level commensurate with the needs of the fluid market, can help assure that milk will be made available to pool plants for fluid uses on peak demand days.

Nevertheless, a substantial proportion of the milk in the market is not

needed at distributing plants, particularly on non-processing days such as weekends. Rather than require these supplies to be physically received at the distributing plant and then transferred to a manufacturing outlet for disposal, Order 4 provides for the diversion of milk directly from the farm to the manufacturing plant. The diversion provisions facilitate the economical disposition of milk supplies not needed at distributing plants. The diversion limits are, therefore, set at levels appropriate to accomplish that purpose.

Some marketing conditions clearly have changed since the present diversion provisions were adopted. Due to the shifting to Order 2 of a large distributing plant, the Order 4 Class I utilization percentage has decreased significantly. A result of this change has been an increase in the percentage of Order 4 reserve milk supplies. One outcome of this has been a substantial increase in the quantity of milk diverted to nonpool plants. For example, such diversions during July 1978 totaled 71.1 million pounds, up 23 percent from the same month a year earlier.

Proponent handler operates a distributing plant at which virtually no milk is used for Class II. Thus, reserve milk supplies associated with the Class I operation must be disposed of elsewhere. Proponent handlers during the entire year all of the milk production of the dairy farmers who supply his pool distributing plant and arranges for the pooling of the milk under the order. These dairy farmers have increased their production at about the same general rate of increase experienced for the market as a whole. As a result, during the months when diversion limits are applicable, the handler utilizes the days of production basis for diverting to nonpool plants because more milk can be diverted under that provision than under the percentage limits.

The modification to the distributing plant pooling requirements that is adopted herein would allow a handler to dispose of up to 60 percent of his milk supplies to nonpool plants during the period of September through February. These supplies could either be diverted or transferred to nonpool plants. It is often more costly to receive milk at a pool plant and then transfer it to a nonpool plant than to move the milk directly from a farm to a nonpool manufacturing facility. However, the present 15 days' production limit on diversions would limit diversions to approximately 50 percent of the handler's receipts. This could result in some milk being transferred when it could more economically be diverted. Such uneconomic handling can be avoided by providing for the diversion to nonpool plants of up to 18 days' production of individual producers.

Providing that up to 18 days' production of a dairy farmer may be diverted to nonpool plants as producer milk will make it possible for the proponent handler, and any others similarly situated, to continue to pool all the milk produced by his regular producers without incurring costly transfer expenses. The change will not provide the means by which large volumes of milk intended only for manufacturing use on a year-round basis may be associated with the market and not be made available to distributing plants.

There is no need, on the other hand, to increase the 25-percent diversion limit. The record does not indicate that any Order 4 handler using the 25-percent diversion limit is experiencing any problem in handling reserve milk because of this limit. Furthermore, no such handler requested that the 25-percent limit be increased. Also, it is noted that an increase in this type of diversion provision, under which a producer's milk could be diverted to a nonpool plant every day for an indefinite period, could inhibit pool milk supplies from being made available to distributing plants when needed.

The record establishes that the basic reasons for having diversion limits are still valid. Accordingly, the proposal to remove all diversion limits is denied.

3. *Pooling standards for reserve processing plants.* The provisions of Order 4 for pooling a reserve processing plant should be modified to provide that such a plant may be operated by either a cooperative association or a federation of cooperatives. A federation should be defined as an organization formed by two or more cooperative associations and incorporated under the laws of a state. The order also should be modified so that a reserve processing plant of a cooperative or federation is pooled only if the total of the fluid milk products (except filled milk) that are transferred from the cooperative's or federation's pool plant(s) to pool distributing plants and the milk of its member producers that is delivered directly from farms to pool distributing plants is not less than 40 percent of the total milk deliveries of the cooperative's or federation's member producers during the month.

The present order provisions accord pool plant status to any reserve processing plant which is operated by a cooperative association if at least 50 percent of its member milk is delivered to pool distributing plants during the month, either directly from farms or by transfer from the cooperative's pool plants.

An organization composed of five dairy cooperative associations proposed that the provisions that provide for the pooling of a reserve processing plant be modified in two repects. One change would reduce the present 50 percent delivery requirement to 40 percent. The other change would permit a federation of cooperatives to be the operator of a pool reserve processing plant.

(a) *Fifty percent delivery requirement.* In support of its proposal to reduce the present 50 percent delivery requirement to 40 percent, proponent presented statistics demonstrating that the Order 4 Class I utilization percentage had decreased significantly over the last few years to an all-time low of 49 percent during July 1978. The witness contended that this has meant an increase in the amount of reserve milk supplies in the market. He stated also that the five proponent cooperatives collectively handle the reserve milk supplies for the market at reserve processing plants. Proponent stated that four of the five cooperatives have had less than 50 percent Class I usage of member milk during many months in recent years and have had to resort to requests for suspension action to keep the milk of member producers pooled under the order. Consequently, proponent stated that current marketing conditions made it vital that the proposal be adopted.

The changes in the market's supply-demand relationship for milk, as expounded in the findings of Issue No. 1, necessitate a reduction in the Order 4 pooling requirements for reserve processing plants. It has been a customary practice of cooperatives in this market to move the milk of member producers to reserve processing plants when it is not needed at pool distributing plants. The proportion of reserve milk supplies in the market has increased in recent years and the Class I utilization percentage has declined. For example, in 1975 Class I utilization was 65 percent and in 1977 Class I utilization was 58 percent. A further significant decrease in Class I utilization for this market has prevailed since May 1, 1978 when a large distributing plant shifted from the Order 4 pool to the Order 2 pool.

The distributing plant that shifted to the Order 2 pool discontinued receiving milk from a large Order 4 cooperative that had been supplying about 10 million pounds of milk each month to the plant. This milk supply of the cooperative is now a part of the reserve milk supply in the Order 4 market and is processed at reserve processing plants.

To accommodate the pooling of the increased volume of reserve milk supplies on the market it has been necessary to suspend various pooling provisions of the order on several occasions

during the past three years. Such suspensions have involved pool distributing plant Class I disposition percentages and diversion limits. The suspension of these provisions has enabled cooperatives to move reserve milk supplies to pool distributing plants and then move such supplies to reserve processing plants or to nonpool manufacturing plants.

Such method of pooling reserve milk supplies by cooperatives that operate reserve processing plants tends to require movement of milk to pool distributing plants in circumstances when such milk is not needed at the distributing plants. This practice could be avoided if the 50 percent delivery requirement were reduced to 40 percent. The lower delivery requirement would permit the cooperatives who operate reserve processing plants to move all their reserve milk supplies directly from the farm to their reserve processing plants and maintain pool status on the milk. This would enable the cooperatives to avoid engaging in hauling milk to pool distributing plants solely for the purpose of keeping the milk pooled.

Moreover, providing pool plant status for a reserve processing plant operated by a cooperative enables the cooperative to minimize the total cost of farm-to-plant hauling for milk of member producers. If member producer milk can be accorded pool status by being received at the reserve processing plant, the cooperative could be expected to utilize milk produced on farms located closest to the reserve processing plant at such plant. Milk of other member producers whose farms are located closest to pool distributing plants could be expected to be moved to such plants. By following this practice to the fullest extent practicable the cooperative will realize greater efficiency in handling its member milk supplies.

The delivery requirement for a cooperative that operates a reserve processing plant should be set low enough to enable the cooperative to move all of the member producer milk that needs to be moved to such plant directly from the farm. On the other hand, such delivery percentage should be high enough to encourage the cooperative to ship adequate supplies of member producer milk to pool distributing plants to fulfill the milk requirements of such plants. The proposed 40 percent delivery requirement will best meet these desired objectives under the current Class I utilization percentage in the Order 4 market. The 40 percent delivery requirement is also comparable to the pooling performance standards adopted for proprietary handlers in the market who operate both a pool distributing plant and a reserve processing plant.

(b) *A plant operated by a federation.* In support of the proposal to permit pool plant status for a plant operated by a federation of two or more cooperatives, proponent stated that two cooperatives in the market have formed a new wholly-owned cooperative (federation) called Holly Milk Cooperative, which has constructed a new processing plant in the Order 4 production area. The witness stated that this plant was built to handle the increased quantities of reserve milk supplies in the market, particularly the reserve supplies of the two cooperatives who entered into the joint venture to build the plant. Proponent stated that at times in the past it has been necessary for these cooperatives to transport reserve milk supplies as far as Ohio to find sufficient plant capacity to handle such milk.

The Holly plant is intended to serve these two cooperatives in the same manner as pool reserve processing plants operated by other handlers in the market. However, the pooling provisions of the order are not written in a manner that would accord pool status for a reserve processing plant operated by a federation. This is because the present provisions limit pool status to a reserve processing plant operated by a cooperative association that has member producers or a reserve processing plant operated by a handler who also operates a pool distributing plant.

Pool plant status for a reserve processing plant operated by a federation would enable the cooperative association members of the federation to realize savings in farm-to-plant hauling costs by moving milk produced on members' farms located closest to the reserve processing plant directly to such plant and moving milk produced on farms located closest to pool distributing plants to such plants.

The 40 percent delivery requirement should be based on the combined cooperatives' member producer milk received at pool distributing plants either directly from the farm or as transfers from pool plants operated by the federation of such cooperatives. Proponent contemplated that the delivery percentage should be met by each member cooperative of the federation. However, proponent conceded that additional economies in farm-to-plant hauling costs could be realized by the cooperatives if they were to meet the pooling standard on a combined basis. Moreover, it will provide for more simplified administration of the pooling provisions to assign pooling credit on shipments from the federation's plant to pool distributing plants on a combined basis.

To facilitate drafting of appropriate pooling provisions for a reserve processing plant operated by a federation, a definition of a federation, as stated previously, is adopted. In order to implement the pooling of milk that is received at a reserve processing plant operated by a federation of cooperative associations, appropriate conforming changes are included in the dairy farmer, producer, and producer milk definitions of the order.

4. *Payments by handlers for certain milk received from other Federal order markets.* A proposal that would require regulated handlers to pay not less than the Middle Atlantic order class prices to a cooperative association for bulk milk received by transfer from a plant pooled under another Federal order by such cooperative association should not be adopted.

Current order provisions do not regulate the price that Order 4 handlers must pay for bulk milk that is received from handlers (either cooperative association or proprietary) regulated under another Federal order. Such milk is priced and pooled in the market of origin where the transferor-handler is held accountable at minimum prices established under that order. Order 4 provisions deal with the classification of interorder transfers at the transferee-handler's pool plant. However, the actual price at which the interorder transaction takes place is not subject to the minimum prices in the transferee-market, i.e., the Order 4 market.

A federation of five cooperative associations that represent producers who supply the Order 4 market proposed that the order be amended to require that Order 4 handlers pay not less than minimum Order 4 prices applicable at their plant location for bulk milk received from a cooperative association plant pooled under another Federal order. While stating that such a requirement is not contained in any Federal order, a witness representing the federation testified that there are unique circumstances that justify the adoption of its proposal. Particularly, the witness referred to various regulatory provisions of the New York-New Jersey milk marketing order (Order 2) which include farm point pricing [2] and the pooling of supply plants under that order by designation rather than requiring such plants to supply milk for fluid use on a regular basis. The witness noted that there are Order 2 supply plants in Pennsylvania located near the farms of producers who direct-ship milk to Order 4 plants. He contended that under these circumstances Order 2 supply plant milk must be priced at its full value in order to contribute to orderly marketing in both the production and mar-

[2] Under the New York-New Jersey order, prices for milk are established at township locations, which is commonly referred to as farm point pricing.

keting area. Proponent alleges that this currently is not the case because farm point pricing of milk under Order 2 understates the actual cost of the milk to a handler and therefore underprices the milk at the plant of first receipt under Order 2 in comparison with Order 4. Proponent indicated that when the plant of first receipt is a supply plant such underpricing occurs because the handler for the milk receives a 15-cent credit from the pool on each hundredweight of farm bulk tank milk received. [3]

Proponent contends that there is a disparity of pricing between Orders 2 and 4 such that Order 2 supply plant milk can be delivered to Order 4 pool plants at less than Order 4 minimum class prices applicable at the latter plants. Proponent presented an exhibit to illustrate the magnitude of price disparity between Orders 2 and 4. Order 2 Class I price differentials applicable at six Order 2 supply plant locations were compared with applicable Order 4 prices at the same locations. On the basis of the exhibit, the Order 2 Class I differential value ranged from 34 to 54.5 cents per hundredweight less than the Order 4 Class I differential value at the same locations.

Proponent contends that it is this difference in pricing that resulted in offers of milk to Order 4 handlers at less than Order 4 prices during May, June and July 1978, although no Order 2 bulk Class I milk was received at Order 4 pool plants during such months. Proponent stated that in order to meet the competition from offers of Order 2 priced milk, Middle Atlantic cooperative associations reduced service charges to Order 4 handlers on milk used to service school and institutional accounts.

A Philadelphia area milk distributors association and an individual proprietary handler also contended that there is a disparity of pricing between Order 2 and Order 4. However, they opposed the proposal on the grounds that it would result in the loss of alternative sources of supply for Order 4 handlers that may be needed to be competitive with Order 2 handlers in the sale of fluid milk products. They also argued that the proposal would not result in uniformity of pricing among competing handlers. One witness stated that just considering the proposal at the hearing hampers the free movement of milk and that the proposal thus should be denied expeditiously.

A cooperative association that has member producers on both the Order 4 and Order 2 markets also opposed the proposal. A witness representing the cooperative association states that the proposal should not be adopted since there are no economic or marketing conditions that could serve as a basis to adopt the proposal. He contended that the proposal was specifically aimed at an Order 2 supply plant that the opposing cooperative association operates at New Holland, Pennsylvania. For this reason, the witness constructed the Class I differential cost for milk moved from the New Holland plant to Philadelphia. On the basis of his calculations, the differential cost of delivering milk to Philadelphia would exceed the Order 4 Class I price in such area plus the applicable 6-cent direct delivery differential by 8.2 cents per hundredweight ($2.922 versus $2.84). On the basis, the witness concluded that there is no misalignment of Class I costs between the orders and that, therefore, there is no economic justification for the proposal.

The witness further testified that evidence of actual movements of bulk Class I milk from Order 2 pool plants to Order 4 pool plants does not establish a need for the proposal. An exhibit presented by the witness indicates that in recent years the volume of bulk Class I shipments from Order 4 to Order 2 exceeded such shipments from Order 2 to Order 4 and that for the months of May, June and July, 1978 no shipments were made from Order 2 pool plants to Order 4 pool plants. Additionally, the witness testified that a single shipment of bulk Class I milk from Order 2 to Order 4 in August 1978 was made by a proprietary handler. Consequently, the proposal would have had no effect on the transaction since it is limited in scope to shipments by a cooperative association.

With respect to this latter point, the witness further contended that the proposal is discriminatory among handlers and their sources of milk supplies. The witness stated that the proposal would foreclose Order 2 cooperative association supply plants as a source of supply to Order 4 handlers while such handlers could continue to purchase milk from Order 2 proprietary handlers at whatever price the market would bear. In addition, the witness stated that the proposal would apply the 6-cent direct delivery different to purchases by Philadelphia area Order 4 handlers from Order 2 cooperative association supply plants whereas such differential does not now apply to transfers from Order 4 reserve processing plants to Philadelphia area distributors. Furthermore, the witness contended that the proposal would prevent Order 2 cooperatives from disposing of reserve milk supplies to Order 4 handlers for Class II use while it would not do so for Order 2 proprietary handlers, thus giving the latter handlers an advantage in the disposition of surplus milk.

In its brief, a federation of cooperative associations that represents producers supplying the Order 2 market opposed the proposal. The federation questioned the legality of a provision that would require Order 4 handlers to pay Order 2 cooperative associations prices different than those required under Order 2. The federation also stated that if the proposal has any validity it would appear that it should be implemented in Order 2 since the milk is priced and pooled under that order. Additionally, the federation stated that if there is a disparity of pricing between the two orders, a joint hearing should be held to consider narrowing any such price differences.

Although the proposal would apply to bulk milk transfers from cooperative association plants pooled under any other Federal order, proponent contends that the alleged interorder pricing problem arises because of the unique feature of farm point pricing in Order 2 and an alleged disparity of pricing between Orders 2 and 4 that results from farm point pricing and pricing changes in Order 2 that became effective November 1, 1977. The hearing record, however, does not demonstrate a price disparity between the cost of direct-delivered Class I milk at Order 4 plants and the cost of Class I milk at such plants that is received by transfer from Order 2 supply plants. Moreover, the record does not establish that the differences in the regulatory provisions of Orders 2 and 4 require the implementation of the proposal.

With respect to the alleged misalignment of prices between Orders 2 and 4, and the Class I differential costs computed by the proponent's witness are those applicable at supply plants in Pennsylvania that are located at varying distances from the major population centers of the Middle Atlantic marketing area (ranging from 60 to 200 miles). However, there are no Order 4 supply plants at these locations that assemble milk supplies for transshipment to Order 4 bottling plants. In addition, the Order 2 Class I differential costs stated by the witness do not include reloading and transportation costs that would be incurred in shipping milk from Order 2 supply plants to the Philadelphia area where offers of milk were supposedly made at less than Order 4 direct-delivered prices. Furthermore, the Order 2 Class I cost used by the witness is understated by 15 cents or more since it excludes farm-to-first plant hauling costs

[3] Proponent is referring to a 15-cent transportation credit for pool milk received by a handler in a pool or partial pool unit. This transportation credit is intended to partially reimburse handlers for transportation costs incurred in moving milk from the farm to the plant of first receipt.

incurred by an Order 2 supply plant operator.

With respect to this latter point, proponent's witness conceded that the Order 4 cooperatives were not concerned with bulk milk transfers from Order 2 proprietary handler plants since costs incurred in receiving and transferring milk tend to equalize the cost of Class I milk between the two orders. This basically negates the claim by proponent that there is a disparity of pricing between the two orders. Actually, the crux of proponent's concern in proposing a provision that relates only to supply plants of cooperatives is the fact that cooperatives associations can pay member producers less than minimum order prices while a proprietary handler can not. Thus, a cooperative association can transfer a portion of the cost of marketing functions to its member producers while a proprietary handler must absorb such costs or pass them on to the next purchasing handler. This is not a situation that is unique to the Order 2 market and thus something that should be recognized in the pricing provisions of Order 4. Blending by a cooperative association of the net proceeds of all of its sales in all markets in all use classifications and distributing the returns to its producers in accordance with the contract between the association and its producers is authorized by the Act and may occur in any market.

With respect to costs of milk incurred by a cooperative association, an opposing cooperative association presented a constructed Class I differential cost in marketing Order 2 supply plant milk in the Philadelphia area. Although it is not possible on the basis of this record to determine whether all of the cost components of the constructed differential precisely reflect current marketing costs, the figures presented by opponent appear reasonable in that they are consistent with the findings of the Assistant Secretary in his decision to revise the pricing structure under Order 2.[4] On the basis of the figures presented by the opposing cooperative, it would appear that Class I costs of Order 2 supply plant milk would exceed the cost of Order 4 direct-delivered milk in the Philadelphia area.

It would not be anticipated that a cooperative association would sell milk at less than its cost for any extended period of time. Rather, sales below costs would be expected only occasionally, usually during periods of surplus production when supplies of distress milk might have to be disposed of on a least-loss basis.

[4]Official notice is taken of the Assistant Secretary's decision on proposed amendments to the New York-New Jersey order that was issued on August 12, 1977 (42 FR 41582).

The record of this proceeding establishes that the volume of bulk Class I milk received by Order 4 handlers from Order 2 sources is insignificant. The greatest volume of such sales since November 1977 occurred in February 1978 when 785 thousand pounds of Class I milk were received at Order 4 plants from Order 2 sources. During such month over 431 million pounds of milk were received from Order 4 producers and over 256 million pounds of such milk were disposed of in Class I uses. Also, during the months of May, June, and July, when Order 2 supply plant milk was purportedly offered at less than Order 4 prices, no bulk Class I milk was received by Order 4 handlers from Order 2 sources.

The record does not establish the existence of disorderly marketing conditions in the Middle Atlantic marketing area that could serve as a basis for implementing the proposal. The possibility of bulk Class I sales from plants pooled under other Federal orders by cooperative associations to Order 4 handlers at less than Order 4 prices is a matter of conjecture. There is no evidence of any such sales. Furthermore, it cannot be concluded on the basis of this record that there is a disparity of pricing between Orders 2 and 4 that would result in a cost of Order 2 supply plant milk at less than the direct-delivered Order 4 price in the Philadelphia area, or that there is a unique feature of Order 2 that requires unique treatment of such milk in Order 4. For these reasons, the proposal is denied.

5. *Whether an emergency exists to warrant omission of a recommended decision.* A spokesman for a federation of five cooperative associations testified that emergency marketing conditions exist that warrant the omission of a recommended decision with respect to its proposed amendments. However, in its post hearing brief, the federation stated that an Order suspending certain provisions of Order 4 through February 1979 that was issued by the Assistant Secretary on October 18, 1978 (43 FR 49285) eliminated the need for omitting a recommended decision in this amendatory proceeding. The federation stated that the effect of the suspension action is to allow sufficient time to review briefs, to issue a recommended decision, and to issue a final proposed rule. For this reason the federation withdrew its request for omitting a recommended decision.

In view of the circumstances, it is determined that there is no need to consider the testimony concerning the need to omit the issuance of a recommended decision and, accordingly the request for emergency action is denied.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in

the Middle Atlantic marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. In § 1004.7, the introductory text of paragraph (a) and paragraph (d) are revised to read as follows:

§ 1004.7 Pool plant.

* * * * *

(a) A plant from which during the month a volume not less than 40 percent of its receipts described in paragraph (a) (1) or (2) of this section is disposed of as Class I milk (except filled milk) and a volume not less than 15 percent of such receipts is disposed of as route disposition (other than as filled milk) in the marketing area;

* * * * *

(d) A plant operated in accordance with paragraph (d) (1), (2) or (3) of this section, subject to the requirement of paragraph (d) (4) of this section.

(1) A reserve processing plant operated by a cooperative association at which milk from dairy farmers is received if the total of fluid milk products (except filled milk) transferred from such cooperative association plant(s) to, and the milk of member producers physically received at, pool plants pursuant to § 1004.7(a) is not less than 40 percent of the total milk of member producers during the month.

(2) A reserve processing plant operated by a federation of cooperative associations at which milk of member producers of the cooperatives is received if the total of fluid milk products (except filled milk) transferred from such federation plant(s) to, and the milk of member producers of the cooperatives physically received at, pool plants pursuant to § 1004.7(a) is not less than 40 percent of the combined milk of member producers of the cooperatives during the month.

(3) A reserve processing plant owned and operated by a cooperative association that also owns and operates a pool plant pursuant to § 1004.7(a) so long as the volume of the cooperative's member milk pooled at the reserve processing plant does not exceed the volume of sales of Class I milk (except filled milk) from the cooperative's pool distributing plant, plus the milk of member producers received directly at pool plants pursuant to § 1004.7(a) of other handlers during the month.

(4) A cooperative or federation of cooperatives operating a pool reserve processing plant qualified pursuant to this paragraph shall notify the market administrator each month, at the time of filing reports pursuant to § 1004.30 and in the detail prescribed by the market administrator, with respect to any receipts from member dairy farmers of the cooperative(s) delivering to such plant not meeting the health requirements for disposition as fluid milk in the marketing area.

* * * * *

§ 1004.11 [Amended]

2. In § 1004.11, the phrase, "the proviso of paragraph (d) of said § 1004.7" is revised to read " (d)(4)".

3. In § 1004.12, the number "15" in the introductory text of paragraph (d)(2) is changed to "18", and paragraph (b) is revised to read as follows:

§ 1004.12 Producer.

* * * * *

(b) A dairy farmer with respect to milk which is received at a pool plant pursuant to § 1004.7(d): *Provided*, That such milk is received directly from the farm of one who is a member of the cooperative operating the plant, or is received directly from the farm of one who is a member of a cooperative association that is a member of the federation operating the plant, or is received as milk diverted from a poll plant pursuant to § 1004.7 (a), (b) or (e).

* * * * *

4. In § 1004.13, paragraph (b) is revised to read as follows:

§ 1004.13 Producer milk.

* * * * *

(b) Received at a pool plant pursuant to § 1004.7(d): *Provided*, That such milk is received directly from the farm of one who is a member of the cooperative operating the plant, or is received directly from the farm of one who is a member of a cooperative association that is a member of the federation operating the plant, or is received as milk diverted from a pool plant pursuant to § 1004.7 (a), (b) or (e).

* * * * *

5. A new § 1004.19 is added to read as follows:

§ 1004.19 Federation.

Federation means an organization that is formed by two or more cooperative associations as defined in § 1004.20 and which is incorporated under the laws of a state.

(This recommended decision constitutes the Department's Draft Impact Analysis Statement for this proceeding.)

Signed at Washington, D.C. on January 19, 1979.

JAMES E. SPRINGFIELD,
Acting Deputy Administrator, Marketing Program Operations.

[FR Doc. 79-2693 Filed 1-24-79; 8:45 am]

[3410-05-M]

Commodity Credit Corporation

[7 CFR Part 1430]

PRICE SUPPORT PROGRAM FOR MILK

Terms and Conditions of 1978-79 Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal announces that the Secretary of Agriculture is considering the semiannual adjustment of the support price for milk. This proposed rule is being issued pursuant to the requirement in the Food and Agriculture Act of 1977 that the support price for milk shall be adjusted semiannually to reflect any estimated change in the parity index during such semiannual period. The Secretary may also consider other matters pertaining to the milk support program, including the manufacturing margins used in calculating Commodity Credit Corporation (CCC) dairy product purchase prices.

DATE: Comments must be received on or before February 26, 1979, to be sure of consideration.

ADDRESS: Director, Procurement and Sales Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, 5741 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Sidney Cohen (ASCS) 202-447-4037.

SUPPLEMENTARY INFORMATION: Section 201(c) of the Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977, provides as follows: "The price of milk shall be supported at such level not in excess of 90 percent nor less than 75 percent of the parity price therefor as the Secretary determines necessary in order to assure an adequate supply of pure and wholesome milk to meet current needs, reflect changes in the cost of production, and assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs. Notwithstanding the foregoing, effective for the period beginning on the effective date of the Food and Agriculture Act of 1977 and ending March 31, 1979, the price of milk shall be supported at not less

than 80 per centum of the parity price therefor. Such price support shall be provided through purchases of milk and the products of milk."

Section 201(d) of the Act provides as follows: "Effective for the period beginning on the effective date of the Food and Agriculture Act of 1977 and ending March 31, 1981, the support price of milk shall be adjusted by the Secretary at the beginning of each semiannual period after the beginning of the marketing year to reflect any estimated change in the parity index during such semiannual period. * * * Any adjustment under this subsection shall be announced by the Secretary not more than thirty days prior to the beginning of the period to which it is applicable."

The parity index (index of prices paid by farmers for commodities, services, interest, taxes, and wage rates) was 757 (1910-14=100) on September 15. It is currently estimated that the March 15, 1979 index will be 3.8 to 5.8 percent higher. Therefore, the adjustment is estimated to require a 3.8 to 5.8 percent increase in the support price on April 1, 1979, or an increase from the present level of $9.64 per hundredweight for milk of 3.5 percent fat content to a level somewhere between $10.00 to $10.20.

From April through September 1978, milk production was about 1 percent below a year earlier. In October and November, production was 0.3 percent below a year ago and it is expected to rise over year earlier levels early in 1979. During October through December butter production was about 17 percent below a year earlier while American cheese production was about 10 percent above a year earlier. Production of nonfat dry milk in October and November (the latest available data) was 33 percent less than a year earlier.

Since October 1, the beginning of the marketing year, CCC has purchased less than 1 million pounds of butter, no cheese and only a relatively small amount of nonfat dry milk under the support program. CCC sold about 10 million pounds of butter back to the industry, at 10 percent above CCC's purchase price.

Commercial consumption of milk and milk products increased in 1977-78 over 1976-77. However, it is expected to increase only slightly in 1978-79 due to a projected decrease in butter use and much smaller gains in cheese use.

The market price of butter in Chicago begain to rise above CCC's support purchase price in mid-July. On October 1, 1978, it was 116.62 cents per pound when the purchase price for the 1978-79 marketing year was announced at 113.30 cents per pound. The price continued to rise, reaching 122.12 cents in the last week in November, but it dropped to close to the announced purchase price in the last week in December.

The American cheese price also begain to rise in July and was 111.12 cents per pound on October 1, 1978, when the purchase price for 1978-79 was announced at 106.00 cents per pound. The price continued to increase, reaching 119.50 cents per pound in early December.

The price for nonfat dry milk began to rise at a much slower rate in July and was very nearly the same as the 73.75 cents per pound announced on October 1, 1978. The price has continued to rise, reaching 78.10 cents per pound in the first week in January.

Manufacturing margins used in calculating the dairy product purchase prices under the support program were increased 10 cents per hundredweight, effective April 1, 1978. Costs to manufacturers have increased since then and it may necessary to increase the manufacturing margins in April 1979, in order to provide greater assurance that the average price for manufacturing milk received by farmers at least equals the announced support price.

PROPOSED RULE

Notice is hereby given that the Secretary of Agriculture is considering the semiannual adjustment in the level of the support price for milk as required by law, and the prices and terms of purchase by CCC of butter, cheese and nonfat dry milk, including factors used in calculating the dairy product purchase prices.

You are invited to submit in writing to the Director, Procurement and Sales Division, data, views and recommendations concerning the determinations to be made. In order to be assured of consideration, all submissions must be received by the Director not later than (30 days after publication in FEDERAL REGISTER). All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director, Procurement and Sales Division, ASCS, USDA, Room 5741-South Building, during regular business hours (8:15 a.m.-4:45 p.m.).

This notice of proposed rule making is issued under authority of Section 201 (c) and (d) of the Agircultural Act of 1949, as amended, (63 Stat. 1051, as amended; 7 U.S.C. 1446); and Sections 4 and 5 of the Commodity Credit Corporation Act, as amended (62 Stat. 1070, as amended; 15 U.S.C. 714b and 714c).

Because the latest available economic data concerning the first quarter of the marketing year is not available until January and because a longer comment period would not permit adequate consideration of public comment, I have determined that compliance with the 60-day comment period prescribed by Executive Order 12044 is not possible.

NOTE.—It is hereby certified that an approved Draft Impact Analysis has been prepared in accordance with Executive Order 12044 and is available from the Director, Procurement and Sales Division, ASCS, USDA, Room 5741-South Building.

Signed at Washington, D.C., on January 15, 1979.

STEWART N. SMITH,
Acting Executive Vice President, Commodity Credit Corporation

[FR Doc. 79-2596 Filed 1-24-79; 8:45 am]

[4910-13-M]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 18692]

AIRWORTHINESS DIRECTIVES

Avions Marcel Dassaults; All Models Fan Jet Falcon Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking

SUMMARY: This notice proposes to adopt an Airworthiness Directive (AD) that would require inspection for wear or inadequate mating of the engaging surfaces of the passenger door outer control handle and its catch on certain Fan Jet Falcon Series airplanes. It would also require repairs or replacements as necessary, repetitive inspections, and related modifications. The proposed AD is needed to prevent improper engagement of the passenger door locking mechanism which could result in the passenger door opening in flight.

DATES: Comments must be received on or before March 12, 1979.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24) Docket No. 18692, 800 Independence Avenue, S.W., Washington, D.C. 20591.

The applicable service bulletin may be obtained from: Falcon Jet Corporation, 90, Moonachie Ave., Moonachie, New Jersey 07074.

A copy of each of the service bulletins is contained in the Rules Docket, Rm. 916, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Don C. Jacobsen, Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Region, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, Telephone 513.38.30, or Chris Christie, Federal Aviation Administration, Engineering and Manufacturing Division, AFS-110, 800 Independence Ave. S.W. Telephone Washington, D.C. Area Code 202-426-3874.

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

There have been reports that the passenger door locking mechanism on certain Fan Jet Falcon series airplanes may not adequately engage, due to component wear or poor adjustment which can allow the door to open in flight if for some reason there is low relative pressure in the cabin. Since this condition is likely to exist or develop on other airplanes of the same type design, it is proposed to issue an airworthiness directive which would require inspection of the passenger door outer handle and its catch on certain Fan Jet Falcon series airplanes to assure there is adequate engagement of the passenger door latching mechanism, repair of the door outer control handle assembly or replacement of the handle, as necessary, repetitive inspection, installation of a microswitch connected to the existing "door locked" annunciator light, and the installation of a placard.

THE PROPOSED AMENDMENT

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 or the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

AVIONS MARCEL DASSAULT (A.M.D.). Applies to all models of the Fan Jet Falcon series airplanes, Serial Numbers 1 through 376, 378 through 380, 382, and 385 through 388, certificated in all categories.

Compliance required as specified in the body of this AD, unless already accomplished.

To prevent inadvertent opening of the passenger door due to incomplete manual engagement in closing, worn components, or poor adjustment of the latching mechanism, accomplish the following:

(a) For aircraft serial numbers 371 and 386, comply only with paragraph (e) of this AD. All other aircraft must comply with paragraphs (b) through (g) of this AD.

(b) Within the next 50 hours in service after the effective date of this AD, unless already accomplished, inspect the passenger door outer control handle and its catch for evidence of wear or inadequate mating of the engaging surfaces in accordance with Avions Marcel Dassault (A.M.D.) Service Bulletin (SB) No. 604 dated May 17, 1978, with Revision 1 dated June 8, 1978, or equivalent approved by the Chief, Aircraft Certification Staff, FAA, AEU-100, Europe, Africa, and Middle East Region.

(c) If during any inspection required by this AD, inadequate mating of the door outer control handle and its catch is found, before further flight, except that the airplane may be flown in accordance with FAR 21.197 and 12.199 to a base where repairs can be made, modify the door outer control handle assembly and its catch and install new steel lock bolts in accordance with AMD-SB No. 615, dated May 17, 1978, or an equivalent approved by Chief, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Region, or if wear is localized on the door outer handle, replace it with a door outer handle of the same part number in accordance with the Falcon 20 service manuals referenced in paragraph "J" of AMD-SB No. 615 or equivalent approved by Chief, Aircraft Certification Staff, AEU-100, FAA, Europe, Africa, and Middle East Region.

(d) If during any inspection required by this AD, adequate mating of the door outer control handle and its catch is found or if a new door outer control handle has been installed in accordance with paragraph (b) of this AD, inspect the door outer control handle and its catch in accordance with the method specified in paragraph (a) of this AD at intervals not to exceed 500 hours time in service from the last inspection until the door outer control handle assembly and its catch are modified and steel lock bolts are installed in accordance with AMD-SB No. 615, dated May 17, 1978, or equivalent approved by the Chief, Aircraft Certification Staff, AEU-100, FAA, Europe, Africa, and Middle East Region.

(e) Within the next 500 hours time in service after the effective date of this AD, install passenger door closing instruction placards and symbols in accordance with the Accomplishment Instructions, paragraph 2. K. of AMD-SB No. 616, dated May 17, 1978 or FAA-approved equivalent.

(f) Within the next 1000 hours time in service after the effective date of this AD, install a microswitch and associated electrical circuitry to the passenger door handle mechanism and accomplish associated modifications in accordance with AMD-SB 616, dated May 17, 1978, or equivalent approved by the Chief, Aircraft Certification Staff, AEU-100 Federal Aviation Administration, Europe, Africa, and Middle East Region, c/o American Embassy, Brussels, Belgium.

(g) Incorporate appropriate revisions to the Aircraft Parts, Maintenance and Repair Manuals, and Wiring Diagrams related to AMD service bulletins referenced in this AD.

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

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

Issued in Washington, D.C., on January 11, 1979.

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

[FR Doc. 79-2362 Filed 1-24-79; 8:45 am]

[4910-13-M]

[14 CFR Part 39]

[Docket No. 78-WE-26-AD]

AIRWORTHINESS DIRECTIVES

McDonnell Douglas Model DC-9 Series and C-9 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would require inspection, rework and replacement of the forward passenger entry door lock mechanism crank assembly. The proposed AD is needed to preclude possible cracking and failure of the crank assembly that could result in jamming of the forward passenger door locking mechanism and prevent the door from being opened.

DATES: Comments must be received on or before March 30, 1979.

ADDRESSES: Send comments on the proposal to: Department of Transportation, Federal Aviation Administration, Western Region, Attention: Regional Counsel, Airworthiness Rule Docket, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attn: Director, Publications and Training C1-750 (54-60).

FOR FURTHER INFORMATION CONTACT:

Kyle L. Olsen, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administra-

tion, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, Phone: 213-536-6351.

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

There have been reports of fatigue cracks found in the forward passenger entry door lock mechanism crank assembly. In one instance, the cracks were determined to be a major contributing factor in the complete failure of the crank assembly and subsequent jamming of the door lock mechanism that prevented the door from being opened after landing; passengers were deplaned through the emergency overwing exits. This door is a Type I emergency exit. The cracks and failure were reported on airplanes with more than 20,000 total flight hours.

The crank assembly, P/N 4918613-1, is made up of a −3 crank and −5 clevis in the shape of a tuning fork. The parts are made from 7075-T651 aluminum plate and are mated together with two bolts, at the crank arm and clevis tang. The mating faces contain a series of saw-tooth serrations to insure positive clamp-up on assembly. The bolt holes in the crank arm are elongated to permit adjustment in the length of the crank assembly during rigging of the door operating and locking mechanism.

The cracks originate in the roots of the serrations and are caused by preload due to misalignment of the −3 and −5 parts on the assembly during rigging. The misalignment is attributed to incorrect length of the elongated holes which permit the serrated surfaces of the mating parts to ride up on the unserrated areas and, in some cases, on the radius of the arm and tang, thereby inducing a preload and a bending stress when the parts are bolted together. The complete failure of one crank assembly is attributed to misalignment and initial overload: misalignment subjected the assembly to bending stress and fatigue cracking in the root of the serrations, and finally, as a result of an overload, complete separation on the −3 crank at the end serration.

The proposed airworthiness directive would require an inspection of the −3 crank and −5 clevis for cracks. The crank and clevis must be replaced with either reworked −3 and −5 parts or newly designed −11 and −13 parts. Parts that have cracks must be removed from service. The locking mechanism and crank assembly are located inside the door and covered by a liner which prevents any cracks or failure from being readily detectable.

Since this condition is likely to exist on other airplanes of the same type design, the proposed airworthiness directive would require a one time inspection, and rework and replacement of the forward passenger entry door mechanism crank assembly.

PROPOSED AMENDMENT

Accordingly, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

McDONNELL DOUGLAS Applies to DC-9 Series and Military C-9 Series Airplanes, Certificated in all Categories.

Compliance is required as indicated, unless already accomplished.

To detect fatigue cracks in the forward passenger entry door lock mechanism crank assembly parts, P/N 4918613-3 (crank) and P/N 4918613-5 (clevis) accomplish the following:

(a) Within the next 1500 landings after the effective date of this AD, or before accumulating 22,500 total landings whichever occurs later, perform the dye penetrant inspections on the crank assembly part P/N 4918613-1, comprised of P/N 4918613-3 (crank) and P/N 4918613-5 (clevis), in accordance with the instructions in McDonnell Douglas DC-9 Service Bulletin 52-111, dated November 15, 1978.

(b) If a crack(s) is found in the −3 crank and/or the −5 clevis before further flight:

(1) Replace the cracked part(s) with a new crank; P/N 4918613-11, and/or a new clevis, P/N 4918613-13, in accordance with the instructions in the McDonnell Douglas DC-9 Service Bulletin 52-111, dated November 15, 1978; or,

(2) Replace the part(s) with an uncracked −3 crank and/or a −5 clevis modified in accordance with instructions in McDonnell Douglas DC-9 Service Bulletin 52-111, dated November 15, 1978.

(c) If no cracks are found in the −3 crank and/or −5 clevis, before further flight:

(1) Modify these parts in accordance with the instructions in McDonnell Douglas DC-9 Service Bulletin 52-111, dated November 15, 1978; or

(2) Replace the part(s) with a new P/N 4918613-11 crank and/or a new P/N 4918613-13 clevis in accordance with the instructions in McDonnell Douglas DC-9 Service Bulletin 52-111, dated November 15, 1978.

(d) Equivalent inspections procedures and repairs may be used when approved by Chief, Aircraft Engineering Division, FAA Western Region.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections required by this AD.

(f) For the purpose of complying with this AD, subject to the acceptance by the signed FAA maintenance inspector, the number of landings may be determined by dividing each airplane's hour's time in service by the operator's fleet average time from takeoff to landing for the airplane type.

(g) Upon request of operator, an FAA maintenance inspector, subject to prior approval of the Chief, Aircraft Engineering Division, FAA Western Region, may adjust the initial and repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator, if the request contains substantiating data to justify the increase for that operator.

NOTE.—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 interim Department of Transportation Guidlines.

Issued in Los Angeles, California on January 15, 1979.

LEON C. DAUGHERTY,
Director,
FAA Western Region.

[FR Doc. 79-2375 Filed 1-24-79; 8:45 am]

[4910-13-M]

[14 CFR Part 71]

[Airspace Docket No. 78-CE—33]

TRANSITION AREA

Broken Bow, Nebraska; Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the 700-foot transition area at Broken Bow, Nebraska to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Broken Bow, Nebraska Municipal Airport, which is based on a VOR, a navigational aid being installed northwest of the airport by the City of Broken Bow, Nebraska.

DATES: Comments must be received on or before February 26, 1979.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures

and Airspace Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri, 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Dwaine E. Hiland, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before February 26, 1979, will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374-3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

THE PROPOSAL

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR Section 71.181) by altering the 700-foot transition area at Broken Bow, Nebraska. To enhance airport usage, an additional instrument approach procedure to the Broken Bow, Nebraska Municipal Airport is being established utilizing a VOR, a navigational aid being installed northwest of the airport by the City of Broken Bow, Nebraska. The establishment of a new instrument approach procedure based on these facilities entails alteration of the transition area at and above 700 feet above ground level (AGL) within which aircraft will be provided additional controlled airspace protection.

Accordingly, the Federal Aviation Administration proposes to amend Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 3, 1978 (43 FR 440), by altering the following transition area:

BROKEN BOW, NEBRASKA

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Broken Bow Municipal Airport (latitude 41°26'05"N, longitude 99°38'25"W); and within 6 miles each side of the Broken Bow VOR 323° radial extending from the 7-mile radius area to 8.5 miles northwest of the VOR.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).)

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

Issued in Kansas City, Missouri, on January 12, 1979.

C. R. MELUGIN, Jr.,
Director, Central Region.

[FR Doc. 79-2361 Filed 1-24-79; 8:45 am]

[1505-01-M]

[14 CFR Part 73]

[Airspace Docket No. 78-50-55]

TEMPORARY RESTRICTED AREAS

Proposed Establishment

Correction

In FR Doc. 78-36069 appearing at page 60579 in the issue for Thursday, December 28, 1978, in § 73.53, on page 60580, third column, third line under R5315B Lejeune, N.C., "Long. 77° 54' 45" W.;" should read "Long. 76° 54' 45" W.;".

[4910-13-M]

[14 CFR Part 73]

[Airspace Docket No. 78-EA-89]

RESTRICTED AREA

Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to divide the present restricted area at Quantico, Va., into two areas and to provide for additional time of designation by issuing a Notice to Airman (NOTAM) in advance of intended additional use. This action would provide for more efficient use of the airspace by permitting nonmilitary operations to use one portion of the area while the military is using another portion. The change in time of designation would provide for make up time of training schedules that could not be met because of weather or other delays.

DATES:Comments must be received on or before February 26, 1979.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Eastern Region, Attention: Chief, Air Traffic Division, Docket No. 78-EA-89, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamacia, N.Y. 11430. The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-24), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430. All communications received on or before February 26, 1979

will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular 11-2 which describes the application procedures.

THE PROPOSAL

The FAA is considering an amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) that would divide the present Quantico Restricted Area R-6608 into R-6608A and R-6608B. No addition airspace would be designated, however, additional time would be provided by a NOTAM issued 24 hours in advance. The designated altitude, controlling agency and using agency would not change.

THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 73.66 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as republished (44 FR 714) as follows:

Under § 73.66

R-6608 title and text is deleted.
R-6608A and R-6608B Quantico, Va., are added as follows:
R-6608A Quantico, Va.
Boundaries. Beginning at Lat. 38°35'10"N.; Long. 77°34'07"W.; to Lat. 38°37'00"N.; Long. 77°34'07"W.; to Lat. 38°37'50"N.; Long. 77°32'20"W.; to Lat. 38°37'00"N.; Long. 77°25'34"W.; to Lat. 38°35'45"N.; Long. 77°24'55"W.; to point of beginning.
Designated altitudes. Surface to 10,000 feet MSL.
Time of designation. Intermittent, 0700 to 2400 hours, local time, other times by NOTAM issued at least 24 hours in advance.
Controlling agency. Federal Aviation Administration, Washington ARTCC.
Using agency. Commanding General, Marine Corps Development and Education Command, Quantico, Va.
R-6608B Quantico, Va.
Boundaries. Beginning at Lat. 38°35'10"N.; Long. 77°34'07"W.; to Lat. 38°35'45"N.; Long. 77°24'55"W.; to Lat. 38°34'00"N.; Long. 77°24'00"W.; to Lat. 38°31'15"N.; Long. 77°24'20"W.; to Lat. 38°29'00"N.; Long. 77°28'45"W.; to Lat. 38°31'20"N.; Long. 77°34'07"W.; to points of beginning.
Designated altitudes. Surface to 10,000 feet MSL.
Time of designation. Intermittent, 0700 to 2400 hours, local time, other times by NOTAM issued at least 24 hours in advance.
Controlling agency. Federal Aviation Administration, Washington ARTCC.
Using agency. Commanding General, Marine Corps Development and Education Command, Quantico, Va.

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

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

Issued in Washington, D.C., on January 19, 1979.

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

[FR Doc. 79-2566 Filed 1-24-79; 8:45 am]

[4910-13-M]

[14 CFR Part 75]

[Airspace Docket No. 77-WE-21]

JET ROUTES

Proposed Revocation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke several jet routes in the vicinity of Battle Mountain, Nevada. Jet Routes J-154, J-198 and J-200 were established so that alternate routes would be available when aircraft encountered mountain wave turbulence. Since these routes have not been used, the FAA proposes to revoke them to reduce chart clutter.

DATES: Comments must be received on or before February 26, 1979.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Western Region, Attention: Chief, Air Traffic Division, Docket No. 77-WE-21, Federal Aviation Administration, 15000 Aviation Boulevard, P.O. Box 92007, Worldway Postal Center, Los Angeles, Calif. 90009. The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket, (AGC-24), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Western Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, P.O. Box 92007, Worldway Postal Center, Los Angeles, Calif. 90009. All communications received on or before February 26, 1979 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

AVAILABILITY OF NPRM

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

THE PROPOSAL

The FAA is considering an amendment to Subpart B of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) that would revoke Jet Routes J-154 and J-200 and revoke in part J-198. Presently, J-154 is aligned from Battle Mountain, Nev., to Sacramento, Calif.; J-198 is aligned in part from Mina, Nev., to Linden, Calif.; and J-200 is aligned from Battle Mountain, to Linden. These jet routes were established to increase the number of routes available when mountain wave turbulence was reported. J-154 has been used only once and J-198 and J-200 have never been used. Radar serv-

ice is available in these areas and could be used in lieu of the jet routes in the unlikely event that course deviation becomes necessary to avoid unfavorable weather. The revocation of these jet routes would reduce chart clutter and improve traffic flow by utilizing radar vectors for safe, expeditious separation of traffic in the area.

THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 75.100 of the Federal Aviation Regulations (14 CFR Part 75) as republished (44 FR 722) as follows:

1. "Jet Route No. 154"—title and text would be deleted.
2. "Jet Route No. 200"—title and text would be deleted.
3. Under Jet Route No. 198—"From Linden, Calif., via INT Linden 063° and Mina, Nev., 298° radials; Mina; Wilson Creek, Nev.;" would be deleted "From Wilson Creek, Nev.;" would be substituted therefor.

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

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

Issued in Washington, D.C. on January 18, 1979.

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

[FR Doc. 79-2364 Filed 1-24-79; 8:45 am]

[4910-13-M]

[14 CFR Part 199]

[Docket No. 18694; Notice No. 79-3]

AIRCRAFT LOAN GUARANTEE PROGRAM

Proposed Revision to Regulations Governing the FAA's Aircraft Loan Guarantee Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pub. L. 95-504, recently signed by the President, amended the Act relating to the FAA's Aircraft Loan Guarantee Program. The new law raised the total amount that can be guaranteed for any eligible participant from 30 million to 100 million dollars; expanded the eligible participants to include charter air carriers, commuter air carriers and intrastate air carriers; extended the term of eligible loans to fifteen years; and required that aircraft purchased under a guaranteed loan comply with FAA noise standards. In order to comply with the new law and to make related procedural changes, and to provide additional information and guidance to potential guarantee applicants the FAA is proposing amendments to Part 199 of the Federal Aviation Regulations.

DATES: Comments must be received on or before March 25, 1979.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24), Docket No. 18694, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Richard A. Smith, Office of the Chief Counsel (AGC-50), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone: (202) 426-3480.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, Docket No. 18694, 800 Independence Avenue, S.W., Washington, D.C. 20591. All communications received on or before March 25, 1979, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rule making will be filed in the docket.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure. The FAA's Aircraft Loan Guarantee program is authorized under the Act of September 7, 1957, as amended (71 Stat. 629; 49 U.S.C. 1324 Note) referenced hereafter as "the Act." The Act provides that this program is the responsibility of the Secretary of Transportation. Section 1.47(c) of the Department of Transportation Regulations (49 CFR 1.47(c)) delegates the Secretary's authority over the Loan Guarantee Program to the Administrator of the Federal Aviation Administration.

To implement the Loan Guarantee program the FAA promulgated Part 199 of Title 14 of the Code of Federal Regulations (14 CFR Part 199). This established the procedural mechanism by which the program is administered.

Recently, Pub. L. 95-504 made substantial amendments to the Act, the most significant of which are as follows:

1. It expands the categories of eligible participants to include "charter air carriers," "commuter air carriers," and "intrastate air carriers" (as those terms are defined in the new Act). Formerly only certain categories of local service, Alaskan, Hawaiian and Helicopter air carriers were eligible.

2. It expands the term of loans which may be guaranteed to a maximum of 15 years. The former maximum was 10 years.

3. It increases the maximum amount of a loan or combination of loans which can be guaranteed for a single carrier to $100 million. The former maximum was $30 million.

4. It adds the requirement that any new turbojet powered aircraft to be purchased under the Loan guarantee program must comply with the FAA's noise standards set forth in 14 CFR Part 36.

5. It provides that any guarantee made for the purchase of any all-cargo nonconvertible aircraft by a charter air carrier must be based on the percentage of service provided by that air carrier to small, medium and nonhub airports during the prior twelve months. The maximum amount of the guarantees will be roughly $1 million for each percent of service to these airports.

6. It re-enacts the authority to guarantee loans for a period of five years effective October 24, 1978. The previous authority expired on September 7, 1977.

The Secretary's guarantee authority lapsed on September 6, 1977 and was not revived until October 24, 1978 as a part of the Airline Deregulation Act (Pub. L. 95-504). During the debates of this Act, Congress demonstrated a

great deal of concern that deregulation might substantially degrade the quality of air service to small communities. In an evident attempt to lessen any such negative effect, Congress expanded the class of eligible carriers to include additional carriers which typically provide the majority of their service to small communities. This expansion, the heightened emphasis on service to small communities and the fact that the loan guarantee program was revitalized, not independently, but as a part of the President's deregulation program, leads the FAA to conclude that this is a new program and that every effort should be made under the expanded guarantee authority to benefit the small communities. In addition, serious questions have been raised by both Congress and the Executive branch about the use and control of loan guarantees. There is every indication that control procedures will be adopted which will treat loan guarantees as part of the Federal budget process. For example, in a recent study by the Congressional Budget Office, that office concluded that:

> Understanding of Federal government activity through the budget process is incomplete to the extent that an estimated $53.4 billion of guaranteed loans are not included in the fiscal year 1979 budget. The current budgetary treatment of guaranteed lending hinders the coordination of loan guarantee programs with other important elements of Federal fiscal policy . . . CBO believes that guarantees, as well as other Federal fiscal activities, should be reviewed and controlled within the Congressional budget process. Efforts to improve control of guarantees should focus on refining the budget structure and strengthening the budget process. *Loan Guarantees, Current Concerns and Alternatives for Control, August 1978, Page 39.*

President Carter's budget message for 1979 expressed similar concern, and as a result, the FAA's 1980 budget contains the following proposed supplemental appropriation language:

FEDERAL AVIATION ADMINISTRATION

Sec. None of the funds in the Department of Transportation and Related Agencies Appropriation Act, 1979, shall be available for the administrative expenses of making a new loan guarantee during fiscal year 1979 for any aircraft purchase loan, pursuant to the act of September, 1957 (71 Stat. 629), as amended, (a) to any air carrier other than a commuter air carrier as defined in § 2 of the Act of September 7, 1957, as amended, or (b) which causes the aggregate of all such guarantees made during fascal year 1979 to exceed $50,000,000 in principal amount.

In light of these potential restrictions and of Pub. L. 95-504 and its history, the FAA, in the administration of this new program, cannot be bound by previous practices. Therefore, in order to be fair to potential applicants, the FAA cannot process loan guarantee applications or issue guarantees until new rules are adopted.

DISCUSSION OF PROPOSED CHANGES

The regulations governing the FAA's Aircraft Loan Guarantee program are found in Part 199 of the Federal Aviation Regulations (14 CFR Part 199) and set forth the procedures for obtaining guarantees. To conform Part 199 to the new amendment, to provide criteria by which applications will be evaluated, and to make related procedural changes, the FAA is proposing the revision of Part 199 as set forth below.

WHO IS ELIGIBLE FOR A GUARANTEE

The Act provides that the Secretary of Transportation is authorized to guarantee any lender against loss of principal and interest on aircraft purchase loans made to various air carriers. "Air Carriers" are defined in Section 101(3) of the Federal Aviation Act of 1958 as "any citizen of the United States who undertakes, whether directly or indirectly or by a lease as any other arrangement, to engage in air transportation." The citizen of the United States, therefore, must engage in air transportation. A question has arisen as to whether a broker, or a consortium of investors which intends to lease an aircraft to an air carrier qualified as an "air carrier" for the purposes of the Act.

There is no indication that Pub. L. 95-504 was designed to add brokers to the class of eligible carriers. Accordingly, the FAA has determined that such groups are too remote from the actual engagement in air transportation to qualify for a guaranteed loan. The actual carriage of freight or passengers will be accomplished by another person (who might well qualify as an eligible carrier if that person sought to purchase the aircraft) and not in any respect by the lessor. Furthermore, to guarantee a loan made to a lessor would be to guarantee a loan for the purchase of an aircraft which, in the future, might well not be used to provide the service which the Act is intended to encourage.

ALASKA AND HAWAII

Section 3 of the Act includes in the class of eligible air carriers "any air carrier whose certificate . . . authorizes scheduled passenger operations the major portion of which are conducted within the State of Hawaii"; and any air carrier whose certificate authorizes scheduled or nonscheduled operations, the "major portion" of which are conducted either within Alaska or between Alaska and the forty-eight contiguous states or adjacent Canadian territory. A question has arisen as to the standard to be used in determining whether a carrier's certificate meets this criteria. For purposes of administering the Act, the term "major portion" will be deemed to refer to more than 50% of the total number of a carrier's operations authorized in a certificate. The term "operation" will be deemed to mean takeoff, and the related subsequent landing, i.e. a takeoff and a landing, would be one "operation."

It is proposed to define the term adjacent Canadian territory in terms of a specific distance from the Alaskan border. Public comment is requested to assist the FAA in selecting a distance that will realistically reflect the objectives of the act as discussed above.

These standards are adopted because they appear to be most suited to facilitate service to small communities in the Alaskan and Hawaiian regions. They offer sufficient flexibility that a carrier may reinforce its economic base by servicing other locations which are economically advantageous; yet insure that communities within these regions will retain their service.

WHAT LOANS ARE COVERED

Section 3 of the Act gives the Secretary of Transportation authority to guarantee certain "loans made" to carriers for the purchase of modern aircraft and equipment. The Act, however, does not define when a loan is made. Neither the Act nor the legislative history restricts the meaning of this term. Accordingly, the FAA will give the term a meaning consistent with the ordinary commercial practice of lending institutions which finance aircraft purchases, so long as the interests of the United States as a guarantor are adequately protected.

In aircraft financing, a "loan" is actually an extended transaction, with a loan agreement or agreements and related documents executed on one date, but with loan amounts changing hands subsequently, on or near the date of aircraft delivery. The FAA, as required by the Act, and as a matter of sound business judgment, intends to review all financing documents prior to executing a guarantee agreement. So long as these documents are provided in final form or the essential terms and conditions of the parties' legal commitments are otherwise finally established, the Agency will have sufficient basis to determine whether an aircraft purchase loan may be guaranteed. Accordingly, loan agreements must be certain and definite in their essential terms and conditions in order to be deemed to be "loans made" within the meaning of the Act; and only such agreements will be considered as a basis for a loan guarantee.

The only exception to this rule involves those loan documents placed in final form prior to the effective date of the Act, but which are contingent on an FAA Guarantee. In these cases no funds will change hands unless there is a guarantee; and, for that reason, such loans will be deemed to qualify under the Act when and if a guarantee is executed.

LOANS WHICH PREDATE GUARANTEE APPLICATIONS

A significant number of inquiries reach the FAA concerning whether a loan is eligible for a guarantee if the funds have already changed hands.

Section 4(a)(5) of the Act provides that no guarantee shall be made unless the Secretary finds that without such guarantee the carrier would be unable to obtain necessary funds on reasonable terms for the purchase of needed aircraft. If loan amounts have been paid over before a guarantee is issued, it can not be argued that the loan was impossible without such guarantee. Similarly, once parties to a loan have agreed to an interest rate without a guarantee, and loan amounts have changed hands, the interest rate of that loan will be deemed to be commercially reasonable. Accordingly, a loan agreement under which loan amounts have changed hands will not qualify for the Loan Guarantee Program. No guarantee will be authorized to reduce an interest rate under such a loan or otherwise to refinance a transaction. The Act authorizes the FAA to guarantee loans made for the purchase of aircraft; not loans made for the refinancing of purchases already consummated. In light of established practice, however, the FAA will consider as eligible for a guarantee, a loan which liquidates previous loans made for deposits so long as the amount of such deposits do not exceed 30% of the aircraft purchase price.

LOANS WHICH ARE CONTRARY TO THE POLICY OF THE UNITED STATES

From time to time, Congress and the Executive Branch promulgate or implement national policies which may affect the Loan Guarantee Program. No guarantee of a loan will be made if the loan or its terms and conditions are in contravention of the national policy or policies in effect at the time of the guarantee.

PRIORITIES AMONG OTHERWISE ELIGIBLE GUARANTEE RECIPIENTS

The Act of September 7, 1957, as amended, authorizes the Secretary of Transportation to guarantee any lender against loss of principal or interest on aircraft purchase loans made to eligible carriers. The Act does not require the Secretary to make such guarantees, but is discretionary in nature.

The Airline Deregulation Act (Pub. L. 95-504) significantly increased the class of eligible carriers by adding commuter air carriers, charter air carriers, and intrastate air carriers. Much of the Congressional debate with respect to the Airline Deregulation Act centered on the effect that law might have on air service to small communities. The FAA views the expansion of the class of eligible carriers as an effort by Congress not only to economically aid these carriers but also to offset any deterioration of service to small communities. Accordingly, in the event law or public policy requires a limitation on the dollar amount or number of guarantees made under the Act, the FAA will give priority to those applications made by carriers which typically provide a major part of the service to small communities. In this regard, the FAA has determined that the commuter air carriers would deserve first priority in such circumstances.

Priorities will be assigned to the individual applications of other eligible carriers based upon their demonstrated service to the smaller communities.

The commuter airlines in 1976 were serving 421 communities in the 48 contiguous states, compared to only 391 served by the local service air carriers. More important, 46% of the communities served by the commuters were under 25,000 population, compared to only 33% of the communities served by local service carriers. Only 9% of the communities served by the trunks were below 25,000 population, and only 11% of those served by the intrastate carriers were below 25,000.

In recent years the commuter air carrier industry has become an increasingly important part of the Nation's air transportation system. These carriers have experienced a 10.3% average annual passenger traffic increase since 1970. CAB statistics for 1977 compared to 1976 show the number of passengers carried by commuters increased 16.5% to 8.5 million, passenger miles increased 22.8% to 946.2 million and city pairs served increased 12.9% to 1,594. One factor contributing to the increase is growing public acceptance of this segment of the industry. Another factor is the decline in the service to the smaller cities rendered by trunk and local service air carriers. Since 1960, these carriers have discontinued service to 179 points. The commuter air carriers have stepped in and provided service to 96 of these points and this trend is expected to continue in the future.

The purpose of the original Aircraft Loan Guarantee Act was to promote the development of local, feeder, and short-haul air transportation and to provide service to the smaller communities. Following passage of the Deregulation Act these carriers are tending to expand their long-haul markets rather than expanding service to small communities. Accordingly, it is reasonable to give special attention in the administration of the program to guarantee the purchase of aircraft intended for use in providing air transportation to the smaller communities. In this way, the program will be useful in assisting the commuter air carriers in replacing trunk and local service air carriers at those points which the Civil Aeronautics Board determines should receive essential air service under Section 419 of the Deregulation Act.

TERMS AND CONDITIONS OF THE LOAN

The FAA, as guarantor of a loan, is financially liable on behalf of the United States in the event of a loan default. In view of this liability, the FAA will not guarantee a loan if the terms and conditions of the loan documents, including any default provisions, are substantially less favorable than those which are available in similar circumstances in the market place at the time of the guarantee.

GUARANTEE FEE

The Act provides that the Secretary will prescribe and collect from the lender a reasonable guarantee fee on each loan. In the past this fee has been 0.25% per annum on the unpaid balance of the guaranteed portion of the loan. We foresee no reason to change this fee rate over the life of the guarantee program. In order to provide more visible notification to the public, the amount of the fee as well as the authority to collect it will be specified in the regulation.

INSTRUCTIONS FOR PREPARATION OF APPLICATIONS

A completed application for a loan guaranty under this program consists of two parts: An FAA Form 2950-1 submitted by the lender; and an FAA Form 2950-2 submitted by the borrower. Current regulations contain detailed instructions on completion of these forms.

The revised regulation will delete these instructions, and will instead simply advise the applicant where application may be obtained and where the completed applications must be submitted. Detailed instruction on completion of the forms will be sent to the applicant along with the forms.

FUNCTIONS OF THE ADMINISTRATOR

The functions of the Secretary, as already pointed out, were transferred to the Administrator by § 1.47(c) of the Department of Transportation Regulations (49 CFR 1.47(c)). Under

the present Part 199, the Administrator's functions are delegated to the Director of the Office of Aviation Policy of the FAA. However, in practice, no loan guarantee has been executed without the approval of the Chief Counsel, or without his formal opinion that such guarantee complies with all requirements of law. The revised regulation merely formalizes that arrangement.

FULL FAITH AND CREDIT

Recently, various lenders have requested the FAA to provide legal opinions that particular loan guarantees under the program are entitled to the full faith and credit of the United States. Because of their repetitive requests, the FAA feels that it is proper to state by regulation the long standing position of the Agency.

Congress has the power to incur obligations on behalf of the United States and may use such agencies as it deems appropriate to execute its constitutional powers (See 41 Op. A.G. 403, 405). So viewed, the act of September 7, 1957, as amended, was a delegation of authority to the Secretary of Transportation to incur guarantee obligations on behalf of the United States. Any such obligation undertaken by the Secretary or his duly appointed representative, pursuant to the authority conferred by the Act, will constitute an obligation of the United States (41 Op. A.G. 403, 405).

This conclusion is not affected by the absence from the Act of any language expressly pledging the faith or credit of the United States to payment of guarantee obligations. The Attorney General has emphasized in various opinions that there is no order of solemnity of valid general obligations of the United States and that no legal priority is afforded general obligations contracted pursuant to an express pledge of faith or credit over those not so accompanied (41 Op. A.G. 363). It is enough to create an obligation of the United States if an agency or officer is validly authorized to incur such an obligation on its behalf and validly exercises that power (41 Op. A.G. 403, 405).

In accordance with the opinions of the Attorney General cited above, and because of the frequency of inquiries on this issue, a provision will be included in the regulations specifying that any guarantee issued pursuant to the Act is entitled to the full faith and credit of the United States.

THE PROPOSED AMENDMENT

Accordingly, the Federal Aviation Administration proposes to amend Part 199 of the Federal Aviation Regulations (14 CFR Part 199) as follows:

PART 199—AIRCRAFT LOAN GUARANTEE PROGRAM

Sec.

199.1 Applicability.
199.3 Definitions.
199.5 Carriers eligible for an aircraft loan guarantee.
199.7 Alaska and Hawaii.
199.9 Loans made within the Act.
199.11 Conditions and limitations under which loans will be guaranteed.
199.13 National policy considerations.
199.15 Priorities among otherwise eligible guarantee recipients.
199.17 Terms and conditions of loan.
199.19 Applications.
199.21 Action taken on applications.
199.23 Fees.
199.25 Deviation from Terms of Agreement or Guarantee.
199.27 Delegation of Administrator's functions.
199.29 Notices.
199.31 Full faith and credit.

AUTHORITY: Act of September 7, 1957 (49 U.S.C. 1324 Note; 82 Stat. 1003), as amended, Pub. L. 95-504, secs. 6(a)(3)(A) and 9 of the Department of Transportation Act (49 U.S.C. 1655(a)(3)(A) and 1657) and sec. 1.4(b)(4) of the Regulations of the Office of the Secretary of Transportation (49 CFR 1.4(b)(4)).

§ 199.1 Applicability.

This part applies to applications for aircraft loan guarantees as provided by the Act of September 7, 1957 (40 U.S.C. 1324 Note), and as extended by Pub. Ls. 90-568 (82 Stat. 1003) and 95-504, and to requests for approval of deviations from the terms of guarantee and loan agreements concluded after September 7, 1957.

§ 199.3 Definitions.

"Act," as used in this part means the Act of September 7, 1957 (49 U.S.C. 1324 Note), as amended.

"Carrier," as used in this part, includes air carrier, charter air carrier, commuter air carrier and intrastate air carrier as these terms are defined in the Act of September 7, 1957, as amended.

§ 199.5 Carriers eligible for an aircraft loan guarantee.

(a) Only those carriers set forth in section 3 of the Act are eligible for loan guarantee assistance.

(b) Only those carriers identified in paragraph (a) of this section who are directly engaged in air transportation are eligible for loan guarantee assistance.

(c) Only those aircraft purchased by carriers for their own use in air transportation shall be eligible for a loan guarantee.

§ 199.7 Alaska and Hawaii.

(a) The term "major portion" as used in section 3 (1)(b) and (c) of the Act means a portion which is greater than 50%

(b) The term "operation" as used in section 3(1)(b) and (c) of the Act means a takeoff and the related subsequent landing.

(c) The term "adjacent Canadian territory" as used in section 3(1)(c) means (a specific distance will be selected for the final rule. See preamble for discussion.)

199.9 Loans made within the Act.

(a) For purposes of determining which loans are eligible for guarantee under the Act, only those loans in which all financing documents are in final form, or in which the essential terms and conditions of the parties' legal commitments are otherwise finally established, shall be considered for a loan guarantee.

(b) Loans agreements which are submitted in final form during the life of the Act shall be deemed to fall within the Act, even if Loan amounts are to be paid over after expiration of the Act.

(c) Loan agreements which were in final form prior to October 24, 1978 may be considered for a loan guarantee only if no payments have been made under such agreement or agreements; and only if payments were expressly contingent on the obtaining of a government loan guarantee.

(d) No guarantee may be authorized for the refinancing of an aircraft purchase loan. This prohibition will not extend to aircraft purchase loans which liquidate previous loans made for deposits on an aircraft so long as such deposits do not exceed 30% of the aircraft purchase price.

§ 199.11 Conditions and limitations under which loans will be guaranteed.

(a) Subject to paragraph (b) of this section, no guaranty shall be made—

(1) Extending to more than the unpaid interest and 90% of the unpaid principal of any loan;

(2) On any loan or combination of loans for more than 90% of the purchase price of the aircraft, including spare parts, to be purchased therewith;

(3) On any loan whose terms permit full repayment more than 15 years after the date thereof;

(4) Wherein the total face amount of such loan, and of any other loans to the same carrier, or corporate predecessor of such carrier, guaranteed and outstanding under the terms of the Act exceeds $100 million;

(5) Unless the Administrator finds that, without such guarantee, in the amount thereof, the carrier would be unable to obtain necessary funds for the purchase of needed aircraft on reasonable terms;

(6) Unless the Administrator finds that the aircraft to be purchased with the guaranteed loan is needed to im-

prove the service and efficiency of operation of the carrier;

(7) Unless the Administrator finds that the prospective earning power—

(i) Of the applicant air carrier or charter air carrier, together with the character and value of the security pledged, furnish (A) reasonable assurances of the applicant's ability to repay the loan within the time fixed therefor, and (B) Reasonable protection to the United States; and

(ii) Of the applicant commuter air carrier or intrastate air carrier, together with the character and value of the security pledged, furnish (A) reasonable assurances of the applicant's ability and intention to repay the loan within the time fixed therefor, to continue its operations as a commuter air carrier or intrastate air carrier, and to the extent found necessary by the Administrator to continue its operations as a commuter air carrier or intrastate air carrier between the same route or routes being operated by such applicant at the time of the loan guarantee, and (B) reasonable protection to the United States; and

(8) On any loan or combination of loans for the purchase of any new turbojet-powered aircraft which does not comply with the noise standards prescribed for new subsonic aircraft in regulations issued by the Secretary of Transportation acting through the Administrator (14 CFR Part 36), as such regulations were in effect on January 1, 1977.

(b) No guarantee may be made by the Administrator under paragraph (a) of this section on any loan for the purchase of any all-cargo nonconvertible aircraft by any charter air carrier in an amount which, together with any other loans guaranteed and outstanding under this Act to such charter air carrier, or corporate predecessor of such charter air carrier, would result in the ratio of the total face amount of such loans to $100 million exceeding the ratio of the amount of charter air transportation of such charter air carrier provided to medium, small, and nonhub airports during the twelve-month period preceding the date on which the application for such guarantee is made by such charter air carrier to the total amount of charter air transportation of such charter air carrier during such twelve-month period.

§ 199.13 National policy considerations.

No loan which is contrary to law or to the economic, social or foreign affairs interests or policies of the United States may be guaranteed.

§ 199.15 Priorities among otherwise eligible guarantee recipients.

In the event that, by reason of law or public policy, a limitation is placed or becomes necessary upon the dollar amount or number of guarantees made under the Act, priorities shall be assigned to guarantee applications in the following order:

(a) Applications made by commuter air carriers;

(b) Applications made by other eligible carriers, in the order of their demonstrated service to the smaller communities.

§ 199.17 Terms and conditions of loan.

No loan shall be guaranteed if its terms and conditions, including any default provisions, are substantially less favorable to the purchaser or guarantor than those which are available in the marketplace for similar transactions at the time of the loan.

§ 199.19 Applications.

(a) The lender shall make application for an aircraft loan guarantee under this part by filing with the Director, Office of Aviation Policy of the FAA an original and five copies of Form FAA 2950-1 and Form FAA 2950-2 prepared by the lender and air carrier, respectively, together with an original and four copies of any supporting documents. These forms may be obtained from the Federal Aviation Administration, Office of Aviation Policy AVP-210, 800 Independence Avenue, SW., Washington, D.C. 20591.

(b) Application forms (FAA 2950-1 and 2950-2) shall be completed in accordance with instructions which will be mailed together with the requested applications.

§ 199.21 Action taken on applications.

(a) Upon receipt of a completed application the Administrator may use available services and facilities of other agencies and instrumentalities of the Federal Government in carrying out the provisions of these regulations.

(b) The Administrator may approve or disapprove applications based on whether or not the requirements and standards of these regulations have been met.

(c) Upon approval of an application, the Administrator may execute any necessary guarantee agreement and such amendments to the guaranty agreement as from time to time become necessary.

§ 199.23 Fees.

Any lender to whom a guarantee under this part is issued shall pay to the Administrator a guaranty fee computed at the rate of ¼ of one percent per annum (based on the actual number of days elapsed) on the average daily amount of the guaranteed portion of the unpaid principal outstanding during the interest period defined in the loan agreement.

§ 199.25 Deviation from terms of Agreement of Guarantee.

No deviation from the terms of any guarantee agreements made after September 7, 1957, or from the terms of any underlying loan agreements approved as a part of a loan guarantee transaction shall be made without the prior approval by the Administrator. An original and four copies of requests for such approval, and an original and two copies of any supporting documents, shall be filed with the Director, Office of Aviation Policy of the FAA.

§ 199.27 Delegation of Administrator's functions.

The functions of the Administrator under this part are exercised by the Director of the Office of Aviation Policy of the FAA subject to approval of the Chief Counsel.

§ 199.29 Notices.

All correspondence required by this part shall be addressed to the Office of Aviation Policy, Attn: AVP-210, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

§ 199.31 Full faith and credit.

Any guarantee which is issued pursuant to this part shall be subject to the full faith and credit of the United States.

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

Issued in Washington, D.C., on January 19, 1979.

S. SCOTT SUTTON,
Acting Director,
Office of Aviation Policy.

[FR Doc. 79-2568 Filed 1-24-79; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 437]

FOOD ADVERTISING (PHASE I)

Trade Regulation Rule; Extension of Post-record Comment Period

AGENCY: Federal Trade Commission.

ACTION: Extension of the post-record comment period.

SUMMARY: On January 12, 1979, the Federal Trade Commission voted to extend the deadline for the submission of public comments on the Report of the Presiding Officer and the Staff Report and Recommendations on Phase I of the proposed Trade Regula-

tion Rule on Food Advertising for two weeks.

DATES: Post record comments will, therefore, be accepted for the public record if received on or before February 12, 1979.

ADDRESS: Comments should be sent to: Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, D.C. 20580

FOR FURTHER INFORMATION CONTACT:

Melvin H. Orlans, 202-724-1511, Deputy Assistant Director for Food and Drug Advertising, Federal Trade Commission, Washington, D.C. 20580 or Judith A. Neibrief, 202-724-1496, Attorney, Division of Food and Drug Advertising, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On November 29, 1978, the Director of the Bureau of Consumer Protection published in the FEDERAL REGISTER, 43 FR 55771, notice of the publication of the Staff Report and Recommendations on Phase I of the proposed Trade Regualtion Rule on Food Advertising. Pursuant to § 1.13(h) of the Commission's rules of practice the publication of this report commenced the final, 60-day comment period on both the Staff Report and Recommendations and the Report of the Presiding Officer (which was published on March 22, 1978; see 43 FR 11834). Therefore, the notice announced that public comments would be accepted if received on or before January 29, 1979.

In December 1978, the Commission received two requests for an extension of the time within which to file post record comments in this proceeding. On January 12, 1979, the Commission determined that an extension of two weeks should be granted. Therefore, comments will now be accepted if received on or before February 12, 1979.

Requests for copies of these reports should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580

Comments will be accepted on both the staff report and the presiding officer's report. Comments should be identified as "Comment on Presiding Officer and Staff Reports—Food Advertising TRR," and addressed to the Secretary—Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580, and submitted, when feasible, in five copies.

The Commission cautions all concerned that the staff report has not been reviewed or adopted by the Commission, and that its publication should not be interpreted as reflecting the present views of the Commission or any individual member thereof.

Approved: January 19, 1979.

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-2692 Filed 1-24-79; 8:45 am]

[4910-14-M]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 183]

[CGD 78-090]

BOATS AND ASSOCIATED EQUIPMENT

Proposed Rule; Correction

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule (FR Doc. 78-36133) appearing at page 60850 in the December 28, 1978 issue of the FEDERAL REGISTER by adding the address to which comments on this proposed rule should be submitted. The date by which the comments must be received is also extended in order to allow commenters adequate time to respond.

DATE: Comments must be received on or before March 12, 1979.

ADDRESS: Comments should be submitted to Commandant (G-CMC/81), (CGD 78-090), U.S. Coast Guard, Washington, D.C. 20590. Comments will be available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Mr. Lars E. Granholm, Office of Boating Safety (G-BBT), U.S. Coast Guard, Room 4314, Department of Transportation, Trans Point Building, 2100 Second Street SW., Washington, D.C. 20590, 202-426-4027.

Dated: January 22, 1979.

C. F. DEWOLF,
Rear Admiral, U.S. Coast Guard, Chief Counsel.

[FR Doc. 79-2721 Filed 1-24-79; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1045-4]

STATE IMPLEMENTATION PLANS

Receipt—Utah

AGENCY: Environmental Protection Agency.

ACTION: Notice of Receipt of Utah SIP.

SUMMARY: The purpose of this notice is to announce the receipt of a State Implementation Plan (SIP) revision for Utah and to invite public comment. On January 3, 1979, pursuant to the requirements of Part D of the Clean Air Act as amended in 1977, the State of Utah submitted to EPA a revision to its SIP for certain areas designated as non-attainment for specific air pollutants. As required by the Act, the purpose of this revision is to implement new measures for controlling air pollution in the non-attainment areas and to demonstrate that these measures will provide for attainment of the national ambient air quality standards as expeditiously as practicable, but no later than December 31, 1982 (in limited instances December 31, 1987). If the revision cannot be approved by EPA on or before July 1, 1979, certain sanctions as required by the Clean Air Act must be implemented in the applicable non-attainment areas.

DATES: See Supplementary Information.

ADDRESSES: Copies of the SIP revision are available at the following addresses for inspection:

Environmental Protection Agency, Region VIII, Regional Library, 1860 Lincoln Street, Denver, Colorado 80295.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460.

Bureau of Air Quality, Utah Division of Health 150 West North Temple, Post Office Box 2500, Salt Lake City, Utah 84110.

WRITTEN COMMENTS SHOULD BE SENT TO:

Mr. Robert R. DeSpain, Chief, Air Programs Branch, Region VIII, environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert R. DeSpain, Chief, Air Programs Branch, Region VIII, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962), and on September 11, 1978 (43 FR 40412), pursuant to the requirements of Section 107 of the Clean Air Act, as amended in 1977, EPA designated areas in each state as non-attainment with respect to the criteria air pollutants. In Utah, the areas designated as non-attainment are:

	TSP	CO	O_3	SO_x
Davis County	X	X	X	—
Salt Lake County	X	X	X	X
Utah County	X	X	X	—
Weber County	X	X	X	—
Tooele County	—	—	—	X
Cedar City	—	—	—	X

Additionally, the Part D of the Amendments required each state to revise its SIP to meet specific requirements in the areas designated as non-attainment. These SIP revisions were due on January 1, 1979, and must demonstrate attainment of the national ambient air quality standards, as expeditiously as practicable, but no later than December 31, 1982, or in limited instances for carbon monoxide and photochemical oxidants, no later than December 31, 1987. If the revised SIP fails to meet the requirements of Part D and cannot be approved by July 1, 1979, the Amendments require the implementation of certain sanctions, which could include:

(1) The prohibition of new source permits for major air pollution sources in the non-attainment area, and

(2) Withholding of some federal funding, including DOT highway funding the EPA sewage treatment grants.

On January 3, 1979, EPA received the revised SIP for the State of Utah and is currently reviewing that SIP with respect to the requirements of the Clean Air Act. At the completion of that review, a notice will be published in the FEDERAL REGISTER proposing approval or disapproval of the revised SIP.

Interested persons are invited to review the revised SIP at one of the locations listed above and comment on its approvability. The proposed notice referred to above will announce the last date which comments can be received. This public comment period may end less than sixty days after EPA's proposal of approval or disapproval.

Dated: January 17, 1979.

ROGER L. WILLIAMS,
Acting Regional Administrator.

[FR Doc. 79-2665 Filed 1-24-79; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1045-3]

STATE IMPLEMENTATION PLANS

Receipt—Colorado

AGENCY: Environmental Protection Agency.

ACTION: Notice of Receipt of Colorado SIP.

SUMMARY: The purpose of this notice is to announce the receipt of a State Implementation Plan (SIP) revision for Colorado and to invite public comment. On January 2, 1979, pursuant to the requirements of Part D of the Clean Air Act as amended in 1977, the State of Colorado submitted to EPA a revision to its SIP for certain areas designated as non-attainment for specific air pollutants. As required by the Act, the purpose of this revision is to implement new measures for controlling air pollution in the non-attainment areas and to demonstrate that these measures will provide for attainment of the national ambient air quality standards as expeditiously as practicable, but no later than December 31, 1982 (in limited instances December 31, 1987). If the revision cannot be approved by EPA on or before July 1, 1979, certain sanctions as required by the Clean Air Act must be implemented in the applicable non-attainment areas.

DATES: See Supplementary Information.

ADDRESSES: Copies of the SIP revision are available at the following addresses for inspection:

Environmental Protection Agency, Region VIII, Regional Library, 1860 Lincoln Street, Denver, Colorado 80295.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW, Washington, D.C. 20460.

Colorado Department of Health, Air Pollution Control Division, 4210 East 11th Avenue, Denver, Colorado 80220.

WRITTEN COMMENTS SHOULD BE SENT TO:

Mr. Robert R. DeSpain, Chief, Air Programs Branch, Region VIII, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert R. DeSpain, Chief, Air Programs Branch, Region VIII, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962), and on September 11, 1978 (43 FR 40412), pursuant to the requirements of Section 107 of the Clean Air Act, as amended in 1977, EPA designated areas in each state as non-attainment with respect to the criteria air pollutants. In Colorado, the areas designated as non-attainment are:

	TSP	CO	O_3	NO_x
Colorado Springs	X	X	X	—
Denver Region	X	X	X	X
Grand Junction Area	X	—	—	—
Larimer-Weld Region	X	X	X	—
Pueblo Area	X	—	—	—

Additionally, the Part D of the Amendments required each state to revise its SIP to meet specific requirements in the areas designated as non-attainment. These SIP revisions were due on January 1, 1979, and must demonstrate attainment of the national ambient air quality standards, as expeditiously as practicable, but no later than December 31, 1982, or in limited instances for carbon monoxide and photochemical oxidants, no later than December 31, 1987. If the revised SIP fails to meet the requirements of Part D and cannot be approved by July 1, 1979, the Amendments require the implementation of certain sanctions, which could include:

(1) The prohibition of new source permits for major air pollution sources in the non-attainment area, and

(2) Withholding of some federal funding, including DOT highway funding and EPA sewage treatment grants.

On January 2, 1979, EPA received the revised SIP for the State of Colorado and is currently reviewing that SIP with respect to the requirements of the Clean Air Act. At the completion of that review, a notice will be published in the FEDERAL REGISTER proposing approval or disapproval of the revised SIP.

Interested persons are invited to review the revised SIP at one of the locations listed above and comment on its approvability. The proposed notice referred to above will announce the last date which comments can be received. This public comment period may end less than sixty days after EPA's proposal of approval or disapproval.

Dated: January 17, 1979.

ROGER L. WILLIAMS,
Acting Regional Administrator.

[FR Doc. 79-2666 Filed 1-24-79; 8:45 am]

[6560-01-M]

[40 CFR Part 52]

[FRL 1045-2]

STATE IMPLEMENTATION PLANS

Receipt—South Dakota

AGENCY: Environmental Protection Agency.

ACTION: Notice of Receipt of South Dakota SIP.

SUMMARY: The purpose of this notice is to announce the receipt of a State Implementation Plan (SIP) revision for South Dakota and to invite public comment. On January 3, 1979, pursuant to the requirements of Part D of the Clean Air Act as amended in 1977, the State of South Dakota submitted to EPA a revision to its SIP for Rapid City, South Dakota, which was designated as non-attainment for total suspended particulates (TSP). As required by the Act, the purpose of this revision is to implement new measures for controlling the emissions of particulates in the Rapid City area and to demonstrate that these measures will provide for attainment of the national ambient air quality standards for TSP as expeditiously as practicable, but no later than December 31, 1982. If the revision cannot be approved by EPA on or before July 1, 1979, certain sanctions as required by the Clean Air Act must be implemented in the Rapid City area.

DATES: See Supplementary Information.

ADDRESSES: Copies of the SIP revision are available at the following addresses for inspection:

Environmental Protection Agency, Region VIII, Regional Library, 1860 Lincoln Street, Denver, Colorado 80295.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460.

South Dakota Department of Environmental Protection, State Office Building, #2, Pierre, South Dakota 57501.

WRITTEN COMMENTS SHOULD BE SENT TO:

Mr. Robert R. DeSpain, Chief, Air Programs Branch, Region VIII, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert R. DeSpain, Chief, Air Programs Branch, Region VIII, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962), and on September 11, 1978 (43 FR 40412), pursuant to the requirements of Section 107 of the Clean Air Act, as amended in 1977, EPA designated areas in each state as non-attainment with respect to the criteria air pollutants. In South Dakota, the Rapid City area was designated non-attainment with respect to total suspended particulates.

Additionally, the Part D of the Amendments required each state to revise its SIP to meet specific requirements in the areas designated as non-attainment. These SIP revisions were due on January 1, 1979, and must demonstrate attainment of the national ambient air quality standards, as expeditiously as practicable, but no later than December 31, 1982, or in limited instances for carbon monoxide and photochemical oxidants, no later than December 31, 1987. If the revised SIP fails to meet the requirements of Part D and cannot be approved by July 1, 1979, the Amendments require the implementation of certain sanctions, which could include:

(1) The prohibition of new source permits for major air pollution sources in the non-attainment area, and

(2) Withholding of some federal funding, including DOT highway funding and EPA sewage treatment grants.

On January 3, 1979, EPA received the revised SIP for the State of South Dakota and is currently reviewing that SIP with respect to the requirements of the Clean Air Act. At the completion of that review, a notice will be published in the FEDERAL REGISTER proposing approval or disapproval of the revised SIP.

Interested persons are invited to review the revised SIP at one of the locations listed above and comment on its approvability. The proposed notice referred to above will announce the last date which comments can be received.

Dated: January 17, 1979.

ROGER L. WILLIAMS,
Acting Regional Administrator.

[FR Doc. 79-2667 Filed 1-24-79; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 1041-8]

DELAYED COMPLIANCE ORDERS

Proposed Delayed Compliance Order for Sun Oil Co. of Pennsylvania

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to issue Administrative Orders to Sun Oil Company of Pennsylvania. The Orders require the Company to bring its terminals in Cleveland, Columbus, Dayton, Akron and Toledo, Ohio into compliance with Ohio Regulation AP-5-07 (3745-21-07) part of the federally approved Ohio State Implementation Plan (SIP). Because the Company is unable to comply with this regulation at this time, the proposed Order would establish an expeditious schedule requiring final compliance by July 1, 1979. Source compliance with these Orders would preclude suits under the Federal enforcement and citizen suit provision of the Clean Air Act (the Act) for violation of the SIP regulations covered by the Orders.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on U.S. EPA's proposed issuance of the Orders.

DATES: Written comments must be received on or before the thirtieth day from the date of this notice and requests for a public hearing must be received on or before the fifteenth day from the date of this notice. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after twenty-one days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESS: Comments and requests for a public hearing should be submitted to Director, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Material supporting the Order 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:

Mr. Pierre Talbert, Attorney, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, at (312) 353-2086.

SUPPLEMENTARY INFORMATION: Sun Oil Company of Pennsylvania owns terminals in Cleveland, Columbus, Dayton, Akron and Toledo, Ohio. The proposed Order addresses emissions from these terminals which are subject to Ohio Regulation AP-5-07 (3745-21-07) of the Ohio Implementation Plan. The regulation limits the emissions of volatile organic materials and is part of the federally approved Ohio State Implementation Plan. The Orders require final compliance with the regulations by July 1, 1979, and the source has consented to its terms.

The proposed Orders satisfy the applicable requirements of Section 113(d) of the Act. If the Orders are issued, source compliance with its terms would preclude further U.S. EPA enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the Orders during the period

the Orders are in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether U.S. EPA should issue the Orders. Testimony given at any public hearing concerning the Orders will also be considered. After the public comment period and any public hearing, the Administrator of U.S. EPA will publish in the FEDERAL REGISTER the Agency's final action on the Orders in 40 CFR Part 65.

Dated: January 10, 1979.

JOHN MCGUIRE,
Regional Administrator,
Region V.

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter 1, as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.400 to reflect approval of the following order:

§ 65.400 Federal Delayed Compliance Orders Issued under Section 113(d)(1), (3), and (4) of the Act.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION V

In the Matter of: Sun Oil Company of Pennsylvania, Cleveland, Akron, Columbus, Dayton, and Toledo, Ohio Marketing Terminals:

Cleveland—Order No. EPA-5-79-;
Akron—Order No. EPA-5-79-;
Columbus—Order No. EPA-5-79-;
Dayton—Order No. EPA-5-79-;
Toledo—Order No. EPA-5-79-

Proceeding pursuant to Section 113(d) of the Clean Air Act, as amended (42 U.S.C. Section 7413(d)).

INTRODUCTION

These Orders are issued this date pursuant to Sections 113(a), 113(d), and 114 of the Clean Air Act, as amended, 42 U.S.C. Section 7401 *et seq.* (hereafter the "Act") and contain a schedule for compliance, interim control requirements, and reporting requirements. Public notice, opportunity for a public hearing, and thirty (30) days notice to the State of Ohio have been provided pursuant to Section 113(d)(1) of the Act.

FINDINGS

1. On September 3, 1978, the United States Environmental Protection Agency (hereafter "U.S. EPA" or "Agency") issued a Notice of Violation (hereafter "NOV") to Sun Oil Company of Pennsylvania (hereafter Sun Oil) pursuant to Section 113(a)(1) of the Act, 42 U.S.C. 7413(a)(1), for alleged violation of Ohio Air Pollution Control Regulation AP-5-07 (recodified 3745-21-07). The NOV cited Sun Oil's Cleveland Marketing Terminal located at 3200 Independence, Cleveland, Ohio.

2. Ohio Air Pollution Control Regulation AP-5-07 (3745-21-07) creates certain requirements applicable to facilities which load volatile organic materials in specified quantities into certain tank trucks, trailers, or railroad tank cars.

3. Ohio Air Pollution Control Regulation AP-5-07 (3745-21-07) is part of the State of Ohio Implementation Plan, which was created under Section 110 of the Act, 42 U.S.C. 7410.

4. In satisfaction of Section 113(a)(4) of the Act, 42 U.S.C. 7413(a)(4), and opportunity to confer with the Administrator's delegate was extended to Sun Oil in the NOV, and a conference was held on September 27, 1978.

5. Following the September 27, 1978, conference, Sun Oil, by letter dated October 23, 1978, stated that it intends to install vapor recovery and disposal units at its Ohio Marketing Terminals, namely, Cleveland, Dayton, Columbus, Akron, and Toledo by July 1, 1979.

6. It has been determined by the U.S. EPA that Sun Oil Company of Pennsylvania is unable to immediately comply with Ohio Air Pollution Control Regulation AP-5-07 (3745-21-07) of the State of Ohio Implementation Plan.

7. It has been determined by U.S. EPA that violations of AP-5-07 (3745-21-07) have continued beyond the 30th day after the date of notification by the Director, Enforcement Division.

ORDERS

After a thorough investigation of all relevant facts, including public comment, it is determined that the schedule for compliance set forth in these Orders are as expeditious as practicable, and that the terms of these Orders comply with Section 113(d) of the Act. Therefore, it is hereby agreed and Ordered that:

1. Sun Oil Company of Pennsylvania will achieve compliance with the State of Ohio Implementation Plan Air Pollution Control Regulation AP-5-07 (3745-21-07) as approved by the U.S. EPA on April 15, 1974, which requires the installation of vapor collection and recovery systems at the volatile organic material loading racks associated with its Ohio Marketing Terminals, namely, Cleveland, Dayton, Columbus, Akron, and Toledo. Such installation shall be in accordance with the following schedule:

	Toledo	Cleveland	Columbus	Dayton	Akron
1. Order Unit	10/13/78	10/13/78	10/13/78	10/13/78	10/13/78
2. Start Construction	2/26/79	3/12/79	3/19/79	4/09/79	4/16/79
3. Unit Shipment	3/19/79	4/09/79	4/23/79	5/14/79	5/28/79
4. Unit Delivery	3/23/79	4/13/79	4/27/79	5/18/79	6/01/79
5. Complete Construction	4/13/79	5/04/79	5/18/79	6/08/79	6/22/79
6. Unit Start-Up	4/23/79	5/14/79	5/28/79	6/18/79	6/29/79
7. Achieve and Demonstrate Compliance	7/01/79	7/01/79	7/01/79	7/01/79	7/01/79

2. Sun Oil Company of Pennsylvania shall adopt and implement operation and maintenance procedures to maximize the control efficiency of the vapor collection and recovery systems and submit a copy of such procedures to the U.S. EPA by May 13, 1979.

3. Sun Oil Company of Pennsylvania shall continue to use submerged loading as the best practicable interim system of emission reduction at its Ohio Marketing Terminal loading facilities above mentioned so as to minimize hydrocarbon emissions, avoid any imminent and substantial endangerment to the health of persons, and minimize product spillage.

4. Sun Oil Company of Pennsylvania shall comply with the following emission monitoring and reporting requirements on or before the dates specified below:

a. *Emission Monitoring*

(1) Sun Oil Company of Pennsylvania shall, on or before January 1, 1979, maintain a record of the quantity of volatile organic materials which passes through each above mentioned Ohio loading facility.

(2) Sun Oil Company of Pennsylvania shall, immediately following demonstrated compliance, maintain a record of any malfunctions of the vapor recovery and disposal systems (including the reasons for such malfunctions) and the down time of the vapor recovery and disposal systems, whether caused by malfunction or other causes.

b. *Reporting Requirements*

(1) No later than fifteen (15) days after any date for achievement of an incremental step of the compliance schedule specified in these Orders, Sun Oil Company of Pennsylvania shall notify U.S. EPA in writing of its compliance or noncompliance with the requirements.

If Sun Oil fails to complete any of the actions required by the dates specified in these Orders, it shall include a detailed explanation of such failure in the notification required in this paragraph 4.b.(1).

(2) Sun Oil Company of Pennsylvania shall, beginning with the calendar quarter January-March 1979, report on a quarterly basis the information required to be maintained under paragraph 4.a. of these Orders. This requirement shall terminate upon submission of data for the calendar quarter April-June 1980.

(3) All submittals, notifications and reports to U.S. EPA pursuant to these Orders shall be made to Mr. Eric Cohen, Chief, Compliance Section, Enforcement Division, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604.

5. Sun Oil Company of Pennsylvania is hereby notified that its failure to achieve final compliance by July 1, 1979, at its Ohio Marketing Terminal loading facilities above mentioned may result in a requirement to pay a noncompliance penalty in accordance with Section 120 of the Act, 42 U.S.C. 7420. In the event of such failure, Sun Oil will be formally notified, pursuant to Section 120(b)(3), 42 U.S.C. 7420(b)(3), and any regulations promulgated thereunder, of its noncompliance.

6. These Orders shall be terminated in accordance with Section 113(d)(6) of the Act if the Administrator or his delegate determines on the record, after notice and hearing, that an inability to comply with Ohio

Air Pollution Control Regulation AP-5-07 (3745-21-07) of the Ohio Implementation Plan no longer exists.

7. Violation of any requirement of these Orders may result in one or more of the following actions:

a. Enforcement of such requirement pursuant to Section 113(a), (b), or (c) of the Act, 42 U.S.C. 7413(a), (b) or (c).

b. Revocation of these Orders, after notice and opportunity for a public hearing, and subsequent enforcement of Ohio Implementation Plan Air Pollution Control Regulation AP-5-07 (3745-21-07) in accordance with the preceding paragraph.

c. If such violation occurs on or after July 1, 1979, notice of noncompliance and subsequent action pursuant to Section 120 of the Act.

8. During the period of these Orders, no Federal enforcement action pursuant to Section 113 of the Act, and no action under Section 304 of the Act shall be pursued where Sun Oil is in compliance with the terms of this Order.

9. Nothing herein shall be construed to be a waiver by the Administrator of any rights or remedies under the Act, including but not limited to Section 303 of the Act, 42 U.S.C. 7503.

10. These Orders are effective upon final promulgation in the FEDERAL REGISTER.

Date ———.

.....

Administrator, U.S. Environmental Protection Agency.

Sun Oil Company of Pennsylvania has reviewed these Orders and believes them to be a reasonable means by which its Ohio volatile organic material loading racks can achieve compliance with Ohio Air Pollution Control Regulation AP-5-07 (recodified 3745-21-07). The Company stipulates as to the correctness of all facts stated above and consents to the requirements and terms of these Orders.

Date ———.

.....

Sun Oil Company of Pennsylvania.

[FR Doc. 79-2698 Filed 1-24-79; 8:45 am]

[4110-35-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

[42 CFR Part 405]

MEDICARE PROGRAM

Reimbursement for Radiological Services Furnished to a Hospital Inpatient by a Physician in the Field of Radiology

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

ACTION: Proposed rule.

SUMMARY: This proposed regulation would provide for Medicare reimbursement of 100 percent of the reasonable charge for all covered diagnostic imaging services furnished to hospital inpatients by physicians in the field of radiology. Under current administrative guidelines 100 percent reimbursement to radiologists is available only if X-rays or rays from radioactive substances are used for diagnostic or therapeutic purposes. The proposed regulation will help simplify reimbursement procedures and facilitate claims processing by hospitals and Medicare carriers and intermediaries for inpatient radiology services.

DATES: Consideration will be given to written comments or suggestions received on or before March 26, 1979.

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

When commenting, please refer to file code MAB-21-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 room 5231 of the Department's offices at 330 C Street, SW., Washington, D.C., on Monday through Friday of each week, from 8:30 to 5 p.m. (Telephone 202-245-0950).

FOR FURTHER INFORMATION CONTACT:

Mr. Paul Riesel, Medicare Bureau, Health Care Financing Administration, Room 190, East High Rise Building, Baltimore, Maryland 21235, 301-594-9595.

SUPPLEMENTARY INFORMATION: Section 131 of the Social Security Amendments of 1967 (Pub. L. 90-248) provided, in part, for 100 percent payment of the applicable reasonable charge for radiology services furnished to a hospital inpatient by a physician in the field of radiology (Section 1833(a)(1)(B) of the Social Security Act). This amendment to the Medicare law was enacted to simplify reimbursement procedures and to facilitate beneficiary understanding of the program and claims processing by hospitals and Medicare carriers and intermediaries for inpatient radiology services.

Prior to the 1967 amendments, the common practice of many hospitals was to submit a bill containing a single combined charge for both the physician's service to the hospital patient and the supporting hospital services. However, physicians's services to a hospital patient are reimbursable under Part B of Medicare on a reasonable charge basis, while supporting hospital services are reimbursed under Part A on a reasonable cost basis. Therefore, it was difficult to allocate the combined charge properly between Part A and Part B. Moreover, because deductible and coinsurance amounts differ for Part A and Part B, it was difficult to subject the combined hospital bill to separate program deductible and coinsurance amounts. The 1967 amendments removed the Part B deductible and coinsurance amounts which would otherwise be applicable to these services, so that complicated allocation and billing procedures could be eliminated.

At the time of enactment of the amendments, the only generally accepted and widely available radiology services were those in which X-rays or rays from other radioactive substances were used for diagnostic or therapeutic purposes. The use of ultrasound as a diagnostic tool was in an incipient stage of development and was not a generally accepted and available diagnostic imaging modality.

Current Medicare administrative guidelines limit 100 percent payment for radiology services to services in which X-rays or rays from radioactive substances are used for diagnostic or therapeutic purposes. The guidelines do not allow 100 percent payment for new procedures that use other forms of radiant energy, such as light, heat, or sound, to produce images for diagnosis. (See Sec. 3146 of the Medicare Part A Intermediary Manual (HIM-13-3) and Sec. 2020.9 of the Medicare Part B Carrier Manual (HIM-14-3).)

To exclude these diagnostic services from the 100 percent payment provision subjects both hospitals and radiologists to the same billing complexities and administrative burdens which the 1967 amendments were intended to alleviate. Therefore, after reviewing the current policy and the 1967 amendments, we propose that all covered diagnostic imaging services furnished to hospital inpatients by physicians in the field of radiology be reimbursed at 100 percent of reasonable charges.

42 CFR 405.240 is amended by revising paragraph (a)(2) to read as follows:

§ 405.240 Payment of supplementary medical insurance benefits; amounts payable.

In the case of an individual who incurs expenses during his coverage period under the supplementary medical insurance plan, payment for the total amount of these expenses incurred during a calendar year shall be made as follows, subject to the provisions in §§ 405.243-405.246:

(a)(1) * * *

(2) Effective April 1, 1968, 100 percent of the reasonable charges for radiological and pathological services furnished to an inpatient of a hospital by a physician in the field of radiology or pathology (see § 405.232(f) and (g)). For purposes of this paragraph, "radiological services" include:

(i) A service in which ionizing radiation is used for diagnostic or thera-

peutic purposes (for example, X-ray, nuclear medicine, angiography); and

(ii) Effective January 1, 1979, other diagnostic imaging services for which other forms of radiant energy such as light, heat, or sound are used to produce images for diagnosis.

* * * * *

(Secs. 1102, 1833, and 1871 of the Social Security Act; (42 U.S.C. 1302, 1395l, and 1395hh).)

(Catalog of Federal Domestic Assistance Program No. 13.773 Medicare—Hospital Insurance and No. 13.774, Medicare-Supplementary Medical Insurance.)

Dated: October 13, 1978.

WILLIAM D. FULLERTON,
Acting Administrator, Health Care Financing Administration.

Approved: January 13, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 79-2689 Filed 1-24-79; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR—Part 73]

[BC Docket No. 79-1; RM-3166]

FM BROADCAST STATION IN CLINTON, ARKANSAS

Proposed changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of FM Channel 296A to Clinton, Arkansas, as that community's first FM assignment. Petitioner, Weber-King Radio, states the proposed channel would provide for an FM station which could render a first full-time aural broadcast service to Clinton, Arkansas.

DATES: Comments must be received on or before March 19, 1979, and reply comments on or before April 9, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Station. (Clinton, Arkansas.)

NOTICE OF PROPOSED RULEMAKING

Adopted: January 16, 1979.

Released: January 19, 1979.

By the Chief, Broadcast Bureau:

1. *Petitioner, Proposal, Comments:* (a) *Notice of Proposed Rule Making* is given concerning amendment of the FM Table of Assignments (Section 73.202(b) of the Commission's Rules) as it relates to Clinton, Arkansas.

(b) A petition for rulemaking [1] was filed by Weber-King Radio ("petitioner"), seeking the assignment of Channel 296A to Clinton, Arkansas, as its first FM assignment. No responses to the petition were filed.

(c) Channel 296A could be assigned to Clinton in compliance with the minimum distance separation requirements.

2. *Community Data:*

(a) *Location:* Clinton, seat of Van Buren County, is located approximately 121 kilometers (75 miles) north of Little Rock, Arkansas, and approximately 121 kilometers (75 miles) southeast of Harrison, Arkansas.

(b) *Population:* Clinton—1,029; Van Buren—8,275.[2]

(c) *Local Broadcast Service:* Clinton is served by daytime-only AM Station KGFL.

3. *Economic Data:* Petitioner asserts that the population of Van Buren County has increased substantially in recent years. It states that Clinton is located in what is primarily an agricultural area specializing in the production of dairy and beef cattle and poultry. We are told that power cord manufacturing and frozen food processing are the major industries in the area.

4. Petitioner states that no nighttime broadcast facility operates in Clinton or Van Buren County. It claims the proposed assignment would permit a station operating on it to fill an important need for coverage of general events in the community, including nighttime sports, muscial programs, cancellations during bad weather, and storm alerts. It asserts that there also is an important need for a local late evening advertising medium for the local businesses of Van Buren County.

5. In view of the fact that the proposed FM channel assignment would provide Clinton, as well as Van Buren County, an opportunity to acquire a first full-time local aural broadcast station, the Commission believes it appropriate to propose amending the FM Table of Assignments, Section 73.202(b) of the Rules, with respect to Clinton, Arkansas, as follows:

City and Channel No.	
Clinton, Arkansas:	Present:—; Proposed: 296A.

6. Authority to institute rulemaking proceedings, showings required, cutoff procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involves channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rulemaking other than comments officially filed at the Commission or oral presentation required by the Commission.

8. Interested parties may file comments on or before March 19, 1979, and reply comments on or before April 9, 1979.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g), and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the

[1] Public Notice of the petition was given on August 2, 1978, Report No. 1135.

[2] Population figures are taken from the 1970 U.S. Census.

proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C

[FR Doc. 79-2626 Filed 1-24-79; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

[48 CFR Parts 1, 17, 23, 42]

FEDERAL ACQUISITION REGULATION PROJECT

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

ACTION: Notice of Availability and Request for Comment on draft Federal Acquisition Regulation.

SUMMARY: The Office of Federal Procurement Policy is making available for public and Government agency review and comment segments of the draft Federal Acquisition Regulation (FAR)[1] regarding the FAR System Administration, Options, Environmental Protection, and Post-Award Orientation. Additional segments will be announced for availability and comment on late dates. An updated list of Agency contact points is provided. Government personnel must obtain copies of the FAR drafts through these established contact points in their agency. Official agency views are requested by this notice. Agency personnel, therefore, should coordinate their views within the Agency to be made a part of the agency's formal comment.

DATE: Comments must be received on or before March 22, 1979.

ADDRESS: Obtain copies of the draft regulation from and submit comments to William W. Thybony, Assistant Administrator for Regulations, Office of Federal Procurement Policy, 726 Jackson Place, NW, Room 9025, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

William Maraist, or Strat Valakis, (202) 395-3300.

SUPPLEMENTARY INFORMATION: The fundamental purpose of the FAR is to reduce the proliferation of regulations; to eliminate conflicts and redundancies; and to provide an acquisition regulation that is simple, clear and understandable. The intent is not to create new policy. However, because new policies may arise concurrently with the FAR project, the notice of availability of draft regulations will summarize the section or part available for review and describe any new policies therein.

The following subparts of the draft Federal Acquisition Regulation are available upon request for public and Government agency review and comment.

PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

1.2 FAR System Administration.

This subpart establishes the administrative mechanisms for maintenance of the FAR, and control of the FAR System. It provides for a high level policy board termed the "FAR Council", which is composed of the Administrator for Federal Procurement Policy (Administrator) and the principal acquisition officials of six major agencies. The Council is supported by a full time "FAR Executive Staff" responsible for overall administration and maintenance of the FAR System, including oversight of agency acquisition regulations which implement or supplement the FAR. The General Services Administration is responsible for publication and distribution of the FAR through the Code of Federal Regulations System (including a loose leaf edition). Departments and agencies are required to review and approve, at the headquarters level, all internal acquisition regulations to insure compliance with FAR requirements. The goal of subpart 1.2 is to create a single government-wide *system* of acquisition regulations, minimizing the volume of implementing and supplementing regulations, while still retaining sufficient flexibility to accomodate agency regulatory needs.

Provisions are made for executive agencies and private sector interests to appeal Executive Staff recommendations to the FAR Council, which will make final determinations.

Routine revisions to the FAR will be issued by the Administrator twice annually, with a three month period provided for implementation. Exceptions to the regular issuance dates may be made when necessitated by statute or in other special circumstances.

PART 17—SPECIAL CONTRACTING METHODS

17.2 Options.

This subpart prescribes policies and procedures for the use of solicitation provisions and contract clauses covering options. An option is a unilateral right in a contract by which, for a specified time, and at a guaranteed price, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract. It includes limitations, documentation, evaluation, and applicable clauses.

PART 23—ENVIRONMENTAL PROTECTION

23.1 Pollution Control.

This subpart implements the Clean Air Act, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, Executive Order 11738, and regulations of the Environmental Protection Agency (EPA) on these subjects. It also includes required solicitation and contract clauses which will be in Part 52.

23.2 Energy Conservation.

Thus subpart implements the Energy Policy and Conservation Act and Executive Order 11912 which delegated presidential responsibility under the Act to the Administrator for Federal Procurement Policy.

23.3 Hazardous Materials.

This subpart prescribes policies and procedures for the acquisition of hazardous materials, other than ammunition and explosives. It includes the required contract clause by which the contractor agrees to submit a Material Safety Data Sheet (Dept. of Labor Form OSHA-20) as prescribed in Federal Standard No. 313A.

[1] Filed as a part of the original document.

PART 42—CONTRACT ADMINISTRATION

42.5 Post-Award Orientation.

This subpart prescribes policies and procedures for the post contract award orientation of contractors and subcontractors. It contains criteria for selecting contracts for post-award conferences, as well as procedures for making conference arrangements, conference procedures and reports.

Dated: January 17, 1979.

LESTER A. FETTIG,
Administrator.

FAR AGENCY CONTACT POINT LIST

Agency for International Development, Department of State—Mr. Joseph C. Watkins, 235-9125, Chief, Support Division, Office of Contract Management, Washington, DC 20523, STOP 100.

Agriculture, Department of—Mr. Edmund Alvarez, 447-3937, Deputy Director, Administrative Services, Office of Operations and Finance, Room 113W, Administration Building, Washington, DC 20520, STOP 209.

Central Intelligence Agency—Mr. Aubrey T. Chason, 281-8167, Chief, Procurement Management Staff, Office of Logistics, Washington, DC, STOP 64.

Civil Aeronautics Board—Mr. Vincent J. Chaverini, 673-5246, Director, Office of Administrative Support Operations, 1825 Connecticut Avenue, NW, Washington, DC 20428, STOP 235.

Commerce, Department of—Mr. David Larkin, 377-3891, Chief, Program Policy Division, Office of Procurement and ADP Management, Room 6414, Washington, DC 20230, STOP 206.

Committee for Purchase from the Blind and Other Severely Handicapped—Mr. Charles W. Fletcher, 557-1145, Executive Director, 2009 14th Street North, Suite 610, Arlington, VA 22201.

Cost Accounting Standards Board—Mr. Noah Minkin, 275-5940, General Counsel, 441 G Street, NW, Room 4836, Washington, DC 20548, STOP 308.

Department of Defense—Mr. Thomas Cassidy, 697-6710, Acting Director, Defense Acquisition Regulatory Council, OUSDRE The Pentagon, Room 3D12080, Washington, DC 20301, STOP 103.

Defense/Department of the Army—Mr. Carl Brotman, 695-0255, Army Policy Member, DAR Council, Office of Assistant Secretary of the Army, R.D. & A.

Defense/Department of the Navy—Mr. Billy Williams, 692-3324, Navy Policy Member, DAR Council, Office of Assistant Secretary of the Navy, OASN (MRANL).

Defense/Department of the Air Force—Lt Col. Daniel Unruh, 695-1997, Air Force Policy Member, DAR Council, AF/RDC.

Defense/Defense Logistics Agency—Mr. David Freeman, 274-6411, DLA Policy Member, DAR Council, Cameron Station, Alexandria, VA.

Energy, Department of—Mr. Thomas Ruppert, 376-9057 Procurement Policy Division, 400 1st Street, NW, Railway Labor Building, Room 308, Washington, DC 20545.

Environmental Protection Agency—Mr. William E. Mathis, 755-0822, Director, Contracts Management Division (PM 214), 401 M Street, SW, Room 2003, Washington, DC 20460, STOP 460.

Federal Trade Commission—Mr. A. J. Nicolosi, 724-1133, Procurement Agent, Procurement and Contracts Branch, 6th & Pennsylvania Avenue, NW, Washington, DC 20580, STOP 221.

General Accounting Office, U.S.—Mr. John Brosnan, 275-5476, Room 7075, 441 G Street NW, Washington, DC 20548, STOP 308.

General Services Administration—Mr. Dale Babione, 566-1043, Acting Assistant Administrator for Acquisition Policy, Washington, DC 20405, STOP 29.

Health, Education & Welfare, Department of—Mr. Ed T. Rhodes, 245-8771, Deputy Assistant Secretary for Grants and Procurement, Hubert H. Humphrey Building, Room 513D, Washington, DC 20201, STOP 367.

Housing and Urban Development, Department of—Mr. Thomas R. Whittleton, 724-0040, Director, Office of Procurement and Contracts, Room B-133, 711 Building, Washington, DC 20410, STOP 98.

Interior, Department of the—Mr. William Opdyke, 343-5914, Division of Procurement and Grants, Office of Administrative and Management Policy, 18th & C Street, NW, Washington, DC 20240, STOP 43.

International Communication Agency—Mr. James T. McIlwee, 653-5570, Chief, Contract and Procurement Division, Office of Administration, Washington, DC 20547, STOP 121.

Justice, Department of—Mr. William H. O'Donoghue, 633-2075, Assistant Director, Procurement Management Group, Administrative Programs Management Staff, 10th & Constitution Avenue NW, Room 6322, Washington, DC 20530, STOP 219.

Labor, Department of—Mr. Walter C. Terry, 523-9148, Director, Office of Grants, Procurement and ADP Management Policy, 200 Constitution Avenue, NW, Room S-1325, Washington, DC 20210, STOP 205.

National Aeronautics and Space Administration—Mr. Stuart J. Evans, 755-2255, Director of Procurement, Washington, DC 20546, STOP 85.

National Science Foundation—Mr. Kenneth B. Foster, 632-5772, Director, Division of Grants and Contracts, 1800 G Street NW, Washington, DC 20550, STOP 19.

Nuclear Regulatory Commission—Mr. Edward L. Halman, 427-4460, Director, Division of Contracts, Washington, DC 20555, STOP 555.

Office of Personnel Management—Mr. Donald J. Biglin, 632-6161, Director, Office of Management, 1900 E Street, NW, Room 5554, Washington, DC 20415, STOP 227.

Panama Canal Company—Mr. Thomas M. Constant, 724-0104, Executive Secretary, 425 13th Street, NW, Room 312, Washington, DC 20004.

Postal Service, U.S.—Mr. Eugene A. Keller, 245-4818, Assistant for Procurement Policy, Procurement and Supply Department, Room 1512, Washington, DC 20260, STOP 201.

Small Business Administration—Mr. Robert McDermott, 653-6588, Acting Associate Administrator for Procurement Assistance, 1441 L Street, NW, Washington, DC 20416, STOP 71.

Smithsonian Institute—Mr. Harry P. Barton, 381-5924, North Building, Room 3120, 955 L'Enfant Plaza SW, Washington, DC 20024.

State, Department of—Mr. Thaddeus J. Figura, 235-9512, Chief, Supply and Transportation Division, Room 532, SA-6, Washington, DC 20520, STOP 27.

Tax Court, U.S.—Mr. Deyane Rudge, 376-2717, Administrative Facilities Officer, Room G-45, 400 2nd Street NW, Washington, DC 20217, STOP 312.

Tennessee Valley Authority—Mr. James L. Williams, Jr., 566-1401, Director, Division of Purchasing, Chattanooga, Tenn. 37401.

Transportation, Department of—Mr. Barnett M. Ancelietz, 426-4237, Director, Installations and Logistics, Washington, DC 20490, STOP 330.

Treasury, Department of the—Mr. Thomas P. O'Malley, 376-0650, Assistant Director, Office of Administrative Programs, Main Treasury Mail Room, 15th & Pennsylvania Avenue, NW, Washington, DC 20220, STOP 223.

Veterans Administration—Mr. Clyde C. Cook, 389-3808, Director, Supply Service, Department of Medicine and Surgery, Washington, DC 20420, STOP 73.

[FR Doc. 79-2608 Filed 1-24-79; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 296]

FISHERMEN'S CONTINGENCY FUND

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

ACTION: Advance Notice of Proposed Rulemaking and Notice of Public Workshops.

SUMMARY: The National Marine Fisheries Service (NMFS) intends to propose regulations to implement Title IV of the Outer Continental Shelf Lands Act Amendments of 1978 (the Act), which established a Fishermen's Contingency Fund to compensate fishermen for certain damages and losses caused by certain oil-and-gas-related activities. NMFS will hold public workshops to discuss certain important issues before regulations are proposed.

DATES: Public workshops will be held: in New Orleans, Louisiana on February 9, 1979; in Boston, Massachusetts on February 13, 1979; and in Anchorage, Alaska on February 21, 1979.

For exact places and times of the workshops, see the "WORKSHOPS" section of this Notice.

Any written comments on the issues identified in this Notice, or on any other aspect of the implementation of the Fishermen's Contingency Fund program, must be received on or before March 5, 1979.

ADDRESSES: Questions concerning the operation of the public workshops should be directed to the appropriate NMFS Regional Director:

Workshop location and regional director

New Orleans, Mr. William Stevenson, Director, Southeast Region, NMFS, 9450 Kroger Blvd. St. Petersburg, Florida 33702. Telephone: (813) 893-3141.

Boston, Mr. William G. Gordon, Director, Northeast Region, NMFS, 14 Elm Street, Gloucester, Massachusetts 01930. Telephone: (617) 281-3600.

Anchorage, Mr. Harry Rietze, Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, Alaska 98802. Telephone: (907) 586-7221.

Any written comments concerning the issues identified in this Notice, or on any other aspect of the implementation of the Fishermen's Contingency Fund program, should be sent to:

Mr. Michael L. Grable, National Marine Fisheries Service, Washington, D.C. 20235.

Please mark "Title IV" on the envelope.

FOR FURTHER INFORMATION CONTACT:

Mr. Michael L. Grable, National Marine Fisheries Service, Washington, D.C. 20235. Telephone: (202) 634-7496.

SUPPLEMENTARY INFORMATION:

I. SUMMARY OF THE NEW STATUTE

A. *The Fund.* Title IV of the Outer Continental Sheif Lands Act Amendments of 1978 (Pub. L. 95-372; 43 U.S.C. 1841 *et seq.*) gives the Secretary of Commerce primary responsibility for developing and implementing a new Fishermen's Contingency Fund program. The program is intended to compensate commercial fishermen (including crew members as well as owners and operators) for damage to commercial fishing vessels and gear, and any resulting economic loss, due to activities related to oil and gas exploration, development, and production on the federal Outer Continental Shelf (OCS). The Fund cannot be used to pay for damages, however, if the ownership of the oil-and-gas-related item causing the damage is known.

The Fund may contain up to $1,000,000. "Area accounts" for different geographic areas of the OCS may be established within the Fund. Each area account may contain up to $100,000. All accounts may be replenished by additional assessments on OCS oil-and-gas operations. Monies in the Fund come from assessments made against holders of OCS oil and gas leases, easements for pipelines, and certain other specified OCS activities. Assessment against OCS lease holders and other OCS operators are made by the Secretary of Commerce. The Secretary of the Interior is responsible for collecting any assessments and depositing them into the appropriate area account within the Fund.

B. *Payments to Commercial Fishermen.* Amounts in each area account may be paid to compensate fishermen in accordance with the requirements of the Act, and regulations which the Secretary of Commerce may issue to implement this program. Commercial fishermen may be compensated for actual and consequential damages, including loss of profits, due to damages to, or loss of, fishing gear by materials, equipment, tools, containers, and other items associated with oil and gas exploration, development, or production activities on the OCS. Payments can be made for damage which occurs in areas that are not on or over the federal OCS, if the claimant proves that the damage or loss was caused by activities associated with federal OCS oil and gas activities.

C. *Presumption of Validity.* The fisherman making a claim has the burden of proving that his/her claim is eligible for compensation from the Fund. However, the Act establishes a presumption of validity for any claim, if the claimant can establish that:

(1) The commercial fishing vessel involved was being used for fishing and was located in an area affected by OCS activities;

(2) A report on the location of the oil-or-gas-related item which caused the damage, and the nature of the damage, was made within five days after the date when the damage was discovered (as an interim procedure, the report should be made to the nearest NMFS Regional Director; see the "ADDRESSES" section of this Notice);

(3) There was no record on nautical charts or in the Notice to Mariners on the date the damage occured that such item existed in that area: and

(4) There was no proper surface marker or lighted buoy which was attached to, or closely anchored by, the item which caused the damage.

D. *Ineligible Claims.* The Act prohibits payment from the Fund if:

(1) The damage was cause by items "attributable to a financially responsible party";

(2) The damage for which the claim is filed was incurred before September 18, 1978; or

(3) The claim is not filed with the Secretary of Commerce within 60 days after the date the damage is discovered.

E. *Reduction in Amount of Award.* The Act requires that payments from the Fund to a claimant be limited or reduced in certain cases:

(1) For claims for damage to fishing gear (including fishing vessels), the amount of the award cannot exceed the replacement value of the gear (or vessel) involved:

(2) For claims for loss of profits, (a) the award cannot be for more than a six-month period, and (b) the claim must be supported by records detailing the claimant's profits during the previous year;

(3) If the claimant has or will receive compensation from insurance for the damage claimed, the award must be reduced accordingly; and

(4) If the negligence or fault of the claimant caused the damage, the award must be reduced accordingly.

F. *Procedure for Deciding Claims.* Claims are filed with the Secretary of Commerce (through the NMFS). NMFS sends a copy of the claim to the Secretary of the Interior, and refers the claim to a hearing examiner who may hold a formal hearing to determine the validity of the claim.

The Secretary of the Interior, after receiving notice of a claim from the Secretary of Commerce, makes reasonable efforts to notify all persons known to have engaged in OCS oil and gas activities in the vicinity where the damage occured. Each person notified must notify the Secretaries of Commerce and the Interior as to whether he/she admits or denies responsibility for the damages claimed. The OCS lease holders and operators, and their contractors or subcontractors, may submit evidence at any hearing concerning the claim.

The hearing is conducted in the United States judicial district nearest to, or in which, the damage occurred, or, if the damage occurred in more than one judicial district, in any of them. The hearing examiner must make his decision on the claim within 120 days after the claim is referred to him by the Secretary of Commerce. The hearing examiner has numerous powers in conducting a hearing concerning the claim, including the powers to administer oaths and subpoena witnesses or production of documents.

If the hearing examiner's decision is in favor of the commercial fisherman filing the claim, the hearing examiner includes, in the award to the claimant, reasonable attorney fees incurred by the claimant in pursuing his/her claim. However, if the hearing examiner determines that the commercial fisherman filing the claim or any person who has denied responsibility for the damages claimed, is responsible for the damage, that person must pay the costs of the proceedings concerning the claim.

The decision of the hearing examiner is not reviewable by the Secretaries of Commerce or the Interior. Any person who wishes to appeal the decision of the hearing examiner must do so by seeking judicial review in the appropriate U.S. Circuit Court of Appeals within 60 days after the hearing examiner's decision.

If no party adversely affected by the hearing examiner's ruling seeks judicial review, the Secretary of Commerce pays the fishermen the amount of the award certified by the hearing examiner. When the claim is paid the Secretary of Commerce becomes subrogated to the fisherman's rights against any party who may later be found to be responsible for the damage.

II. Issues

Before proposing program regulations, NMFS would like to receive public comment on several issues which concern the program (and any others about which the public may be concerned).

ISSUE NO. ONE. Establishing the nature of obstructions which cause damage to fishing vessels or gear. Obstructions causings damage can be of at least three kinds: (a) natural obstructions; (b) man-made obstructions other than those resulting from oil and gas activities; or (c) man-made obstructions resulting from oil and gas exploration, development, and production on the federal Outer Continental Shelf. Only damage resulting from the third kind of obstruction is eligible for recovery from the Fund. If some physical evidence of the obstruction is not obtained by a claimant, what means are available for the claimant to establish the eligible nature of the obstruction and what should be the standard of proof?

ISSUE NO. TWO. Fixing the Position of Obstructions. Accurate reports of the location of obstructions which cause damage or loss for which claims are filed are very important because (1) the reports may be checked during the claims verification process, and (2) the National Ocean Survey may wish to locate precisely the obstruction so it can be properly charted. (The Act requires the Secretary of Commerce, in cooperation with the Secretary of the Interior, to survey all obstructions on the Outer Continental Shelf, including both natural and man-caused ones.)

Several methods of position fixing are available to vessels, but the different methods vary in their accuracy and repeatability. What methods of position fixing are generally available to fishing vessels and what methods should be employed to determine the location of the obstruction with precision suitable for the purposes of claims verification and charting of obstructions?

ISSUE NO. THREE. Valuation of lost or damged property. The Act specifies that the ceiling on compensation for lost or damaged property is the "replacement value". What is a fair and equitable basis for calculating the cost of lost or damaged property to reflect the age and condition of that property? Should different evaluation methods be used in different types of cases?

One alternative might be fair market value. Another alternative might be depreciated replacement cost. The question of salvage value might also be material. What is the best method and how could the values claimed (on whatever basis) be best established with certainty?

ISSUE NO. FOUR. Valuation of other economic loss. In addition to property damage, the statute also provides for compensation for economic loss resulting from property damage. What is the best method of compensation for claimant's inability to fish (lost fishing time) due to property damage and how could the values claimed (on whatever basis) best be established with certainty? What duty does a claimant have to minimize lost fishing time (for example, should a spare net have been aboard so that fishing could begin again as soon as possible after the initial net was damaged)?

A second area of concern involves the claimant's cost in pursuing the claim. Although the Act specifically permits recovery for attorneys' expenses, it is silent on the subject of recovery for such things as attempts to identify the nature of the obstruction, personal expenses resulting from the claims process, etc. To what extent should claimants be able to recover costs incurred in proving the nature of obstructions?

ISSUE NO. FIVE. Claimant's negligence. The statute prevents recovery to the extent that loss was caused by claimant's negligence. What kinds of acts, or failures to act, might constitute negligence?

ISSUE NO. SIX. Settlement of Claims Prior to Hearing. A hearing conducted under 5 U.S.C. 554 before a hearing examiner is similiar in nature and procedure to a court trial. If a pre-hearing review by NMFS showed that a claim had a high likelihood of success, NMFS might recommend to the hearing examiner that the award be certified without requiring additional proceedings. Would this pre-hearing settlement procedure be helpful to the fishermen, yet fair to the oil and gas industry?

ISSUE NO. SEVEN. Payment of Hearing Costs. Under what circumstances might a claimant or an oil or gas company be found to be responsible for the damages and, thus (as required by the Act), be liable for paying the cost of all proceedings with respect to the claim?

ISSUE NO. EIGHT. Hearing Examiner Discretion. There are at least two approaches to the issue of how much discretion a hearing examiner has in adjudicating claims. One approach would be for program rules to be very specific in areas like standard of proof, basis of compensation, claimant negligence, etc. This would tend to limit the hearing examiner's discretion because the examiner would have to evaluate the claim in accordance with specific criteria in the rules. This approach might have the advantages of treating similarly situated claimants similarly and putting claimants on notice, in advance, of the requirements for a successful claim recovery. The other approach would be to keep program rules quite general and give each hearing examiner as much discretion as possible in adjudicating claims. This approach might result in uneven treatment of claimants and might not result in claimants having a good foreknowledge of the requirements of successful claims recovery. It would have the advantage, however, of giving each hearing examiner a great deal of flexibility in dealing with the facts of each case.

ISSUE NO. NINE. Scope and amount of area accounts. Outer Continental Shelf oil and gas exploration, development, and production activities appear to be minor at this time in the major Atlantic and Pacific fishing areas, but very extensive in the Gulf of Mexico fishing areas. This might argue for establishing a number of area accounts (capitalized at the maximum level) in the Gulf of Mexico, while presently establishing only one area account each (capitalized at something less than the maximum amount) for the Atlantic and Pacific. One rationale for the scope of area accounts in the Gulf of Mexico might be the five existing U.S. Geological Survey Districts in the Gulf of Mexico. Atlantic and Pacific area accounts could be later expanded as conflict activity demonstrated a need to do so.

III. Staff Working Draft of Regulations

NMFS is preparing proposed regulations to implement this new program. A working draft of proposed regulations has been prepared by NMFS staff to help focus the efforts of federal agencies concerned in implementing the program. This working draft addresses some but not all of the issues identified in this Notice, and does not represent any official position of NMFS.

Copies of the staff working draft of the proposed regulations will be available at the public workshops announced below. The workshops will *not* be devoted to a detailed discussion of the staff working draft, but instead will focus on the issues identified above. NMFS expects that the staff working draft will be substantially re-

vised before proposed regulations are published.

WORKSHOPS: The National Marine Fisheries Service invites oral and written public comment on the issues identified in this Notice, and on implementation of the Fishermen's Contingency Fund program in general, before NMFS issues proposed regulations to implement the program. Public workshops will be held at the following locations on the following dates:

Place	Date	Time
New Orleans, Louisiana: Ramada Inn Airport, Kenner, Louisiana (near New Orleans Airport).	Friday, February 9, 1979	9 a.m. to 3 p.m.
Boston, Mass.: Logan Hilton Hotel (Near Logan Airport)	Tuesday, February 13, 1979	10 a.m. to 3 p.m.
Anchorage, Alaska: Anchorage Westward Hilton, 3rd and E Streets.	Wednesday, February 21, 1979	7:30 p.m.

Interested members of the public are invited to attend and participate in the workshops. In addition, interested persons may submit written comments on the issues identified in this Notice, or on any other aspect of the implementation of the Fishermen's Contingency Fund program. Any written comments must be sent to Mr. Grable (see the "ADDRESSES" section of this Notice) before March 5, 1979. All comments received will be considered before NMFS issues proposed regulations to implement the Act.

WINFRED H. MEIBOHM,
Acting Executive Director, NMFS.

JANUARY 22, 1979.

[FR Doc. 79-2694 Filed 1-24-79; 8:45 am]

[3510-22-M]

[50 CFR Parts 611 and 671]

TANNER CRAB OFF ALASKA

Fishery Management Plan Amendments and Proposed Regulations

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Fishery Management Plan Amendments and Proposed Regulations.

SUMMARY: Two amendments to the fishery management plan for Tanner crab off Alaska (FMP) are preliminarily approved under section 304 of the Fishery Conservation and Management Act, as amended. The amendments increase the optimum yield for Tanner crab and expand the area in which foreign vessels may fish for Tanner crab off Alaska. Regulations to implement the amendments are proposed and comments on the amendments and regulations are solicited.

DATE: Comments will be received until March 7, 1979.

ADDRESS: Comments should be addressed to: Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Washington, D.C. 20235. Please mark the envelope "Alaska Tanner Crab."

FOR FURTHER INFORMATION CONTACT:

Mr Harry Rietze, Director, Alaska Region, National Marine Fisheries Service, Box 1668, Juneau, Alaska 99802, telephone 907-586-7221.

SUPPLEMENTARY INFORMATION: The FMP for Tanner crab off Alaska was prepared by the North Pacific Fishery Management Council and approved by the Assistant Administrator for Fisheries on April 18, 1978 (see 43 FR 21170, May 16, 1978) under authority of the Fishery Conservation and Management Act, as amended (the Act) (16 USC 1801 *et seq.*). Final regulations applicable to vessels of the United States were promulgated on December 6, 1978 (43 FR 57149), and regulations applicable to vessels of foreign nations for the remainder of 1978 were implemented on December 19, 1978 (43 FR 59075). Regulations governing foreign vessels for 1979 also were published on December 19, 1978 (43 FR 59292, at 59320). An approved plan amendment extending the FMP through October 31, 1979, was published for public comment on November 8, 1978 (43 FR 52034), and was published in final form on January 4, 1979 (44 FR 1115).

On November 27, 1978, the Council submitted two amendments to the FMP to the Assistant Administrator for Fisheries, for review under Section 304 of the Act. The first amendment would increase the optimum yield (OY) for the Kodiak district from 25 million pounds to 35 million pounds for 1979. This amendment is based on current information which indicates that earlier stock assessments underestimated the amount of Tanner crab available for harvest in the Kodiak district.

The second amendment would extend the area in which foreign crab fishing in the Bering Sea is permitted by allowing foreign vessels to fish in the area between 54° and 58°N latitude, west of 173°W longitude. The purpose of the amendment is to allow full utilization by foreign fishermen of available Tanner crab resources by providing fishing grounds which are ice-free early in the season. The amendment would allow foreign vessels to retain only *C. opilio* Tanner crab, and would restrict harvest between 54°N latitude and 58°N latitude west of 173°W longitude to 2,500 metric tons (mt) of the total allowable level of foreign fishing (TALFF) of 15,000 mt.

The amendment also facilitates enforcement of the 2,500 mt limitation. No foreign processing vessel when north of 58°N latitude may receive crabs caught south of 58°N latitude. Conversely, no foreign processing vessel when south of 58°N latitude may receive crabs caught north of 58°N latitude.

Signed at Washington, D.C., this 22 day of January, 1979.

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

AMENDMENT TO THE FMP

The FMP for the Tanner Crab Fishery off the Coast of Alaska (43 FR 21174) is amended as follows:

1. Section I.C (43 FR 21176)—Management Measures and Rationale for Foreign Fishing—*Delete* the last three sentences and *substitute:*

Crab fishing by foreign nations is prohibited south of 58°N latitude except west of 173°W longitude. Crab fishing is prohibited east of 164°W longitude north of 58°N latitude. The allocation to foreign pot fisheries directed at Tanner crab will be set at 15,000 mt (33,096,000 lbs.) * * *;

2. Section 8.3.2 Foreign (43 FR 21200)—*Delete* the first paragraph and *substitute:*

That portion of the *Preliminary Management Plan for King and Tanner Crab of the Eastern Bering Sea* which deals with the Tanner crab fishery will remain in force except that: (1) the area of legal fishing shall be north of 58°N latitude and west of 164°W longitude, and south of 58°N latitude west of 173°W longitude in the Bering Sea;

and (2) for the Bering Sea management area, see section F.8.3.2 of this Plan. (The referenced Preliminary Management Plan appeared in the FEDERAL REGISTER on February 11, 1977. See Appendix 11.6.) * * *;

3. Section D.3.2.1.3 *Catch Trends* (43 FR 21229)—*Delete* the last two sentences and *substitute:*

In 1978 a harvest guideline range of 15-25 million pounds was set. The actual harvest was 33.1 million pounds. A mid-season adjustment of the harvest range was made by ADF&G based on a high CPUE and the stock assessments during the fishery. The data indicates the harvest range should be set at 20-35 million pounds with the expectation that the resource can sustain a catch in the upper end of that range. The catch history thru 1977 is documented in Table D1 * * *;

(4) Section D.3.3.2 *Guideline harvest levels* (43 FR 21231)—*Add* the following after the last sentence of the 3rd paragraph:

High CPUE during the 1978 season (January-April) and high stock levels as indicated by stock indexing studies led to a midseason change in harvest range with the catch ultimately totaling 33.1 million pounds. The guideline harvest level is therefore set at 20-35 million pounds with the expectation that catches can be safely taken near the top of that range * * *;

(5) Section D.4.7.1 *Maximum Sustainable Yield* (MSY) (43 FR 21232)—*Delete* the first paragraph and *substitute:*

Because of insufficient research data, no estimate of a MSY can be developed using generally accepted population dynamics models. However, an estimate of MSY of 25 million pounds (11,333 mt) has been derived by using the average catch of 25.1 million pounds (11,385 mt) for the seasons 1972/73 through 1975/76.

Analysis of commercial catch and assessment data obtained during 4 years of intensive fishing prior to the 1977 season when the average catch was 25.1 million pounds (11,385 mt) indicates that the current exploitation level has not significantly affected brood stock capacity or caused a decline in crab abundance * * *;

(6) Section D.4.7.3 *Acceptable Biological Catch (ABC)* (43 FR 21232)—*Delete* the paragraph and *substitute:*

Based upon the average catch since the 1972/73 season and current biological information, an acceptable biological catch of 20 to 35 million pounds (9,066 to 15,865 mt) has been established* * *;

(7) Section D.5.3 *Expected Domestic Annual Harvest (DAH)* (43 FR 21232)—*Delete* both paragraphs and *substitute:*

The DAH is approximately 1.8 times the 1977 harvest of 20.7 million pounds (9,399 mt). The low price received per pound and increased handling and sorting costs limited participation in the 1977 fishery.

With an increase in the ex-vessel price to approximately 40 cents per pound, 110 to 120 vessels harvested 33.1 million pounds (15,005 mt) in 1978. It is expected that catches near the upper end of the harvest range (20-35 million pounds) will be sustained* * *;

(8) Section D.6.3 *Optimum Yield (OY)*, (43 FR 21232)—*Delete* the paragraph and *substitute:*

Optimum yield for the Kodiak management area is set at 35 million pounds (15,865 mt). * * *;

(9) Section F.3.2.1.3 *Catch Trends* (43 FR 21238)—*Delete* the paragraph and *substitute:*

U.S. fishermen caught 18,000 pounds (8.2 mt) of Tanner crab in 1968, 22.3 million pounds (10,115 mt) in 1976, 51.5 million pounds (23,400 mt) in 1977 and 68 million pounds in 1978. Annual Harvests are shown in Table 1. * * *;

(10) Section F.7.0 *Total Allowable Level of Foreign Fishery* (43 FR 21250)—(a) *Delete* the last sentence of the first paragraph and *subsitute:*

For this reason and in order to prevent gear conflicts and a foreign bycatch of *C. bairdi* crab, any foreign harvest of Tanner crab has been restricted to two areas: (1) north of 58°N latitude and west of 164°W longitude and (2) south of 58°N latitude and west of 173°W longitude * * *;

(b) *Add* at the end of the third paragraph:

Not more than 2,500 mt (5,515,000 pounds) of the TALFF can be taken from area (2), south of 58°N latitude and west of 173°W longitude and no. *C. bairdi* crab can be retained in that area. Foreign fishing has been allowed in that area primarily to provide ice free fishing grounds early in the season * * *;

(11) Section F.8.3.2 *Foreign* (43 FR 21250)—*Delete* the entire text of the section and *substitute:*

See statewide Section 8.3.2 Management measures governing foreign fishing are as follows:

(1) The total allowable foreign catch shall not exceed 15,000 mt of snow (Tanner) crab from that portion of the Bering Sea over which the United States exercises fishing jurisdiction. Of that amount not more than 2,500 mt may be taken in the area south of 58°N latitude and west of 173°W longitude.

(2) It shall be unlawful for any foreign fishing vessel to fish for crab at any time east of 164°W longitude and south of 58°N latitude except that they may fish for Tanner crab *C. opilio* species in the area south of 58°N latitude and west of 173°W longitude. No Tanner crab species *C. bairdi* may be retained in that area.

(3) When south of 58°N latitude and west of 173°W longitude no foreign processing ship may receive crabs from any catcher boat that are caught north of 58°N latitude. No foreign processing ship when north of 58°N latitude may receive crabs caught south of 58°N latitude.

The Assistant Administrator for Fisheries has determined under section 304 of the Act that the amendments are consistent with the National Standards, the Act and other applicable law, and has initially determined that these proposed regulations are not significant regulations under Executive Order 12044. A negative assessment of environmental impact has been filed with the Environmental Protection agency.

PROPOSED REGULATIONS

It is proposed to amend 50 CFR 611.91 (see 43 FR 59320, December 19, 1978) as follows:

§ 611.91 [Amended]

1. Section 611.91 (b) (2) is amended as follows: *Add* the following sentence: "No more than 2,500 metric tons of the TALFF set forth in that table may be taken south of 58°N latitude."

2. Section 611.91 is further amended by revising paragraphs (d) and (f)(1) and by adding a new paragraph (f)(5) to read as follows:

§ 611.91 Tanner crab fishery.

* * * * *

(d) *Closed areas.* No foreign vessel may engage in fishing for Tanner crab:

(1) Within 12 nautical miles of the baseline used to measure the U.S. territorial sea;

(2) South of 58° N latitude, except west of 173° W longitude;

(3) South of 54° N latitude; or

(4) East of 164° W longitude.

* * * * *

(f) *Other Restrictions.* (1) *Non-retention.* No foreign vessel may retain:

(i) Any female or soft shell Tanner crab;

(ii) Any Tanner crab of the species *C. bairdi* caught south of 58° N latitude; or

(iii) Any species of crab other than the genus *Chionoecetes.* All crabs whose retention is prohibited by this paragraph (f)(1) shall be returned immediately to the sea in a manner which: (A) minimizes handling mortality, and (B) is in accordance with section 611.13 of this Part.

* * * * *

(5) *Fishing Location.* (i) A foreign processing vessel located south of 58° N latitude and west of 173° W longitude is prohibited from receiving from any foreign catcher vessel Tanner crab caught north of 58° N latitude.

(ii) A foreign processing vessel located north of 58° N latitude is prohibited from receiving from any foreign catcher vessel Tanner crab caught south of 58° N latitude.

§ 611.20 [Amended]

3. Section 611.20(c), Table I, is amended as follows:

a. In the line beginning "Crab * * * Crab, Tanner," add footnote "6" after footnote "3" and before "15,000," to read "[3] [6]15,000."

b. Add a new footnote "6" to read: [6]Of this TALFF, not more than 2,500 mt may be taken south of 58° N latitude.

§ 671.21 [Amended]

4. Section 671.21(a), Table I, is amended as follows:

In line 8 ("Kodiak district") *delete* "11,340" and *substitute* "15,876".

[FR Doc. 79-2681 Filed 1-22-79; 4:50 pm]

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.

[3410-01-M]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

PRIVACY ACT OF 1974

Revision of Systems of Records

Notice is hereby given that the Office of Inspector General is revising its systems of records for the reasons given below. Although language has been added to one system of records to better explain how the information is used, there are no new routine uses. Therefore, this revision becomes effective on January 25, 1979.

Systems USDA/OIG-1 through 6: Additional authority of Public Law 95-452; editorial changes, including explanatory material and minor corrections.

Systems USDA/OIG-3: Official designated as contact for individuals to request access and to contest information.

Systems USDA/OIG-6: Expansion of explanation of routine uses to specifically identify use of records to carry out matching programs.

In accordance with the above, USDA/OIG-1 through 6 are revised to read as follows:

USDA/OIG-1

System name:

Employee Records, USDA/OIG

System location:

In the Headquarters Office in the Agriculture Administration Building, 14th and Independence Avenue, S.W., Washington, D.C. 20250, and in the following U.S. Department of Agriculture, Office of Inspector General, Regional Offices and suboffices:

OIG Regional Offices

26 Federal Plaza, Room 1707, New York, New York 10007.
8930 Ward Parkway, P.O. Box 205, Kansas City, Missouri 64141.
555 Battery Street, Room 522, San Francisco, California, 94111.
101 South Main, Room 324, Temple, Texas 76501.
422 Federal Center Building, Hyattsville, Maryland 20782.
1 North Wacker Drive, Room 800, Chicago, Illinois 60606.
1447 Peachtree Street, N.W., Room 901, Atlanta, Georgia 30309.

OIG/Audit Suboffices

Federal Building, Harrisburg, Pennsylvania 17108.
Federal Building, Marlboro, Massachusetts 01752.
Federal Building, Syracuse, New York 13260.
Federal Office Building, Hato Rey, Puerto Rico 00917.
Federal Building, Little Rock, Arkansas 72201.
P.O. Box 29383, New Orleans, Louisiana 70189.
P.O. Box 16393, Jackson, Mississippi 39206.
P.O. Box 15067, Nashville, Tennessee 37215.
310 New Bern Avenue, Raleigh, North Carolina 27601.
333 Waller Avenue, Lexington, Kentucky 40504.
Box 14153 Main Post Office, St. Louis, Missouri 63178.
167 Federal Building, Des Moines, Iowa 50309.
276 Federal Building, Lincoln, Nebraska 68508.
571 Federal Building, St. Paul, Minnesota 55101.
200 North High Street, Columbia, Ohio 43215.
5610 Crawfordsville Road, Indianapolis, Indiana 46224.
2490 West 26th Avenue, Denver, Colorado 80211.
1711 Federal Building, Portland, Oregon 97204.
P.O. Box 1363, Huron, South Dakota 57350.
135 South State Street, Salt Lake City, Utah 84111.
24,000 Avila Road, Laguna Niguel, California 92677.

OIG/Investigation Suboffices

U.S. Court House, Hato Rey, Puerto Rico 00918.
600 Dekalb Pike, King of Prussia, Pennsylvania 19406.
310 New Bern Avenue, Raleigh, North Carolina 27611.
4004 Hillsboro Road, Nashville, Tennessee 37215.
5305 Executive Place, Jackson, Mississippi 39206.
200 North High Street, Columbia, Ohio 43215.
2490 West 26th Avenue, Denver, Colorado 80211.
P.O. Box 1363, Huron, South Dakota 57350.
100 Centennial Mall North, Lincoln, Nebraska 68508.
24,000 Avila road, Laguna Niguel, California 92677.
511 Northwest Broadway, Portland, Oregon 97209.
522 N. Central Avenue, Phoenix, Arizona 85004.

Categories of individuals covered by the system:

OIG temporary and permanent employees, former employees of OIG and predecessor offices, and applicants for employment.

Categories of records in the system:

These records show personnel management and work-related information, including position, title, grade, pay rate, pay, temporary and permanent address, phone number, performance evaluations, promotions, travel information, accident reports and related information, activity reports, participation in savings and contribution programs, availability for employment, for assignment, or for transfer, qualifications, awards, hours worked, issuance of credentials, passports, and other indentification, assignment and accountability of property and other things of value, parking space assignments, training and development, and special assignments.

Authority for maintenance of the system:

Pub. L. 95-452, 5 U.S.C. 301, 7 CFR 2.33.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To other agencies in the Department and Executive Branch agencies, such as the Civil Service Commission, as necessary, for proper personnel actions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained on computer and in file folders, notebooks, and card file boxes.

Retrievability:

By name of individual employee.

Safeguards:

Available on official need-to-know basis. Kept in locked offices after office hours.

Retention and disposal:

Records are retained as long as needed and then discarded. Personal information that might be considered derogatory or embarrassing is burned when no longer needed.

System manager(s) and address

Director, Personnel Management Staff, OIG, U.S. Department of Agriculture, Washington, D.C. 20250.

Notification procedure:

Inquiries should be addressed to Director, Policy, Liaison and Information Staff, OIG, U.S. Department of Agriculture, Washington, D.C. 20250.

Record access procedures:

To gain access to information in the system, send request to Director, Policy, Liaison and Information Staff, OIG, USDA, Washington, D.C. 20250.

Contesting record procedures:

To contest information in this system, send request to Director, Policy, Liaison and Information Staff, OIG, USDA, Washington, D.C. 20250.

Record source categories.

The primary information is furnished by the individual employee. Additional information is provided by supervisors, coworkers, references, and others.

USDA/OIG-2

System name:

Intelligence Records, USDA/OIG.

System location:

In the Headquarters Office in the Agriculture Administration Building, 14th and Independence Avenue, S.W., Washington, D.C. 20250, and in the OIG offices listed in the system of records designated USDA/OIG-1.

Categories of individuals covered by the system:

Suspects and unpaid informants.

Categories of records in the system:

Names, occupations, other information about suspects and allegations against them; and types of information previously furnished by or to be expected from informants.

Authority for maintenance of the system:

Pub. L. 95-452, 5 U.S.C. 301, 7 CFR 2.33.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Routine uses for law enforcement purposes will include referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto.

Policies and practices for storing, retrieving, accessing, and disposing of records in the system:

Storage:

Stored on sheets of paper and index cards.

Retrievability:

Retrievable by name of individual subject.

Safeguards:

Available on an official need-to-know basis and kept in locked storage when not in use.

Retention and disposal:

Kept indefinitely and continually updated; out-of-date material is burned.

System manager(s) and address:

Director, Security and Special Investigations Division, Office of the Inspector General, Washington, D.C. 20250. Inquiries and requests should be addressed to: Director, Policy, Liaison and Information Staff, USDA, OIG, Washington, D.C. 20250.

Systems exempted from certain provisions of the act:

This system has been exempted from the provisions of sections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) pursuant to 5 U.S.C. 552a(k)(2) as investigatory material compiled for law enforcement purposes. This exemption is contained in 7 CFR 1.123.

USDA/OIG-3

System name;

Investigative Files and Subject/Title Index, USDA/OIG.

System location:

In the Headquarters Office in the Agriculture Administration Building, 14th and Independence Avenue, S.W., Washington, D.C. 20250, and in the OIG Regional and Investigation Suboffices listed in the system of records designated USDA/OIG-1.

Except for inadvertent errors, all entries in regional office indexes are duplicated in the Headquarters index. Thus the Headquarters index is the only complete index in OIG. The Headquarters files also contain a copy of every investigative report, but not the correspondence in all cases. Older investigative files may be stored in Federal Records Centers or on microfiche. Therefore, delays in retrieving this material can be expected.

Categories of individuals covered by the system.

The individual names in the OIG index fall into one or more of the following categories:

Subjects. These are applicants for OIG employment or individuals against whom allegations of wrongdoing have been made. In some instances, these individuals have been the subjects of investigations conducted to establish whether allegations were true. In other instances, the allegations were deemed too frivolous or indefinite to warrant inquiry.

Principals. These are individuals who are not named subjects of investigative inquiries, but may be responsible for violations. For example, the president of a firm alleged to have violated laws or regulations would likely be individually listed in the OIG index.

Complainants. These are individuals who allege wrongdoing, mismanagement, or unfair treatment relating to USDA employees and/or programs.

Others. These are all other individuals closely connected with a matter of investigative interest or whose names have been checked through the index to determine whether they were of record. Among these names are those of people who are connected with a matter only in that they have shown unusual interest in having allegations investigated or in learning the results of investigation. Also included in the index are the names of persons on the Department of Justice crime list.

Categories of records in the system:

The OIG Subject/Title Index and Investigative Files consist of:

1. Index cards and/or a microfiche index filed alphabetically by the names of individuals, organizations, and firms with a separate card or line items for each; dates of entries made into the index or dates of materials containing information about the named subjects; and identification of the OIG file or files containing information on that subject.

2. Files containing bound sheets of paper or microfiche of such sheets from investigative and other reports, correspondence, and informal notes and notations concerning (a) one investigative matter or (b) a number of incidents of the same sort of alleged violation or irregularity.

If such information was available when an index card or line item was made, the card or microfiche concerning an individual will include the individual's address, date of birth, and Social Security number.

3. Where investigation is being or will be conducted, but has not been completed, various case management records, investigator's notes, statements of witnesses, and copies of records. These are contained on index slips or cards and sheets of paper located in an OIG office or in the possession of the OIG investigator. Cer-

tain management records are retained after the investigative report is released as a means of following action taken on the basis of the OIG investigative report.

Authority for maintenance of the system:

Pub. L. 95-452, 5 U.S.C. 301, 7 CFR 2.33.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Routine use for law enforcement purposes will include referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility for investigating or prosecuting a violation of law or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, or any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

The OIG Subject/Title Index consists of 3 inch by 5 inch cards or microfiche line items stored in steel cabinets. The investigative files are stored in steel lektriever cabinets, on microfiche sheets, or in Federal Records Centers.

Retrievability:

The subject cards or line items are arranged alphabetically, and each card or line item identifies one or more OIG investigative case files or administrative files arranged numerically by file number. Information in investigative or administrative files concerning individuals not indexed is considered irretrievable.

Safeguards:

These records are available within USDA and to others in the Executive Branch only upon proper identification and on a need-to-know basis. These records are kept in limited-access areas during duty hours and in locked offices at all other times.

Retention and disposal:

The cards or line items are kept indefinitely and investigative case files are maintained for 15 years. However, certain investigative case files of unusual significance are kept indefinitely. Administrative files are kept for five years.

System manager(s) and address:

Director, Management and Budget Staff, Office of the Inspector General, U.S. Department of Agriculture, Washington, D.C. 20250.

Record access procedures:

To request access to information in this system, write to Director, Policy, Liaison and Information Staff, Office of Inspector General, U.S. Department of Agriculture, Washington, D.C. 20250.

Contesting record procedure:

To contest information in this system, send request to Director, Policy, Liaison and Information Staff, Office of Inspector General, U.S. Department of Agriculture, Washington, D.C. 20250.

Systems exempted from certain provisions of the act:

This system has been exempted from the provisions of sections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) pursuant to 5 U.S.C. 552a (k)(2) and (k)(5) as investigatory material compiled for law enforcement purposes or compiled solely for determining suitability, eligibility or qualifications for Federal civilian employment. This exemption is contained in 7 CFR 1.123.

USDA/OIG-4

System name:

Liaison Records, USDA/OIG

System location:

Headquarters Offices in Agriculture buildings at 14th and Independence Avenue, S.W., Washington, D.C. 20250, and in the OIG offices listed in the system of records designated USDA/OIG-1.

Categories of individuals covered by the system:

Employees or officials of Federal, State, and local governmental agencies.

Categories of records in the system:

Such information as name, title, address, phone number, and type of assistance previously given or interest previously shown or expected.

Authority for maintenance of the system:

Pub. l. 95-452, 5 U.S.C. 301, 7 CFR 2.33.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Disclosed to other investigative agencies (e.g., FBI, Secret Service, IRS) to coordinate investigative efforts or for those agencies to use in their independent investigations and to facilitate referral of OIG investigative information to other Executive Agencies that have an official interest.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Index cards and sheets of paper.

Retrievability:

By name of individual or by name of agency.

Safeguards:

Information is usually obtained from public records or previous contacts and is generally available to OIG employees and others on request. Records are in the custody of OIG employees during working hours and in locked offices at other times.

Retention and disposal:

Information is kept indefinitely and disposed of when updated. Out-of-date information is discarded.

System manager(s) and address:

Directors of the offices indicated in "System location."

Notification procedure:

Inquiries and requests should be addressed to Director, Policy, Liaison and Information Staff, Office of the Inspector General, U.S. Department of Agriculture, Washington, D.C. 20250.

Record access procedures:

To gain access to information in this system, send request to Director, Policy, Liaison and Information Staff, OIG, U.S. Department of Agriculture, Washington, D.C. 20250.

Contesting record procedures;

To contest information in this system, send request to Director, Policy, Liaison and Information Staff, OIG, U.S. Department of Agriculture, Washington, D.C. 20250.

Record source Categories:

Public documents and directories and previous contacts with individuals listed.

USDA/OIG-5

System name:

Management Information and Data Analysis System, USDA/OIG

System Location:

Computer files are maintained on the Computer Sciences Infonet System with main offices at 650 North Sepulveda, El Segundo, California. Source documents and printouts are kept in OIG Headquarters, U.S. De-

partment of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C. 20250 and in the OIG regional offices listed in the system of records designated as USDA/OIG-1 (with the exception of the New York Regional Office).

Categories of individuals covered by the system:

OIG professional audit employees.

Categories of records in the system:

The Management Information and Data Analysis System provides audit management officials with a wide range of information on audit operations, including job performance of OIG professional audit personnel in grade GS-13 and below. The system identifies individual audit assignments of employees and provides information on their use of direct and indirect time; significant dates relating to each audit such as starting date, exit conference date, and report release date; the number and significance of audit findings and the identity of all the professionals who participated in the assignment.

Authority for maintenance of the system:

Pub.L. 95-452, 5 U.S.C. 301; 7 CFR 2.81.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Provided upon request to the General Accounting Office for reviewing OIG audit operations. Disclosure may also be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Computer discs and/or magnetic tape.

Retrievability:

Information in the system can be retrieved by OIG Headquarters and regions. Information can be retrieved by audit report number, employee Social Security number, or geographic location.

Safeguards:

Normal computer security is maintained over access to discs and magnetic tapes. Printouts are available within USDA as necessary and are kept under lock and key when not in use. Source documents are kept in file cabinets in the offices listed above.

Retention and disposal:

Discs and/or magnetic tapes are cleared, retired, or destroyed, when no longer useful, in accordance with General Services Administration and USDA retirement and/or destruction schedules.

System manager(s) and address:

Assistant Inspector General for Audits, Office of the Inspector General, U.S. Department of Agriculture, Washington, D.C. 20250.

Notification procedure:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him, from the Director, Policy, Liaison and Information Staff, USDA-OIG, Washington, D.C. 20250. A request for information pertaining to an individual should contain: Name, address, and particular information requested.

Record access procedures:

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the Director, Policy, Liaison and Information Staff, OIG, U.S. Department of Agriculture, Washington, D.C. 20250

Contesting record procedures:

Same as access procedures described above.

Record source categories:

Information in the system comes entirely from OIG audit employees.

USDA/OIG-6

System name:

Audit Information System, USDA/OIG

System location:

Records included in this system may be located at audit sites throughout the United States or at any of the Departmental Computer Centers. The Departmental Computer Centers are: (1) Washington Computer Center, 12th and Independence Avenue, S.W., Washington, D.C. 20250; (2) New Orleans Computer Center, P.O. Box 60900, New Orleans, Louisiana 70160; (3) Kansas City Computer Center, P.O. Box 205, Kansas City, Missouri 64141; (4) St. Louis Computer Center, 1520 Market Street, Room 3441, St. Louis, Missouri 63103; (5) Fort Collins Computer Center, 3825 East Mulberry Street, Fort Collins, Colorado 80521.

Categories of individuals covered by the system:

This system employs temporary data sets, computer printouts, and other audit records obtained from USDA agencies, non-Federal sources, and Federal agencies other than USDA. Individuals covered by these records are participants in programs administered and/or funded by the Department of Agriculture; employees of USDA and other Federal, State, county, and municipal agencies; and officials and employees of contractors, grantees, and cooperators that conduct business related to USDA programs.

Categories of records in the system:

The system may contain, for short periods of time, various categories of records relating to administration of, or individual participation in, USDA programs. For example, the categories of records may relate to the Department's farm, food, loan and research programs and to payroll records of USDA or other governmental employees.

Authority for maintenance of the system:

Pub. L. 95-452, 5 U.S.C. 301, 7 CFR 2.33.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are routinely used for analysis during the course of Office of Inspector General (OIG) audits. To facilitate this analysis, USDA, other Federal, State, or other governmental computer tapes containing program participation or employment information may be matched against themselves or each other to find duplications that indicate possible improper or illegal participation in USDA programs. Matching may be conducted by OIG, other USDA agencies, other Federal agencies, and/or State, county, or municipal agencies. The computer printouts of duplicates may be furnished to OIG auditors and investigators, the non-Federal entity responsible for operating the program, other Executive Branch audit agencies, the General Accounting Office, the Department of Justice, other law enforcement agencies, and the Congress.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Information is stored electronically on computer direct access storage devices or magnetic tape and in computer printouts and other audit records.

Retrievability:

Electropically stored information may be retrieved using standard audit software analysis and retrieval packages and is limited only by the data elements maintained in the data set. This information may be transmitted and received using standard teleprocessing procedures. Data elements may include such information as an individual's name, address, social security numbers, employee identification, case or farm number, and specific information about the individual's program participation or employment. Information located in computer printouts and other audit records may be retrieved manually while audits are in process. After an audit is completed, information about individuals can only be retrieved by first identifying the audit involved (by type, location and time conducted) and then retrieving the information from audit work materials by mechanical or electronic search. If individual participation was investigated, personal privacy information about that individual may be retrievable, by name, from system USDA/OIG-3, described above.

Safeguards:

Normal computer security is maintained over access to electronically encoded data. Computer printouts and other audit records are protected in accordance with the sensitivity of data contained therein.

Retention and disposal:

Electronically encoded data is seldom retained for more than six months. It is then destroyed either by degaussing or overwriting the computer media. Computer printouts and manually prepared audit records may be incorporated into audit files where they are retrievable only by audit number or report title. Audit files are retained in accordance with General Services Administration retirement and/or destruction schedules. Computer printouts not incorporated into audit files are destroyed.

System manager(s) and address:

The system managers are the USDA Regional Inspectors General for Audits in whose geographical areas the audit sites and Departmental Computer Centers are located. These are as follows: (1) Regional Inspector General for Audits, Northeast Region, OIG, USDA, Room 422, Federal Building, Hyattsville, Maryland 20782 (Washington Computer Center); (2) Regional Inspector General for Audits, Southeast Region, OIG, USDA, 1447 Peachtree Street, N.E., Room 900, Atlanta, Georgia 30309; (3) Regional Inspector General for Audits, Midwest Region, OIG, USDA, 1 North Wacker Drive, Chicago, Illinois 60606; (4) Regional Inspector General for Audits, Southwest Region, OIG, USDA, Federal Office Building—Room 324, 101 South Main Street, Temple, Texas 76501 (New Orleans Computer Center); (5) Regional Inspector General for Audits, Great Plains Region, OIG, USDA, 8930 Ward Parkway, P.O. Box 205, Kansas City, Missouri 64141 (Kansas City, Fort Collins, and St. Louis Computer Centers); (6) Regional Inspector General for Audits, Western Region, OIG, USDA, Room 522 Customs House, 555 Battery Street, San Francisco, California 94111.

Notification procedure:

Any individual may request information contained in this system of records or information as to whether the system contains records pertaining to that individual by contacting the Director, Policy, Liaison and Information Staff, OIG, USDA, Washington, D.C. 20250. The individual is reminded that this system of records is temporary and usually is accessible only while an audit of a particular program or activity is in process. The period of accessibility normally ranges from one month to approximately six months, depending on the type of audit and the use made of the information. Any request for information pertaining to an individual should contain that person's name, address, the USDA program the individual is participating in, any pertinent identification number such as a case number, and the particular information requested. Proof of identity and/or authorization to access will be required.

Record access procedures:

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to that person by submitting a written request to the Director, Policy, Liaison and Information Staff, OIG, U.S. Department of Agriculture, Washington, D.C. 20250.

Contesting record procedures:

These inquiries also should be sent to the Director, Policy, Liaison and Information Staff, OIG, U.S. Department of Agriculture, Washington, D.C. 20250.

Record source categories:

Information contained in this system of records is obtained mainly from USDA agencies and State and local governments that administer USDA programs on a cooperative basis and may be obtained from other grantees and program participants and other Federal agencies.

Information generally relates to a USDA program or activity which is being audited. Upon conclusion of the audit, the information is either destroyed, returned to the originator, or stored in an audit file from which information about individuals cannot be retrieved without manual and/or electronic search.

Signed at Washington, D.C., this 19th day of January 1979.

BOB BERGLAND,
Secretary, United States Department of Agriculture.

[FR Doc. 79-2864 Filed 1-24-79; 8:45 am]

[6230-01-M]

CIVIL AERONAUTICS BOARD

[Docket Nos. 33826, etc.; Order 79-1-102]

CONTINENTAL AIRLINES, ET AL.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 18th day of January 1979.

Petitions of Continental Airlines, Delta Airlines, Ozark Airlines, Trans World Airlines, for amendment of certificate of public convenience and necessity, Dockets 33826, 34086, 34145, 34174, 33894; applications of Continental Airlines, Delta Airlines, for exemption authority, Dockets 34102, 34143.

On October 25, 1978, Continental Airlines filed an application for amendment of its certificate to add Denver-San Francsico/Oakland/San Jose authority, accompanied by a motion to consolidate with Frontier's application for nonstop Denver-Los Angeles authority in Docket 33527.[1]

In support of its application, Continental states that it will provide at least three daily round trips and offer reduced fares; it can compete effectively in the market since it has a strong structure at Denver; and the Denver-San Francisco market merits additional competitive services.

Continental has also filed a petition for an order to show cause in the Denver-San Jose market in Docket 34086.

No one has objected to Continental's requests.

Delta, in Docket 34145, and Ozark, in Docket 34174,[2] have filed applications requesting the same authority. However, neither application has supporting documentation.

TWA, which already holds Denver-Bay Area authority, seeks removal of a long-haul restriction which requires its flights to originate or terminate at Chicago or St. Louis or at a point east of these cities.

Exemption applications for Denver-San Francisco and Denver-San Jose

[1] We will consider Continental's motion to consolidate with Frontier's application in a forthcoming order.

[2] We will consolidate both of these dockets into this proceeding.

authority have been filed by Delta and Continental, respectively.

We tentatively conclude, on the basis of the tentative findings below, that it is consistent with the public convenience and necessity to grant, on a Category II subsidy-ineligible basis, the Denver-San Francisco and Denver-San Jose portions of the applications [3] of Continental, Delta and Ozark and any other fit, willing and able applicant, whose fitness, willingness and ability can be established by officially noticeable data.[4] Further, we tentatively conclude that no oral evidentiary hearing is necessary here since there are no material determinative facts requiring such a hearing for their resolution.

Under the Airline Deregulation Act of 1978, we must approve an application for certificate authority unless we find, by a preponderance of the evidence, that approval would not be consistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). The new Act creates a presumption that the grant of all applications is consistent with the public convenience and necessity. It places on any opponents of these applications the burden of proving them inconsistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). To give such opponents a reasonable opportunity to meet an admittedly heavy burden of proof, it is our view that applicants must indicate what type of service they would provide if they served the markets at issue. This does not mean that an applicant must show that it will provide service if it receives authority, but rather what the nature of its services would be if it decides to serve. We will give all existing and would-be applicants 15 days from the date of service of this order to supply data,[5] in order to give interested persons sufficient information on the nature of the applicant's proposal to assess consistency with the convenience and necessity. Our tentative findings concerning all applicants that have not filed illustrative service proposals are contingent on such filings.

Our tentative conclusions comport with the letter and spirit of the Airline Deregulation Act of 1978, particularly the declaration of policy set forth in section 102 which instructs us to rely, to the maximum extent possible, on competitive forces, including potential competition.[6] See our general conclusion about the benefits of multiple permissive authority in *Improved Authority to Witchita Case, et al.*, Order 78-12-106, December 14, 1978. Accordingly, we conclude that it is desirable to award the additional authority sought by the applicants, whether or not services are in fact operated. The existence of additional operating rights in markets now being served by incumbent carriers or authorized to be served will best effect the statute's policy objectives of placing maximum reliance on the decisions of the marketplace. This will occur because newly authorized carriers may actually enter the market in order to exploit unmet demand, both in terms of price and service, or because incumbents will be encouraged by the realistic threat of entry to meet that demand. Because demand is dynamic in character and therefore constantly changing, the most effective means to assure that competitive forces will operate quickly and efficiently is to award multiple operating authority to carriers that are fit, willing and able to provide service.

Notwithstanding the foregoing tentative conclusions in support of multiple permissive authority in this proceeding, we wish to make clear that we in no way desire to deter objections that might be asserted under the 1978 Act by air carriers, civic interests or other interested persons. The new statute contains a completely revised declaration of policy in section 102, as well as numerous additional and modified substantive provisions. Some of these statutory changes relate to considerations not expressly covered in the preceding statute. For example, while diversion from existing carriers will not be given decisive weight in rejecting applications for new authority except upon an extraordinary showing of financial jeopardy on the part of one or more existing air carriers, with the consequent loss of air service which cannot be immediately replaced, other provisions suggest that the Congress desires us to take into account other factors. These include, but are not limited to satellite airport questions, the degree of concentration within the industry and safety. Any party in this proceeding may explain in full why the authority that we propose to grant should not issue. Such explanations should apply specifically to the applications in issue, and should be sufficiently detailed to overcome the statutory presumption of favorable treatment that the Act bestows on applications.

Upon review of the environmental evaluation submitted by Continental in its application, to which no answers have been filed, we find that our decision to award it authority does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, or a major regulatory action under the Energy Policy and Conservation Act of 1975. We reserve judgment on the environmental consequences of other applications, pending submission of environmental data.

We also tentatively conclude that TWA's long-haul restriction should be removed. It is our policy to remove operating restrictions unless there are affirmative reasons for retaining them. No reason for retaining the restriction has been shown here. Since we are proposing to authorize Continental, Delta and Ozark to provide nonstop service in the Denver-San Francisco

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[3] We have also tentatively decided not to hyphenate San Francisco, Oakland and San Jose. If a carrier does not use its Denver-San Jose authority, another carrier can obtain that authority under section 401(d)(5) of the Act as long as San Jose is listed as a separate point on the first carrier's certificate (*see* Order 78-11-41). We believe that this course of action is more consistent with the Act's declaration of policy which calls on us to encourage air service at major urban airports through secondary or satellite airports.

Additionally, Denver-Oakland authority will not be treated in this proceeding because the market is being considered in another case, the *Oakland Service Case*, Docket 30699. In that proceeding, we invited carriers that have definite intentions of providing service in the Oakland markets to apply for exemptions. (Order 78-12-101, December 14, 1978).

[4] Officially noticeable data consist of that material filed under § 302.24(m) of our rules. Applicants whose fitness cannot be so established must make a showing of fitness, as well as dealing with any questions under sections 408 and 409 of the Act. Should such applications be filed, we will then consider how to deal with them procedurally.

On the basis of officially noticeable data, we find that Continental, Delta and Ozark are citizens of the United States and are fit, willing, and able to perform the air services proposed and to conform to the provision of the Act and our rules, regulations and requirements.

[5] They should submit an illustrative schedule of service in the markets at issue, which shows all points that they might choose to serve, the type and capacity of the equipment they would likely use and the elapsed trip time of flights in block hours over the segments. For the markets at issue only, they should also provide an environmental evaluation as required by Part 312 of our Regulations, and an estimate of the gallons of fuel to be consumed in the first year of operation in the markets if they instituted the proposed service, as well as a statement on the availability of the required fuel.

If an applicant has already filed this material in a related docket, it simply need refer to that docket.

[6] Section 102(a) specifies as being in the public interest, among other things: "The placement of maximum reliance on competitive market forces and on actual and potential competition (A) to provide the needed air transportation system, and (B) to encourage efficient and well-managed carriers to earn adequate profits and to attract capital" and "The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services."

and Denver-San Jose markets, TWA's certificate condition should be removed, so it can effectively compete in these markets.[7]

We will deny Continental's and Delta's exemption applications. The exemption requests are predicated upon the general need for competitive service in the markets. Also, Continental states that it should be granted an exemption because a "technicality" prevented it from receiving Denver-San Jose authority under the Act's unused authority provision.

Under the new Act, the change in statutory language overrides much of the precedent developed under former section 416(b)(1) and encourages us to eliminate many of the limitations we observed in the past exercise of our exemption authority. However, we are also cognizant of the fact that, despite enacting sweeping changes under the Airline Deregulation Act, Congress chose to retain the basic framework of the Federal Aviation Act[8] under which certification is the norm. Therefore, we will require each exemption applicant to demonstrate that a grant of a particular exemption will fulfill an immediate public need, so as to justify resort to the exemption procedure in lieu of utilizing conventional certification procedures.

Here, neither carrier has convinced us that there are such needs requiring exemptions. This conclusion is bolstered by our use of expedited showcase procedures. Further, we will not use exemptions as a tool to grant authority merely because a carrier failed to obtain such authority under the unused authority provisions.[9]

We will give interested persons 30 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; replies will be due within 10 days thereafter. We expect such persons to direct their objections, if any, to specific markets, and to support such objections with detailed economic analysis. If an evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a proceeding that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

Accordingly, 1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and amending the certificates of public convenience and necessity of Continental for Route 29, Delta for Route 24, Ozark for Route 107 and TWA for Route 2 so as to authorize the carriers to engage in nonstop operations between Denver and San Francisco and between Denver and San Jose; and amending, to grant any of the authority in issue, the certificates of any other fit, willing and able applicants, the fitness of which can be established by officially noticeable material;

2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or certificate amendments set forth here, to file with us and serve upon all persons listed in paragraph 9, no later than February 23, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections; answers shall be due no later than March 5, 1979;

3. If timely and properly supported objections are filed, we will accord full consideration to the matters and issues raised by the objections before we take further action;[11]

4. In the event no objections are filed, we will deem all further procedural steps to have been waived an we may proceed to enter an order in accordance with the tentative findings and conclusions set forth here;

5. We consolidate Dockets 34174, 34145, 33894, and 34086, with Continental's application in Docket 33826;

6. We direct applicants for the authority in issue to file the data set forth in footnote 5 no later than February 8, 1979;

7. We deny the relief sought in Dockets 34102 and 34143; and

8. We will serve a copy of this order upon Continental, Delta, Ozark, TWA and all other persons named in the service list in Docket 33826.

We will publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[12]
Secretary.

[FR Doc. 79-2582 Filed 1-24-79; 8:45 am]

[7] We note that the relief we propose to grant today is consistent with Order 78-12-14, December 7, 1978, Appendix F, 1-2, which proposed to grant TWA nonstop authority in the Denver-San Francisco, Denver-Oakland, and Denver-San Jose markets. If TWA receives the authority in its route realignment proceeding, our tentative grant here will be superseded, and vice versa.

[8] *See, e.g., Northwest Airlines, Inc. v. C.A.B.*, 539 F. 2d 749 (D.C. Cir. 1976); *Utah Agencies v. C.A.B.*, 504 F. 2d 1232, 1237 (10 Cir. 1974).

[9] In Order 78-11-41, we decided that unused authority could not be granted in the Denver-San Jose market because Denver-San Francisco was being served, and service to one airport of a hyphenated point is considered service at the point.

[10] Since provision is made for the filing of objections to this order, we will not entertain petitions for reconsideration.

[11] All Members concurred.

[6320-01-M]

[Order 79-1-118; Docket No. 33343]

CONTINENTAL AIR LINES, INC., ET AL.

Order Regarding Service at Lawton/Ft. Sill and Wichita Falls

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 19th day of January 1979.

Application of Continental Air Lines, Inc., for deletion of authority at Lawton/Ft. Sill and Wichita Falls, Docket 33343; notices of Continental Air Lines, Inc., of termination of all service at Lawton-Ft. Sill and Wichita Falls, Dockets 33827, 33828 and 34081; Continental Air Lines, Inc., suspension/replacement, Dockets 28744 and 31330.

On September 1, 1978, Continental Air Lines filed an application under section 401(g) of the Federal Aviation Act for deletion of Lawton/Ft. Sill, Oklahoma, and Wichita Falls, Texas, from its certificate for Route 29. On September 11, 1978, it filed a petition for an order to show cause why its application should not be granted.

In support of its application and petition, Continental states that by Order 77-10-92, October 29, 1977, the Board granted Continental's application for suspension of service at Lawton/Ft. Sill and Wichita Falls subject to replacement service being provided by Metroflight;[1] that Metroflight commenced its replacement service on October 31, 1977, and has provided service continuously since then between Lawton/Ft. Sill and Wichita Falls, on the one hand, and Oklahoma City and Tulsa, on the other; that the replacement service is decidedly uneconomic and unwarranted; and that Continental has no alternative but to seek permanent deletion of the points and termination of its replacement agreement with Metroflight. More specifically, Continental states that Metroflight's service has averaged only 2.5 passenger enplanements per departure (21% load factor); that Metroflight has incurred operating losses in excess of $180,000; and that Continental has paid Metroflight more than $206,000 under the terms of the replacement agreement. Continental asserts that the real problem is that there is not sufficient demand to support commuter service to Oklahoma City and that Dallas/Ft. Worth is the most important destination and connecting hub for Wichita Falls and Lawton/Ft. Sill passengers and there is abundant service to Dallas/Ft. Worth. Continental argues that its authority should be deleted rather than

[1] Continental was authorized to suspend service at Lawton/Ft. Sill and Wichita Falls for a period of five years.

made permissive for the following reasons: deletion will automatically terminate its agreement with Metroflight; the so-called "scope clause" of its labor agreement with its pilot provides that it might be obligated to pay its pilots for the reduced flying time resulting from suspension of its service; deletion avoids any possible legal controversy concerning permissive route authority; and its has no plans or intentions to reinstitute service at either Lawton/Ft. Sill or Wichita Falls at any time in the foreseeable future.

Answers to Continental's deletion application were filed by the Wichita Falls Parties, the City of Lawton, and the Air Line Pilots Association (ALPA). Wichita Falls opposes the deletion request claiming that Continental has not given the replacement service sufficient time to develop, that deletion will deprive the traveling public of single-plane and on-line service to Lawton/Ft. Sill, Oklahoma City and Tulsa, and that it will inconvenience the traveling public. Lawton opposes the request on grounds that Continental has not adequately developed the replacement service, that deletion would eliminate the currently available joint-fare tariffs available on Metroflight and would adversely affect the planned development of the Lawton-Wichita Falls air service. ALPA opposes the deletion and argues that the Board cannot grant Continental's application without a hearing.

On October 25, 1978, Continental filed notices under the recently amended section 401(j) of the Federal Aviation Act of its intent to terminate all air transportation which it is providing either directly or by agreement with another air carrier at Lawton/Ft. Sill and Wichita Falls effective after 90 days.[2]

No answers to the termination notices have been filed.

We have decided (1) not to prohibit Continental's termination notices to take effect, and (2) to issue an order to show cause why Continental's application for deletion of Lawton/Ft. Sills and Wichita Falls should not be denied.

Our decision on the termination notices is based on the following considerations. In addition to the service being provided by Metroflight as replacement service for Continental, Lawton/Ft. Sill and Wichita Falls are receiving the following service. At Lawton/Ft. Sill, Frontier is providing four nonstop round trips daily except Saturday to Dallas/Ft. Worth and one daily nonstop round trip to Oklahoma City. It is also providing single-plane service to Atlanta, Denver, Enid and Sacramento. Metroflight is providing four daily nonstop round trips to Dallas/Ft. Worth (one flight is not operated on Saturdays) and three daily nonstop round trips to Altus. At Wichita Falls, Texas International is providing three daily nonstop round trips to Dallas/Ft. Worth with single-plane service to Houston, Lake Charles and New Orleans. Rio Airways is providing twelve daily nonstop round trips to Dallas/Ft. Worth. Our review of the services now being provided at Lawton/Ft. Sill and Wichita Falls convinces us that essential air transportation will be maintained at the points without the service that Continental is obliged to guarantee or that Metroflight is providing under the replacement arrangement. We will therefore allow the notices of termination to become effective after the required 90-day notice period.[3]

In order to make Continental's suspension authority in Order 77-10-92 compatible with our decision not to prohibit Continental from terminating it its service obligation after the 90-day period, we will amend Order 77-10-92 to make the suspension indefinite rather than for five years and to eliminate ordering subparagraph 2(b) which requires Continental to resume service within 30 days after Metroflight or another acceptable Part 298 carrier ceases or fails to provide the minimum level of service specified.

As to Continental's deletion application, we tentatively conclude that deletion of the points from its certificate would not be consistent with the public convenience and necessity. In support of our conclusion, we make the following tentative findings. We see no reason to delete Continental's authority to serve Lawton/Ft. Sill and Wichita Falls when Continental will be relieved of its service obligations at the points after the 90-day notice period. Retention of the points on Continental's certificate will not only permit the flexibility for Continental to resume service at any time circumstances might warrant such action, but also, and more importantly, enable the communities to attract service under the dormant authority provisions of the 1978 Act. Under these circumstances, we tentatively conclude that Continental's application to delete Lawton/Ft. Sill and Wichita Falls from its certificate should be denied.

We will give interested persons 30 days following the date of this order to show cause why the tentative findings and conclusions set forth here regarding Continental's deletion application should not be made final; replies will be due within 10 days thereafter. We expect those persons to direct their objections, if any, to specific matters dealt with here, and to support their objections with detailed economic analysis. If an evidentiary hearing complete with the opportunity for cross-examination is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts the objector would expect to establish through such a hearing that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

Accordingly, (1). The notices filed by Continental Airlines for termination of service at Lawton/Ft. Sill, Oklahoma, and Wichita Falls, Texas, in Dockets 33827, 33828, and 34081 may be effective January 22, 1979;

2. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated here regarding Continental's deletion application and denying the certificate amendment application of Continental Air Lines to delete Lawton/Ft. Sill and Wichita Falls;

3. We direct any interested persons having objections to the issuance of an order making final the proposed findings and conclusions set forth in Paragraph 2 to file with us, no later than February 19, 1979, and serve upon all persons listed in Paragraph 6 below, a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied upon to support the stated objections; interested persons shall file answers to objections no later than March 1, 1979;

4. If timely and properly supported objections to the show cause are filed, we will give full consideration to the matters or issues raised before we take further action on the deletion application;

5. In the event no objections are filed to our tentative findings to deny Continental's deletion application, we will eliminate all further procedural steps relating to that part and we will proceed to enter an order in accordance with the tentative findings and conclusions set forth in this order;[4]

6. We will serve this order on the Mayors of Lawton, Ft. Sill, Wichita Falls, Oklahoma City, and Tulsa; the airport managers of Lawton/Ft. Sill Municipal, Wichita Falls Municipal Airport, and Will Rogers World Airport; Governors, States of Oklahoma and Texas; the Oklahoma Aeronautics Commission and Texas Aeronautics Commission; Frontier Airlines, Texas International Airlines, Metro Airlines,

[2] Continental filed a 60-day notice under section 401(j)(2) in Docket 34081 on November 20, 1978.

[3] As well as relieving Continental of its service obligation at these points, this determination effectively relieves Metroflight of any obligation to provide the replacement service.

[4] Since provision is made for the filing of objections to the show-cause proposed, we will not entertain petitions for reconsideration regarding the deletion application.

Rio Airways; and the Postmaster General; and

7. We amend ordering paragraph 2 of Order 77-10-92 to delete the words "for a period of five years" and to delete subparagraph 2(b).

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[5]
Secretary.

[FR Doc. 79-2584 Filed 1-24-79; 8:45 am]

[6320-01-M]

[Docket Nos. 31128; Order 79-1-100]

EASTERN AIR LINES, INC., ET AL.

Order To Show Cause and Denying Petitions for Reconsideration

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 18th day of January 1979.

Application of Eastern Air Lines, Inc., for an exemption under section 416(b) of the Federal Aviation Act of 1958, as amended, Docket 31128; application of Northwest Airlines, Inc., for amendment of its certificate of public convenience and necessity for Route 3, Docket 31213; application of Northwest Airlines, Inc., for an exemption under section 416(b) of the Federal Aviation Act of 1958, as amended, Docket 31244; application of Delta Air Lines, Inc., for amendment of its certificates of public convenience and necessity for Routes 8, 24, 27, and 54, Docket 31529; application of Delta Air Lines, Inc., for an exemption under section 416(b) of the Federal Aviation Act of 1958, as amended, Docket 32791.

By Order 78-10, October 20, 1978, we granted Eastern's exemption application in Docket 31128 insofar as it requested nonstop authority in the Fort Myers-Chicago market and denied exemption applications by Delta and Northwest for authority in the Atlanta-Fort Myers and Chicago-Fort Myers markets, respectively. We left to a later order the applications of Delta and Northwest for certificate amendments involving service at Fort Myers.[1]

We have received petitions for reconsideration of our order by the Fort Myers Parties, Northwest, and Delta. Fort Myers contends that its tourist industry cannot compete effectively against other vacation destinations unless more competitive air service is authorized. Northwest argues that it is in an excellent position to meet the need for Chicago-Fort Myers service this winter; that its proposal is clearly superior to that of Eastern; and that the decision conflicts with action taken the same day granting three carriers exemption authority in the Seattle/Portland-Honolulu markets.[2] Delta adds that our order is inconsistent with the new Act, which it contends mandates a policy of authorizing competition and using our exemption powers more liberally. Both carriers argue that our decision is protectionist toward Eastern.

The Fort Myers Parties support the petitions for reconsideration filed by the two carriers. Eastern filed in opposition.

We will deny the petitions for reconsideration. The petitioners have failed to show any new facts or demonstrate any error in the findings made in Order 78-10-107. Our exemption award to Eastern, the only carrier with authority at both points, was a logical response to the need to provide improved service during a peak traffic period. Northwest would have had to open a new station at Fort Myers. Delta did not show any unsatisfied immediate need which required an exemption for Fort Myers-Atlanta authority.

We recognize that the new law allows us to use our exemption power more freely. As we move toward an open entry regime, the problems raised by the *Kodiak* case diminish. It is clear that multiple exemptions were justified in the Seattle/Portland-Honolulu situation where a major incumbent withdrew needed capacity from the market. Indeed, multiple exemptions may be highly desirable in far less compelling circumstances. However, Delta and Northwest have not shown that there is a sufficient urgency for additional services to require use of our exemption power, particularly in light of the speed of our current certification procedures. Under these circumstances, we believe that the 401 process should be the tool for granting the desired operating authority.

As to the certificate amendment applications, we have tentatively concluded, on the basis of tentative findings below, that it is consistent with the public convenience and necessity to authorize, on a Category II subsidy-ineligible basis, unrestricted nonstop service between Fort Myers, on the one hand, and Baltimore, Boston, Chicago, New York, Philadelphia, and Washington, on the other,[3] to Delta and any other applicant whose fitness, willingness and ability can be established by officially noticeable data,[4] and to grant the application of Northwest insofar as it seeks Fort Myers-Chicago authority. Further, we tentatively conclude that no oral evidentiary hearing is needed here since there are no material determinative issues of fact requiring such a hearing for their resolution.

Fort Myers is a rapidly growing point—in 1967 a total of 87,090 passengers enplaned or deplaned there, while in 1977 the figure was 426,240,[5] a fourfold increase. This growth represented a rate of increase 2½ times the national average.[6] Traffic at Fort Myers has exceeded the predictions of even the most optimistic applicants in the *Fort Myers-Atlanta Case*, Docket 27237.[7] Yet, nonstop service is only available in seven markets, four of which are within Florida.[8] Only two carriers are currently authorized to serve the city, and their authority is for the most part nonduplicative. Therefore, we tentatively conclude that the award of unrestricted authority between Fort Myers and Baltimore, Boston, New York, Philadelphia, Washington, and Chicago, would be consistent with the public convenience and necessity. National is the only carrier with unrestricted authority to the northeast, and Eastern is the only carrier with single-plane authority to Chicago.

Under the Airline Deregulation Act of 1978, we must approve an application for certificate authority unless we find, by a preponderance of the evi-

[5] All members concurred.

[1] In Docket 31213 Northwest has applied for certificate authority between Chicago and Fort Myers nonstop and via Tampa. In Docket 31529 Delta has applied to add Fort Myers as an intermediate point on four domestic routes.

[2] See Order 78-10-106

[3] We are not including Atlanta because the issue of nonstop authority between Fort Myers and Atlanta is included for consideration in the *Florida Service Case* (see Order 78-11-15, on reconsideration). For the same reason, we are not including Ft. Lauderdale, Miami, Orlando, Sarasota, or Tampa. To the extent that Northwest's application in Docket 31213 involves one stop authority between Fort Myers via Tampa, it will be dismissed. To the extent that Delta's application in Docket 31529 involves authority between Fort Myers and points not included in the scope of this order, it will be dismissed.

[4] Officially noticeable data consist of that material filed under § 302.24(m) of our Procedural Regulations. Applicants whose fitness cannot be so established must make a showing of fitness, as well as deal with any questions under sections 408 and 409 of the Act. Should such applications be filed, we will then consider how to deal with them procedurally.

On the basis of officially noticeable data, we find that Delta and Northwest are citizens of the United States and are fit, willing and able to perform the air services proposed to be awarded here and to conform to the provisions of the Act and our rules, regulations and requirements.

[5] C.A.B. O&D Surveys, Table 8.

[6] Appendix A to Northwest Motion for an Order to Show Cause, Docket 31213.

[7] Eastern forecast it would carry 196,155 passengers in CY 1976 (Exhibits EA-103, 104, Docket 27237). It actually transported 229,549 (Eastern exemption application, Docket 31128, Appendix B).

[8] The markets are Atlanta, Chicago (by exemption), Miami, New York (unused authority), Orlando, Sarasota/Bradenton and Tampa.

dence, that approval would not be consistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). The new Act creates a presumption that the grant of all applications is consistent with the public convenience and necessity. It places on any opponents of these applications the burden of proving them inconsistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). To give such opponents a reasonable opportunity to meet an admittedly heavy burden of proof, it is our view that applicants must indicate what type of service they would provide if, after receiving authority, they chose to serve the markets at issue. This does not mean that an applicant must show that it will provide service if it receives authority but rather what the nature of its service would be if it decided to serve. We will give all existing and further applicants 15 days from the date of service of this order to supply data,[9] in order to give interested persons sufficient information on the nature of the applicant's proposal to assess consistency with the public convenience and necessity. Our tentative findings concerning all applicants that have not filed illustrative service proposals are contingent on such filings.

Upon review of all the facts and pleadings in this case, we have tentatively determined that there is no reason why we should not grant multiple awards. Our tentative conclusions comport with the letter and spirit of the Airline Deregulation Act of 1978, particularly the declaration of policy set forth in section 102 which instructs us to rely, to the maximum extent possible, on competitive forces, including potential competition.[10] See our general conclusions about the benefits of multiple permissive authority in *Improved Authority to Wichita Case, et al.*, Order 78-12-106, December 14, 1978. Accordingly, we conclude that it is desirable to award the additional authority sought, as well as that included here by our own motion, whether or not services are in fact operated. The existence of additonal operating rights in markets now being served by incumbent carriers or authorized to be served will best effect the statute's policy objective of placing maximum reliance on the decisions of the marketplace. This will occur because newly authorized carriers may actually enter the market in order to exploit unmet demand, both in terms of price and service, or because incumbents will be encouraged by the realistic threat of entry to meet that demand. Because demand is dynamic in character and therefore constantly changing, the most effective means to assure that competitive forces will operate quickly and efficiently is to award multiple operating authority to carriers that are fit, willing and able to provide service.

Notwithstanding the foregoing tentative conclusions in support of multiple authority in this proceeding, we wish to make clear that we in no way desire to deter objections that might be asserted under the 1978 Act by air carriers, civic interests or other interested persons. The new statute contains a completely revised declaration of policy in section 102, as well as numerous additional and modified substantive provisions. Some of these statutory changes relate to considerations not expressly covered in the preceding statute. For example, while diversion from existing carriers will not be given decisive weight in rejecting applications for new authority except upon an extraordinary showing of financial jeopardy on the part of one or more existing air carriers, with the consequent loss of essential air service which cannot be immediately replaced, other provisions suggest that the Congress desires us to take into account other factors. These include, but are not limited to, satellite airport questions, the degree of concentration within the industry, and safety. Any party in this proceeding may explain in full why the authority that we propose to grant should not issue. Such explanations should apply specifically to the applications and authority in issue, and should be sufficiently detailed to overcome the statutory presumption of favorable treatment that the Act bestows on applications.

Finally, upon review of the environmental evaluation submitted by Northwest in its application, to which no answers have been filed, we find that our decision to award it Chicago-Fort Myers authority does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, or a major regulatory action under the Energy Policy and Conservation Act of 1975.[11] We reserve judgment on the environmental consequences of other applications or amendments to existing applications, pending submission of environmental data.

We will give interested persons 30 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; replies will be due within 10 days thereafter. We expect such persons to direct their objections, if any, to specific markets, and to support such objections with detailed economic analysis. If any evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a proceeding that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

Accordingly,

1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and amended and certificate of public convenience and necessity of Delta Air Lines for Routes 8, 24, 27, and 54 so as to authorize it to engage in nonstop operations between Fort Myers, on the one hand, and Boston, Baltimore, Chicago, New York, Philadelphia, and Washington, on the other; amending the certificate of Northwest Airlines for Route 3 so as to authorize it to engage in nonstop operations between Fort Myers and Chicago; and amending, to grant any of the authority in issue, the certificates of any other fit, willing and able applicants the fitness of which can be established by officially noticeable material;

2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or certificate amendments set forth here, to file with us and serve upon all persons listed in paragraph 9, no later than February 23, 1979, a statement of objections together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections; answers shall be due no later than March 5, 1979;

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[9] They should submit an illustrative schedule of service in the markets at issue, which shows all points that they might choose to serve, the type and capacity of the equipment they would likely use and the elapsed trip time of flights in block hours over the segments. For the markets, at issue only, they should also provide an environmental evaluation as required by Part 312 of our Regulations, and an estimate of the gallons of fuel to be consumed in the first year of operations in the markets if they instituted the proposed service, as well as a statement on the availability of the required fuel.

[10] Section 102(a) specifies as being in the public interest, among other things:

"The placement of maximum reliance on competitive market forces and on actual and potential competition (a) to provide the needed air transportation system, and (b) to encourage efficient and well-managed carriers to earn adequate profits and to attract capital" and "The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services."

[11] Northwest provided data only for the Chicago-Fort Myers market in its evaluation. We expect it to supply similar data for the other markets at issue if it wishes to obtain authority. We reserve judgment as to the environmental consequences of such additional services.

3. If timely and properly supported objections are filed, we will accord full consideration to the matters and issues raised by the objections before we take further action;[12]

4. In the event no objections are filed, we will deem all further procedural steps to have been waived and we may proceed to enter an order in accordance with the tentative findings and conclusions set forth here;

5. We deny the petitions of Delta Air Lines, Northwest Airlines, and the Fort Myers Parties for reconsideration of Order 78-10-107;

6. We grant the motions of Northwest Airlines for an order to show cause and for immediate hearing in Docket 31213;

7. We direct Delta Air Lines and any other applicants for the authority at issue, to file the data indicated in footnote 9 by February 8, 1979;

8. Except to the extent that they conform to the scope of this proceeding, we dismiss the applications of Delta Air Lines in Docket 31529 and of Northwest Airlines in Docket 31213; and

9. We will serve this order on Eastern Air Lines; Delta Air Lines; Northwest Airlines; National Airlines; the Fort Myers Parties; the City of Chicago; the City of New York; the Port of New York Authority; the City of Atlanta; the Tampa Bay Parties; the City of Boston; the City of Philadelphia; the City of Washington, D.C.; the City of Baltimore; all other certificated carriers; and the Postmaster General.

We will publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[13]
Secretary.

[FR Doc. 79-2581 Filed 1-24-79; 8:45 am]

[6320-01-M]

[Docket Nos. 34226, etc.; Order 79-1-117]

EASTERN AIR LINES, ET AL.

Order Denying Consolidation and Instituting Investigation

Adopted by the Civil Aeronautics Board at its offices in Washington, D.C., on the 19th day of January 1979.

Eastern Air Lines, for approval of acquisition of control of National Air Lines, Inc., Docket 34226, Texas International-national acquisition case and enforcement investigation, Docket 33112, Pan American-National Acquisition Case, Docket 33283.

On December 13, 1978, Eastern Air Lines filed an application requesting Board approval of its proposed acquisition of control of National Airlines. Eastern also filed a motion to consolidate this application into the on-going hearing on the applications of Texas International Airlines[1] and Pan American World Airways,[2] applications that also request Board approval of proposed acquisitions of National Airlines.

Answers supporting Eastern's motion to consolidate have been filed by Braniff Airways and the United States Department of Transportation. The Department of Justice stated by letter that it did not oppose consolidation. Answers in opposition to consolidation have been filed by Pan American, Texas International, the "510 Furloughed Pan American Airmen,"[3] and the Board's Bureau of Pricing and Domestic Aviation.[4] National Airlines also filed an answer, without taking a position on whether the Board should consolidate the Eastern proposals.

Eastern's pleadings and the answers to it motion were filed with the Board and were also reviewed by Judge William H. Dapper, the administrative law judge presiding over the consolidated Pan American and Texas International hearing. On December 19, Judge Dapper presented the consolidation issue to the Board, as is provided for by our Rules of Practice,[5] along with his recommendation that the Board grant the consolidation request.[6]

We have decided not to consolidate Eastern's application with those of Pan American and Texas International, at least not at trial stage. The Eastern application will be heard separately and under the expectation that the record in that proceeding will be certified directly to the Board at the close of testimony. In reaching this decision we have considered all the arguments for consolidation, but we are not convinced that it would be fair to the opposition parties or good administrative practice to consolidate so untimely an application, coming at the close of testimony and months after commencement of the hearings, and consequently risk an indeterminate delay in cases that are nearly ripe for decision. This would be especially bad precedent in the very time-sensitive area of takeovers and mergers. We believe that direct certification of the record will permit us to meet the possible problems raised in the consolidation request, without jeopardizing the progress of the other applications.

The principal arguments advanced in favor of consolidation are the following. The applications have common issues of law and fact and many common parties. Consequently, it is argued, administrative efficiency and the need to avoid inconsistent determinations from the same evidence require consolidation. It is also argued that Eastern's application is mutually exclusive with those of Pan American and Texas International, that the public interest cannot be properly examined without a comparison of the various proposals, and that Eastern will be precluded from effecting its proposal if either of the other applications is approved first. Finally, it is argued that the Airline Deregulation Act,[7] which under certain circumstances requires consideration of less anticompetitive alternatives before approval of a merger,[8] also requires consolidated consideration of these proposals.

As to the arguments about common issues of law and fact—and obviously not all of these questions will be identical—we believe that the parties and the new administrative law judge assigned to the Eastern application should make extensive use of the existing record. To this end, we request the parties and the judge to use their best efforts to construct the new record by incorporation and judicial notice of the record in Dockets 32112 and 33282, and to devise whatever other efficiences are procedurally fair. We will also request that the procedural schedule in the evidentiary phase of the Eastern proceeding be scheduled to conclude on or about the first of April. This will permit certification of the Eastern record directly to the Board in time for contemporaneous consideration with the Pan American and Texas International records—should this somehow be required. However, these cases do not involve comparative questions in a "carrier selection" sense, and the issue of impact on competition must be answered for each application separately.

Given the decision to bypass the initial decision stage if contemporaneous decision becomes necessary, most of the arguments for consolidation—dealing as they do with the need for comparision and possible prejudice to Eastern—are substantially mooted. We

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[12] Since provision is made for the filing of objections to this order, we will not entertain petitions for reconsideration.

[13] All Members concurred.

[1] Docket 33112.

[2] Docket 33283. This docket and that noted above have been consolidated already and have proceeded as a single hearing. Order 78-9-24, September 7, 1978.

[3] This is a group of furloughed Pan American employees who are participating in the Pan American and Texas International hearing.

[4] The Bureau's answer was filed with motion to file late which we will grant.

[5] Rule 12(b), 14 CFR 302.12(b).

[6] Judge Dapper has not received the answer of the Bureau of Pricing and Domestic Aviation at the time he made his recommendation.

[7] Pub. L. No. 95-504, 92 Stat. 1705 (1978).

[8] *Id.*, Sec. 26, amending section 408 of the Federal Aviation Act of 1958, 49 U.S.C. 1378. The Board is instructed to consider less anticompetitive alternatives to a section 408 proposal if it finds that the proposals might be approved despite antitrust implications.

would add, however, that we have chosen not to consolidate because we are quite uncertain about the extent of delay that would ensue,[9] and we do not care to set an unfortunate precedent for merger proceedings. Mergers and takeovers are time-sensitive matters. The Board has traditionally respected this,[10] and we are now commanded to do so by the Airline Deregulation Act.[11] We intend to proceed to a prompt decision on these applications, and certification of the Eastern record will permit a timely decision on all the applications as required.[12]

Accordingly:

1. The application of Eastern Airlines in Docket 34426 will be set for expedited hearing.

2. The taking of evidence before an administrative law judge should be completed by April 1.

3. The record in this proceeding will be certified directly to the Board unless, by further order, the Board requests an initial decision.

4. Parties to Dockets 33112 and 33283 are parties to the proceedings in Docket 34226.

5. The motion of Eastern Airlines for consolidation is denied and the motion of the Bureau of Pricing and Domestic Aviation to file late is granted.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[13]
Secretary.

O'Melia, Member, Dissenting:

The purpose of today's board order is simply to decide what procedure to use in dealing with Eastern's application for acquisition of control of National Airlines. The natural and expected procedure, the procedure recommended by the presiding administrative law judge in his certification to the Board of December 19, 1978, the procedure which the Board itself followed in the *Pan American-National Acquisition* Case, (Docket 33283, see Order 78-9-24) is to consolidate the Eastern application to the other two pending merger cases involving National Airlines (Dockets 33283 and 33112). Consolidation makes sense, because then common issues of law and fact can be appropriately and efficiently treated together, and problems raised by the mutual exclusivity of these various applications can be minimized. The Board considered all this, but, on December 21, 1978,[1] motivated by a desire to innovate and expedite the case, it voted to test out a maverick procedure. It has taken almost four weeks to prepare an order which would merely confirm in writing the Board's decision not to consolidate without making its legal and practical deficiencies too evident.[2] I must dissent to it.

The principal arguments for consolidating Eastern's application are succinctly summarized at page 3 of the order. It is significant to me that affirmative, positive arguments for not consolidating are not similarly set out in the order. We are instead left to gather that this is being done to expedite the case, to avoid setting an unfortunate precedent and to move to a prompt and timely decision on *all* the applications. I dissent, because this order does exactly the opposite. After being told in the body of the order that we are by-passing the initial decision stage—presumably, this will save us a lot of time—we are then informed in a footnote and in an ordering paragraph that the Board may subsequently change its mind and ask the administrative law judge for an initial decision. Am I to believe that this all-options-open solution will save us time as compared to the one and one-half month delay estimated by the administrative law judge which consolidation might require? I wonder also what this does to the case organization and direction of the administrative law judge? Wouldn't he be likely to handle the case differently if he knew that he was to write an initial decision, or knew that he was not to write an initial decision? Or are we to be even more innovative and assign still a third judge to write the initial decision.

Aside from these purely pragmatic reasons for dissenting from the Board's order, there are some deeper precedential aspects that give me pause. First, in light of the Board's determination in *Eastern-National-Colonial, Acquisition of Assets*, 18 C.A.B. 453, 455 (1954), that the objectives of the two proceedings in that case on applications for acquistion and merger "were mutually exclusive", I find it disturbing for the Board to refuse to consolidate the Eastern application with the pending Pan American and TXI applications now being heard. The presiding judge's certification to the Board, as indicated above, stated that consolidation of Eastern's application would cause little delay and would not defer the ultimate decision in the consolidated case by more than six weeks. It seems to me that any reasonable balancing of the precedent of the Board requiring consolidation of *mutually exclusive* applications, and the small delay occasioned by consolidation leads to the conclusion that the Eastern application should be consolidated herein. Moreover, I believe that the Board would be in a better position to fulfill its responsibilities under the new Deregulation Act if the Eastern application were consolidated into this proceeding. The Board would then have the benefit of the views of a presiding officer who had heard the entirety of the evidence and had weighed all of the arguments of the parties, as well as having the published views of the affected parties and the public interest intervenors, both governmental and private.[3] This would be true regardless of whether the Board takes a narrow or a very broad view of the phrase "consistent with the public interest" appearing in section 408(b)(1) of the Act. It would be especially helpful to have a consistent record, and a record that permits us to keep our options open on that key Congressional directive to the Board on mergers and control.

This brings me to my second point, and that is the question whether the Board should give *comparative consideration* to these various applications. So far as I am aware, the Board has not decided in the short time since enactment of the Airline Deregulation Act that the only public interest considerations in processing merger applications are the anti-competitive aspects of the Clayton Act. However, this was the principal argument made to the Board by staff components in arguing that the cases did not need to be consolidated. I am not prepared to make such far-reaching conclusions without the benefit of the completed records in all of the proceedings. This is particularly true because international routes are involved. I have seen no discussion on whether these carriers, which all hold international routes, could be authorized to acquire National without a comparative hearing as to which one would be the best qualified carrier under international licensing policy guidelines. These international route policy guidelines have very significant public interest considerations, and have remained unchanged under the new statute. I am not convinced, because of these elements, that considerations of public interest concerns in section 408 proceedings is confined to those alternatives having to do with anticompetitive effects.

Nor does separate hearing of the Eastern application satisfy what may be a requirement, that the Board reach comparative judgments as to each of these carriers *on the same record*. Inherent in the Board's refusal to consolidate, and in its attempt to move these cases quickly, is the stated probability that the initial decision may be dispensed with in the Eastern proceeding. The evidence in the Eastern proceeding will be prepared and the case tried at a time when the parties still will be wrestling with the Pan Am/TXI/National case; this is hardly a

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[9] In his recommendation in favor of consolidation, Judge Dapper appeared to indicate a delay of approximately one month. The Bureau of Pricing and Domestic Aviation claims, however, that proceeding on such an accelerated basis would prejudice their ability to participate. We agree that this could be a problem; the Eastern application presents many questions which are quite unlike those involved in the earlier applications. Consequently, we have allowed, in the choice of an April 1 target date for completion of the record, several additional weeks for evidentiary preparation.

[10] *See*, Order 73-6-106, June 27, 1973, and the cases cited there.

[11] Sec. 1010 of the Airline Deregulation Act, *supra*, provides that the Board must issue decision in merger cases not later than the last day of the sixth month after submission. Due to a temporary delay in the effectiveness of this provision, it is not technically applicable to any of the applications here.

[12] Our determination is made consistent with the requirements of the Administration Procedure Act, 5 U.S.C. 557(b)(2). If after we have a more complete understanding of the timing of this and the related merger cases, it becomes desirable to have briefs to the administrative law judge and an initial decision we will so inform the parties and the administrative law judge.

[13] All Members concurred except Member O'Melia who filed the attached dissent.

[1] I was away from Washington on official Board business on December 21, 1978, and did not participate in that meeting.

[2] On the basis of the Board's vote and instructions at the December 21 meeting, an administrative law judge was assigned to the Eastern application. A prehearing conference on this application has been convened and held, although an instituting order for this proceeding has not been issued by the Board.

[3] We should not overlook the fact that the Department of Transportation supported Eastern's motion to consolidate, and the Department of Justice stated by letter that it did not oppose Eastern's motion.

prescription to make an adequate record, to give a reasonable opportunity to the parties to make their best case, or as indicated above, to keep the Board's options open.

Moreover, inherent in the procedure proposed is a short-circuiting of the adjudicatory process and a substitution of Board staff for the function of an administrative law judge rendering a decision based on the evidence he has heard, as well as forming the issues for the parties and for the decisional body on appeal. The procedural irregularities already alleged in this proceeding, including the questionable seminars (see my separate statement to Order 79-1-49, January 8, 1979) and the waivers granted to key Board personnel involved in enforcement aspects freeing them from "separation of functions" constraints (see my separate statement in PR-175, July 6, 1978) create the impression that the Board's views were previously conceived and are not being openly made on the record. Additional procedural limitations, particularly in light of the continued arguments by staff that could be perceived to limit the Board's options in the ultimate decision, can only foster concern by the parties, the public and the courts that refusal to consolidate and elimination of the initial decision as to Eastern are designed to infringe the rights of the parties to a full and open hearing.

I, too, am in favor of measures to expedite our cases. But, here, there are too many detriments and disadvantages to the proposed expedited procedure, including the substantial possibility that it will only result in a greater loss of time. I would vote to consolidate the application.

RICHARD J. O'MELIA.

[FR Doc. 79-2583 Filed 1-24-79; 8:45 am]

[6320-01-M]

[Docket Nos. 31447, 33734; Order 79-1-104]

PIEDMONT AVIATION, INC, AND BRANIFF AIRWAYS, INC.

Final Order and Order to Show Cause

Adopted by the Civil Aeronautics Board at its Office in Washington, D.C., on the 18th day of January 1979.

Application of Piedmont Aviation, Inc., for amendment of its certificate of public convenience and necessity for Route 87 to extend its system to Dallas/Ft. Worth, Docket 31447, application of Braniff Airways, incorporated, for amendment of its certificate of public convenience and necesity for Route 9 to authorize service Dallas/Ft. Worth Greensboro/Raleigh, Docket 33734.

On September 13, 1978, we adopted an order to show cause proposing to take two actions: (1) To amend Piedmont's certificate for Route 87 so as to add a new permissive and Category II subsidy-ineligible segment between the terminal Dallas/Ft. Worth, on the one hand, and the coterminals Greensboro/High Point and Raleigh/Durham, on the other, and (2) to remove Eastern's stop restrictions in the Dallas-Greensboro/Raleigh markets on its certificates for Routes 5 and 10.[1] The order provided for the filing of objection and answers.

Eastern objected to our proposed amendment of Piedmont's certificate, arguing that, since we proposed to grant Eastern nonstop authority in these markets in our order dealing with its route realignment application,[2] we should give it the exclusive opportunity to implement and develop any new authority.

Braniff also responded to our order, objecting to our proposed actions unless we simultaneously grant it authority in these markets. On the same date (October 23), it applied to amend its certificate for Route 9 so as to authorize Dallas/Ft. Worth-Greensboro/Raleigh service.[3] It also petitioned for an order to show cause why we should not grant it the route authority it requests.

Piedmont filed a reply in opposition to Braniff's response and also answered in opposition to Braniff's petition. Eastern also answered in opposition to Braniff's motion to consolidate and petition to show cause, making arguments similar to those it made in connection with our proposed Piedmont awards.

For the reasons stated below, we will make final our tentative findings and conclusions set forth in Order 78-9-60 and amend Piedmont's certificate for Route 87 and Eastern's certificates for Routes 5 and 10 as proposed. We also tentatively conclude, based on the tentative findings below, that it is consistent with the public convenience and necessity to amend Braniff's certificate for Route 9 so as to add a new segment between the terminal Dallas/Ft. Worth, on the one hand, and the coterminals Greensboro and Raleigh, on the other, and to award Dallas/Ft. Worth-Greensboro/Raleigh authority to any other fit, willing and able applicant the fitness of which can be established by officially noticeable data[4] and that provides that material specified on page 5 below. Further, we tentatively find that such awards can be made without the necessity of an oral evidentiary hearing since there are no material determinative facts which require such a hearing for their determination.

With regard to making final Order 78-9-60, we find Eastern's objections without merit. In essence, it asks for protection since it has the dominant position in the markets. We held in Order 78-8-97[5] that the 1958 Act did "not instruct us to safeguard each individual carrier from all the possible inroads of competition, where those inroads do not * * * threaten the carrier's existence or the provision of essential air services." This is even more clearly the case under the Airline Deregulation Act of 1978,[6] which instructs it to rely, to the maximum extent possible, on competitive forces including potential competition.[7] Eastern has not raised any objections that persuade us to deviate from the policies enumerated in the 1978 Act.[8]

As to our proposed award to Braniff, Piedmont argues that the certification of Braniff may contribute to unreasonable industry concentration, provide an opportunity for unfair competitive practices, and contravene the Act's objectives, contained in its Declaration of Policy, of strengthening

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[1] Order 78-9-60.

[2] Order 78-9-136, September 29, 1978. Eastern's route realignment application was filed in Docket 29983. This order will preempt the relief proposed in Order 78-9-136 in the Dallas/Ft. Worth-Greensboro/Raleigh markets.

[3] Docket 33734. It also moved to consolidate its application with Docket 31447. We will deny Braniff's motion as untimely. Piedmont filed its application in Docket 31447 on September 29, 1977. Braniff delayed over one year before filing its application and motion to consolidate. Rather than delay making final the September 13 show-cause order, we will deal with Braniff's application separately in this order.

[4] Officially noticeable data consist of that information filed with us under Part 302.24(m) of our Rules of Practice. Applicants whose fitness cannot be so established must submit sufficient evidence on that issue and on any Section 408 and 409 issues. We will determine the procedures for dealing with such applications, when and if they are filed.

On the basis of officially noticeable data, we find that Braniff is a citizen of the United States and is fit, willing, able to perform the air service proposed and to conform to the provisions of the Act and our rules, regulations, and requirements. We also find, based on Braniff's environment evaluation, that our proposed action will not consitute a major Federal action significantly affecting the quality of the human environmental within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 or a major regulatory action within the intent of the Energy Policy and Conservation Act. We reserve judgment on the environmental consequences of other application pending submission of environmental data.

[5] *Piedmont Boston Entry, p. 9*

[6] Pub. L. 95-504, 92 Stat. 1705 (October 24, 1978).

[7] Section 102(a) specifies as being in the public interest, among other things:

"The placement of maximum reliance on competitive market forces and on actual and potential competition (a) to provide the needed air transportation system, and (b) to encourage efficient and well managed carriers to earn adequate profits and to attract capital" and "The encouragement, development, and maintenance of an air transporation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services."

[8] This discussion applies with equal force to Eastern's objection to Braniff's petition to show cause. Eastern has in neither case met its burden under the 1978 Act of showing that the grants of new authority would not be consistent with the public convenience and necessity.

small carriers and encouraging efficient and well-managed carriers to earn adequate profits and to attract capital.

Contrary to Piedmont's assertion, we find that our tentative decision here to make awards in the Dallas/Ft. Worth-Greensboro/Raleigh markets to Braniff and any other fit, willing and able carrier conforms with the letter and spirit of the Act. A review of the pleadings and facts of this case convince us that there is no reason why multiple awards should not be made. Whether or not services are actually operated, we believe it is desirable to award additional authority in these markets, as this will best promote the statute's policy objective of placing maximum reliance on the decisions of the marketplace. The policy will be effectuated because Braniff and any other newly authorized carriers may actually enter the market in order to exploit unmet demand, in terms of price or service, and because incumbents will be induced by the realistic threat of entry to operate at or near optimum levels of efficiency. Because demand is dynamic in character, and therefore constantly changing, the most effective means to assure that carriers will respond quickly and efficiently to competitive forces is to award operating authority to all carriers that are fit, willing and able to provide service.

Piedmont's claim that grant of this authority to Braniff may provide an opportunity for predatory and unfair practices is totally speculative. We will not stifle competition upon such unsubstantiated fears. Similarly, we disagree with its contention that our proposed actions may contribute to unreasonable industry concentration. We are opening these markets to competition by all fit, willing and able carriers, large and small, including Piedmont. As we said in our final *Oakland* order: [9]

> Being big is not always an advantage; very often a small or medium-sized market will be far more important to a small carrier than to a larger rival, and will receive more top management attention, more innovation, service mor carefully tailored to local market needs, the support of beyond-market traffic flows to which the larger carrier lacks access * * * Of course, the smaller carrier does not always beat out the larger, but it does so often enough to refute utterly any theory that the latter have such weighty natural advantages that the smaller ones will be driven out of the market unless the Board extens its protecting arms around them (at 41).

Indeed, the Conference Report to the 1978 Act [10] specifically explains that paragraph (a)(10) of the Act's policy statement, which calls for the strengthening of small carriers "is not interpreted to mean that the Board must engage in carrier selection in its route proceedings to preclude large air carriers from new routes." In short, the Act directs the promotion of competitive opportunities for all carriers, not the sheltering of small carriers.

Under the Airline Deregulation Act of 1978, we must approve an application for certificate authority unless we find, by a preponderance of the evidence, that approval would not be consistent with the public convenience and necessity. The new Act creates a presumption that the grant of all applications is consistent with the public convenience and necessity. It places on any opponents of these applications the burden of proving them inconsistent with the public convenience and necessity. To give such opponents a reasonable opportunity to meet their burden of proof, it is our view that applicants must indicate what type of service they would provide if they served the markets at issue. This does not mean that an applicant must show that it will provide service if it receives authority but rather what the nature of its service would be if it decided to serve. We will give all existing and would-be applicants 15 days from the date of service of this order to supply data,[11] in order to give interested persons sufficient information on the nature of the applicant's proposal to assess consistency with the public convenience and necessity. Our tentative findings concerning all applicants that have not filed illustrative service proposals are contingent on such filings.

Finally, notwithstanding the foregoing tentative conclusions in support of multiple authority in this proceeding, we wish to make clear that we in no way desire to deter objections that might be asserted under the 1978 Act by air carriers, civic interests or other interested persons. The new statute contains a completely revised declaration of policy in section 102, as well as numerous additional and modified substantive provisions. Some of these statutory changes relate to considerations not expressly covered in the preceding statute. For example, while diversion from existing carriers will not be given decisive weight in rejecting applications for new authority except upon an extraordinary showing of financial jeopardy on the part of one or more existing air carriers, with the consequent loss of air service which cannot be immediately replaced other provisions suggest that the Congress desires us to take into account other factors. These include, but are not limited to, satellite airport questions, the degree of concentration within the industry and safety. Any party in this proceeding may explain in full why the authority that we propose to grant should not issue. Such explanations should apply specifically to the applications in issue, and should be sufficiently detailed to overcome the statutory presumption of favorable treatment that the Act bestows on applications.

We will give interested persons 30 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; replies will be due within 10 days thereafter. We expect such persons to direct their objections, if any, to specific markets, and to support such objections with detailed economic analysis. If an evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a proceeding that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

Accordingly,

1. We make final our tentative findings and conclusions stated in Order 78-9-60 and amend Piedmont's certificate for Route 87, as shown in appendix A,[12] and Eastern's certificates for Routes 5 and 10, as shown in appendix B;[12a]

2. The certificate amendments shall be effective on the date of service of this order, subject to timely payment of such license fees as may be prescribed by us; and any service operated by Piedmont in the Dallas/Ft. Worth-Greensboro/Raleigh markets shall be classified as subsidy-ineligible, Category II;

3. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated here

[9] Order 78-9-96, September 21, 1978.

[10] H. Rep. 1779, 95th Cong. 2d Sess. 56 (1978).

[11] They should submit an illustrative schedule of service in the markets at issue, which shows all points that they might choose to serve, the type and capacity of the equipment they would likely use and the elapsed trip time of flights in block hours over the segments. For the markets at issue only they should also provide an environmental evaluation as required by Part 312 of our Regulations, and an estimate of the gallons of fuel to be consumed in the first year of operations in the markets if they instituted the proposed service, as well as a statement on the availability of the required fuel.

[12] We have considered Piedmont's representations on the gross transport revenue increase resulting from an award of Dallas/Ft. Worth-Greensboro/Raleigh authority. On the basis of these representations, we find that, for purposes of a license fee, the resulting increase in gross transport revenues will be $16.2 million. We note, however, that the payment of license fees assessed for new authority has been suspended by Order 77-4-42; April 18, 1972.

[12a] Appendices A and B filed with the office of the Federal Register as part of the original document.

and amending Braniff's certificate for Route 9 so as to add a new segment, authorizing the nonstop scheduled air transportation of persons, property and mail between the terminal point Dallas/Ft. Worth, on the one hand, and the coterminal points Greensboro/High Point and Raleigh/Durham, on the other; and granting any of the authority in issue to any other fit, willing and able applicant, the fitness of which can be established on the basis of officially noticeable material, by amending its certificate(s);

4. We direct any interested person objecting to the issuance of an order making final the proposed findings, conclusions and certificate amendments set forth here to file with us and serve upon all persons listed in paragraph 7, those objections, together with a summary of testimony, statistical data, and evidence expected be relied on to support objections, no later than February 23, 1979; answers to objections shall be filed no later than March 5, 1979; [13]

5. In the event no objections are filed, we will deem all further procedural steps to be waived and we may proceed to enter an order in accordance with the tentative findings and conclusions we have set forth here;

6. We deny Braniff's motion to consolidate into Docket 31447 its application in Docket 33734; and

7. We shall serve this order upon Piedmont Aviation, Airlift International, Allegheny Airlines, American Airlines, Braniff International, Continental Air Lines, Delta Air Lines, Eastern Air Lines, Flying Tiger Line, Hughes Airwest, Texas International Airlines, Frontier Airlines, National Airlines, North Central Airlines, Northwest Airlines, Ozark Air Lines, Pan American World Airways, Southern Airways, Trans World Airlines, United Airlines, the North Carolina Department of Transportation, Division of Aeronautics, the Greensboro/High Point Airport Authority, the Carolina By-Products Company, Inc., the Virginia State Corporation Commission, the Virginia Division of Aeronautics, the Texas Aeronautics Commission, the Norfolk Port and Industrial Authority, the Airport Director, Raleigh/Durham Airport Authority, the Airport Managers, Byrd International Airport and Roanoke Municipal Airport, the Cities of Dallas and Fort Worth, the Dallas Chamber of Commerce, the Mayors of Knoxville, Bristol (Virginia), Roanoke, Winston-Salem, Greensboro, Fayetteville, Richmond, Dallas, Fort Worth, and the Governors of the States of North Carolina, New York, Virginia, and Texas.

We shall publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[14]
Secretary.

[FR Doc. 79-2580 Filed 1-24-79; 8:45 am]

[13] Since we have provided for the filing of objections, we will not entertain petitions for reconsideration.

[14] All members concurred.

[6335-01-M]

COMMISSION ON CIVIL RIGHTS

ILLINOIS ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Illinois Advisory Committee (SAC) of the Commission will convene at 10:00 am and will end at 3:00 pm, on February 20, 1979, at 230 South Dearborn Street, Midwestern Regional Office Conference Room No. 3280, Chicago, Illinois 60604.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Midwestern Regional Office of the Commission, 230 South Dearborn Street, Chicago, Illinois 60604.

The purpose of this meeting is to discuss report from Regional SAC Conference (12/15/78), up-date on Insurance Redlining Follow-up, Chicago desegregation Report and Special Education Report.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 19, 1979.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 79-2585 Filed 1-24-79; 8:45 am]

[3510-12-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976. (Pub. L. 94-265), will meet to discuss: (1) Shark Fishery Management Plan, (2) Fluke Fishery Management Plan, (3) Status of Fishery Management Plans, (4) Other Administrative Matters.

DATES: February 14, 15, & 16, 1979.

ADDRESS: The meeting will take place at the Sheraton-Fountainebleau Inn, 10100 Ocean Highway, Ocean City, Maryland 21842. (302) 524-3535.

FOR FURTHER INFORMATION CONTACT:

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, North and New Streets, Room 2115, Federal Building, Dover, Delaware 19901, Phone: (302) 674-2331.

SUPPLEMENTARY INFORMATION: The meeting will convene on Wednesday, February 14, 1979, at 1:00 p.m. and will adjourn on Friday, February 16, 1979, at approximately 1:00 p.m. The meeting is open to the public.

Dated: January 22, 1979.

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

[FR Doc. 79-2670 Filed 1-24-79; 8:45 am]

[3810-70-M]

DEPARTMENT OF DEFENSE

Office of the Secretary

DISCHARGE REVIEW BOARDS

Implementation of Requirements Regarding the Index of Decisions and Preparation of Decisional Documents Issued by the Army, Navy, and Air Force Discharge Review Boards

Notice is hereby given that procedures have been established to implement requirements regarding the quarterly index of decisions and preparation of decisional documents issued by the Army, Navy, and Air Force Discharge Review Boards. Procedures have also been established to inform certain classes of persons about these procedures.

Requirements for the preparation of decisional documents and indexes of Discharge Review Board decisions were established in the Stipulation of Dismissal, *Urban Law Institute of Antioch College, Inc. v. Secretary of Defense*, No. 76-0530 (D.D.C., Jan. 31, 1977). These procedures were further developed in DoD Directive 1332.28 (43 FR 13564, 32 CFR Part 70). On August 23, 1978, the District Court entered a preliminary injunction in the *Urban Law Institute* case directing the Department of Defense to develop procedures that would further the purposes of the previous Stipulation of Dismissal.

By Memorandum to the Secretaries of the Military Departments, dated October 28, 1978, the Assistant Secretary of Defense for Manpower, Reserve Affairs, and Logistics (ASD(MRA&L)) created procedures

for taking corrective action with respect to allegations that the decisional documents violate provisions of the Stipulation of Dismissal. The Memorandum also set forth the conditions under which such corrective action may entitle an applicant to a new hearing. The Memorandum further described other opportunities for applicants to receive new hearings. Details concerning the placement of the index of Discharge Review Board decisions are provided in the Memorandum. The Memorandum also specified the manner of notification about these matters to certain classes of individuals and provided sample letters to be used by the Discharge Review Boards.

As a result of the court's order of November 9, 1978, the original attachments to the Memorandum of October 28, 1978, have been modified. The modifications are reprinted below.

On December 9, 1978, the ASD(MRA&L) sent a Memorandum to the Secretaries of the Military Departments in furtherance of the court's order of November 9, 1978, by providing detailed procedures for a Joint Service Review Activity to receive and act on complaints about violations of the Stipulation as authorized by the court's order. The Memorandum establishes the Joint Service Review Activity as a function of the Department of Defense under the general supervision of the Deputy Assistant Secretary of Defense for Military Personnel Policy, and provides procedures for processing complaints authorized by the court's order.

The Department of Defense has been ordered by the District Court to implement these procedures; therefore, prompt action is required in order to meet the requirements established by the court. Under the procedures set forth in the Memorandum, certain classes of applicants and their counsel were or soon will be provided with information about use of the index published in November 1978, which contains entries under the newly published uniform standards for the Dischage Review Boards. The new indexing categories were published in the FEDERAL REGISTER (43 FR 47273) on October 13, 1978.

In view of the court order mandating prompt action, and the interest of applicants in receiving timely notice of the new procedures, immediate implementation is required. Therefore, notice and prepublication of these matters or public comment is impracticable, unnecessary, and contrary to the public interest.

FOR FURTHER INFORMATION CONTACT:

Col. Hugh R. Overholt, JAGC, US Army or Lt. Col G. A. Johnson, USAF, telephone 202-697-9525, Office of the Deputy Assistant Secretary of Defense (Military Personnel Policy), The Pentagon, Room 3C980, Washington, D.C. 20301.

EFFECTIVE DATE: December 9, 1978.

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

JANUARY 22, 1979.

ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., October 28, 1978.

MEMORANDUM FOR THE SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Urban Law Institute of Antioch Institute of Antioch College, Inc. et al. v. Secretary of Defense, et al., Civ. No. 76-0530 (D.D.C.) *Stipulation: Jan. 31, 1977 (Court Order: Aug. 23, 1978)*

New procedures for the operation of the Discharge Review Boards are forwarded for immediate implementation. This will insure we meet the requirements of Dod Directive 1332.28, as well as the matters arising out of the subject case.

It is requested that the Department of the Army, as designated administrative focal point for processing all matters affecting the DRBs, undertake the responsibility for providing administrative support to the Joint-Service Review Activity.

JOHN P. WHITE,
Assistant Secretary of Defense, (Manpower, Reserve Affairs & Logistics).

PROCEDURES FOR THE OPERATION OF THE DISCHARGE REVIEW BOARDS IN CONNECTION WITH U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA (COURT ORDER: AUG. 23, 1978)

1. These procedures implement the Stipulation and Court Order in Urban Law Institute of Antioch College, Inc. v. Secretary of Defense, No. 76-0530 (D.D.C.) (Stipulation of Dismissal: Jan. 31, 1977).

2. To assist the Assistant Secretary of Defense (MRA&L), a joint service review activity shall be established for the sole purpose of assuring that decisional documents and index entries meet the requirements of the Stipulation in the subject case and DoDD 1332.28.

3. *Procedures.* a. Any person may submit a specific complaint alleging that an index entry or a decisional document issued on or after April 1, 1977 contains a specifically identified violation of the stipulation. Such complaints shall be addressed to the Department of Defense, as follows:

(1) Army cases shall be sent to the following address: Office of Assistant Secretary of Defense (MRA&L/MPP), Attn: Discharge Review—Army, Pentagon, Washington, D.C. 20301.

(2) Navy and Marine Corps cases shall be sent to the following address: Office of the Assistant Secretary of Defense (MRA&L/MPP), Attn: Discharge Review—Navy, Pentagon, Washington, D.C. 20301.

(3) Air Force cases shall be sent to the following address: Office of Assistant Secretary of Defense (MRA&L/MPP), Attn: Discharge Review—Air Force, Pentagon, Washington, D.C. 20301.

b. The complaint shall be forwarded to the Military Department concerned. If the President of the Discharge Review Board (DRB) or other official designated by the Secretary concerned determines that there is a specifically identified violation, a new statement of findings, conclusions, and reasons shall be prepared which complies with the decisional document requirements of DoDD 1332.28 and which applies the discharge review standards in effect at the time the original decisional document was prepared.

(1) Such statement shall be issued as an amendment to the decisional document by a panel of the DRB in a case where the defective document was issued by a DRB. If the defective document was issued as a result of a review by the Secretary concerned, the new statement shall be issued as an amendment to the decisional document by the Secretary or by an official to whom the Secretary's authority has been delegated.

(2) If it is determined that a decisional document that will comply with the decisional document requirements of DoDD 1332.28 cannot be prepared based upon the record of the proceedings and the records considered by the DRB in a case where the applicant did not receive complete relief, the applicant, and counsel, if any, shall be notified of the opportunity to request a new review of the case within thirty (30) days.

(3) In accordance with DoDD 1332.28, decisional documents issued under subparagraphs (1) and (2) shall be sent to the applicant and counsel, if any, and shall be made available for public inspection and copying. A copy of the amended decisional document available to the public shall be sent to the complainant and to the Assistant Secretary of Defense (MRA&L). On a quarterly basis, the joint service review activity shall monitor amended decisional documents under selection procedures established by the Assistant Secretary of Defense (MRA&L).

c. The issuance of a new decisional document pursuant to subparagraph (b) above shall not entitle the applicant to an opportunity for further review beyond that provided in reconsideration provisions of DoDD 1332.28 except in cases where the defective document was issued as a result of: (1) an initial record review conducted under the Department of Defense Special Discharge Review Program (SDRP) as implemented subsequent to April 5, 1977; or (2) an initial record review conducted pursuant to Pub. L. No. 95-126 (codified at 38 U.S.C.A. 3103(e)(2) (Supp. 1978)).

d. If a further review is authorized under the exceptions listed in subparagraphs (c)(1) or (c)(2), the applicant and counsel shall be notified of the right to request a de novo hearing under the discharge review standards in effect at the time such previous statement was prepared and under the standards in DoDD 1332.28. The applicant must submit a request for such de novo review within the time period that was permitted for response in the program under which the defective decisional document was issued. Government counsel will be made available to the applicant if such de novo review is conducted under the SDRP and the applicant would have been entitled to counsel under the SDRP. If the review is conducted under the SDRP, an initial decision will be made under the standards in DoDD 1332.28. If complete relief is not granted, the case will be reviewed under the SDRP standards in effect at the time the previous decisional document was issued. The decisional document shall contain a

statement of findings, conclusions, and reasons for the decisions under the SDRP and the decision under DoDD 1332.28.

e. If it is determined that corrective action is required with respect to an index entry, the necessary correction shall be submitted to the official responsible for preparation of the index.

f. If the Military Department determines that the correspondence does not include a specific complaint alleging that a decisional document or index entry contains a specifically identified violation of the Stipulation, the Military Department shall return the correspondence to the Assistant Secretary of Defense (MRA&L), citing the basis for its determination.

g. When the correspondence contains a specific complaint alleging that a decisional document or index entry contains a specifically identified violation of the Stipulation and the Military Department determines that any portion of the corrective action requested is not warranted, the correspondence will be returned to the Assistant Secretary of Defense (MRA&L). The Military Department will provide a brief description of the basis for its determination.

h. If correspondence is returned to the Assistant Secretary of Defense (MRA&L) under subparagraphs (f) or (g), a determination shall be made by the joint service review activity as to whether corrective action is required. If it is determined that such action is required, the Military Department shall be directed to take appropriate action under subparagraphs (b)-(e). If it is determined that no such action is required, an appropriate response shall be provided to the complainant by the joint service review activity citing the basis for the determination.

4. *Notice of the Opportunity to Seek Corrective Action and Other Matters.* Each Military Department shall provide the notice contained at Attachment 1 to all applicants and their counsel, if applicable, who were denied complete relief as a result of a hearing, record review, or Secretarial review held during the period from April 1, 1977 to August 23, 1978.

5. *The Index.* a. Each Military Department shall insure that the index is available at the site of all traveling board locations as soon as possible for hearings to be held on or before October 22, 1978.

b. Each Military Department shall insure that the index is reasonably available for the applicant at least 30 days prior to the arrival of the traveling board for all hearings held subsequent to October 22, 1978.

c. The index scheduled to be published in the last week of November, 1978 shall include the terminology contained in DoDD 1332.28 and any amendments thereof.

6. *Notification about the Index.* a. Each Military Department immediately shall provide the notice contained in Attachment 2 to applicants presently scheduled for a personal appearance hearing and their counsel.

b. Prior to publication of the index scheduled to be published in the last week of November, 1978:

(1) The notice contained in Attachment 2 shall be executed by the applicant and counsel, if any, prior to commencement of a personal appearance hearing;

(2) The notice contained in Attachment 2 shall be included in the notice required by DoDD 1332.28 to be sent to applicants and counsel concerning the availability of regulations;

(3) The notice specified in Attachment 3 shall be provided to applicants who have requested a documentary discharge review and their counsel. The Discharge Review Board may initiate consideration of the case pending receipt of the request for continuance. If a timely request is received, consideration of the case shall be held in abeyance for the duration of the continuance. If no request is received within 30 days, or if the applicant or counsel requests the Board to proceed, consideration of the case shall be completed and a decision shall be issued.

c. Subsequent to publication of the index scheduled to be published in the last week of November, 1978: (1) general information about the index shall be provided in the notice to applicants concerning the availability of regulations required by DoDD 1332.28; (2) the notice specified in Attachment 3 shall be sent to the applicant prior to a documentary discharge review if the applicant was not provided with the notice specified in paragraphs 6(b) or 6(c)(1).

7. *Decisional Documents.* In order to further the purposes of DoDD 1332.28, the President of the Discharge Review Board, or the presiding officer of the panel concerned, shall insure that decisional documents prepared by the board or the panel meet the requirements of the Directive.

ATTACHMENT 1

Dear ————,

Our records show that your discharge was reviewed by the Discharge Review Board since April 1, 1977, and that the Board did not grant you a change or full upgrade of your discharge. A recent court order (in *Urban Law Institute of Antioch College Inc. v. Secretary of Defense,* Civ. No. 76-530 (D.D.C., Aug. 23, 1978)) has directed us to inform you about a number of matters, in particular that you might be entitled to a new review of your case and that you can obtain free help in making a decision.

1. *Right to a New Hearing.* The Court has ordered us to tell you that if your case was last reviewed before March 31, 1978, you have the right to request and receive an entirely new review of your case. This new review may result in an upgrade or a further upgrade in your discharge. This new review will be based upon newly published standards in DOD Directive 1332.28, published in the FEDERAL REGISTER on March 31, 1978. Copies of the FEDERAL REGISTER may be found at most public or private libraries; or you may obtain a copy of the directive by writing to the address listed in paragraph 8 of this letter. This new review is an absolute right for applicants whose cases have not been reviewed since March 31, 1978 and does not depend upon any of the other procedures discussed later in this letter. If your case has been reviewed since March 31, 1978, you may be eligible for a further review under the provisions for reconsideration that are spelled out in DOD Directive 1332.28. There is enclosed for your use, should you want to reapply, a DD Form 293 (attachment 1) which should be filled out and mailed to the address provided on the bottom of the DD Form 293. *The discharge that you now have will not be lowered if you apply for a new review.*

2. *Right to Use New Index.* The Court has also directed us to inform you about the Index of the decisions of the Discharge Review Boards. The index may assist applicants in appealing their discharges. The Index identifies cases that might be similar to yours and the resasons used by Discharge Review Boards in deciding those cases. You may look at this Index or copy it at the locations listed on Attachment 2 to this letter. The Index available now, however, does not index cases under the newly published Discharge Review Board standards. In late November, 1978, a revised Index will be available. This revised Index will index cases under the newly published standards in DOD Directive 1332.28.

3. *Right to a Complete Explanation of the Board's Decision In Your Case.* When you previously applied for a discharge review, the Discharge Review Board sent you a decisional document announcing the Board's decision. The purpose of the decisional document is to provide you with an explanation of why the Board decided the case the way it did. *If you do not have a copy of the Board's explanation, you can receive a free copy by writing to [the address of the Service's Discharge Review Board.]*

If the decision of the Board that was sent to you did not contain a full explanation of why the Board decided your case the way it did or the Board did not discuss important issues you raised, you can receive a full explanation if you make a specific complaint and specifically identify a violation of the requirements for preparation of an explanation. The requirements for preparation of an explanation are contained in the Stipulation of Dismissal, *Urban Law Institute of Antioch College, Inc. v. Secretary of Defense,* No. 76-530 (D.D.C., Jan. 31, 1977). A copy of the Stipulation may be obtained by writing the address listed in paragraph 8.

Because you must be specific, you cannot make a general complaint such as stating, "I don't believe that the Board gave consideration to all the problems I faced in the Army/Navy/Marine Corps/Air Force." Instead, you must tell us specifically how the decision was not complete within the meaning of the requirements for preparation of an explanation. The type of specific complaint that is required is one like "the Board did not state why it rejected my claim that I did not receive proper counseling," or "the only reason given by the Board for not upgrading my discharge was a statement that the discharge was appropriate based on the overall service record without any specific supporting findings."

If you wish to make a complaint about the explanation of the Board's decision in your case, you must write to the Department of Defense, as follows:

(1) Army cases shall be sent to the following address: Office of Assistant Secretary of Defense (MRA&L/MPP), Attn: Discharge Review—Army, Pentagon, Washington, D.C. 20301.

(2) Navy and Marine Corps cases shall be sent to the following address: Office of the Assistant Secretary of Defense (MRA&L/MPP), Attn: Discharge Review—Navy, Pentagon, Washington, D.C. 20301.

(3) Air Force cases shall be sent to the following address: Office of Assistant Secretary of Defense (MRA&L/MPP), Attn: Discharge Review—Air Force, Pentagon, Washington, D.C. 20301.

4. *Right to a New Hearing Under the Special Discharge Review Program or a New Hearing to Regain Veterans Benefits.* Under certain circumstances you may have a right to a new hearing in your case under the more liberal standards of the Special Discharge Review Program, where you may have a free lawyer to represent you. You

may also have a right to a new hearing to get Veterans Administration benefits that you may have lost if the Discharge Review Board reconsidered your case because of a recent Act of Congress. To be specific, you will have a right to a new hearing if:

a. Your case was decided under the Department of Defense's Special Discharge Review Program (application period was April 3, 1977 through October 4, 1977) or was a Special Discharge Review Program case reconsidered after March 27, 1978, as required by Congress; and

b. You did not have a hearing at which you were either present or were represented by counsel/representative; and

c. You write the Department of Defense using the procedures described above under the heading *Right to a Complete Explanation of the Boards' Decision in Your Case;* and

d. Your complaint concerns the explanation in the decisional document you received when the Discharge Review Board first reviewed your case under the programs described in subparagraph (a) above; and

e. The Department of Defense determines that the explanation of the Board in the decisional document in your case was not complete.

If you write and meet these conditions, we will write you back and inform you that you have a right to request a hearing when we send you another decisional document containing the complete explanation of the Board. We will also inform you that you can get a lawyer to represent you at your hearing at no cost to you if you applied under the Special Discharge Review Program and still have an Undesirable Discharge or Discharge Under Other Than Honorable Conditions. *You will not lose any upgrade in your discharge that you may have already received or lose any right to veterans benefits that you already have as a result of a new hearing.*

5. *Assistance in Your Case.* As you can see, for you to determine if you are eligible for a new hearing or a more complete explanation in your case, you need to understand this letter and the issues in the *Urban Law Institute* case. You may wish to contact those who assisted you in your initial appeal.

6. *The Availability of Free Assistance.* In addition, the court has ordered us to inform you of a list of organizations provided by the people who brought the lawsuit. If you contact these organizations, they will explain the meaning of this letter to you free of charge. These organizations are listed on attachment 3. Further advice from the people who brought the lawsuit may be obtained free of charge from the Veterans Education Project, 1346 Connecticut Avenue, NW., Room 606, Washington, D.C. 20036, (202) 466-2244. The Veterans Education Project has asked us to inform you that they will accept no collect calls. These people or organizations are not connected with the federal government, and our listing of these organizations in no way implies Department of Defense sponsorship or endorsement.

7. *Further Questions You May Have.* If you have any questions at all concerning your case that you cannot get satisfactorily answered by those who assisted you in your initial appeal, or by the organizations listed on attachment 3, you may call the following number at your own expense. (Each Board phone number).

8. *Availability of Regulations and Documents.* Regulations of the Department of Defense or a Military Department, including the newly published standards in DOD Directive 1332.28 and the Stipulation of Dismissal in the *Urban Law Institute* case, may be obtained by writing to the Director, DA Military Review Boards Agency, ATTN: SFBA (Reading Room), The Pentagon, Room 1E520, Washington, D.C. 20310. Current regulations are normally provided to individual applicants without charge.*

Sincerely,

ATTACHMENT

WHERE NO AGENCIES ARE LISTED FOR YOUR STATE, CALL OR WRITE THE NEXT NEAREST STATE OR: VETERANS EDUCATION PROJECT, 1346 Connecticut Avenue, N.W., Rm. 610, Washington, D.C. 20036, 202-466-2244.

ALABAMA:
see last page for agencies

ALASKA:
ACLU of Alaska
c/o William P. Bryson
333 West 4th Avenue, Suite 35
Anchorage AK 99501
907-276-7000

ARIZONA:
Friends Draft & Military Counseling
ATTN: Ralph Raymond, Counselor
303 North Lindsay Road Sp R56
Mesa AZ 85203
602-832-0811

ARKANSAS:
Legal Aid Bureau of Central AR
ATTN: Claude Nicholson
209 West Capitol Avenue, Suite 36
Little Rock AR 72201
501-376-3423

CALIFORNIA:
Discharge Review Project/Swords to Plowshares
944 Market Street, Suite 500
San Francisco CA 94102
415-391-6984

CCCO Western Region
1251 Second Avenue
San Francisco CA 94122
415-566-0500

Veterans Outreach Project
ATTN: Jim Graham
1349 A Street
Hayward CA 94545
415-881-1414

Veterans Affairs Office
ATTN: Phil Knox, Room 200
Silo University of CA Davis
Davis CA 95616
916-752-2020

Discharge Upgrading Program
Office of Veterans Affairs
California State University
Chico CA 95929
916-895-5911

Office of Veterans Affairs
Building 434, Room 121-C
University CA Santa Barbara
Santa Barbara CA 93106
805-961-4193

Center for Veterans Rights
514 West Adams Boulevard
Los Angeles CA 90007
213-748-4662

American G.I. Forum
ATTN: Larry Tipton
1680 East Santa Clara Street
San Jose CA 95116
408-259-4686

Purple Heart Veterans Rehabilitation Services
3333 E. South Street
Long Beach CA 90805
213-531-2587

ICHE/Education Central
ATTN: Robert Dudley
P.O. Box 686
Soledad CA 93960
(institutional use only)

COLORADO:
Office of Veterans Affairs
ATTN: Elvin Hopper
Pikes Peak Community College
5675 South Academy Boulevard
Colorado Springs CO 80906
303-576-7711x40

CONNECTICUT:
Veterans Affairs Office, City of Bridgeport
ATTN: Don Michelle
45 Lyon Terrace, Room 19
Bridgeport CT 06604
203-576-7907

Veterans Assistance Project
ATTN: Howard Graham
59 Whitney Avenue
New Haven CT 06510
203-777-5374

DELAWARE:
see listings for New Jersey, Pennsylvania or New York

DISTRICT OF COLUMBIA:
Veterans Education Project
1346 Connecticut Avenue, N.W., Room 610
Washington, D.C. 20036
202-466-2244

Urban Law Institute of Antioch College, Inc.
ATTN: Prof. Frank Munger
1624 Crescent Place, N.W.
Washington, D.C. 20009
202-265-9500x228

Incarcerated Veterans Assistance Organization
51 Peabody Street, N.E.
Washington, D.C. 20011
202-726-9080

FLORIDA:
Community Intervention Inc.
ATTN: Keith Merrill
P.O. Box 2407
Naranja FL 33032
305-443-7496

Office of Veterans Affairs
ATTN: Bob Jett, Director
University of South Florida
Tampa FL 33617
813-974-2291

GEORGIA:
Southern Center for Military and Veterans Rights
848 Peachtree Street, N.E.
Atlanta GA 30308
404-881-6666

Economic Opportunity Atlanta/Veterans Outreach Program
75 Marietta Street, N.W.
Atlanta GA 30303
404-524-0862

HAWAII:
Trecker, Rosenberg & Fritz
415 Uluniu Street
Kailua HI 96734
808-261-8544

IDAHO:
Idaho State Division of Veterans Services
VA Regional Office, Room 789
Federal Building & US Courthouse
Box 044
Boise ID 83724
208-384-1245

ILLINOIS:
Midwest Committee for Military Counseling
343 South Dearborn, Suite 317
Chicago IL 60604
312-939-3349

Project Verdict
ATTN: Howard Stoner
53 West Jackson, Room 225
Chicago IL 60604
312-786-0016

INDIANA:
VETS Project
ATTN: Charles Mathes
611 North Park Street, Rm. 516
Indianapolis IN 46204
317-639-9421

IOWA:
Iowa Civil Liberties Union
ATTN: Steve Brown, Director
102 East Grant Street, Suite G-100
Des Moines IA 50319
515-243-3576

KANSAS:
see listings for Missouri and Veterans Education Project in District of Columbia

KENTUCKY:
William Allison
3208 West Broadway
Louisville KY 40211
502-776-1740

LOUISIANA:
New Orleans Legal Assistance
ATTN: Richard Goines
226 Carondelet St., Suite 605
New Orleans LA 70130
504-529-7551

MAINE:
Maine Civil Liberties Union
97A Exchange Street
Portland ME 04101
207-744-5444

MARYLAND:
see listings for District of Columbia

MASSACHUSETTS:
Committee on Military Justice
ATTN: Adele Miles
303 Austin Hall
Harvard Law School
Cambridge MA 02138
617-495-4820

Gold Star Parents for Amnesty
ATTN: Pat Simon
25 Beacon Street
Boston MA 02108
617-742-2100

MICHIGAN:
Center for Education of Returning Veterans
5031 Grandy
Detroit MI 48211
313-224-6262

MINNESOTA:
Veterans Assistance & Outreach
ATTN: Linda Bick
University of Minnesota
2020 Minnehaha Avenue
Minneapolis MN 55050
612-376-5085

MISSISSIPPI:
Paul S. Minor
400 Main Street, Suite 301
P.O. Box 1388
Biloxi MS 39533
601-374-5151

MISSOURI:
Veterans Service Center
ATTN: Patricia Clement
3025 South Brentwood
Brentwood MO 63144
314-968-4518

ACLU of Western Missouri
ATTN: Margaret Barron, Dir.
823 Walnut Street, Room 608
Kansas City MO 64106
816-421-1875

MONTANA:
Montana State Department of Veterans Affairs
ATTN: David Armstrong
111 Sanders Street, Room 210
P.O. Box 4210
Helena MT 59601
406-449-3014

NEBRASKA:
see listing for Veterans Education Project in District of Columbia

NEVADA:
Nevada Commission for Veterans Affairs
Attn: Stein E. Moen
VA Regional Office, Room 104
1201 Terminal Way
Reno NV 89520
702-784-5238

NEW HAMPSHIRE:
Franklin Pierce Law Center
ATTN: Arpiar Saunders
2 White Street
Concord NH 03301
603-228-1541

NEW JERSEY:
Drop-In Center
Rutgers University
55 Central
Newark NJ 07102
201-623-4005

Veterans Affairs Office
ATTN: George DeNardo
Records Hall, Room 201
Rutgers University
New Brunswick NJ 08901
201-932-8157

NEW MEXICO:
Mark Shapiro
9104 Lagrima De Oro NE
Albuquerque NM 87111
505-296-2596 (evenings)

Legal Aid Society of Albuquerque, Inc.
ATTN: Howard Graham
505 Marquette, N.W.
P.O. Box 7538
Albuquerque NM 87104
505-243-7871

Veterans Affairs Office
ATTN: Mike Wheeler
Mesa Vista Hall, Room 2097
University of New Mexico
Albuquerque NM 87131
505-277-3513

NEW YORK:
Veterans Upgrade Center
84 Fifth Avenue, Room 1105
New York NY 10011
212-675-2777

American Friends Service Com.
ATTN: Margaret Rusk
821 Euclid Avenue
Syracuse NY 13210
315-475-9469

Veterans Outreach Project
ATTN: Phil Hansen
75 Woodbury Boulevard
Rochester NY 14607
716-428-7445

Allen Pilbeam
Box 149
Attica NY 14011
(institutional use only)

NORTH CAROLINA:
Quaker House
ATTN: Bill Sholar
223 Hillside Avenue
Fayetteville NC 28301
919-485-3213

NORTH DAKOTA:
ND Dept. of Veterans Affairs
1017 Fourth Avenue North
P.O Box 1287
Fargo ND 58107
701-237-8383

OHIO:
Community Action Commission-VETS
c/o Ron McCants, Director
801 Linn Street
Cincinnati OH 45203
513-241-1425

ACLU of Cleveland
1223 West 6th Street
Cleveland OH 44114
216-781-6276

OKLAHOMA:
Oklahoma ACLU
ATTN: Shirley Barry
1707 North Broadway
Oklahoma City OK 73101
405-524-8511

OREGON:
Portland Military & Veterans Counseling Center, Inc.
633 S.W. Montgomery Street
Portland OR 97201
503-224-9307

Project Return-VETS
ATTN: K. Stangel
1412 S.E. 25th
Portland OR 97214
503-234-0801

PENNSYLVANIA:
CCCO
ATTN: John Judge
2016 Walnut Street
Philadelphia PA 19103
215-568-7971

Veterans Action Committee
ATTN: Adrian Powell
1501 Cherry Street
Philadelphia PA 19102
215-241-7173 or 7181

Delaware County Legal Assistance
ATTN: Mark Kaufman
844 Main Street, Box 295
Darby PA 19023
215-534-5400

Friends Peace Center
ATTN: Tom Onieal
4836 Ellsworth Avenue
Pittsburgh PA 15213
412-683-2669

PUERTO RICO:
Puerto Rico Legal Project
P.O. Box 1829 Old San Juan Sta.
San Juan PR 00903

809-756-5788

RHODE ISLAND:
Vietnam Era Veterans Association
ATTN: Joseph Knight
242 Prairie Avenue
Providence RI 02905
401-521-6710

SOUTH CAROLINA:
Neighborhood Legal Assistance Program
ATTN: James Dimitri
438 King Street
Charleston SC 29403
803-722-0107

Palmetto Legal Services
ATTN: Robert Guild
1316 Main Street, P.O. Box 1056
Columbia SC 29202
803-799-9668

SOUTH DAKOTA:
South Dakota Legal Services
ATTN: Barbara Bordeaux
P.O. Box 727
Mission SD 57555
605-856-4444

TENNESSEE:
Memphis Area Legal Services
ATTN: Tom Ashby
308 Dermon Building
Memphis TN 38103
901-526-5132

University of Tennessee Legal Clinic Community Office
502 South Gay Street, Suite 404
Knoxville TN 37902
615-974-5241

TEXAS:
University of Texas School of Law Upgrading Clinic
c/o Prof. Edward Sherman
Univ. Of Texas School of Law
Austin TX 78705
512-471-5151

UTAH:
VETS
ATTN: Larry Witherow
431 South 6th East
Salt Lake City UT 84102
801-328-8521

VERMONT:
Project to Advance Veterans Employment
Litigation Division
P.O. Box 37
Randolph VT 05060
802-728-3303

VIRGINIA:
ACLU of Virginia
ATTN: Chan Kendrick
1001 East Main Street, #515
Richmond VA 23219
804-644-8022 or 649-8140

WASHINGTON:
Seattle Veterans Action Center
ATTN: Steve LaVerne
1300 Madison Street
Seattle WA 98104
206-625-4656

WEST VIRGINIA:
See listings for District of Columbia, Virginia or Pennsylvania

WISCONSIN:
National Association of Black Veterans, Inc.
4240 West Fond du lac Avenue
Milwaukee WI 53218
414-442-6110

VETS House
134 East Johnson Street
Madison WI 53703
608-255-8387

WYOMING:
See listing for Utah or Veterans Education Project in District of Columbia

ALABAMA:
OFFICES OF THE LEGAL SERVICES CORPORATION:
Montgomery Regional Office
ATTN: Emily Gassemheimer
804 South Perry Street
Montgomery AL 36104
205-832-4570

Selma Regional Office
ATTN: Booker Fort
520 Church Street
P.O. Box 954
Selma AL 36701
205-875-3770

Mobile Regional Office
ATTN: Steve Gudac
103 Dauphin St., Ste. 610
Mobile AL 36602
205-433-6560

Gadsden Regional Office
ATTN: Sue Thompson
802 Chestnut Street
Gadsden AL 35901
205-543-2435

Florence Regional Office
412 South Court St., Rm. 311
Florence AL 35630
205-767-2020

Dothan Regional Office
161 South Oates
Dothan AL 36301
205-793-7932

Birmingham Area Legal Services
2030 First Avenue North, 2d Fl.
Birmingham AL 35203
205-328-3540

Legal Services of North Central Alabama
ATTN: Norman Bradley
102 Clinton Avenue West
Huntsville AL 35805
205-536-9645

ADDENDUM TO ATTACHMENT 1 [1]

Further Information About the Index.

Paragraph 2 of the attached letter describes the index of decisions of the discharge review boards. As noted in paragraph 2 of the attached letter, the next index will be published in late November. The following information concerns the index that will be published in late February.

Commencing April 1, 1977, all decisions of the Discharge Review Boards (DRBs) were assigned index numbers. These index numbers are tabulated quarterly and a consolidated index is prepared. This index is made available to help you prepare your case for presentation to the appropriate Discharge Review Board.

A more complete quarterly index of past decisions of the Discharge Review Boards will be published during the last week of February 1979. This index will include, among other things, several thousand cases reviewed and indexed since the promulgation of Department of Defense Directive 1332.28 dated March 29, 1978. The February 1979 index will be more extensive than the index presently available because it will include many cases that previously have not been indexed. Your case will be decided under the same standards as the cases contained in the February 1979 index, and that index may assist you in determining the matters you wish the board to consider.

If you request a discharge review before the index is published, you have a right to obtain a continuance in order to examine the February index.

ATTACHMENT 2 [2]

Dear Applicant:

As you were previously notified, you are scheduled for a personal appearance hearing before the ———— Discharge Review Board.

Commencing April 1, 1977, all decisions of the Discharge Review Boards (DRBs) of all Services were assigned index numbers. These index numbers are tabulated quarterly and a consolidated index is prepared. This index is made available to help you prepare your case for presentation to the appropriate Discharge Review Board. Attached is a list of locations at which you may examine the index. It is expected that the next quarterly index of past decisions of the DRBs will be available during the last week of November 1978. This index will include, among other things, a listing of DRB decisions and the issues addressed in some cases reviewed and indexed since the promulgation of the Department of Defense Directive 1332.28 dated March 29, 1978. The next index will be broader in scope than the index presently available because it will index cases under the newly published standards contained in the DoD Directive. Your case will be decided under these standards, and the November 1978 index may assist you in determining the matters you wish the board to consider.

A more complete quarterly index of past decisions of the Discharge Review Boards will be published during the last week of February 1979. This index will include, among other things, several thousand cases reviewed and indexed since the promulgation of Department of Defense Directive 1332.28 dated March 29, 1978. The February index will be more extensive than the index presently available because it will include many cases that previously have not been indexed. Your case will be decided under the same standards as the cases contained in the February 1979 index, and that index may assist you in determining the matters you wish the board to consider.

If you wish to obtain a delay in your case in order to examine either the November of February index, you should so indicate below at this time. However, you may proceed with your hearing as scheduled. Please indicate your choice, sign and return this letter to the Board in person or by return envelope provided.

Sincerely,

☐ I want to proceed with my previously scheduled hearing.
☐ I do not want a hearing at this time, and request a delay in order to examine the November quarterly index.
☐ I do not want a hearing at this time, and request a delay in order to examine both

[1] As a result of the court's order of November 9, 1978, the following addendum was included in Attachment 1. The court's order is attached as an appendix.

[2] As a result of the court's order of Nov. 9, 1978, the original Attachment 2 was replaced by this revision. The court's order is attached as an appendix.

the November and February quarterly indexes.*

(Signature of Applicant): _____

(Date): _____

ATTACHMENT 3 [3]

Dear Applicant:

Consideration of your case has been initiated by a Discharge Review Board pursuant to your request of DD Form 293.

Commencing April 1, 1977, all decisions of the Discharge Review Boards (DRBs) of all Services were assigned index numbers. These index numbers are tabulated quarterly and a consolidated index is prepared. This index is made available to help you prepare your case for presentation to the Discharge Review Boards. Attached is a list of locations at which you may examine the index. It is expected that the next quarterly index of past decision of the Discharge Review Boards (DRBs) will be available during the last week of November 1978. This index will include, among other things, a listing of DRB decisions and the issues addressed in specific discharge review cases, as required by the Department of Defense Directive 1332.28 dated March 29, 1978. The next index will be broader in scope than the index presently available because it will index cases under the newly published uniform standards contained in the DoD Directive. Your case will be decided under these standards, and the November 1978 index may assist you in determining the matters you wish the board to consider.

A more complete quarterly index of past decisions of the Discharge Review Boards will be published during the last week of February 1979. This index will include, among other things, several thousand cases reviewed and indexed since the promulgation of Department of Defense Directive 1332.28 dated March 29, 1978. The February 1979 index will be more extensive than the index presently available because it will include many cases that previously have not been indexed. Your case will be decided under the same standards as the cases contained in the February 1979 index and that index may assist you in determining the matters you wish the board to consider.

If you wish to obtain a delay in your case in order to examine either the November or February index, you should so indicate below at this time. However, you may wish to have the Discharge Review Board complete the review that has been initiated in your case. Please indicate your choice, sign and retrun this letter to the board in person or by return envelope provided.

☐ I want the Discharge Review Board to complete the action in my case.

☐ I do not want the Discharge Review Board to complete the action in my case and request a delay in order to examine the November quarterly index.

☐ I do not want the discharge Review Board to complete the action in my case and request a delay in order to examine both the November and February quarterly indexes.

If you do not respond within 30 days of the date of this letter, the Discharge Review Board will complete action on your case.

Signature (of applicant): _____

Date: _____

[3] As a result of the court's order of Nov. 9, 1978, the original Attachment 3 was replaced by this revision. The court order is attached as an appendix.

ATTACHMENT 4 [4]

Further Information About the Index of Decisions

Commencing April 1, 1977, all decisions of the Discharge Review Boards (DRBs) were assigned index numbers. These index numbers are tabulated quarterly and a consolidated index is prepared. This index is made available to help you prepare your case for presentation to the appropriate Discharge Review Board.

A quarterly supplement to the index is scheduled to be published in the last week of November 1978. The next quarterly index of past decisions of the Discharge Review Boards will be published during the last week of February 1979. This index will include, among other things, several thousand cases reviewed and indexed since the promulgation of Department of Defense Directive 1332.28 dated March 29, 1978. The February 1979 index will be more extensive than the index presently available because it will include many cases that previously have not been indexed. Your case will be decided under the same standards as the cases contained in the February 1979 index and that index may assist you in determining the matters you wish the board to consider.

If you wish to obtain a delay in the Discharge Review Board's consideration of your case in order to examine the February index, your request for a delay should be sent promptly to the Discharge Review Board.

ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C. 20301

DECEMBER 9, 1978.

MEMORANDUM FOR THE SECRETARIES OF THE MILITARY DEPARTMENTS

Subject: Urban Law Institute of Antioch College, Inc. v. Secretary of Defense, No. 76-0530 (D.D.C.) (Stipulation of Dismissal: Jan. 31, 1977, Court Order: Nov. 9, 1978)

Refs: (a) DepSecDef memo, 11Feb77, subj: Urban Law Institute of Antioch College, Inc., et al., v. Secretary of Defense, et al., U.S.D.C., D.C., Civil Action No. 76-0530

(b) DoD Directive 1332.28, Discharge Review Board (DRB) Procedures and Standards, 29Mar78 (para. D.3.e.)

(c) ASD(MRA&L) memo, 28Oct78, subj: Urban Law Institute of Antioch College, Inc., et al., v. Secretary of Defense, et al., Civ. No. 76-0530 (D.D.C.) Stipulation: Jan. 31, 1977 (Court Order: Aug. 23, 1978)

Reference (c) provided for a Joint Service Review Activity (JSRA) to assist ASD(MRA&L) in assuring that DRB decisional documents and index entries meet the requirements of the Stipulation in the subject case and DoD Directive 1332.28. The operating procedures prescribed in the attachment to this memorandum will be utilized as interim guidance for this Activity until publication of a formal DoD directive.

The Chairmanship of the JSRA will rotate among the Military Department representatives on a quarterly basis, beginning with the Air Force representative.

The Department of the Army is requested to provide an officer in the grade of 0-3/0-4 as Administrative Director/Recorder of the JSRA to report to the Chairman, JSRA by 15 December 1978.

Requirements of the 23 August 1978 Court Order in the *Urban Law* case resulted in a large backlog of DRB cases for filing and indexing in the Armed Forces Discharge Review/Correction Boards Reading Room. Temporary augmentation of the Reading Room staff is required. The Departments of the Navy and Air Force are requested to provide one civilian employee each in grade GS-5 or below to augment the Reading Room staff on a full-time basis during the period 18 December 1978 through 16 March 1979.

I must emphasize the importance of this activity to the entire Department of Defense—and ask for your full support.

ROBERT B. PIRIE, Jr.,
Principal Deputy Assistant, Secretary of Defense, (MRA&L).

Attachment.

JOINT SERVICE REVIEW ACTIVITY PROCEDURES

1. These procedures, for a Joint Service Review Activity, implement the Stipulation and Court Orders in Urban Law Institute of Antioch College, Inc. v. Secretary of Defense, No. 76-0530 (D.D.C.)(Stipulation of Dismissal: Jan. 31, 1977, Court Order: Nov. 9, 1978) and memorandum from ASD(MRA&L) dated 28 October 1978.

2. The Joint Service Review Activity is established for the sole purpose of assuring that decisional documents and index entries meet the requirements of the Stipulation in the subject case.

3. The Activity shall conduct its operations and render its decisions under the provisions of this memorandum at the direction of the DASD(MPP)(MRA&L).

4. The procedures set forth herein may be modified or supplemented by the DASD(MPP)(MRA&L).

5. a. The Joint Service Review Activity shall consist of one person in the grade of 0-6 from each of the Military Departments, and an alternate of equivalent rank. The members shall be appointed by a the Military Department concerned and shall serve at the direction of the Assistant Secretary of Defense (MRA&L).

b. As a general matter, counsel for the Activity shall be provided by the Military Department whose decisional documents are being considered bya the Activity at that meeting, provided, however, that such counsel may serve during consideration of documents from a different Service if there is no objection by members of the Activity.

c. A full-time Administrative Director shall assist the Chairman in coordinating the operations of the Activity and shall act as Recorder during meetings of the Activity.

6. a. The chairmanship of the Activity shall be rotated on a quarterly basis among the representatives of the Military Departments.

b. The Activity shall develop a uniform docketing procedure for use by the Activity and the Military Departments for the complaint process. Each Military Department shall provide the Chairman with a weekly report of: (1) the number of complaints acted upon by its DRB which require fur-

[4] This attachment was added after the court's order of Nov. 9, 1978. Except for persons sent the revised versions of Attachments 1, 2, and 3, the following information will be provided to all Discharge Review Board applicants and counsel with whom the Discharge Review Boards correspond between the date of the court order and the date of the February 1979 index. The court order is attached as an appendix.

ther action by the Activity, (2) the number of complaints acted upon by its DRB not requiring further action by a the Activity, and (3) the number of complaints pending review within the Military Department. The Activity shall meet once a month or more frequently if the Chairman determines that there are a sufficient number of complaints to warrant review by the Activity. The Chairman is responsible for insuring the expeditious resolution of complaints.

7. Representation by the three Military Departments shall constitute a quorum. The presiding officer during a meeting of the Activity shall be the representative of the Service whose decisional documents are under consideration. Matters before the Activity shall be presented by the Administrative Director in his capacity as a nonvoting Recorder. Each of the three members of the Activity shall have one vote. A majority of the votes of the members is required to approve action by the Activity. No member or counsel may participate in any action by the Activity concerning a decisional document with respect to which he previously took action as a board member or in any other review or advisory capacity. A minority opinion may be appended to the Activity's record of action if desired by a dissenting member.

8. The following procedures will be used in processing compiaints:

a. When correspondence contains a specific complaint alleging that a decisional document or index entry contains a specifically identified violation of the Urban Law Stipulation and the Military Department determines that any portion of the corrective action requested is not warranted, the correspondence will be forwarded to the Activity with a brief description of the bases for the Military Department's determination as set forth in Attachment 1.

b. If a Military Department determines that correspondence from a complainant does not include a specific complaint alleging that a decisional document or index entry contains a specifically identified violation of the Stipulation, the Military Department shall forward the correspondence to the Activity, citing the bases for its determination as set forth in Attachment 1.

c. If correspondence is forwarded to the Activity under a. or b. above, a determination shall be made by the Activity as to whether corrective action is required. If it is determined by the Activity that corrective action is required, the Military Department shall be informed of the deficiencies noted in sufficient detail so that corrective action may be taken. After corrective action by a Military Department has been completed, the corrected decisional document shall be forwarded to the Activity for review and transmittal to the complainant. If it is determined by the Activity that no corrective action is required, an appropriate response shall be provided the complainant by the Activity citing the bases for the determination.

d. If the Military Department of the Activity in its review of a decisional document issued on or after March 27, 1978, determines that there has been a violation of the decisional document requirements of DoD Directive 1332.28, corrective action will be directed as appropriate.

9. For those new statements of findings, conclusions and reasons that are prepared by a Military Department in response to a complaint to the ASD(MRA&L) and that are not otherwise reviewed by the Activity, the Activity shall review on a quarterly basis enough of a sample of such new statements to ensure that they comply with the Stipulation.

10. Action taken by the Activity shall be reported to the Assistant Secretary of Defense (MRA&L), ATTN: DASD(MPP).

11. The responsibility for filing complaints and other records of the Activity, and for performing related administrative duties to assist the Administrative Director, is delegated to the Army.

12. Amended decisional documents issued by the Military Departments will be indexed by the Military Depatment under the terminology included in the quarterly index scheduled to be published during the last week of November 1978, and subsequent indexes.

13. The Administrative Director is responsible for disposition of the Records of Action (Attachment 1) prepared by the Military Departments and the Joint Service Review Activity.

14. The Stipulation in the subject case permits plaintiffs to submit complaints concerning any violation of the Stipulation to the General Counsel of the Department of Defense. The General Counsel amy refer complaints about decisional documents and index entries to the Joint Service Review Activity for initial comment.

Service: Date:

Name of Complainant:

Docket No.:

1. List specific complaints.

2. List other defects in the decisional document or index entries noted by the Military Department.

3. List Military Department's findings on each specific complaint or defect and the reasons for each finding.

4. List the Military Department's conclusions on each specific complaint or defect and the reasons for each conclusion.

5. *JSRA*: List specific complaints or other defects not noted by the Military Department.

6. List JSRA findings on each specific complaint or defect in the decisional document or index entries and the reasons for each finding.

7. List JSRA conclusions on each specific complaint or defect and the reason for each conclusion.

8. Action taken by JSRA:

Army Member

Navy Member

Air Force Member

Counsel/Recorder

Final Action Taken

by:_____ on:_____

The response sent to the complainant is attached.

APPENDIX

Court Order

Nov. 9, 1978

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

URBAN LAW INSTITUTE OF ANTIOCH COLLEGE, INC., ET AL., Plaintiffs, v. SECRETARY OF DEFENSE, ET AL., Defendants.

Civil Action No. 76-0503.

ORDER

Upon consideration of plaintiffs' motion to reopen to secure compliance with the Stipulation of Dismissal herein, the memoranda submitted by the parties discussing the issue of why the preliminary relief granted by the Court on August 23, 1978, should not be made final, oral argument of counsel and the entire record herein, it appears to this Court that to further the purposes of the Stipulation entered in this case by this Court on January 31, 1977, it is hereby

ORDERED that the preliminary relief granted by this Court on August 23, 1978, is made final; and it is

FURTHER ORDERED that the quarterly index to be published by defendants during the last week of February, 1979, shall index all those decisional documents issued after April 1, 1977 and not previously published in an index, that have been sent to applicant and counsel and/or made publicly available on or before twenty (20) days prior to the scheduled publication date of such index; and it is

FURTHER ORDERED that defendants shall provide all Discharge Review Board applicants and counsel with whom the Discharge Review Boards correspond between the date of this Order and the date of publication of the February, 1979 index with the following information: Commencing April 1, 1977, all decisions of the Discharge Review Boards (DRBs) were assigned index numbers. These index numbers are tabulated quarterly and a consolidated index is prepared. This index is made available to help applicants prepare their cases for presentation to the appropriate Discharge Review Board. Another quarterly index of past decisions of the Discharge Reveiw Boards will be published during the last week of February, 1979. This index will include, among other things, several thousand cases reviewed and indexed since the promulgation of Department of Defense Directive 1332.28 dated March 29, 1978. The February, 1979 index will be more extensive than the index presently available because it will include many cases that previously have not been indexed. Cases will be decided under the same standards as the cases contained in the February, 1979 index, and that index may assist applicants in determining the matters they wish the board to consider. Such notification shall also inform the applicant that he or she may obtain a continuance of defendants' consideration of their case for the purpose of consulting the February, 1979 index by submitting a timely request therefor to the Discharge Review Board; and it is

FURTHER ORDERED that for those new statements of findings, conclusions and reasons that are prepared by a military department in response to a complaint to the Department of Defense and that are not reviewed by the Department of Defense, the Department of Defense shall review on a quarterly basis enough of a sample of such new statements to ensure that such new statements comply with the Stipulation herein; and it is

FURTHER ORDERED that plaintiffs and defendants shall file memoranda on March 9, 1979, discussing the adequacy of the actions defendants have taken to comply with this Order and the Stipulation herein.

Entered this 9th day of November, 1978

AUBREY E. ROBINSON, Jr.,
United States District Judge.

[FR Doc. 79-2617 Filed 1-24-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

CASES FILED

Week of December 15 through December 22, 1978

Notice is hereby given that during the week of December 15 through December 22, 1978, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in such cases may file with the DOE written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

JANUARY 15, 1979.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 15 through 22, 1978]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 15, 1978	Amtel Inc., Whitco, Inc., and Sun Company, Inc., Philadelphia, Pennsylvania.	DMR-0039	Request for Modification/Rescission. IF GRANTED: The October 13, 1978, Decision and Order issued to Sun Company, Inc. would be rescinded, and the supplier-purchaser relationships among Sun, Amtel, Inc. and Whitco, Inc. would be restructured to conform to an agreement reached by the three firms on December 1, 1978.
Dec. 15, 1978	Carr Oil Company, Inc., Franklin, Louisiana.	DEE-2083	Price Exception (Section 212.93). IF GRANTED: Carr Oil Company, Inc. would be granted a retroactive exception which would relieve it of the obligation to refund overcharges attributable to its wholesale sales of diesel fuel.
Dec. 15, 1978	Chestertown Shorgas Co., Chestertown, Maryland.	DEE-2080	Price Exception (Section 212.93). IF GRANTED: The Chestertown Shorgas Company would be granted an exception to the provisions of 10 CFR 212.93, permitting it to increase its prices for propane gas.
Dec. 15, 1978	Clark and Clark, Ardmore, Oklahoma	DEE-2077 and DEE-2078.	Price Exception (Section 212.73). IF GRANTED: Clark and Clark would be permitted to sell crude oil from the Bass and Pickens leases, located in Carter County, Oklahoma, at upper tier ceiling prices.
Dec. 15, 1978	Continental Oil Company, Houston, Texas.	DXE-2081 and DXE-2082.	Extension of relief granted in *Continental Oil Co.*, 2 DOE Par. —— (September 22, 1978). IF GRANTED: Continental Oil Company would be permitted to sell crude oil produced from the McCroskey and McNee leases, located in the Olivera Canyon Field, Santa Barbara County, California at upper tier ceiling prices.
Dec. 15, 1978	Edgington Oil Company, Washington, D.C.	DEX-0134	Supplemental Order. IF GRANTED: The level of exception relief found to be appropriate in a Proposed Decision and Order issued to the Edgington Oil Company (Case No. DXE-1890) on December 6, 1978, would be modified.
Dec. 15, 1978	Universal Development Company, Ann Arbor, Michigan.	DEE-2079	Exception to Change Supplier. IF GRANTED: Universal Development Corporation would be assigned a new base period supplier of motor gasoline to replace Texaco, Inc.
Dec. 19, 1978	Marathon Oil Company, Findlay, Ohio	DXE-2097	Extension of relief granted in *Marathon Oil Company*, 2 DOE Par. —— (September 9, 1978). IF GRANTED: Marathon Oil Company would be granted an extension of exception relief previously granted and would be permitted to continue selling crude oil produced from the Canal Unit, located in Kern County, California, at upper tier ceiling prices.
Dec. 19, 1978	Petroleum, Inc., Wichita, Kansas	DEE-2084	Price Exception (Section 212.73). IF GRANTED: Petroleum, Inc. would be permitted to sell crude oil from the Johnson lease No. 1-29, located in Converse County, Wyoming, at upper tier ceiling prices.
Dec. 20, 1978	Ashland Oil, Inc. and Clark Oil & Refining Corporation, Washington, D.C.	DES-0255	Request for Stay. IF GRANTED: Ashland Oil, Inc. and Clark Oil & Refining Corporation would receive a stay of the provisions of 10 CFR 211.67(l)(4) exempting them from the $.21/bbl entitlement penalty on imported crude oil pending the DOE's decision on their Appeal from the August 1978 Entitlement Notice (Case No. DEA-0255).
Dec. 20, 1978	Atlantic Richfield Company, Los Angeles, California.	DEE-2092	Exception to the provisions of 10 CFR Section 212.85. IF GRANTED: Atlantic Richfield Company would be permitted to calculate the cost of transporting crude oil and covered products transported by domestic marine vessels between United States ports on the basis of market rates applicable to marine transportation vessels.
Dec. 20, 1978	Cities Service Company, Tulsa, Oklahoma	DEE-2086	Price Exception (Section 212.73). IF GRANTED: Cities Service Company would be permitted to sell the crude oil produced from the Walker A Lease, located in Seminole County, Oklahoma, at upper tier ceiling prices.
Dec. 20, 1978	Gulf Oil Corporation, Houston, Texas	DPI-0033	Exception to the base fee requirements. IF GRANTED: Gulf Oil Corporation would be permitted to import crude oil on a fee-exempt basis.
Dec. 20, 1978	Gulf Oil Corporation, Tulsa, Oklahoma	DXE-2087	Extension of relief granted in *Gulf Oil Corporation*, 2 DOE Par. —— (October 18, 1978). IF GRANTED: Gulf Oil Corporation would be permitted to sell the crude oil produced from the South Stanley Lease, located in Osage County, Oklahoma, at upper tier ceiling prices.
Dec. 20, 1978	Hydrotherm, Inc., Los Angeles, California	DEE-2091 and DES-2091.	Stay Request and Exception to the Provisions of 10 CFR, Part 405, Section 430.33(n)(1). IF GRANTED: Hydrotherm, Inc. would receive an exception to the provisions of 10 CFR, Part 405, Section 430.33(n)(1), regarding test procedures of a covered product.
Dec. 20, 1978	Justiss-Mears Oil Company, Jena, Louisiana.	DXE-2088	Extension of relief granted in *Justiss-Mears Oil Company*, 1 DOE Par. 81,106 (April 11, 1978). IF GRANTED: Justiss-Mears Oil Company would be permitted to sell the crude oil produced from the Saucier No. 1 lease, at upper tier ceiling prices.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of December 15 through 22, 1978]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 20, 1978	Monsanto Company, Houston, Texas	DXE-2093 and DXE-2094.	Extension of relief granted in *Monsanto Company*, 2 DOE Par. 81,045 (1978); *Monsanto Company*, 2 DOE Par. —— (October 16, 1978). IF GRANTED: Monsanto Company would be permitted to sell the crude oil produced from the Hendrick "A" Lease and the Hendrick "C" Lease, located in Winkler County, Texas, at upper tier ceiling prices.
Dec. 20, 1978	Newhall Refining Company, Newhall, California.	DEX-0133	Supplemental Order. IF GRANTED: The DOE would review the entitlements exception relief granted to Newhall Refining Company during its fiscal year ending August 31, 1978 in order to determine whether the level of relief accorded to the firm was appropriate.
Dec. 20, 1978	Texaco, Inc., Denver, Colorado	DXE-2089 and DXE-2090.	Extension of relief granted in *Texaco, Inc.*, 2 DOE Par. —— (October 6, 1978). IF GRANTED: Texaco, Inc. would be permitted to sell the crude oil produced from the Sweeney Lease, located in Moffat County, Colorado and the Wyoming "G" lease, Johnson County, Wyoming, at upper tier ceiling prices.
Dec. 20, 1978	W. F. Shuck Petroleum Company, Cromwell, Connecticut.	DEE-1967	Exception to Change Supplier. IF GRANTED: W. F. Shuck Petroleum Company would be assigned a new base period supplier of motor gasoline to replace Texaco, Inc.
Dec. 20, 1978	Earl E. Wall, New Orleans, Louisiana	DXE-2095	Extension of relief granted in *Earl E. Wall*, 2 DOE Par. —— (September 27, 1978). IF GRANTED: Earl E. Wall would be permitted to sell crude oil produced from the Lester Reed Unit, located in the Grand Coulee Field, Acadia Parish, Louisiana, at market prices not to exceed $19.58 per barrel.
Dec. 20, 1978	Unionville Tire & Supply Company, Unionville, Virginia.	DEE-2096	Exception to Change Supplier. IF GRANTED: Unionville Tire & Supply Co. would be assigned a new base period supplier of motor gasoline to replace Flippo Oil Company.
Dec. 21, 1978	Clark Oil and Refining Company, Washington, D.C.	DFA-2070	Freedom of Information Appeal. IF GRANTED: Clark Oil and Refining Company would receive access to all documents relating to the sale of a refinery in Mount Pleasant, Texas, by American Petrofina, Inc. ("Fina") to Dorchester Gas Corporation and the exception proceeding regarding that transaction.
Dec. 21, 1978	Crown Central Petroleum Corporation, Washington, D.C.	DEA-0269	Appeal of September 1978 Entitlements Notice. IF GRANTED: The September 1978, Entitlements Notice would be amended and the entitlements sale obligations of Crown Central Petroleum Corporation would be recomputed to eliminate the $.21/bbl penalty set forth in Section 211.67(i)(4).

Notices of Objection Received

Date	Name and location of applicant	Case No.
Dec. 18, 1978	Appalachian Flying Service, Washington, D.C	DEO-0158
Dec. 15, 1978	Wilson Oil Company, Wabasha, Minnesota	DEO-0124
Dec. 20, 1978	Mid-Michigan Truck Service, Houston, Texas	DXE-1997
Dec. 18, 1978	Lunday-Thagard Oil Company, Washington, D.C	DXE-1936
Dec. 18, 1978	Navajo Refining Company, Washington, D.C	DXE-1937
Dec. 15, 1978	Young Refining Company, Washington, D.C	DXE-1978

Proposed Remedial Orders, Notices of Objection Received

Dec. 21, 1978	St. Louis Fuel and Supply Company, Washington, D.C	DRO-0159
Dec. 21, 1978	Diversified Chemical & Propellants Co., Oak Brook, Illinois	DRO-0160

[FR Doc. 79-2506 Filed 1-23-79; 8:45 am]

[6450-01-M]

CASES FILED

Week of December 22 through December 29, 1978

Notice is hereby given that during the week of December 22 through December 29, 1978, the appeals and applications for exception or other relief listed below were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR 205, any person who will be aggrieved by the DOE action sought in this case may file with the DOE written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with te Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

JANUARY 16, 1979.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 22 through 29, 1978]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 22, 1978	Ashland Oil Inc. & Clark Oil & Refining Corporation.	DEA-0273	Appeal of September 1978 Entitlements Notice. IF GRANTED: The September 1978 Entitlements Notice would be amended and the entitlements sales obligations of Ashland Oil, Inc. and Clark Oil and Refining Corporation would be recomputed to eliminate the $.21/bbl. differential for foreign crude oil specified in Section 211.67(i)(4).
Dec. 22, 1978	Energy Cooperative, Inc., Washington, D.C	DEA-0272	Appeal of September 1978 Entitlements Notice. IF GRANTED: The September 1978 Entitlements Notice would be amended and the entitlements sales obligations of Energy Cooperative, Inc. would be recomputed to eliminate the $.21/bbl. differential for foreign crude oil specified in Section 211.67(i)(4).
Dec. 22, 1978	Farmers Union Central Exchange, Inc. *et al.*, Washington, D.C.	DEA-0271	Appeal of September 1978 Entitlement Notice. IF GRANTED: The September 1978 Entitlement Notice would be amended and the entitlement sales obligations of Farmers Union Central Exchange, Inc., Indiana Farm Bureau Cooperatives Assn. and National Cooperative Refinery Assn. would be recomputed to eliminate the $.21/bbl. differential for foreign crude oil specified in Section 211.67(i)(4).
Dec. 22, 1978	Tosco Corporation, Washington, D.C	DES-1910 and DST-1910.	Request for Stay and Temporary Stay. IF GRANTED: Tosco Corporation would receive a stay of Section 212.83 with respect to its sales of motor gasoline to two of its classes of purchaser, pending a final determination on its Application for Exception (Case No. DXE-1910).
Dec. 26, 1978	Batson Petroleum Corporation, Alexandria, Virginia.	DRD-0136	Motion for Discovery. IF GRANTED: Discovery would be granted to Batson Petroleum Corporation with respect to its Statement of Objections to a Proposed Remedial Order (Case No. DRO-0136).
Dec. 26, 1978	Burlington Northern, Inc., St. Paul, Minnesota.	DEE-2104	Exception to reporting requirements. IF GRANTED: Burlington Northern, Inc. would not be required to file reports in the first phase of the Financial Reporting System.
Dec. 26, 1978	Joseph O'Neill Oil Properties, Midland, Texas.	DXE-2098	Extension of relief granted in *Joseph I. O'Neill Oil Properties* 1 DOE Par. 81,111 (1978). IF GRANTED: Joseph I. O'Neill Oil Properties would be granted an extension of exception relief previously granted and be permitted to continue to sell crude oil produced from the Feldman and Pardo lease located in Scurry County, Texas at upper tier ceiling prices.
Dec. 26, 1978	Powerine Oil Company, Los Angeles, California.	DEE-2099	Exception to the Entitlements Program. IF GRANTED: Powerine Oil Company would be granted an exception from its entitlement purchase obligations under the provisions of 10 CFR Section 211.67.
Dec. 27, 1978	Argo Petroleum Corporation, Houston, Texas.	DRH-0146	Request for Evidentiary Hearing. IF GRANTED: An evidentiary hearing would be convened in connection with a Statement of Objections submitted by Argo Petroleum Corporation regarding a Proposed Remedial Order which was issued to the firm by DOE Region IX (Case No. DRO-0146).
Dec. 27, 1978	Armstrong Petroleum Corporation, Los Angeles, California.	DRH-0150 and DRD-0150.	Request for Evidentiary Hearing and Motion for Discovery. IF GRANTED: An evidentiary hearing would be convened in connection with the Statement of Objections submitted by Armstrong Petroleum Corp. regarding a Proposed Remedial Order which was issued to the firm by DOE Region IX on November 16, 1978 (Case No. DRO-0150). In addition it would be granted discovery with respect to the objection it has raised.
Dec. 27, 1978	McAlester Fuel Company, Denver, Colorado.	DMR-0040	Request for Modification/Rescission. IF GRANTED: The February 21, 1978 Consent Order issued by the DOE Office of Enforcement would be modified with respect to the sale of crude oil from the Jim Coulee Unit, located in Musselshell County, Montana.
Dec. 27, 1978	Mohawk Petroleum Corporation, Bakersfield, California.	DEX-0135	Supplemental Order. IF GRANTED: The DOE would correct an error in the Decision and Order (Case No. DEX-0127) issued to Mohawk Petroleum Corporation on December 14, 1978.
Dec. 27, 1978	Sun Producing Company, Dallas, Texas	DEE-2100	Price Exception (Section 212.73). IF GRANTED: Sun Producing Company would be permitted to reduce the base production of the Delhi Unit, located in Richland, Franklin, and Madison Parishes, Louisiana by 1,125 barrels per day for the period beginning June 1, 1978.
Dec. 28, 1978	Louis Kahan, Tulsa, Oklahoma	DEE-2101	Price Exception (Section 212.73). IF GRANTED: Louis Kahan would be permitted to sell the crude oil produced from the Polly "B" lease located in Seminole County, Oklahoma at upper tier ceiling prices.
Dec. 28, 1978	O'Brien's North Star Station, Superior, Michigan.	DEE-2103	Exception to change supplier. IF GRANTED: O'Brien's North Star Station would be assigned a new supplier of motor gasoline to replace its present supplier, Ashland Oil Corporation.
Dec. 28, 1978	Schulze Processing, Inc., Washington, D.C.	DST-0012	Request for Temporary Stay. IF GRANTED: Schulze Processing, Inc. would be granted a temporary stay of its entitlement purchase obligations under the October 1978 Entitlements Notice.
Dec. 28, 1978	Union Oil Company of California, Los Angeles, California.	DEE-2102	Price Exception (Section 212.73). IF GRANTED: Union Oil Company of California would be permitted to sell the crude oil produced from the Pacific Electric Pool located in the Las Cienegas Oil Field, California at upper tier ceiling prices.

Notices of Objection Received

Date	Name and location of applicant	Case No.
Dec. 22, 1978	Pacific Resources, Inc., Washington, D.C	DEE-1874
Dec. 26, 1978	Craft Petroleum Company, Jackson, Mississippi	DEE-1558, DEE-1559
Dec. 28, 1978	North Attleboro Gas Company, North Attleboro, Massachusetts	DEO-0163

Proposed Remedial Orders, Notices of Objection Received

Dec. 22, 1978	City of Long Beach, Washington, D.C	DRO-0161
Dec. 27, 1978	Lucia Lodge, Big Sur, California	DRO-0162
Dec. 28, 1978	Texas Pacific Oil Company, Houston, Texas	DRO-0165
Dec. 28, 1978	Garrett Production Company, Washington, D.C	DRO-0164
Dec. 28, 1978	Texaco Inc., New York, New York	DRO-0166

[FR Doc. 79-2507 Filed 1-24-79; 8:45 am]

[6450-01-M]

ISSUANCE OF PROPOSED DECISION AND ORDER

January 2 through January 5, 1979

Notice is hereby given that during the period January 2 through January 5, 1979, the Proposed Decision and Order which is summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to Application for Exception which had been filed with that Office.

Amendments to the DOE's procedural regulations, 10 CFR 205, were issued in proposed form on September 14, 1977 (42 FR 47210 (September 20, 1977)), and are currently being implemented on an interim basis. Under the new procedures any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of the new procedures, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The new procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this Proposed Decision and Order is available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t. except federal holidays.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

JANUARY 18, 1979.

PROPOSED DECISION

Bock and Bacon Oil Company, Houston, Texas, DXE-2027 Crude oil

The Bock and Bacon Oil Company filed an Application for Exception from the provisions of 10 CFR, part 212, Subpart D, in which the firm requested that it be permitted to continue to sell certain of the crude oil produced from the Champion Paper Company Lease, located on the Norian Field in Newton County, Texas, at upper tier ceiling prices or at market price levels. On January 4, 1979, the DOE issued a Proposed Decision and Order which determined that the Bock and Bacon Exception request be granted.

[FR Doc. 79-2508 Filed 1-24-79; 8:45 am]

[6450-01-M]

ISSUANCE OF PROPOSED DECISIONS AND ORDERS

January 8 through January 12, 1979

Notice is hereby given that during the period January 8 through January 12, 1979, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office. Amendments to the DOE's procedural regulations, 10 CFR 205, were issued in proposed form on September 14, 1977 (42 FR 47210 (September 20, 1977)), and are currently being implemented on an interim basis. Under the new procedures any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of the new procedures, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The new procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this Proposed Decision and Order is available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t. except federal holidays.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

JANUARY 18, 1979.

PROPOSED DECISIONS AND ORDERS

Chevron U.S.A. Inc., San Francisco, California, DEE-1963, crude oil

Chevron U.S.A. Inc. filed an Application for Exception from the provisions of 10 CFR 212.73. The exception request, if granted, would permit the firm to sell the crude oil produced from State Lease PRC 1824 South Flank Pool (the South Flank Lease)

located in the Summerland field offshore Santa Barbara County, California, at market prices. On January 12, 1979, the DOE issued a Proposed Decision and Order in which it determined that the exception request should be granted.

Justiss-Mears Oil Company, Inc., Jena, Louisiana, DXE-2088, crude oil

The Justiss-Mears Oil Company, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the working interest owners to sell a portion of the crude oil which is produced from the Saucier No. 1 Well, located in the Five Mile Bayou Field in Avoyelles Parish, Louisiana, at upper tier ceiling prices. *Justiss-Mears Oil Co., Inc.*, DOE Par. 81,106 (1978). On January 9, 1979, the DOE issued a Proposed Decision and Order to Justiss-Mears Oil Company, Inc. granting an extension of exception relief which permits the firm to sell at upper tier ceiling prices 85.59 percent of the crude produced for the benefit of the working interest owners from the Saucier No. 1 Well during the period January 1, 1979 through June 30, 1979.

McAlester Fuel Company, Houston, Texas, DEE-2010 crude oil

McAlester Fuel Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The request, if granted, would permit the firm to sell the crude oil produced from the Kelly Field Tyler Sand Unit at upper tier ceiling prices. On January 12, 1979 the DOE issued a Proposed Decision and Order in which it determined that McAlester should be permitted to sell at upper tier ceiling prices 74.90 percent of the crude oil produced from the Kelly Field Tyler Sand Unit for the benefit of the working interest owners during the period December 15, 1978 through June 30, 1979.

Pennzoil Producing Company, Houston, Texas, DXE-2044 crude oil

Pennzoil Producing Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Pennz>oil to sell the crude oil produced for the benefit of the working interest owners from the McGraw-Stevens Waterflood Unit at market price leveis. On January 9, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Pennzoil Producing Company, Houston, Texas, DXE-2012 crude oil

Pennzoil Producing Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Pennzoil to sell the crude oil produced for the benefit of the working interest owners from the Woodruff Sand Waterflood Unit at market price levels. On January 11, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Ross Production Company, Shreveport, Louisiana FEE-4476 crude oil

Ross Production Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Ross to sell the crude oil produced from the C. F. Routon property located in Catahoula Parish, Louisiana for the benefit of the working interest owners at upper tier ceiling price levels. On January 12, 1979 the DOE issued a Proposed Decision and Order which determined that Ross' request should be granted in part.

Sun Company, Inc. Dallas, Texas DEE-1483 crude oil

Sun Company, Inc. filed an application for Exception from proposed amendments to the provisions of 10 CFR 211.67 (the Domestic Crude Oil Entitlements Program). The exception request, if granted, would permit Sun to sell the crude oil produced for the benefit of the working interest owners from the Felda Fields without regard to the proposed Amendments. On January 12, 1979, the DOE issued a Proposed Decision and Order which determined that the exception request be granted to the extent that Sun may sell a portion of the crude oil produced from the Sunoco Felda Unit at upper tier prices.

Texas Oil and Gas Corporation, Corpus Christi, Texas, DEE-1830 crude oil

Texas Oil and Gas Corporation filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Texas Oil and Gas to sell the crude oil produced for the benefit of the working interest owners at the Pete Rydolph "A" Lease at upper tier ceiling prices. On January 12, 1979, the DOE issued a Proposed Decision and Order which determind that the exception request be granted.

[FR Doc. 79-2509 Filed 1-24-79; 8:45 am]

[6450-01-M]

Southwestern Power Administration

[DOE/EA-0068]

TRANSMISSION LINE CONSTRUCTION

HARRY S. TRUMAN DAM TO CLINTON SUBSTATION

Negative Determination of Environmental Impact

The Southwestern Power Administration, Department of Energy, has analyzed the potential environmental impacts of the proposed construction of 29 miles of 161 Kv transmission line in Benton and Henry Counties in Missouri from the Harry S. Truman Dam near Warsaw, Missouri, to the SWPA substation at Clinton, Missouri, and has determined that the proposed action will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act, 42 U.S.C. 4321 et seq. Therefore, pursuant to 10 CFR 208.4(c), the Department of Energy has concluded that preparation of an Environmental Impact Statement is not required.

Copies of the negative determination and the environmental assessment are available for public inspection at:

Library, DOE, Room 1223, 20 Massachusetts Avenue, NW., Washington, DC; DOE Freedom of Information Reading Room GA152, Forrestal Building, 1000 Independence Avenue SW., Washington, DC; and SWPA Headquarters, Room 3330, Page Belcher Building, 333 West 4th Street, Tulsa, OK.

This notice of negative determination and the environmental assessment are being furnished to various Federal, State, and local agencies with environmental expertise, or which are otherwise likely to be interested in, or affected by, the proposed program. Copies of the documents are also being furnished to State and local clearinghouses and to other interested groups and individuals.

Interested parties are invited to submit written comments with respect to the negative determination to: Administrator, Southwestern Power Administration, P.O. Drawer 1619, Tulsa, Oklahoma, 74101. Ten copies should be submitted. All comments should be received within 15 days of the date of this notice. Any information considered by the person submitting it to be confidential should be so identified and submitted in accordance with procedures set forth in 10 CFR 205.9(f). Any material not filed in accordance with such section will be considered to be nonconfidential. The Department of Energy reserves the right to determine the confidential status of information or data submitted, and to treat it according to that determination.

A limited number of single copies of the negative determination and the environmental assessment are available for distribution by contacting the Chief, Branch of General Services, Southwestern Power Administration, P.O. Drawer 1619, Tulsa, Oklahoma, 74101.

Dated at Washington, D.C., this 22 day of January 1979.

RUTH C. CLUSEN,
Assistant Secretary for Environment.

[FR Doc. 79-2696 Filed 1-24-79; 10:41 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180172E; FRL 1044-7]

ALABAMA, ARKANSAS, FLORIDA, GEORGIA, LOUISIANA, NORTH CAROLINA, SOUTH CAROLINA, AND TEXAS

Proposed Emergency Exemptions for Use of Ferriamicide to Control Fire Ants; Extension of Additional Comment Period

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

ACTION: Proposed emergency exemptions; extension of additional comment period.

SUMMARY: EPA is providing a second additional formal opportunity for public comment on proposed emergency exemptions to permit the use of the pesticide Ferriamicide to control fire ants in Alabama, Arkansas, Florida, Georgia, Louisiana, North Carolina, South Carolina, and Texas. Notice of the first opportunity for additional formal public comment was published in the October 18, 1978 edition of the FEDERAL REGISTER (43 FR 48012).

DATE: Comments on these eight applications are due by February 5, 1979.

ADDRESS: Send comments to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mr. Timothy A. Gardner, Product Manager 15 (PM-15), Registration Division (TS-767), Office of Pesticide Programs, EPA, Room 229, East Tower, telephone (202) 426-9426.

SUPPLEMENTARY INFORMATION: A complete statement of the background relating to EPA's decision to permit additional public comment on the applications of the eight States named above to use the pesticide Ferriamicide in those States appeared in the October 18, 1978 edition of the FEDERAL REGISTER (43 FR 48012). EPA's position is that emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) are not subject to the notice and comment provisions of 5 U.S.C. Section 553. The Agency, however, provided an additional formal comment period on the eight States' applications.

The additional comment period closed on November 15, 1978. Since that date additional information has been brought to the Agency's attention and the Agency has decided to provide a second additional opportunity for formal comment. The additional information which has been received has been placed in the public file on this matter, which is located in Room 229-E, 401 M Street SW., Washington, D.C. The public file may be inspected during normal business hours.

Any additional comments which interested persons desire to submit on the information in the public file or any other relevant subject must be submitted by February 5, 1979.

Dated: January 22, 1979.

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

[FR Doc. 79-2678 Filed 1-24-79; 8:45 am]

[6560-01-M]

[FRL 1044-5]

NATIONAL DRINKING WATER ADVISORY COUNCIL

Open Meeting

Under section 10(a)(2) of Pub. L. 92-463, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under Pub. L. 93-523, the "Safe Drinking Water Act," will be held at 9:00 a.m. on February 22, 1979, and at 8:30 a.m. on February 23, 1979, in Room 3906, Waterside Mall, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C.

The purpose of the meeting will be to discuss EPA's underground Injection Control Regulations which are scheduled to be reproposed, and to review State program reports on drinking water activities. In addition, five new Council members will be given the oath of office.

Both days of the meeting will be open to the public. The Council encourages the hearing of outside statements and allocates a portion of its meeting time for public participation. Any parties or individuals interested in presenting an oral statement should petition the Council in writing. The petition should include the general topic of the proposed statement and the petitioner's telephone number.

Any person who wishes to file a written statement can do so before or after a Council meeting. Accepted written statements will be recognized at Council meetings.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement, should contact Patrick Tobin, Executive Secretary for the National Drinking Water Advisory Council, Office of Drinking Water (WH-550), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

The telephone number is: Area Code 202/426-8877.

THOMAS C. JORLING,
Assistant Administrator for Water and Waste Management.

JANUARY 22, 1979.

[FR Doc. 79-2680 Filed 1-24-79; 8:45 am]

[6560-01-M]

[OPP-180256; FRL 1044-6]

OREGON AND WASHINGTON STATE DEPARTMENTS OF AGRICULTURE

Specific Exemptions to Use Isopropyl Carbanilate to Control Cheatgrass and Volunteer Grain in Fallow Wheat Fields

The Environmental Protection Agency (EPA) has granted specific exemptions to the Oregon and Washington State Departments of Agriculture (hereafter referred to as the "Applicants") to use isopropyl carbanilate to control cheatgrass and volunteer grain in 50,000 acres of fallow wheat fields in Oregon and 100,000 acres in Washington. These exemptions were granted in accordance with, and are subject to, the provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Room E-315, Washington, D.C. 20460.

According to the Applicants, wheat fields are allowed to remain fallow every other year in Oregon and Washington in order to conserve the limited amount of moisture for the subsequent wheat crop. Research and grower practice have demonstrated that it is important to control weed growth in fallow fields since weed growth utilizes moisture and necessitates excessive tillage or cultivation prior to planting. Minimum tillage is an important agricultural practice in these areas since the light, sandy soils are subject to wind and water erosion. Growers normally attempt to leave at least twenty percent of the previous crop residue on the soil surface in order to reduce soil erosion.

This year's heavier than normal rain in August and September has enabled germination and establishment of cheatgrass and volunteer grain many months earlier than in previous years. These weeds utilize large amounts of moisture and require residue-destroying tillages to control them. The Applicants claim that the use of isopropyl carbanilate would control the weeds during the non-crop year, and allow the past year's crop residue to control erosion since tilling would not be required.

Under conditions that exist this year, the Applicants feel that the alternative registered pesticides atrazine, cyanazine, glyphosate, and paraquat will not provide effective control of weed pests for a variety of reasons. They claim that these pesticides may (1) work for one of the weeds but not the other, (2) are effective only when used on the growing plants, (3) can be applied by ground equipment only and in the affected area there is limited available equipment, (4) require multiple, cost-prohibitive applications, or (5) are not recommended for use on soils with low organic content, which is the condition of the soils to be treated.

The applicants estimate the loss of five bushels of wheat per acre of untreated fields. In Oregon the monetary loss could come to $875,000, and in Washington it could come to $1,500,000. Washington also claims that future productivity may be reduced by the loss of up to 100 tons of top soil per acre as a result of wind and water erosion if growers must resort to tillage to control the weeds.

The Applicants propose to make a single pre- or post-emergence application of isopropyl carbanilate using ground or air equipment. In Oregon, it will be applied at a rate of three pounds active ingredient (a.i.) per acre, and in Washington, three to four pounds a.i. per acre depending on soil type if pre-emergence, or stage of weed growth if post-emergence. Treated fields will be planted to wheat in the fall of 1979.

EPA has established interim tolerances for residues of isopropyl carbanilate on various agricultural crops at rates ranging from 0.05 part per million (ppm) to 2 ppm. EPA has conclud that residue levels from the proposed use are not likely to exceed 0.1 ppm, and should not result in an undue health hazard. Unreasonable adverse effects to fish and wildlife are not anticipated.

After reviewing the applications and other available information, EPA has determined that (a) pest outbreaks of cheatgrass and volunteer grains have occurred; (b) there is no effective pesticide presently registered and available for use to control these pests in Oregon and Washington; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the pests are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicants have been granted specific exemptions to use the pesticide noted above until March 1, 1979. The specific exemptions are also subject to the following conditions:

1. The Product Chem Hoe 135 FL3 may be applied at a rate of three pounds a.i. per acre in Oregon, and three to four pounds a.i. per acre in Washington;

2. A single application is authorized;

3. Ground application will be made in a minimum of 20 gallons of water, and aerial application will be made in five to ten gallons of water;

4. All applications of isopropyl carbanilate are limited to fallow fields that will be planted to wheat during the fall of 1979;

5. In Oregon, a maximum of 50,000 acres may be planted. In Washington, a maximum of 100,000 acres may be planted;

6. Applications shall be made by State-licensed commercial applicators or qualified growers;

7. All applicable directions, restrictions, and precautions on the product label will be observed;

8. Precautions will be taken to avoid or minimize spray drift to non-target areas;

9. This use of isopropyl carbanilate is not expected to result in residues of isopropyl carbanilate in wheat grain, straw, or forage in excess of 0.1 ppm. Wheat grain and straw with residues that do not exceed this level may be offered in interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action. Existing tolerances are adequate to cover secondary residues in meat and milk;

10. The EPA shall be immediately informed of any adverse effects to man or the environment resulting from the use of isopropyl carbanilate in connection with this exemption; and

11. Each of the Applicants is responsible for assuring that all of the provisions of its specific exemption are met in the State and must submit a report summarizing the results of this program by June 15, 1979.

(Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).)

Dated: January 22, 1979.

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

[FR Doc. 79-2679 Filed 1-24-79; 8:45 am]

[6560-01-M]

[FRL 1044-4]

SCIENCE ADVISORY BOARD SUBCOMMITTEE ON MOBILE SOURCES

Open Meeting

As required by Pub. L. 92-463, notice is hereby given that a meeting of the Subcommittee on Mobile Sources of the Science Advisory Board will be held beginning at 9:15 a.m., February 20 and 21, 1979 in Room 1112-A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia. This the first meeting of the Subcommittee on Mobile Sources. The Agenda includes a briefing on diesel health effects research being conducted by the Environmental Protection Agency, the Department of Transportation, and the automobile industry; A summary of provisions of the Clean Air Act relating to mobile sources; and a review of the Mobile Sources Research Plan prepared by EPA's Mobile sources Research Committee. The meeting is open to the public. Any member of the public wishing to attend, participate, or obtain information should contact Mr. Terry F. Yosie or Dr. Douglas B. Seba, Staff Officers, Subcommittee on Mobile Sources, (703) 557-7720, by close of business February 13, 1979.

Dated: January 19, 1979.

RICHARD M. DOWD,
Staff Director, Science Advisory Board.

[FR Doc. 79-2682 Filed 1-24-79; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[SS Docket No. 79-4; File Nos. 82242/3/4-IB-98**]

RULAND SALVAGE, INC.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: January 12, 1979.

Released: January 17, 1979.

In reapplications of Ruland Salvage, Inc., 603 Main Street, Westbury, New York 11590, for authorizations for new facilities in the Business Radio Service, SS Docket No. 79-4, File Nos. 82242/3/4-IB-98**.

1. The Chief, Safety and Special Radio Services Bureau (the Bureau) has before him for consideration the above-captioned applications of Ruland Salvage, Inc. (Ruland) for authorization of new facilities in the Business Radio Service. The applications, filed September 8, 1978, had been granted by the Bureau November 9, 1978. On November 21, 1978, the Bureau, pursuant to § 1.113 of the Commission's Rules, set aside its earlier action and returned the applications to pending status after receiving information that Ruland had been operating unlicensed radio facilities on frequencies assigned by the Commission for use by other licensees.

2. Ruland's applications propose operation on a frequency pair in the 800 MHz band. Information before the Bureau indicates that for a period of two months Ruland operated a radio system on a frequency pair in the 472/475 MHz band and that such operation continued until it was discovered by the staff of the Commission's Field Operations Bureau. Ruland's use of that frequency pair was unlicensed. Those frequencies were evidently licensed to Motorola Communications And Electronics, Inc. in Jericho, New York, which has sold radio equipment to Ruland. It appears that the radio equipment used by Ruland in its unlicensed operation was lent to it by Motorola. See *Bill Sims d/b/a Sims Tow Service*, Docket No. 21416 (FCC 78D-42 released July 7, 1978). It is unclear why the radio equipment was lent to Ruland.

3. The information before the Bureau concerning Ruland's unlicensed operation raises serious questions as to whether Ruland possesses the requisite character qualifications or is sufficiently competent or shows sufficient interest with respect to the licensing and implementation of radio facilities to receive a grant of the authorizations which it here seeks. Because the Bureau cannot make the necessary finding, pursuant to Section 309(a) of the Communications Act of 1934, as amended, that a grant of the above-referenced applications would serve the public interest, convenience and necessity, the applications must, in accordance with Section 309(e) of the Act, be designated for hearing.

4. *Accordingly, it is ordered*, That in accordance with the provisions of Section 309(e) of the Communications Act of 1934, as amended (47 U.S.C. 309(e)), the above-captioned applications of Ruland Salvage, Inc., File Nos. 82242/3/4-IB-98**, for authorization of new facilities in the Business Radio Service are, pursuant to authority delegated in Sections 0.131(a) and 0.331 of the Commission's Rules, designated for hearing, at a time and place to be specified at a later date, on the following issues:

(a) To determine whether Ruland Salvage, Inc. operated radio facilities in the Business Radio Service which were not licensed to it.

(b) To determine whether any unlicensed operation by Ruland Salvage, Inc. was knowing or willful.

(c) To determine, in light of the evidence adduced pursuant to issues (a) and (b) hereinabove, whether Ruland Salvage, Inc. possesses the requisite character qualifications to receive a grant of the applications which are the subject of this proceeding.

(d) To determine, in light of the evidence adduced pursuant to issues (a) and (b) hereinabove, whether Ruland Salvage, Inc. has exhibited such lack of interest or carelessness concerning conduct of its affairs with respect to the licensing and implementation of radio facilities that it should not be entrusted with the radio authorizations which it is here seeking.

(e) To determine, in light of the evidence adduced pursuant to each of the foregoing issues, what disposition of the above-captioned applications of Ruland Salvage, Inc. will best serve the public interest, convenience and necessity.

5. *It is further ordered*, That Ruland Salvage, Inc. and the Chief, Safety and Special Radio Services Bureau ARE MADE PARTIES in this proceeding.

6. *It is further order*, That the burden of proceeding with the introduction of evidence of the burden of proof are, pursuant to Section 309(e) of the Communications Act of 1934, as amended, and §§ 1.254 and 1.973(e) of the Commission's rules, upon Ruland Salvage, Inc. with respect to the issues set forth in paragraph 4 hereinabove.

7. *It is further ordered*, That each of the parties named in paragraph 5 hereinabove, in order to avail itself of the opportunity to be heard, shall within 20 days of the mailing of this notice of designation by the Secretary of the Commission, file with the Commission, in triplicate, a written notice of appearance that it will appear on the date fixed for hearing and present evidence on the issues specified in this Order, as prescribed in § 1.221 of the Commission's rules.

8. *It is further ordered*, That the Secretary of the Commission shall serve a copy of this Order, by Certified Mail, Return Receipt Requested, upon Ruland Salvage, Inc. at the address furnished in its applications.

FEDERAL COMMUNICATIONS COMMISSION,
CARLOS V. ROBERTS,
Chief, Safety and Special Radio Services Bureau.

[FR Doc. 79-2613 Filed 1-24-79; 8:45 am]

[6712-01-M]

[Canadian List No. 379]

CANADIAN STANDARD BROADCAST STATIONS

Notification List

List of new stations, proposed changes in existing stations, deletions, and corrections in assignments of Canadian standard broadcast stations modifying the assignments of Canadian broadcast stations contained in the Appendix to the Recommendations of the North American Regional Broadcasting Agreement Engineering Meeting January 30, 1941.

DECEMBER 8, 1978.

Call letters	Location	Power kW	Antenna	Schedule	Class	Antenna height (feet)	Ground system		Proposed date of commencement of operation
							Number of radials	Length (feet)	
CHRD	Drummondville, Que., N. 45°47'47", W. 72°29'04" (P.O. 10kw) (Reduced tolerance Q = 18mV/m)	*50D/35N*	DA-2	*1480 kHz* U	III	.....	.....	.....	Dec. 8, 1979

WALLACE E. JOHNSON,
Chief, Broadcast Bureau,
Federal Communications Commission.

[FR Doc. 79-2614 Filed 1-24-79; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

COMBUSTION ENGINEERING, INC.

Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Combustion Engineering, Inc. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to its proposed acquisition of Basic Incorporated. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Combustion Engineering. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: January 17, 1979.

FOR FURTHER INFORMATION CONTACT:

Malcolm R. Pfunder, Assistant Director for Evaluation, Bureau of Competition, Room 394, Federal Trade Commission, Washington, D.C. 20580, (202-523-3404).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers of acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the FEDERAL REGISTER.

By direction of the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-2691 Filed 1-24-79; 8:45 am]

[4110-24-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Institute of Museum Services

MUSEUM SERVICES PROGRAM

Closing Date for Receipt of Applications for Fiscal Year 1979

Notice is given that, under the authority contained in section 206 of the Museum Services Act, Pub. L. 94-462, Title II (20 U.S.C. 965), applications from museum are being accepted under the Museum Services Program. The Museum Services Program provides Federal financial assistance to ease the financial burdens borne by museum as a result of their increased use by the public and to help them carry out their educational and conservation roles as well as other functions. Under this program grants are made to museums to maintain, increase, or improve museum services.

CLOSING DATE: Applications for awards must be mailed or hand delivered by March 9, 1979.

(a) *APPLICATIONS FORMS AND INFORMATION:* Application forms are available from the program office of the Institute of Museum Services (IMS). The Institute plans to mail forms and program information packages to organizations currently on the Institute's mailing list.

Applications must be prepared and submitted in accordance with the regulations for the Museum Services Program (45 CFR Part 64) and the instructions and forms included in the program information packages.

(b) *APPLICATIONS SENT BY MAIL:* An application sent by mail must be addressed to: U.S. Office of Education, Application Control Center, ATTENTION: 13.923, Washington, D.C. 20202. (While the Institute is not part of the U.S. Office of Education, that Office is making available its facilities to receive applications invited under this notice.)

Applications sent by mail must be postmarked not later than March 9, 1979. Proof of timely mailing must consist of a legible U.S. Postal Service dated postmark or legible mail receipt stamped by the U.S. Postal Service.

(NOTE.—The U.S. Postal Service does not uniformly provide a dated postmark. Applicants should check with their local post office before relying on this method.

Applicants are encouraged to use registered or at least first class mail.

(c) *HAND-DELIVERED APPLICATIONS:* An application to be hand-delivered must be taken to the U.S. Office of Education, Application Control Center, Room 5673, Regional Office Building Three, 7th & D Streets, S.W., Washington, D.C. Hand-delivered applications will be accepted daily between the hours of 8 a.m. and 4 p.m. Washington, D.C. time except Saturdays, Sundays, or Federal holidays. Applicatons will not be accepted after 4 p.m. on the closing date.

Strict compliance with the closing date and these procedures is required. Late applications will be returned to the applicants.

(d) *PROGRAM INFORMATION:*

(1) *Adoption of final regulations.* Final regulations for the Museum Services Program (45 CFR Part 64) were published in the FEDERAL REGISTER on September 29, 1978 at pages 45166-45173. These regulations govern the program for the current fiscal year, including the review of applications submitted in response to this notice. These regulations contain rules for the award of grants to museums from funds appropriated under the Museum Services Act, including rules governing the eligibility of applicant institutions, the types of assistance that may be provided, the criteria to be used in judging applications, and the requirements that must be met by applicants.

In the final regulations, IMS invited additional public comment regarding the criteria for evaluation of applications for general operational support (§ 64.13 of the regulations, 45 CFR 64.13) and for project support (§ 64.14 of the regulations, 45 CFR 64.14). (See p. 45167 of the September 29, FR Doc.) The Institute received very few written comments on these criteria in response to this invitation. In the view of the Institute, the comments received do not warrant a change in the criteria. One commenter urged that the criteria for evaluation of applications for general operational support (§ 64.13) should invite the applicant to provide statistical informaton on whether increased attendance had resulted in increased operating costs causing neglect of essential museum services such as conservation. IMS believes that the criteria as written (particularly §§ 64.13(a) and 64.13(b)) permit applicants to address this concern. Other commenters expressed satisfaction with the regulations as they stand.

Under these circumstances, the criteria in §§ 64.13 and 64.14 of the final regulations published on September 29 remain in effect and will govern the valuation of applications for assistance under the Museum Services Program submitted during the current fiscal year. In applying the criterion for general operating support in § 64.13(a) (45 CFR 64.13(a))—museum services—the Institute does not give less weight to situations where the effect of the general operating support is to maintain rather than increase the quality of

services of the applicant institution. See § 64.7 of the regulations.

An application must contain the information necessary to permit IMS to determine that the applicant meets the requirements in § 64.11 of the regulations (45 CFR 64.11) and to apply the criteria for evaluation of applications.

Applications will be accepted from institutions which qualify as museums under the definition set forth in the regulations. (Service organizations are currently ineligible.)

For the 1979 grants program, priority will be given to those museums that:

1. Have been providing museum services for at least two years.

2. Operate their own exhibition facilities. (See § 64.12 (45 CFR 64.12).)

(2) *Other information.* For fiscal year 1979 $7,400,000 in grant funds are available. Not less than 75% of this amount will be awarded for general operating support. The balance of the funds will be awarded for special projects that are model or exemplary and address a problem that is general to a number of museums.

A museum may apply for both operational and project support, but it is anticipated that no museum will receive more than $25,000 under the Institute's grant programs for the current fiscal year. (See § 64.9 of the regulation (45 CFR 64.9).) The Institute will accept joint applications from cooperating museums in the Special Projects category. In these cases, each museum is eligible for up to $25,000, but one of the cooperating museums must serve as fiscal agent. Applicants wishing to submit joint applications are encouraged to contact the IMS staff prior to submitting applications.

(e) *FOR FURTHER INFORMATION AND FORMS CONTACT:* Elizabeth Olofson, Institute of Museum Services, Room 326H, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201; telephone (202) 245-6753.

(Catalog of Federal Domestic Assistance No. 13.923; Insitute of Museum Services)

Dated: January 17, 1979.

LEE KIMCHE,
Director, Institute of Museum Services.

[FR Doc. 79-2558 Filed 1-24-79; 8:45 am]

[4110-02-M]

Office of Education

[Amdt. #2]

NATIONAL ADVISORY COUNCIL ON THE EDUCATION OF DISADVANTAGED CHILDREN

Meeting Relocated

This notice is an amendment to the notice of the meeting of the Editing Committee of the National Advisory Council on the Education of Disadvantaged Children which appeared on Page 1472 in the January 5, 1979 edition of the FEDERAL REGISTER. The Editing Committee meeting scheduled to be held on January 29-30, 1979 in Washington, D.C., has been relocated. The meeting will now be held at 2929 Banyan Road in *Boca Raton, Florida.* For any further information regarding this meeting, please call the Council office at area code 202/724-0114.

The National Advisory Council on the Education of Disadvantaged Children is established under section 148 of the Elementary and Secondary Act (20 U.S.C. 2411) to advise the President and the Congress on the effectiveness of compensatory education to improve the educational attainment of disadvantaged children.

Signed at Washington, D.C. on January 22, 1979.

GLORIA B. STRICKLAND,
Acting Executive Director.

[FR Doc. 79-2587 Filed 1-24-79; 8:45 am]

[4110-02-M]

TEACHER CENTERS PROGRAM

Procedures for Appeal and Extended Closing Dates for Transmittal of Applications for Fiscal Year 1979

On August 23, 1978, closing dates for transmittal of applications for grants awarded by the U.S. Office of Education were published in the FEDERAL REGISTER. That notice covered most Office of Education programs, including the Teacher Centers Program. Because the Education Amendments of 1978 (Pub. L. 95-561) made changes in the Teacher Centers Program statute (20 U.S.C. 1119a), the Office of Education is now amending the August 23, 1978 notice of closing dates to reflect those changes. Apart from the changes noted in this notice, the dates and other information contained in the August 23, 1978 notice of closing dates remain unchanged. This notice changes only: (1) The procedures for appeal and transmittal of applications for which an appeal has been requested; (2) the closing dates for transmittal of applications for non-competing continuation awards to support the first year of operation following an award made solely for planning; and (3) the amount of funds available.

I. *Notice of Procedures for Appeal.* The Education Amendments of 1978 (Pub. L. 95-561) significantly change that portion of the Teacher Centers Program statute which permits a dissatisfied applicant to appeal for reconsideration of an unfavorable recommendation of its application by the State educational agency. (See 20 U.S.C. 1119a(c)(2) and (3).)

The effect of the statutory change is that in every appeal by an applicant (1) the Commissioner requests further consideration by the appropriate State educational agency, whether or not it reconsiders the application favorably, shall transmit it to the Commissioner.

In order to avoid the delay in transmitting and evaluating applications that might result from this statutory change, the Commissioner gives notice to applicants who wish to appeal that their petition must be transmitted to the office of the Teacher Centers Program (at the address noted under Further Information) by March 9, 1979, and that applicants should simultaneously send a copy of the petition to the appropriate State educational agency. Applicants who wish to appeal are encouraged to make their intent known by telephone at the number given below under "Further Information" prior to submitting a written appeal. The Commissioner requests further consideration by the appropriate State educational agencies of any and all applications for which an appeal is taken, and further requests the State educational agencies to transmit those applications to the U.S. Office of Education Application Control Center by March 15, 1979.

(Although the amended Teacher Centers Progarm stautue allows the State educational agency to wait 30 days—until April 9, 1979 at the latest—before transmitting its non-recommended applications for which appeals have been made, the March 15, 1979 date is suggested in the above paragraph to facilitate timely review by the Office of Education.)

II. *Notice of Extended Closing Dates. New closing dates for non-competing continuation grants.* The Commissioner establishes new closing dates *only* for the transmittal of applications for non-competing continuation awards to support the first year of operation following an award made solely for planning a teacher center. The Commissioner is extending these dates in order to give applicants who received grants solely for planning the maximum time possible to complete their work. The awards affected are:

Grant number G007804146 Ouachita Parish, LA
Grant number G007804569 Jackson, MS
Grant number G007804048 Missoula, MT

Grant number G007804567 Newark, NJ
Grant number G007804655 Oak Ridge, TN
Grant number G007804162 Kelso, WA
Grant number G007804138 Spokane, WA
Grant number G007804040 Spokane, WA

The closing dates for all applicants other then those listed above are unchanged. (See the notice of closing dates that was published in the FEDERAL REGISTER on August 23, 1978.)

CLOSING DATE FOR TRANSMITTAL OF APPLICATIONS TO STATE EDUCATIONAL AGENCIES. To be assured of consideration for funding, applications for non-competing continuation awards, *to support the first year of operation following an award made solely for planning a teacher center,* should be mailed (postmarked) or hand delivered to the appropriate State educational agency by March 1, 1979.

If the application is late, the State educational agency may lack sufficient time to review it with other non-competing continuation applications and may decline to accept it.

All applications must be submitted to the State educational agency of the State in which the applicant is located, for review by that agency. The State educational agency must then transmit to the U.S. Office of Education those applications that it recommends for consideration and approval by the Commissioner of Education. State educational agencies may set their own criteria for the review of applications, and applicants may wish to take these criteria into consideration. The State criteria (if any) can be obtained by writing to the appropriate State educational agency (see the list of chief State school officers in the notice of closing dates that was published in the FEDERAL REGISTER on August 23, 1978).

APPLICATIONS DELIVERED BY MAIL: Five copies (3 for the U.S. Office of Education) of an application for a non-competing continuation grant should be sent to the chief State school officer of the appropriate State educational agency. The package in which the application is mailed should be clearly marked: Attention: CFDA 13.416 Teacher Centers Program continuation application. Planning grant. State review required.

APPLICATIONS DELIVERED BY HAND: An application that is hand delivered should be taken to the office of the appropriate chief State school officer, during their regular business hours.

CLOSING DATE FOR TRANSMITTAL OF APPLICATIONS TO THE U.S. OFFICE OF EDUCATION: To be assured of consideration for funding, applications for non-competing continuation awards *to support the first year of operation following an award made solely for planning a teacher center,* should be mailed (postmarked) or hand delivered by March 15, 1979.

If the application is late, the Office of Education may lack sufficient time to review it with other non-competing continuation applications and may decline to accept it.

APPLICATIONS DELIVERED BY MAIL: Applications sent by mail must be addressed to the U.S. Office of Education, Application Control Center, Attention: 13.416, Washington, D.C. 20202.

Applicants are encouraged to use registered or at least first-class mail.

APPLICATIONS DELIVERED BY HAND: Applications that are hand delivered must be taken to the U.S. Office of Education, Application Control Center, Room 5673, Regional Office Building 3, Seventh and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand delivered applications between 8 a.m., and 4 p.m. (Washington, D.C., time) daily except Saturdays, Sundays, and Federal holidays.

AVAILABLE FUNDS: The fiscal year 1979 appropriation for the Teacher Centers Progam is $12.625 million. It is anticipated that of this sum $3 million will be available to fund approximately 30 new projects. These estimates do not bind the U.S. Office of Education except as may be required by the applicable statutes and regulations.

FURTHER INFORMATION: For further information contact Dr. Allen Schmieder, Teacher Centers Program, Division of Educational Systems Development, U.S. Office of Education (Room 819 Riviere Building), 400 Maryland Avenue, SW., Washington, D.C. 20202, telephone (202) 653-5839.

(20 U.S.C. 1119a)

Dated: January 18, 1979.

ERNEST L. BOYER,
U.S. Commissioner of Education.

(Catalog of Federal Domestic Assistance Number 13.416; Teacher Centers Program)

[FR Doc. 79-2577 Filed 1-24-79; 8:45 am]

[4110-89-M]

Office of the Assistant Secretary for Education, Office of the Assistant Secretary for Planning and Evaluation

FINANCING PUBLIC AND NONPUBLIC ELEMENTARY AND SECONDARY SCHOOLS DURING THE COMING DECADE

Public Hearing

AGENCY: Department of Health, Education, and Welfare.

ACTION: Notice of public hearing.

SUMMARY: This document establishes the time and date for a public hearing on the financing of public and nonpublic elementary and secondary schools during the period 1980-1990.

DATE: February 5.

LOCATION: Auditorium, Hubert Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20202.

TIME: 9-12 a.m. and 1-5 p.m.

CONTACT: William E. McLaughlin, 202-245-6996.

Supplementary Information: The Education Amendments of 1978 direct the Secretary of the Department of Health, Education, and Welfare to conduct a comprehensive, three-year study of elementary and secondary school finance. The legislation provides the following framework for the study:

1. Investigation of the availability of reliable and comparative data on the status and trends in financing elementary and secondary education.

2. Conduct of studies necessary to understand and analyze the trends and problems affecting the financing of elementary and secondary education, both public and nonpublic, including the prospects for adequate financing during the next ten years.

3. Development of recommendations for federal policies to assist in improving the equity and efficiency of federal and state systems for raising and distributing revenues to support elementary and secondary education.

The purpose of the public hearing is to provide an opportunity for the public to share their concerns and proposals regarding the financing of elementary and secondary education during the coming decade.

The hearing will be before the Steering Committee established by the Secretary to oversee the initial organization of the study. Present will be the Deputy Assistant Secretary for Education, the Deputy Assistant Secretary for Planning and Evaluation, the Deputy Director for the National Institute of Education, the Assistant Commissioner of Education for Policy Studies, and the Acting Director of the Division of Elementary and Secondary Education Statistics in the National Center for Education Statistics.

Testimony will be accepted from students, parents, faculty, administrators, public officials, and educational organizations. Testimony should be limited 15 minutes or less. Those interested should directly contact William E. McLaughlin at (202) 245-6996 by February 2. The following information should be provided when contacting Mr. McLaughlin: Name; address; (business, if appropriate); telephone number during working hours; capacity in which the presentation will be made (e.g., parent, student, association representative, etc.); principal issues to

be addressed; minimum time necessary for presentation; and text of presentation, if available.

The transcription and all written testimony will become a part of the record in the proceedings.

Dated: January 17, 1979.

MARY BERRY,
Assistant Secretary for Education.

Dated: January 17, 1979.

BEN W. HEINEMAN,
Assistant Secretary for Planning and Evaluation, Acting.

[FR Doc. 79-2578 Filed 1-24-79; 8:45 am]

[4110-85-M]

Office of the Secretary

ANNUAL OPERATING PLAN

Fiscal Year 1979

The following tables set forth the compliance and enforcement activities that the Office for Civil Rights is conducting in FY 1979.

OCR plans to have 573.2 investigator person years available [1] for compliance work in FY 1979. Of these person years, 377.6 are assigned to complaint investigations. The remaining 195.6 person years are assigned to compliance reviews.

In FY 1977, OCR resolved complaints for which investigations were required at the rate of 4.3 per investigator per year. In the first half of FY 1978, the rate had been increased to 6.7 complaints per investigator per year, and to 11.8 by the second half of the fiscal year. If OCR continues to resolve investigated complaints at the rate of 11.8 per investigator per year, it will end FY 1979 with a workload of 2555 complaints under or awaiting investigation.

The consent order, dated December 29, 1977, in *Adams vs. Califano* and related cases requires that OCR "use its best efforts" to eliminate the complaint backlog by the end of FY 1979. To accomplish this, OCR should have no more than 1266 complaints in its workload at that time. Without the addition of substantial new resources, this goal can be accomplished only by increasing the Agency's productivity to a rate of 18 investigated complaint resolutions per investigator per year by the third quarter of FY 1979. Accordingly, OCR will use its best efforts to increase its productivity to an annual rate of 18 complaints per investigator per year in order to comply with the *Adams* Order. Table 2 shows the results OCR would achieve in FY 1979 working at the rates of 12 and 18 investigated complaints per investigator per year.

In order to raise its productivity rate, OCR will:

- Improve its management control and accountability
- Streamline its complaint processing procedures
- Strengthen its training program for new and experienced investigators
- Provide better policy articulation
- Establish closer coordination between regional offices and HEW General Counsel attorneys (including locating a new unit of attorneys in each OCR regional office)

A report on the Agency's increased productivity for the first half of FY 1979 will be issued on May 31, 1979. If the report indicates that the backlog will be eliminated before the end of the year, as OCR believes it will, there will be staff available for additional compliance reviews in the fourth quarter of FY 1979. The additional reviews to be conducted will be identified in the May 31 report.

OCR appreciates the comments that members of the public submitted on the proposed AOP that was published in August. After careful consideration of these comments and re-evaluation of its priorities, the following changes have been made in the compliance reviews to be conducted in FY 1979:

CHANGES IN THE PROPOSED AND FY 1979 ANNUAL OPERATING PLAN

Type	Number	Person years
REVIEWS DROPPED		
Medicaid/Medicare Reviews	1	2.24
Public Health Care Reviews	2	4.00
Mental Retardation Services Reviews	2	1.66
Child Welfare Services Reviews	1	.41
Compliance Plan Monitoring	1	.10
Public Higher Education Central Administrative Units Reviews	2	1.32
Special Title IX Reviews	5	.55
REVIEWS ADDED		
Monitoring Adams State Higher Education Systems	1	.75
FY78 AOP Carryover Reviews	3	2.53
Hospital Reviews	1	1.45
Health Planning Reviews	1	.65
Public Assistance/Social Services Reviews	2	4.00
Vocational Rehabilitation Services Reviews	1	1.04
Community Colleges Reviews	2	2.00
Special 504 Reviews	2	.80

The investigator time assigned to compliance reviews in FY 1979, 195.6 person years, is 20.4 person years less than scheduled in FY 1978 because of the transfer of staff with Executive Order 11246 responsibilities to the Department of Labor on October 1. (The FY 1978 plan assigned approximately 21 person years to Executive Order reviews). The specific reviews that OCR will conduct in FY 1979 are dictated by:

- The requirements of the consent order
- Other external requirements such as reviewing applications for Federal financial assistance (primarily ESAA grants)
- OCR's goal of achieving balance in its compliance program
- The minority, female and handicapped population in each HEW region.

The specific types of reviews which OCR will conduct appear in Table 3. Region by region tables for the compliance reviews are available from OCR on request.

Dated: January 18, 1979.

DAVID S. TATEL,
Director,
Office for Civil Rights.

[FR Doc. 79-2502 Filed 1-24-79; 8:45 am]

[1] OCR's total authorized staff for FY 1979 is 1893 positions. Of these positions, 527 are assigned to Headquarters and 1366 to the regional offices. Of the regional positions, 687 are for investigators, 108 for attorney support, 82 for first line supervisors, 178 for management and 311 for clerical support. Of the investigator positions, 398 were filled on October 1, and 563 on December 31. Because of the time needed for the filling of these vacancies and the training of the new staff, OCR estimates that the staff in these 687 investigtor positions will provide 573.2 person years of work in FY 1979.

OFFICE FOR CIVIL RIGHTS

FY 1979 ANNUAL OPERATING PLAN

TABLE 1

COMPLAINT RECEIPTS

1. Starting Inventory 10/1/78	3376
2. Projected FY 1979 Complaint Receipts	5768
3. FY 1979 Receipts Projected to be Closed Without Investigation	2514
4. FY 1979 Receipts held for Investigation (See Table 2)	3254
5. Total Complaints Requiring Investigation in FY 1979 (Item 1 + Item 4)	6630

OCR will close complaints without an investigation for one or more of the following reasons:

1. OCR has no jurisdiction over the alleged discrimination.
2. OCR has no jurisdiction over the subject matter of the complaint.
3. The complaint is filed too late.
4. The complaint is incomplete and not completed within 110 days.
5. The complaint is being, or will be, investigated by another compliance agency.
6. The complainant cannot be located, refuses to cooperate, or withdraws the complaint.
7. The complaint is on its face without merit.

OFFICE FOR CIVIL RIGHTS
FY 1979 Annual Operating Plan
Table 2
Complaints Pending at End of Year

NOTE: OCR will be in compliance with the Adams Order when it is able to begin the investigation of complaints when they are received. Given OCR's projected complaint receipts for FY 1979, and the time required for the conduct of an investigation and negotiations, the minimum OCR workload at the end of FY 1979 without a backlog will be 1266 complaints.

PRODUCTIVITY RATE	12	18
Investigated Complaints Closed in FY'79	4075	5364
Workload at End of 4th Quarter FY 1979	2555	1266
Person Years for Additional Compliance Reviews in 4th Quarter FY 1979	-0-	42

* The productivity rate represents the number of investigated complaints a single investigator resolves in a fiscal year.

Table 3
OFFICE FOR CIVIL RIGHTS
COMPLIANCE REVIEW ACTIVITY - 1979

NATIONAL TOTALS

11/20/78

TYPE OF REVIEW	NUMBER	PERSON YEARS	TYPE OF REVIEW	NUMBER	PERSON YEARS	TYPE OF REVIEW	NUMBER	PERSON YEARS
1. Emergency School Aid Act Reviews (Title VI)	644	45.08	11. New Reviews of Elementary & Secondary Districts in the N & W (Brown)(Title VI Section 504; Title IX)	2	6.00	18. Public Assistance/ Social Services Reviews (Title XX) (Title VI; Section 504)	3	6.00
2. Health Agency and Program Pre-grant Reviews (Title VI)	1,395	6.99	12. Medicaid/Medicare Reviews (Title VI; Section 504)	1	2.24	19. Child Welfare Services Reviews (Title VI; Section 504)	2	1.78
3. Monitoring Adams State Higher Education Systems (Title VI)	11	11.25	12a. Hospital Reviews (Title VI; Section 504)	10	3.13	20. Vocational Rehabilitation Services Reviews (Title VI; Section 504)	3	3.12
4. Formerly Dual State Higher Education Systems Reviews (Title VI)	5	11.00	12b. Nursing Home Reviews (Title VI; Section 504)	0	0	21. Compliance Plan Monitoring (Title VI, Section 504; Title IX)	56	5.60
5. Elementary and Secondary School District Language Program (Lau) Reviews (Title VI)	45	9.45	12c. Neighborhood Health Center Reviews (Title VI; Section 504)	2	.16	22. Community Colleges/Systems Reviews (Title VI; Section 504; Title IX)	2	2.00
6. Equal Educational Services Reviews of Major City School Systems (Title VI; Section 504; Title IX)	4	12.50	13. Public Health Care Reviews (Title VI; Section 504)	2	4.00	23. Special Section 504 Reviews (Section 504)	45	10.00
7. Area Vocational/Technical School Reviews (Title VI; Section 504; Title IX)	10	10.80	14. Health Planning Reviews (Title VI; Section 504)	3	1.95	24. Special Title IX Reviews (Title IX)	78	14.68
8. Special Purpose State Administered School Reviews (Title VI; Section 504; Title IX)	15	9.60	15. Mental Health Services Reviews (Title VI; Section 504)	3	2.00			
9. FY '78 AOP Carryover Reviews (Title VI; Section 504; Title IX)	9	3.28	16. Mental Retardation Services Reviews (Title VI; Section 504)	3	2.49			
10. FY '78 AOP Negotiation and Enforcement Carryover (Title VI; Section 504; (Title IX)		9.07	17. Drug Abuse/Alcoholism Services Reviews (Title VI; Section 504)	2	.94		2352	195.61

[4110-12-M]

Office of the Secretary

OFFICE OF FACILITIES ENGINEERING

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part A of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare, Office of the Secretary, by making certain changes in chapter AMF, "Office of Facilities Engineering," (OFE) (43 FR 2764, January 19, 1978). The amendment transfers the functions of the Management Services Staff from the Office of the Director and the Division of Federally Assisted Construction from Office of Technical Services to the Office of Planning and Special Projects. These changes will provide for more effective management and use of staff. The necessary revisions to the chapter are as follows:

Delete from section AMF.20 Functions, subsection A, Office of the Director, items 7 and 8, and from subsection C, Office of Technical Services, items 7, 8, and 9. Add the above items to subsection B, Office of Planning and Special Projects. The revised statement for B, Office of Planning and Special Projects, now reads as follows:

B. Office of Planning and Special Projects. The Office of Planning and Special Projects performs the following functions:

1. Manages and coordinates special activities that cut across functional responsibilities within the Office of Facilities Engineering, such as:

(a) The development and recommendation of energy conservation actions for HEW-owned facilities and HEW facility-related programs; (b) the development and recommendation of HEW policy and procedures for providing physical accessibility in the area of architectural barriers; and (c) the development and maintenance of a working procedure and process for HEW facilities master planning.

2. Provides technical facilities planning consulting services to any HEW requesting office.

3. Designs, implements, and operates internal engineering management information and performance evaluation systems in coordination with OFE Office heads. Advises those Office heads on changes in procedures and priorities in all matters relating to internal OFE and HEW-wide facility engineering operations. Designs, implements, and operates the OFE manpower management program control, and work planning systems.

4. Provides ADP operations and technical ADP support to system users within HEW and GSA for the Facilities Management Information System (FMIS), Facilities Engineering Automated Management System (FEAMS), and Safety Management Information System.

5. Directs and coordinates the HEW nationwide natual disaster engineering activity to service the Office of Education and the Department of Housing and Urban Development/Federal Disaster Assistance Administration Programs.

6. Develops the requirements for an information system to monitor construction project schedules, costs, trends, and progress, and annual manpower resources need.

7. Manages the Department's construction wage rate (Davis-Bacon) and labor standards program, and coordinates with the Department of Labor in resolving construction contractor violations.

Dated: January 15, 1979.

FREDERICK M. BOHEN,
Assistant Secretary for Management and Budget.

[FR Doc. 79-2557 Filed 1-24-79; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-79-910]

PRIVACY ACT OF 1974

Proposed New System of Records

AGENCY: Department of Housing and urban Development.

ACTION: Notice of proposed new system of records.

SUMMARY: The Department is giving notice of a new system of records it intends to maintain that is subject to the provisions of the Privacy Act of 1974.

EFFECTIVE DATE: The system of records shall become effective without further notice on February 26, 1979 unless comments are received on or before February 26, 1979, which would result in a contrary determination.

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

FOR FURTHER INFORMATION CONTACT:

Mr. Harold Rosenthal, Departmental Privacy Act Officer, telephone 202-755-5192.

SUPPLEMENTARY INFORMATION: The new system identified as Single-Family Homes Management Underwriting System will consist of manual and machine-readable records about builders of single-family dwellings. The system records are required by the Department to aid the processing of mortgagee applications for property appraisal and commitment for mortgage insurance. The personal data items protected by the Privacy Act and included in this system are: name, address, telephone number, tax identification or social security account number, and minority data to include racial/ethnic background and the sex of the builder. A new system report was filed with the Speaker of the House, the President of the Senate and the Office of Management and Budget on November 24, 1978. The prefatory statement containing General Routine Uses applicable to all of the Department's systems of records was published at 43 FR 55105 (November 24, 1978). Appendix A, which lists the addresses of HUD's field offices, was published at 43 FR 55121 (November 24, 1978).

HUD/H-5

System name:

Single-family Homes Management Underwriting System.

System location:

Headquarters and field offices. For a complete listing of these offices, with addresses, see Appendix A.

Categories of individuals covered by the system:

Builders of single-family dwellings.

Categories of records in the system:

Case binders and automated files contain builder's name; address; telephone number; tax identification number or social security account number; and minority data for statistical tracking to include racial/ethnic background and sex of the builder.

Routine uses of records maintained in the system including categories of users and purposes of such uses:

See Routine Uses paragraphs in prefatory statement. Other routine uses: none.

Policies and practices for stowing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

In case binders and on magnetic tape/disc/drum.

Retrievability:

Name, tax identification number or social security number.

Safeguards:

Manual files are kept in lockable cabinets or rooms; automated records

are maintained in secured areas. Access to either type of record is limited to authorized personnel.

Retention and disposal:

Manual records of insured cases are retained for 36 years and rejected cases are retained for one year. Computerized records of insured cases are retained for 10 years and rejected cases are retained for 3 years.

System manager and address:

Director, Office of Organization and Management Information, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Notification procedure:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

Record access procedures:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

Contesting record procedures:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

Records source categories:

HUD authorized mortgagees.

(5 U.S.C. 552a, 88 Stat. 1896; sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d)).)

Issued at Washington, D.C., January 19, 1979.

WILLIAM A. MEDINA,
Assistant Secretary for Administration.

[FR Doc. 79-2685 Filed 1-24-79; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CALIFORNIA

Filing of California State Protraction Diagram

JANUARY 16, 1979.

Notice is hereby given that effective March 14, 1979, the following protraction diagram, approved December 18, 1978, is officially filed and of record in the California State Office, Bureau of Land Management, Sacramento, California. In accordance with Title 43, Code of Federal Regulations, this protraction will become the basic record for describing the land for all authorized purposes at and after 10:00 a.m. on the above date. Until this date and time, the diagram has been placed in the open files and is available to the public for information only.

CALIFORNIA PROTRACTION DIAGRAM 60 (REVISED), SAN BERNARDINO MERIDIAN, CALIFORNIA

T. 2 S., R. 9 E.,
Sec. 1;
Sec. 2, N½, SE¼;
Sec. 3, NW¼;
Sec. 4;
Sec. 5, N½, SE¼;
Sec. 8, E½;
Sec. 9;
Sec. 10, SW¼;
Sec. 11, E½;
Secs. 12 & 13;
Sec. 14, E½;
Sec. 15, NW¼;
Sec. 16, N½;
Sec. 24, E½;
Sec. 25, NE¼, S½;
Sec. 36.

Copies of this diagram are for sale at two dollars ($2.00) each by the Survey Records Office, Bureau of Land Management, Room E-2807, Federal Office Building, 2800 Cottage Way, Sacramento, California.

HERMAN J. LYTTGE,
Chief, Branch of Records and Data Management.

[FR Doc. 79-2591 Filed 1-24-79; 8:45 am]

[4310-84-M]

[Group 519]

CALIFORNIA

Filing of Plat of Survey

JANUARY 17, 1979.

1. A plat of survey of the following described land, accepted January 13, 1976, will be officially filed in the California State Office, Bureau of Land Management, Sacramento, California, effective at 10:00 a.m. on March 16, 1979:

MOUNT DIABLO MERIDIAN, CALIFORNIA

T. 26 S., R. 37½ E.,
Sections 1, 12, 13, 24, 25 and 36.

The area described totals 1,477.23 acres.

The plat represents a dependent resurvey of the west boundary of T. 26 S., R. 38 E., and the north and a portion of the west boundaries of Section 1, T. 27 S., R. 37 E., and the subdivisional survey of a hiatus designated as T. 26 S., R. 37½ E.

2. These lands are within California Grazing District No. 1 established by Secretary's Order dated April 8, 1935.

3. The above listed lands are withdrawn from entry under the nonmineral public land laws by Public Land Order No. 2594, dated January 22, 1962, establishing the Monache-Walker Pass National Cooperative Land and Wildlife Management Area and Section 36 is withdrawn in Stock Driveway No. 235, California No. 17, by Secretary's Order dated January 21, 1933.

4. The area surveyed is located at the eastern edge of the Sierra Nevada Mountains. The steep mountain escarpments range in elevation from 4,000 feet to over 6,000 feet. Vegetation in the lower elevations includes Joshua trees, sagebrush and creosote bush with annual grasses as understudy. Pinon-juniper is found at the higher elevations with an understudy of big sage, black brush and California buckwheat.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, Room E-2841, 2800 Cottage Way, Sacramento, California 95825.

HERMAN J. LYTTGE,
Chief, Branch of Records and Data Management.

[FR Doc. 79-2592 Filed 1-24-79; 8:45 am]

[4310-84-M]

[Colorado 26085]

NORTHWEST PIPELINE CORP.

R/W Application for Pipeline

JANUARY 17, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 USC 185), Northwest Pipeline Corporation, 315 East 200 South, Salt Lake City, Utah 84111, has applied for a right-of-way for a 4¼" o.d. natural gas pipeline for the Colorow Gultch Gathering System approximately 0.879 miles long across the following Public Lands:

SIXTH PRINCIPAL MERIDIAN, RIO BLANCO COUNTY, COLORADO

T. 3 N., R. 97 W., 6th P.M.
Section 29: SW¼NW¼, N½SW¼, W½SE¼

The above-named gathering system will enable the applicant to collect natural gas in areas through which the pipeline will pass and to convey it to the applicants' customers.

The purposes for this notice are: (1) To inform the public that the Bureau of Land Management is proceeding with the preparation of environmental and other analytic reports, necessary for determining whether or not the application should be approved and if approved, under what terms and conditions. (2) To give all interested parties the opportunity to comment on the application. (3) To allow any party asserting a claim to the lands involved or having bona fide objections to the proposed natural gas gathering system to file its claim or objections in the Colorado State Office. Any party so filing must include evidence that a copy thereof has been served on *Northwest Pipline Corporation.*

Any comment, claim or objections must be filed with the Chief, Branch of Adjudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202, as promptly as possible after publication of this notice.

ANDREW W. HEARD, Jr.,
Leader, Craig Team
Branch of Adjudication.

[FR Doc. 79-2593 Filed 1-24-79; 8:45 am]

[4310-84-M]

[Colorado 26176 c]

NORTHWEST PIPELINE CORP.

R/W Application for Access Road

JANUARY 17, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 USC 185), Northwest Pipeline Corporation, 315 East 200 South, Salt Lake City, Utah 84111, has applied for a 30' right-of-way for an access road for a meter station for the Rocky Mountain Natural Gas Gathering System approximately 0.011 miles across the following Public Lands:

SIXTH PRINCIPAL MERIDIAN, MOFFAT COUNTY, COLORADO

T. 10 N., R. 94 W., 6th P.M.
Section 22: SE¼SW¼SW¼
Section 27: NE¼NE¼NW¼

The above-named gathering system will enable the applicant to collect natural gas in areas through which the pipeline will pass and to convey it to the applicants' customers.

The purposes for this notice are: (1) To inform the public that the Bureau of Land Management is proceeding with the preparation of environmental and other analytic reports, necessary for determining whether or not the application should be approved and if approved, under what terms and conditions. (2) To give all interested parties the opportunity to comment on the application. (3) To Allow any party asserting a claim to the lands involved or having bona fide objections to the proposed natural gas gathering system to file its claim or objections in the Colorado State Office. Any party so filing must include evidence that a copy thereof has been served on *Northwest Pipeline Corporation.*

Any comment, claim or objections must be filed with the Chief, Branch of Adjudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202, as promptly as possible after publication of this notice.

ANDREW W. HEARD, Jr.,
Leader, Craig Team
Branch of Adjudication.

[FR Doc. 79-2594 Filed 1-24-79; 8:45 am]

[4310-84-M]

[CA-856]

CALIFORNIA

Termination of Proposed Withdrawal and Reservation of Land

JANUARY 15, 1979.

Notice of a Bureau of Reclamation, U.S. Department of the Interior, application CA-856, for withdrawal and reservation of lands for addition to Tulelake townsite was published as FR Doc. 74-9483 on page 14618 of the issue of April 25, 1974 and republished as FR Doc. 77-17003 on pages 30549 and 30550 of the issue of June 15, 1977. The applicant agency has withdrawn its application in its entirety. The lands involved are described as follows:

MOUNT DIABLO MERIDIAN, CALIFORNIA

T. 47 N., R. 4 E.,
Sec. 1, a tract of land within the NW¼NW¼ being all the southerly portion of Lot 4, also shown as Block 1 on the plat of "Tulelake Townsite Addition," approved September 11, 1973.

The area described aggregates 12.43 acres in Siskiyou County, California.

Therefore, pursuant to the regulations contained in 43 CFR Part 2350, such lands at 10:00 a.m. on February 22, 1979, will be relieved on the segregative effect of the above mentioned application.

MARIE M. GETSMAN,
Acting Chief, Lands Section,
Branch of Lands and Minerals Operations.

[FR Doc. 79-2597 Filed 1-24-79; 8:45 am]

[4310-84-M]

[Colorado 22644 and 26913]

LANDS IN ROUTT COUNTY, COLORADO

Public Hearing

United States Department of the Interior, Bureau of Land Management, Colorado State Office, Denver, Colorado. Notice is hereby given that a public hearing will be held on February 15, 1979 at 7:00 p.m. in the Routt County Courthouse in Steamboat Springs, Colorado. The purpose of the hearing is to obtain public comments concerning the offering for lease of certain coal resources in the lands hereinafter described on the Technical Examination-Environmental Assessment Report and on the following items: (1) the method of mining to be employed to obtain maximum economic recovery of the coal (2) the impact that mining the coal in the proposed leaseholds may have on the area, included but not limited to impacts on the environment, agriculture, and other economic activities, and (3) method of evaluation of the coal to be offered. Comments will be accepted orally or in writing and will be considered prior to lease offering.

In addition, the public is invited to submit written comments on the fair market value of the coal to be offered to the State Director, Bureau of Land Management, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202.

COAL TO BE OFFERED IN C-22644

The coal resource to be offered is limited to strippable reserves to be mined from the Wadge Coal bed in the following described lands located approximately 13 miles south of Milner, Routt County, Colorado:

T. 4 N., R. 86 W., 6th P.M.
Sec. 18: Lots 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, & 16;
Sec. 19: Lots 2, 3, 4, 5, and those parts of Lots 1, 6, 7, 8, 11, and 12 and that part of the NW¼NE¼ lying north of a line described below*:
T. 4 N., R. 87 W., 6th P.M.
Sec. 13: SE¼NE¼, NE¼SE¼, S½SE¼
Sec. 24: NE¼, NE¼NW¼, S½NW¼, N½SW¼, N½N½S½SW¼, NW¼SE¼, N½N½SW¼SE¼, and that part of the E½SE¼ lying north of a line described below*:

*Southern boundary—Beginning at the southwest corner of the N½N½SW¼SW¼ of Sec. 24, T. 4 N., R. 87 W., 6th P.M., Colorado, thence N. 89° 54' E. approximately 3,960 ft. to the southwest corner of the N½N½SE¼SE¼, thence N. 63° 16' E. approximately 1,473 ft. to the northeast corner of the S½S½NE¼SE¼ of said section, thence N. 0° 30' W. approximately 63 ft. along the Range line between Ranges 86 and 87 W., 6th P.M., Colo. to the southwest corner of Lot 12 of Sec. 19, T. 4 N., R. 86 W., 6th P.M., Colo., thence N. 53° 29' E. approximately 6,651 ft. to the northeast corner of

Footnotes continued on next page

COAL TO BE OFFERED IN C-26913

The coal resource to be offered is limited to strippable reserves to be mined from the Wadge Coal bed in the following described lands located approximately 13 miles south of Milner, Routt County, Colorado:

T. 4 N., R. 86 W., 6th P.M.
Sec. 7: Lot 11 and SE¼
Sec. 8: Lot 4 and SW¼
Sec. 18: Lots 1, 2 and 3 (Containing 524.48 acres.)

NOTICE OF AVAILABILITY

The Technical Examination-Environmental Assessment Report will be available for review in the Craig District Office, Bureau of Land Management, 455 Emerson Street, P.O. Box 248, Craig, Colorado 81625.

A copy of the Technical Examination-Environmental Assessment Report, the case files and the comments submitted by the public on fair market value, except those portions identified as proprietary by the commenter, will be available for public inspection at the Bureau of Land Management, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202.

ANDREW W. HEARD, JR.,
Leader, Craig Team,
Branch of Adjudication.

[FR Doc. 79-2598 Filed 1-24-79; 8:45 am]

[4310-84-M]

[ES 10960]

LOUISIANA

Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

The Property Management and Disposal Service, General Services Administration, filed application ES 10960 on April 28, 1972 for the withdrawal of the following described land:

LOUISIANA MERIDIAN

T. 12 S., R. 6 E.,
Sec. 79, The westernmost part not patented as part of Lot 1, sec. 6, based on the public land survey plat of October 2, 1830,

Containing approximately 17.50 acres in Iberia Parish, Louisiana. The General Service Administration desires to use the land in its disposal program for the former New Iberia Naval Auxiliary Air Station. A notice of the proposed withdrawal was previously published as FR Doc. No. 73-12378 in FR 16253 on June 21, 1973.

Pursuant to Section 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application.

All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing with the Director, Eastern States, Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Maryland 20910, on or before February 20, 1979. Notice of the public hearing will be published in the FEDERAL REGISTER, giving the time and place of such hearing. The hearing will be scheduled and conducted in accordance with BLM Manual Sec. 2351.16B. All previous comments submitted in connection with the withdrawal application are included in the record and will be considered in making a final detemination on the application.

In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management on or before February 20, 1979.

The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by temporary segregation. In accordance with Section 204(g) of the Federal Lands Policy and Management Act of 1976 the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications in connection with the pending withdrawal application should be addressed to the Director, Eastern States, Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Maryland 20910.

LOWELL J. UDY,
Director,
Eastern States.

[FR Doc. 79-2599 Filed 1-24-79; 8:45 am]

[4310-84-M]

[NM 35756 and 35764]

NEW MEXICO

Applications

JANUARY 16, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Southern Union Gathering Company has applied for five 4-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 29 N., R. 8 W.,
Sec. 3, lot 1, SE¼NE¼, NE¼SW¼, S½SW¼ and N½SE¼;
Sec. 12, N½NE¼.
T. 29 N., R. 9 W.,
Sec. 17, SE¼SE¼;
Sec. 20, NE¼NE¼;
Sec. 21, lot 1;
Sec. 24, lots 1, 7 and 8.

These pipelines will convey natural gas across 2.074 miles of public lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address toa the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

FRED E. PADILLA,
Chief, Branch of Lands and
Minerals Operations.

[FR Doc. 79-2602 Filed 1-24-79; 8:45 am]

[4310-84-M]

[NM 35758, 35763]

NEW MEXICO

Applications

JANUARY 18, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Southern Union Gathering Company has applied for one 2-inch and one 4-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 31 N., R. 10 W.,
Sec. 30, lots 16, 18 and 19.
T. 30 N., R. 11 W.,
Sec. 1, lot 4.

These pipelines will convey natural gas across 0.978 of a mile of public lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land

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Footnotes continued from last page
the W½NW¼NE¼ of Sec. 19, T. 4 N., R. 86 W., 6th P.M., Colo. (Containing 1,265.22 acres.)

Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

RAUL E. MARTINEZ,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-2603 Filed 1-24-79; 8:45 am]

[4310-84-M]

[NM 35759 and 35762]

NEW MEXICO

Applications

JANUARY 16, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Gas Company of New Mexico has applied for one 2-inch, one 3-inch and four 4-inch natural gas pipline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 26 N., R. 8 W.,
Sec. 5, lots 2, 3, 4 and SW¼NE¼;
Sec. 6, lot 1.
T. 27 N., R. 8 W.,
Sec. 31, SW¼NE¼, W½SE¼ and SE¼SE¼.
T. 29 N., R. 8 W.,
Sec. 31, lots 9, 11, 12, SE¼NE¼ and NE¼SE¼;
Sec. 32, S½NE¼, N½SW¼ and NW¼SE¼.

These pipelines will convey natural gas across 3.559 miles of public lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-2601 Filed 1-24-79; 8:45 am]

[NM 35761 and 35772]

NEW MEXICO

Applications

JANUARY 18, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Gas Company of New Mexico has applied for four 4-inch and four 2-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 29 N., R. 11 W.,
Sec. 5, lot 4 and SW¼NW¼;
Sec. 6, lots 1, 3, 6, 7, S½NE¼, SE¼NW¼, E½SW¼ and SE¼;
Sec. 7, E½NE¼.
T. 30 N., R. 11 W.,
Sec. 31, lots 12, 14 and 15.
T. 31 N., R. 11 W.,
Sec. 18, lot 2.
T. 31 N., R. 12 W.,
Sec. 13, lots 1, 2 and 5.

These pipelines will convey natural gas across 4.530 miles of public lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

RAUL E. MARTINEZ,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-2600 Filed 1-24-79; 8:45 am]

[4310-84-M]

[Wyoming 65890]

WYOMING

Application

JANUARY 18, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation of Salt Lake City, Utah filed an application for a right-of-way for one 8⅝ inch O.D. pipeline, one 6⅝ inch O.D. pipeline and three 4½ inch O.D. pipelines for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 21 N., R. 111 W.,
Sec. 8, NW¼NW¼.
T. 21 N., R. 112 W.,
Sec. 2, S½SE¼;
Sec. 10, N½N½, SW¼NW¼ and NW¼SW¼;
Sec. 12, N½N½, SW¼NW¼ and N½SW¼.

The pipelines are an extension of the applicant's Moxa Arch Gathering System and will transport natural gas from the Whiskey Buttes #6, #8, and #17 wells in sections 10, 1, and 12, T. 21 N., R. 112 W., to a point in the NW¼NW¼ Sec. 8, T. 21 N., R. 111 W., in Lincoln and Sweetwater Counties, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 N., P. O. Box 1869, Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-2606 Filed 1-24-79; 8:45 am]

[4310-84-M]

[Wyoming 66261]

WYOMING

Application

JANUARY 17, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 4½ inch pipeline and related facilities consisting of a meter house and a dehydrator for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 17 N., R. 99 W.,
Sec. 8, SW¼SW¼;
Sec. 18, SW¼NE¼, E½NE¼, N½SE¼ and SE¼SE¼.

The pipeline will transport natural gas produced from the Federal R-1 Well located in the SW¼SW¼ of sec. 8, to a point of connection with Colorado Interstate Gas Company's existing pipeline in the NW¼SE¼ of sec. 18, within T. 17 N., R. 99 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 N., P.O. Box 1869, Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-2605 Filed 1-24-79; 8:45 am]

[4310-84-M]

[Wyoming 66308]

WYOMING

Application

JANUARY 17, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation of Salt Lake City, Utah filed an application for a right-of-way to construct a 6⅝ inch O.D. pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 22 N., R. 111 W.,
Sec. 20, N½N½;
Sec. 22, N½N½.

The proposed pipeline will transport natural gas extending from a point of connection with Northwest Pipeline Corporation's Trunk "A" pipeline located in the NW¼SW¼ section 29, and will connect into the proposed 6⅝ inch O.D. pipeline at a point in the NW¼NW¼ section 20, and will end at a point in the NW¼NW¼ section 23, T. 22 N., R. 111 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 N., P.O. Box 1869, Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-2604 Filed 1-24-79; 8:45 am]

[4710-07-M]

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

PRESIDIO VALLEY FLOOD CONTROL PROJECT

Intent Not to Prepare Environmental Impact Statement

JANUARY 10, 1979.

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Intent not to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines, and the Agency's "Operational Procedures for Implementing section 102 of the National Environmental Policy Act of 1969" dated March 5, 1974, the Agency hereby gives notice that an environmental impact statement is not found necessary for the work of repairing the Presidio Valley Flood Control Project levees, channel bank, grade control structures, and irrigation and drainage facilities damaged during the September-October 1978 flood.

The findings of the environmental assessment of this action are that it does not constitute a major Federal action which would cause significant local, regional, or national impact on the environment. As a result of these findings, Mr. J. F. Friedkin, Commissioner, has determined that the preparation and review of an environmental impact statement are not needed for this action.

FOR FURTHER INFORMATION CONTACT:

D. D. McNealy, Principal Engineer, Supervising, United States Section, International Boundary and Water Commission, 4110 Rio Bravo, El Paso, Texas 79902, 915-543-7330.

SUPPLEMENTARY INFORMATION: The Presidio Valley Flood Control Project was authorized by Pub. L. 92-549, approved October 25, 1972, as part of a coordinated plan by the United States and Mexico for international flood control works for protection of lands along the international section of the Rio Grande in the United States and in Mexico in the Presidio-Ojinaga Valley. Construction of the levees was completed late in 1976, and the Project receives annual maintenance.

A final environmental impact statement dated March 17, 1971, on the original flood control project was transmitted to the Council on Environmental Quality on april 1, 1971, and included the finding that the project would have negligible effects on wildlife, and would enhance the environment of the people in the Valley.

The extraordinary 1978 flood was 146 percent of the levee design flood, resulting in overtopping and breaching of the downstream portion of the levee and causing inundation of 2,119 acres of farmlands. The plan of repair includes reconstruction and raising portions of the levee, repairing the erode channel bank, repair of the levee erosion damage, cleaning and repair of drainage facilities, and placing or replacing riprap where needed.

No administrative action on implementation of this proposal will be taken until February 26, 1979.

Signed at El Paso, Texas, this 16th day of January, 1979.

D. D. MCNEALY,
Principal Engineer, Supervising.

[FR Doc. 79-259 Filed 1-24-79; 8:45 am]

[4810-25-M]

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

PRIVACY ACT OF 1974

Systems of Records; Annual Publication

The purpose of this document is to give notice that the systems of records identified in notices published in the FEDERAL REGISTER at 42 FR 48178 (September 22, 1977) continue in effect without change. This notice is published in compliance with the requirements of 5 U.S.C. 552a(e)(4).

ROWLAND E. CROSS,
Chairman, Joint Board for the Enrollment of Actuaries.

JANUARY 19, 1979.

[FR Doc. 79-2683 Filed 1-24-79; 8:45 am]

[4410-18-M]

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE

Solicitation for Research Grants Regarding Parole Conditions and Revocations

The National Institute of Law Enforcement and Criminal Justice announces a competitive research grant aimed at examining administrative discretion as it relates to determination of conditions of parole and the utilization of technical violations as a basis for parole revocations.

The solicitation asks for proposals to be submitted for peer review in accordance with the criteria set forth in the solicitation. In order to be considered, all proposals must be postmarked no later than March 15, 1979. The 18 month research grant is planned for award in July 1979 with funding support not to exceed $225,000.

Further information and copies of the solicitation can be obtained by contacting: Director, Corrections Division, Office of Research Programs, NILECJ, 633 Indiana Avenue, N.W.,

Washington, D.C. 20531 (301) 492-9118.

BLAIR G. EWING,
Acting Director, National Institute of Law Enforcement and Criminal Justice.

[FR Doc. 79-2607 Filed 1-24-79; 8:45 am]

[4410-18-M]

GRANT PROGRAMS

AGENCY: Law Enforcement Assistance Administration, Department of Justice.

ACTION: Notice of grant programs.

The Law Enforcement Assistance Administration (LEAA) published in the FEDERAL REGISTER on August 24, 1978, (43 FR 37964), a draft program announcement or incentive fund programs in order to obtain public comment about the proposed concept. Extensive and varied comments were received from a number of public interest groups and individuals. LEAA is now considering those comments and will issue a revised version, in the form of a Guideline, for review later this year.

Due to the divergence of views on the proposed programs and budget constraints for new program funding, LEAA will only experiment with the concept and award only a limited number of grants this fiscal year for the models listed below. Additional programs may be announced later in the year, depending on the availability of resources.

Programs will be governed by the administrative and fiscal requirements of LEAA Guideline Manuals M 4500.1G, Guide to Discretionary Grant Programs and M 7100.1 Financial Management for Planning and Action grants, except where specific modifications are necessary to provide flexibility for experimenting with this approach. Deadlines for application, size and number of grants to awarded, selection criteria, and specific procedures for application will differ among the programs. That information may be obtained from the offices listed below.

The names, addresses, and telephone numbers of offices to contact for information about each program are listed with each program description below:

1. MANAGING CRIMINAL INVESTIGATIONS

LEAA-sponsored research and development have disclosed a number of ways in which improvements can be made in managing criminal investigations, a critical police function. successful tests at five sites have been conducted, upon which this program is based. The program has the following objectives:

To increase the percentage of convictions for target crimes and offenders;

To reduce the number of cases not prosecuted or dismissed because of faulty case preparation;

To decrease the time and resources devoted by investigator units on cases which are potentially "unsolvable," and;

To improve the effective allocation of investigative resources.

The program has five major elements designed to structure the criminal investigation process to achieve the objectives:

(1) Organizational structure;
(2) Preliminary investigation;
(3) Case screening;
(4) Managing continuing investigation;
(5) Investigative monitoring system.

For information contact: Enforcement Program Management Team, Office of Criminal Justice Programs, Law Enforcement Assistance Administration, Washington, D.C. 20531 Phone: (202) 376-3967.

2. CAREER CRIMINAL PROSECUTION PROGRAM

A disproportionate amount of a jurisdiction's serious and violent crime is committed by a relatively few habitual offenders who utilize familiarity with the criminal justice system to avoid apprehension, identification, full prosecution and appropriate punishment. This program seeks to identify offenders who frequently commit robbery, aggravated assault, forceable sexual offenses, burglary, and recidivistic homicide, and to expedite the thorough preparaton and presentments of those cases to court.

The program emphasizes these concepts and strategies:

Early screening and evaluation of all felony cases to identify career criminal cases according to predetermined and even-handedly applied selection criteria;

Senior prosecutors assigned to career criminal cases;

Individualized and thorough case preparation (vertical handling);

A policy of no plea to sentence bargaining;

Witness coordination.

The program may be implemented by agencies, such as State Planning Agencies or State Prosecutor Associations, that have State-wide representation and that have authority to implement and supervise subgrants in local prosecutors' offices. Participating prosecutor offices must have a minimum of six (6) full-time assistant prosecutors.

For information contact: Career Criminal Prosecution Program, Adjudication Division, Office of Criminal Justice Programs, Law Enforcement Assistant Administration, Washington, D.C. 20531 Phone: (202) 376-2275.

3. JUROR UTILIZATION AND MANAGEMENT

This program is a set of operating procedures and measurements for juror utilization and management designed to reduce costs to the community, minimize income loss for jurors, insure selection methods that are proper and can withstand legal challenge, and increase citizen participation and interest by making productive use of jurors' time. LEAA-sponsored demonstrations have been implemented in 18 jurisdictions and are showing considerable cost and time savings.

The program design is based on proven methods for qualifying the optimum number of jurors, and summoning and utilizing jurors. It will enable state and local court administrators to apply and transfer these methods.

The program strategy focuses on state-wide implementation, or implementation in an individual court when that would have State-wide impact, of proven juror management procedures, tailoring the required financial and technical assistance to the needs of each State.

For information contact: Adjudication Program Management Team, Office of Criminal Justice Programs, Law Enforcement Assistance Administration, Washington, D.C. 20531. Phone: (202) 376-2275.

4. TREATMENT ALTERNATIVES TO STREET CRIME (TASC)

The Treatment Alternatives to Street Crime (TASC) program is designed to reduce substance abuse and its related criminal activity by providing community-based treatment services for substance abusing offenders. The TASC model has been demonstrated in over 50 cities and counties since 1972 and has expanded in concept from a pretrial diversion mechanism for heroin abusers to a comprehensive criminal justice/health care linkage mechanism for drug and alcohol abusing offenders.

The major elements of the model include:

A screening unit to identify and recruit potential clients as soon as possible after their arrest.

A diagnostic/evaluation unit to determine the nature and extent of drug use and provide appropriate referral to community-based treatment.

A monitoring or tracking unit to continuously monitor the progress of clients in treatment, to include weekly urinalysis reports, as well as serve as a liaison to the court or other criminal justice agent.

The TASC incentive program strategy focuses primarily on state-wide implementation of TASC models in all major urban centers and regional

rural areas where such services are needed. Each state will be required to establish a small central coordinating unit to plan and administer the TASC effort.

For information contact: TASC Program, Corrections Division, Office of Criminal Justice Programs, Law Enforcement Assistance Administration, Washington, D.C. 20531. Phone: (202) 376-3824.

5. PROSECUTOR MANAGEMENT INFORMATION SYSTEM (PROMIS)

This program will support the implementation of PROMIS on a multi-jurisdictional basis. PROMIS was developed as a prosecutor's management information system in 1971 for the Washington, D.C., U.S. Attorneys Office. The Institute for Law and Social Research (INSLAW), with LEAA support, has refined the system so that it can be operated on either a full-size or a mini-computer. The system is machine independent and can be operated on a variety of different manufacturers' hardware. A manual adaptation has also been developed for offices not requiring an automated system. PROMIS is presently being implemented in approximately 45 jurisdictions and been successfully adapted for use by State and local court systems.

The focus of this program is prosecutor offices; consideration may also be given to utilization of the system for trial court purposes. Objectives should be consistent with a State's criminal justice information planning. State-wide implementation is to be conducted on a phased basis in 3-5 jurisdiction increments. Counties may choose whether to install PROMIS, mini-PROMIS, or manual PROMIS, based upon their particular office workload requirements.

For information contact: Systems Division, National Criminal Justice Information and Statistics Service, Law Enforcement Assistance Administration, Washington, D.C. 20531. Phone: (301) 492-9057.

HENRY S. DOGIN,
Deputy Administrator for Policy Development.

[FR Doc. 79-2595 Filed 1-24-79; 8:45 am]

[7532-01-M]

NATIONAL COMMISSION ON NEIGHBORHOODS

MEETING

Late Notice

AGENCY: National Commission on Neighborhoods.

ACTION: Late notice of meeting by the National Commission on Neighborhoods called by a consensus of the commissioners.

SUMMARY: This notice required under the Federal Advisory Committee Act (5 U.S.C. Appendix I) announces a public meeting.

TIME AND DATE: From 9 a.m. to 5 p.m. on February 8, 1979.

PLACE: Room 9104, New Executive Office Building.

AGENDA: 9 a.m. to 5 p.m.—Consideration of final report.

JOHN EADE,
Designated Federal Officer.

[FR Doc. 79-2822 Filed 1-23-79; 3:45 pm]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

EXPORTATION OF NUCLEAR FACILITIES OR MATERIALS

Applications for Licenses

Pursuant to 10 CFR 110.70, "Public Notice of Receipt of an Application", please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, N.W., Washington, D.C.

Dated this day January 17, 1979, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

GERALD G. OPLINGER,
Assistant Director, Export/Import and International Safeguards, Office of International Programs.

EXPORT LICENSE APPLICATIONS, SOURCE AND SPECIAL NUCLEAR MATERIAL; IN KILOGRAMS

Name of applicant, date of application, date received, application number	% Enriched & Material Type	Total Element	Total Isotope	End-Use	Country of Ultimate Destination
Nissho-Iwai American, 12/19/78, 12/22/78, XSNMO1435.	45.40 Enriched Uranium	12	5.448	Demonstration Experiments of medium enriched uranium at KUCA.	Japan
General Elect. Co., 12/22/78, 12/27/78, XSNMO1436.	3.1 Enriched Uranium	5,875	161	Reload fuel for Tsuruga	Japan
Nissho-Iwai American, 12/29/78, 01/08/79, XSNMO1439.	1.52 Enriched Uranium	229.14	1.52	Fuel for advanced Thermal Reactor "FUGEN".	Japan

[FR Doc. 79-2419 Filed 1-24-79; 8:45 am]

[4910-58-M]

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 79-4]

ACCIDENT REPORTS AND STATISTICAL ANALYSES; RESPONSES TO SAFETY RECOMMENDATIONS

Availability

Aircraft Accident Reports.—The National Transportation Safety Board on January 11 made available the findings and probable causes of 900 U.S. general aviation accidents which occurred in 1978. The reports comprise a volume, the first in a series presented in a synoptic, computer-printout format that will be issued this year. This publication, No. NTSB-BA-78-7, also provides statistical information tabulated by type of accident, phase of operation, kind of flying, injury index, aircraft damage, conditions of light, pilot certificate, injuries, and causal factors.

The Safety Board, in Press Release SB 79-2 for Issue Number 1, cites one general aviation accident in which three persons were killed after a Piper PA-28 collided with cables supporting a 600-foot tall television antenna tower near Clewiston, Fla. The Board again warned general aviation pilots against low flying, which it described as usually unwarranted, unnecessary, and unsafe. The Board pointed out that in addition to the natural obstructions endangering low flight,

such as trees, box canyons, and mountains, the pilot in today's world is confronted with man-made obstructions often difficult to see even in good visibility conditions.

NOTE.—The brief reports in this publication contain essential information; more detailed data may be obtained from the original factual reports on file in the Washington Office of the Safety Board. Upon request, factual reports will be reproduced commercially at an average cost of 17 cents per page for printed matter, $5 per page for black-and-white photographs, and $4 per page for color photographs, plus postage. Requests concerning aircraft accident report briefs should include this information: (1) Date and place of occurrence, (2) type of aircraft and registration number, and (3) name of pilot.

Copies of Issue No. 1 may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

Annual Review of Aircraft Accident Data.—Another Safety Board publication, No. NTSB-ARG-78-2, presents the record of aircraft accidents which occurred in U.S. general aviation operations during the calendar year 1977. This publication, also released on January 11, includes an analysis of accident data relating to an overview, types of accidents, accident causal factors, kinds of flying, and conclusions; a statistical compilation of accident information presented in the form of accident and rate tables, analytic tables, injury tables and cause/factor tables. These statistical data are divided into sections pertaining to all operations, small fixed-wing aircraft, large fixed-wing aircraft, rotorcraft, gliders, and collisions between aircraft.

The total number of all general aviation accidents reached 4,286, an increase of 49 over 1975 and 93 more than in 1976. The number of fatal accidents—702—was an increase of 7 over 1976. The 1977 review also shows that engine failure or malfunction was cited as being involved in 1,025 accidents—almost 24 percent of the total number. Considering the total accidents by phase, the highest percentage—41 percent—occurred during the landing phase. Takeoff accidents accounted for 20 percent of the total.

The Safety Board noted in its press release, No. SB 79-3, that the pilot was cited as a causal factor in 89 percent of the fatal accidents and 81 percent of the nonfatal accidents during 1977. Emphasis on accident prevention training and safety programs, with special attention to pilot causal factors, could have a positive influence on the safety record of general aviation and could reduce the accident rates in this category, the Board said.

U.S. Civil Aviation Safety Records.—Through the medium of press release SB 79-4, U.S. civil aviation safety records for calendar year 1978 were released on January 16. The two basic segments of civil aviation, air carrier operations and general aviation operations, are presented separately. In each category the safety data are compiled in 10-year comparison tables of accidents, fatalities, and rates.

As indicated in the attachments to the press release, 1978 produced a mixed operational record; air carrier safety improved over the previous year but general aviation safety declined. U.S. air carriers recorded fewer total accidents and fewer fatalities than the preceding year. U.S. general aviation recorded increases in total and fatal accidents and fatalities compared to the preceding year.

The press release notes that U.S. air carriers in 1978 carried more than 286 million passengers, an increase of 32 million passengers or nearly 13 percent over 1977. In general aviation, except for commuter operation, the number of passengers carried is not reported. However, the aircraft hours flown in general aviation increased 2.2 percent from 35.8 million in 1977 to 36.6 million in 1978.

RESPONSES TO SAFETY RECOMMENDATIONS

Aviation

A-78-76.—The Federal Aviation Administration on January 3 submitted a formal response to a recommendation issued last October 17 calling for issuance of an Airworthiness Directive similar to AD 67-26-3 for all Piper PA-28 amd PA-32 aircraft to require that the interior surfaces of both main fuel tanks are inspected for evidence of sealant deterioration. (See 43 FR 50063, October 26, 1978.)

In response FAA notes that after 1966 the sloshing process, using sloshing compound EC 776SR, was discontinued on fuel tanks manufactured at the Piper Vero Beach Plant. Since then, PRC 1422 sealant has been used and is applied only to the skin laps of production airplanes. FAA says that analysis of available service history on this process does not provide any basis for airworthiness directive action at this time. FAA is, however, acting to minimize the probability of fuel flow interruption due to contamination by sealant deterioration. FAA has requested that the manufacturer: Implement improved cleaning and flushing procedures for the fuel system during manufacturing buildup; revise the inspection items required at annual inspection as listed in the aircraft service manual to emphasize the detection of fuel system contamination; and revise the appropriate service manuals to emphasize cleaning and thorough removal of all old sealant prior to resealing, and to specifically prohibit localized or spot sealing.

Further, FAA will issue a maintenance alert item emphasizing the importance of strict adherence to the fuel tank sloshing procedures provided with the Randolph Sloshing Sealer 802 compound. FAA expects to complete these actions within 90 days.

A-78-79 through 81; A-78-82 and 83.—FAA's response of January 9 addresses two sets of related recommendations issued last October 26 as a result of safety Board investigation of two midair collisions—one, last May 18 near Memphis (Tenn.) International Airport involving a Cessna 150 and a Falcon Fan Jet, and the other occurring last September 25 over San Diego, Calif., involving a Pacific Southwest Airlines Boeing 727-214 and a Cessna 172. (See 43 FR 51151, November 2, 1978.)

Concerning A-78-79, FAA reports that procedures for handling consecutive approaches at Memphis have been formalized and instituted to require coordination of any consecutive approach prior to the aircraft's crossing the approach end of the runway; if that coordination is not approved, the aircraft is climbed to 3,000 feet and handled as a departure. Also, aircraft conducting multiple practice approaches will be required to climb straight ahead to 3,500 feet with control responsibility transferred to the TRACON, unless otherwise coordinated.

Recommendation A-78-80 calls for establishment of two categories of terminal radar service areas (TRSA)— locations handling the largest volume of traffic with automated ATC equipment available to be designated TRSA I locations, and the remaining areas to be designated TRSA II locations. FAA reports issuance of a proposed rulemaking which it believes will meet or exceed the intent of this recommendation without adding additional categories of airspace or control services. FAA believes the latter is necessary to facilitate pilot and public understanding of the system and the various levels of service provided.

Recommendation A-78-81 asked FAA to require Mode "C" transponder equipment for operations with a TRSA I and Group II TCA and require that a pilot of a VFR flight traversing a TRSA I establish radio contact with the appropriate ATC facility before entering the designated airspace. FAA will soon issue an advance proposed rulemaking to upgrade altitude encoding requirements.

Recommendations A-78-82 and 83, stemming from the San Diego accident, addressed visual separation in terminal control areas and TRSA's. In response, FAA states that the total use of visual separation which is permitted only in the terminal environment is currently under study by a

task group composed of FAA headquarters, field personnel and Department of Defense representatives. All recommendations for changes resulting from this group will be submitted to all aviation interests, including the Safety Board, prior to May 1, 1979.

Highway

H-78-20.—Letter of January 12 from the Federal Highway Administration is in response to a recommendation issued last May 3 after the Safety Board completed a safety effectiveness evaluation of the National Accident Sampling System (NASS). The recommendation called for a comprehensive study of highway safety accident problem factors for data to identify the problem magnitude and support research and counter measure formulation, the problem factors to include geometric design factors, roadway surface skid resistance qualities, traffic control devices, traffic barrier systems, roadway hazards, and other factors related to highway operational safety. This study was to be designed to support the National Highway Transportation Safety Administration NASS program and activities of FHWA and State and local agencies involved in highway safety. (See 43 FR 20284, May 11, 1978.)

FHWA reports in response that an extensive list of data items related to highway and motor carrier safety was submitted by FHWA to NHTSA in May 1978 for consideration and possible inclusion in NASS forms. A joint FHWA/NHTSA subcommittee which reports to the Executive Coordination Group is now reviewing the data items on this list. Meetings of this group were held in August, September, November 1978, and a fourth meeting is planned for early 1979.

Further, FHWA reports planning a comprehensive study of its needs for safety-related information. In "A Statement of National Highway Transportation Policy," December 1976, FHWA said the ". . . safety considerations must be accounted for throughout each stage in the transportation development process." A task force is now determining the needed information to carry out this policy and should complete its report within 3 or 4 months. The scope, objectives, and approach for this task force study are described in an FHWA Notice, "Study of FHWA's Safety-Related Information Needs."

H-78-51.—Letter of January 9 from FHWA is in response to the Safety Board's December 1 comments on FHWA's initial response dated October 25 to one of two recommendations issued last July 19 following investigation of the tractor-cargo-tank semitrailer accident which occurred near Beattyville, Ky., September 24, 1977. The recommendation asked FHWA to expedite the implementation of the findings of the FHWA study, "Analysis of Cargo-Tank Interity in Rollovers, Final Report, October, 1977," by Dynamic Sciences, Inc., FHWA Contract DOT-FH-9193. (See 43 FR 56113, November 30, 1978.)

As indicated in the Board's December 1 letter, the primary concern in issuing this recommendation was the time element. The need for methods to reduce leakage from cargo tanks in overturn situations was firmly established by a study begun as a result of an NTSB recommendation made in 1973. This tank analysis study also confirmed the need for clarification of Federal regulations. The Board also noted that current FHWA action includes an engineering research effort of one year, a review of that research, and regulatory activity which in itself includes notices of proposed rulemaking, more review, and final publication of rules with an effective date usually beyond that. This total process could conceivably take three to six years, which means that, if all goes well, a problem identified in 1973 might be solved in 1981. The Board asked FHWA to do all in its power to expedite the process by keeping review periods in check and reducing any slippage in contract time.

Attached to FHWA's January 9 response is a paper entitled "Summary of Research and Regulatory Actions Pertinent to Leakage in Cargo Tanks." FHWA shares the Board's concern regarding the time consumed in the regulatory process and states that, upon completion of the planned research, every effort will be made to expedite any resultant revision to the Materials Transportation Bureau for promulgation under 49 CFR Part 178 or Part 177. The Board will be kept apprised of the progress in the research study and will be invited to any meangful contract briefing.

H-78-69.—FHWA's letter of January 5 provides the initial response to a recommendation arising from the investigation of a truck-semitrailer collision with a pickup truck near Marion, N.C., January 25, 1978. The recommendation called on FHWA to review North Carolina's barrier rail installation practices to assure conformity to height standards. (See 43 FR 48742, October 19, 1978.)

In response, FHWA states that it has long recognized the problem of improper height of guardrails and refers for example to paragraph 4.g. of FHWA Notice N 5040.19, dated June 28, 1976, and to the American Association of State Highway and Transportation Officials "Guide for Selecting, Locating, and Designing Traffic Barriers," 1977. Copies of these references are attached to FHWA's response. Also, instead of a review of only North Carolina practices, FHWA reports that a memorandum, dated November 21, was sent to all FHWA field offices with the expectation that reviews will be made as the Division Administrators deem appropriate. A copy of this memorandum is also provided.

Railroad

R-78-1 through 4.—Letter of December 22 from Conrail responds to the Safety Board's comments of November 3 concerning recommendations issued last February 15 following investigation of the June 12, 1977, collision of two Conrail freight trains at Stemmers Run near Baltimore, Md. The recommendations asked Conrail to insure that its freight trains and locomotives receive proper airbrake tests (R-78-1); equip all mainline freight trains with radio capable of communicating between trains, between trains and base stations, and between both ends of the same train (R-78-2); supplement Rule 102 by requiring the crewmembers of all trains to noitfy by radio the appropriate authority (dispatcher, etc.) immediately when a train stops under unpredicted circumstances and require that authority to inform all trains that are approaching the stopped train (R-78-3); and determine whether engineers on Conrail freight trains fully understand and use train brakes properly (R-78-4). (See 43 FR 8600, March 2, 1978.)

Last September 6 Conrail's initial response indicated that a program to insure proper airbrake tests has been instituted and that inspections are monitored on a daily basis. Conrail also informed the Board that a study is in progress to determine the feasibility of adopting a Conrail policy which will provide radio communications within cabooses. Conrail reported that its new Rule 102 provides that when a train is moving and emergency application of the brakes occurs, adjacent tracks must be protected in both directions by fusees and if possible, by radio transmission to other trains and train dispatcher. Further, Conrail's September 6 letter outlined Conrail's training program, stating, "It is unrealistic to expect a supervisor to accompany every engineer on every trip to determine compliance of airbrake rules." Conrail relies on the individual to perform his duties properly using knowledge gained in promotional and remedial training programs.

On November 3 the Safety Board, in answer to Conrail's September 6 response, asked for further advice concerning Conrail's program to insure proper airbrake tests and the related monitoring system. The Board stated its accord with Conrail's policy to equip each mainline locomotive consist of an operating radio in the control-

ling unit, but wanted to be advised of Conrail's decision to equip mainline cabooses with radios, as outlined in recommendation R-78-2.

With reference to recommendation R-78-3, the Board noted in its November 3 letter Conrail's revised Rule 102 contains two improvements on the previous rule—the mandatory use of fusees and the radio transmission to other trains and to the train dispatcher. The Board concurred with Conrail in that some circumstances, such as the close proximity of a passing train, radio "dead spots," overlapping transmissions, and preoccupation with other duties, may result in an untimely or futile transmission, but believes that fusee protection of adjacent tracks plus a transmission of an emergency brake application could be the difference between an unexpected to stop and a subsequent collision. Further, the Board noted that revised Rule 102 does not afford "immediate" fusee protection and does not absolutely require radio transmissions to other trains and train dispatcher. The Board asked to be advised of Conrail's intent to emphasize these points in their training and rules classes.

Concerning recommendation R-78-4, the Board commended Conrail's use of the Stemmers Run accident for training and instruction purpose is commendable. The Board agreed that placing a supervisor on every train is not realistic and recognized that efficiency testing of operating employees affords railroad management a valuable tool in determining each engineer's proper understanding of airbrakes. The Board asked to be advised of Conrail's method of such testing, outlining the frequency and type of testing of locomotive engineers.

Conrail's December 22 response addresses the Board's November 3 comments. As to recommendation R-78-1, Conrail says that terminal airbrake tests are made on all Conrail trains by car inspectors, who are required to complete a form for each group of cars tested; the forms are maintained at the terminal offices. Overall responsibility for assuring proper airbrake tests is in the hands of mechanical supervisors who monitor the testing by the car inspectors for compliance with all applicable Federal regulations.

Concerning recommendation R-78-2, Conrail advises that after conducting a study the company has decided not to equip each caboose with radios, but Conrail is providing portable radios to all crewmembers whose responsibilities require them to be on the rear of Conrail trains. Currently 5,000 such radios are in service and another 5,200 sets are on order, scheduled for delivery by April 1, 1979.

With regard to recommendation R-78-3, Conrail will hold special classes on the new Book of Rules for Conducting Transportation, strongly emphasizing revised Rule 102. This will include the requirement to provide immediate fusee protection, and, if possible, to notify other trains in the area and the train dispatcher when emergency situations arise. Conrail notes that although revised Rule 102 does not specifically indicate that fusees are to be immediately provided, this requirement is understood and will be underscored in the training and rule classes. employees will also be instructed that unless radio transmission is impossible due to "dead spots," close proximity of passing trains, etc., the train dispatcher and other trains in the area must be notified of emergency situations.

Concerning recommendation R-78-4, Conrail reports that new engine service employees are trained at the various enginemen's training schools throughout the Conrail system to comply fully with airbrake rules. Train and engine service employees are required to complete the qualification page in their timetables, including information as to (1) date of last physical examination, (2) employee qualifications—geographical, (3) date of last examination—Book of Rules and Timetables, and (4) date of last airbrake examination or instruction. Conrail further notes that road foremen assigned to Conrail's major terminals are responsible for monitoring all train and engine service employees for compliance with rules. The road foremen ride with and observe train and engine crews and a record is maintained on Conrail's Operational and Safety Test Form 1872. Conrail also has a mandatory program that requires all train and engine service employees to be reinstructed in airbrake operation every two years. Each Region and Division monitors the records of employees' biannual airbrake instruction due dates.

R-78-5 and 6.—Responsive to recommendations also issued as a result of the Stemmers Run accident is the letter of January 4 from the Federal Railroad Administration. These recommendations asked FRA to analyze the data relating to the role of radio in train accidents and report its findings (R-78-5), and, unless refuted by that analysis, require railroads to install radios where appropriate on trains and to maintain them in operating condition, unless all personnel involved are notified to the contrary by appropriate railroad procedures (R-78-6). (See 43 FR 8600, March 2, 1978.)

In response, FRA reports that analysis of a five-year study of train accidents resulting from improper use of radio or the malfunction of the radio equipment shows 24 accidents in 1976, 23 in 1975, 2 in 1974, 2 in 1973, and 1 in 1972. FRA notes that the increase in figures for 1975-1976 when compared to the figures for the three previous years is misleading in that it was brought about by revision to the accident reporting cause codes. The revision made it possible to more clearly identify these types of causes in the reporting of train accidents, FRA said. Nine of the radio related accidents shown were caused by either the failure of radio equipment or the failure of personnel to properly utilize radio. Since the principal problem appears to be improper use, FRA has developed standards for the proper use of radio for train operations and has incorporated certain testing requirements governing the radio equipment utilized on engines and cabooses.

Based on review of the accident statistics attributable to the use of radio in railroad operations, FRA does not find justification for promulgation of additional regulations requiring the installation of radios.

R-78-26 and 27.—Letter of January 15 from FRA is in response to recommendations issued last June 28 following investigation of the collision of a Louisiana & Arkansas Railway Company (L&A) freight train and an L. V. Rymes tractor-semitrailer at Goldonna, La., December 28, 1977. (See 43 FR 29195, July 6, 1978.)

In response to R-78-26, which recommended that FRA assure that L&A complies with the requirements of 49 CFR Part 174 (Transportation of Hazardous Materials), FRA states that since the Goldonna accident L&A has issued to its employees the Bureau of Explosives booklet, "Emergency Handling of Hazardous Materials in Surface Transportation" and B. E. Pamphlet 20. The fire departments along L&A'S road also received these two publications. FRA also reports that L&A is trying to increase employee congnizance of the rules for handling hazardous materials. L&A's Superintendent of Safety has attended numerous Hazardous Materials conferences and has passed this information on to company employees. L&A conducts monthly goal meetings with special emphasis on hazardous materials handling. Further, FRA's Director of Safety in Region 4 will continue to monitor L&A's compliance with hazardous materials handling rules.

Recommendation R-78-27 asked FRA to quickly conclude its study of improvements to the design of locomotive operator compartments to minimize crash damage and to promulgate necessary regulations. FRA reports that in FY 1979, scale model impact tests will be conducted on the crashworthy locomotive cab conceptual design and the energy absorption capability of that design will be evaluated. A full-scale demonstration cab will

be completed by December 1979, and the actual full-scale testing of the design is scheduled for June 1980. FRA says that all of the tests will be completed and the report issued the first quarter of 1982.

NOTE: Copies of Safety Board press releases and safety recommendation response letters in their entirety are available without charge. All requests for copies must be in writing, identified by press release or recommendation number. Address inquiries to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 29594.

Single copies of the Annual Review of Aircraft Accident Data, 1977, are also available free of charge by writing to the Safety Board. Multiple copies of this and other Safety Board reports may be purchased by mail from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

(Secs. 304(a)(2) and 307 of the Independent Safety Board Act of 1974 (Pub. L. 93-633, 88 Stat. 2169, 2172 (49 U.S.C. 1903, 1906)).)

MARGARET L. FISHER,
Federal Register Liaison Officer.

JANUARY 22, 1979.

[FR Doc. 79-2625 Filed 1-24-79; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for Clearance of Reports intended for use in collecting information from the public received by the Office of Management and Budget on January 19, 1979 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes:

The name of the agency sponsoring the proposed collection of information;

The title of each request received;

The agency form number(s), if applicable;

The frequency with which the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses;

The estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service
Status of Claims Against Households
FNS-209
Monthly
648 State food stamp programs 648 responses; 1,296 hours
Ellett, C.A., 395-5080

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation
Monthly return of arson offenses known to law enforcement
4-749
Monthly
180,000 nationwide law enforcement agencies 180,000 reponses; 90,000 hours
Office of Federal Statistical Policy and Standard, 673-7956

REVISIONS

VETERANS ADMINISTRATION

Fiduciary Account Book and Accounting Form
27-4718 and 27-4706
Annually
Fiduciary
63,300 responses; 126,600 hours
Caywood, D.P., 395-6140

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health
Individual National research Service Award Application (Research Fellowship Application)
Phs 416-1, 2, 3, 5, 6, 7, and 6031-1
On occasion
Individual fellowship applicants and awardees
27,500 responses; 51,860 hours
Richard Eisinger, 395-3214

OFFICE OF THE SECRETARY

Income Survey Development Program—1978
Research Panel Round-up
OS-1-79
Quarterly
Household members in national probability sample
78,959 responses; 27,636 hours
Office of Federal Statistical Policy and Standards, 673-7956

DEPARTMENT OF INTERIOR

Bureau of Land Management
Grazing application (grazing schedule)
4130-1
On occasion
Applicants for grazing authorization
21,000 responses; 7,000 hours
Ellett, C.A., 395-5080

EXTENSIONS

NATIONAL SCIENCE FOUNDATION

Final Project Report
NSF-98A
Annually
Colleges and universities
10,000 responses; 5,000 hours
LaVerne V. Collins, 395-3214

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

DOD Industrial Plant Equipment Requisition (NASA use)
DD 1419
On occasion
NASA contractors
900 responses; 198 hours
Caywood, D.P., 395-6140

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration
Engineers' monthly report of substation progress
REA-457
Monthly
REA electric borrowers
516 reponses; 516 hours
Ellett, C.A., 395-5080

FOOD AND NUTRITION SERVICE

Claim for Reimbursement—Summer Food Service Program
FNS-143 and 143-1, SF-270
Monthly
Summer camps
2,400 responses; 792 hours
Caywood, D.P., 395-6140

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 79-2628 Filed 1-24-79; 8:45 am]

[3110-01-M]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on January 18, 1979 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes:

The name of the agency sponsoring the proposed collection of information;

The title of each request received;

The agency form number(s), if applicable;

The frequency with which the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses;

The estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be

approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

INTERNATIONAL COMMUNICATION AGENCY

Update of Information on Exchange Visitor Program Sponsor
IAP-87
On occasion
6,000 universities, colleges, and private foundations
6,000 responses; 1,500 hours
Marsha Traynham, 395-6140

REVISIONS

INTERNATIONAL COMMUNICATION AGENCY

Fact Sheet for Performing Artists Touring Privately
IAP-90
On occasion
Performing artists
500 responses; 250 hours
Marsha Traynham, 395-6140

VETERANS ADMINISTRATION

National Service Life Insurance—Claim for monthly payments
29-4125A
On occasion
Beneficiary
12,000 responses; 3,000 hours
Caywood, D. P., 395-6140

DEPARTMENT OF COMMERCE

Bureau of Census
Footwear
MA-31A
Annually
Footwear manufacturers
750 responses; 990 hours
Office of Federal Statistical Policy and Standard, 673-7956

BUREAU OF CENSUS

Apparel (production and shipment)
MA-23A and MA-23A(S)
Annually
Apparel manufacturers and jobbers
5,000 responses; 8,500 hours
Office of Federal Statistical Policy and Standard, 673-7956

EXTENSIONS

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Production and Mortgage Credit
Application for Insurance—supplementary loan
FHA-3201-A
On occasion
Cooperativeproject mortgagors
190 responses; 95 hours
Strasser, A., 395-5080

DEPARTMENT OF LABOR

Labor Management and Service Administration
Simplified Annual Report Format
Annually
Labor unions
5,000 responses; 833 hours
Strasser, A., 395-5080

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 79-2615 Filed 1-24-79; 8:45 am]

[3110-01-M]

UNIFORM RULES OF PROCEDURE FOR BOARDS OF CONTRACT APPEALS

Invitation for Public Comment

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

ACTION: Notice of proposed direction regarding Uniform Rules of Procedure for Boards of Contract Appeals.

SUMMARY: This proposed direction would instruct the General Services Administration and the Department of Defense to incorporate changes regarding rules of Boards of Contract Appeals and related material into the Federal Procurement Regulations (FPR) and Defense Acquisition Regulations (DAR).

On November 1, 1978, the President signed into law Pub. L. 95-563, the "Contract Disputes Act of 1978."

That Act, among other things, requires changes to the Rules of Procedure currently in use by the Boards of Contract Appeals of the procuring agencies, as well as certain other changes in contract clauses and procurement regulations. The proposed regulations set forth below incorporate the changes required by Pub. L. 95-563, as well as certain other improvements. The proposed Rules of Procedure are to be adopted uniformly by all Boards of Contract Appeals.

DATE: Comments must be received on or before February 23, 1979.

ADDRESS: Comments are to be submitted to the Office of Federal Procurement Policy, OMB, 726 Jackson Place, NW., Room 9025, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT:

Mr. Owen Birnbaum, Deputy Associate Administrator for Acquisition Law (202) 395-3455.

LESTER A. FETTIG,
Administrator.

PROPOSED RULES OR PROCEDURES

PREFACE TO RULES

1. *Jurisdiction for considering appeals*

The —— Board of Contract Appeals (referred to herein as "the Board") shall consider and determine appeals from decisions of contracting officers relating to contracts awarded by (i) the —— (executive agency) or (ii) any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal.

2. *Organization and location of the Board*

(a) The Board's address is (——).

(b) The Board consists of a Chairman, (Vice Chairman), and other members, all of whom are attorneys at law duly licensed by any state, commonwealth, territory, or the District of Columbia. In general, the appeals are assigned to a panel of at least (—) members who decide the case by a majority vote.

3. *Board of Contract Appeals procedure*

(a) Time, computation, and extensions—

(1) Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time shall be in writing.

(2) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

PRELIMINARY PROCEDURES

1. *Appeals, How Taken*

(a) Notice of an appeal must be in writing and together with two copies must be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within ninety (90) days from the date of receipt of a contracting officer's final decision.

(b) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written final decision within sixty (60) days from receipt of such request, and the contracting officer has not done so, the contractor may file a written notice of appeal directly with the Board, citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a claim in excess of $50,000 to the contracting officer and the contracting officer has failed to issue a final decision within a reasonable time, the contractor may file a written notice of appeal directly with the Board, citing the failure to issue a decision.

(d) Upon docketing of appeals filed pursuant to (b) or (c) hereof, the Board may, on motion of either party, or on its own motion, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

2. *Notice of Appeal, Contents of*

A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and agency or bureau involved in the dispute, and the decision from which the appeal is taken. The notice of appeal should be signed by the appellant (the contractor making the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

3. *Forwarding of appeals*

When a notice of appeal in any form has been received by the contracting officer he shall endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward it to the Board. Following receipt by the Board of the original notice of an appeal (whether through the contracting officer or otherwise), the appellant and contracting officer will be promptly advised of its receipt and the appellant will be furnished a copy of these rules.

4. *Preparation, Content, Organization, Forwarding, and Status of Appeal File*

(a). Duties of Contracting Officer—Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board (through the) an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision from which the appeal is taken;

(2) The contract including specifications and pertinent amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

Within the same time above specified the (3/M) shall furnish the appellant a copy of each document he transmits to the Board, except those in subparagraph (a)(2) above. As to the latter, a list furnished appellant indicating specific contractual documents transmitted will suffice.

(b) Duties of the Appellant—Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which he considers pertinent to the appeal, and furnish two copies of such documents to the Government trial attorney.

(c) Organization of Appeal File—Documents in the appeal file may be originals or legible facsimile or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) Lengthy Documents—Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted he shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) Status of Documents in Appeal File—Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object to consideration of a particular document or all documents in advance of hearing or of settling the record in the event there is no hearing on the appeal. If such objection is made, the Board will rule upon admissibility into the record as evidence in accordance with Rules 13 and 20 hereof.

5. *Dismissal for Lack of Jurisdiction*

Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may determine that its decision on the motion will be deferred pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own motion to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

6. *Pleadings*

(a) Appellant—Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed. The pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. Upon receipt of the complaint, the Board shall serve a copy of it upon the Government. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(b) Government—Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an answer thereto. The answer shall set forth simple, concise and direct statements of Government's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counter-claims as appropriate. Upon receipt of the answer, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

7. *Amendments of Pleadings or Record*

The Board upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of the complaint or answer, or to reply to an answer.

The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the documentation described in Rule 4, tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or the Rule 4 documentation (which shall be deemed part of the pleadings for this purpose),

it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

8. *Hearing Election*

After filing of Government's answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether, it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

9. *Prehearing Briefs*

Based on an examination of the documentation described in Rule 4, the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

10. *Prehearing or Presubmission Conference.*

Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may upon its own initiative, or upon the application of either party, call upon the parties to appear before an Administrative Judge or examiner of the Board for a conference to consider:

(a) Simplification or clarification of the issues;

(b) The possibility of obtaining stipulations, admissions, agreements on documents, and understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(c) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(d) The possibility of agreement disposing of any or all of the issues in dispute; and

(e) Such other matters as may aid in the disposition of the appeal.

The results of the conference shall be reduced to writing by the Administrative Judge or examiner and this writing shall thereafter constitute part of the record.

11. *Submission Without a Hearing*

Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other docmentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

12. *Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures. These procedures are available solely at the election of the appellant.*

12.1. *Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedure.*

(a) In appeals where the amount in dispute of $10,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details fo this procedure appear in section 12.2 of this Rule. An appellant may elect the ACCELERATED procedure rather than the SMALL CLAIMS (EXPEDITED) procedure for any appeal eligible for the SMALL CLAIMS (EXPEDITED) procedure.

(b) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.3 of this Rule.

(c) The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made either in his notice of appeal or by other written notice at any time thereafter.

(d) In deciding whether the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure is applicable to a given appeal, the Board shall determine the amount in dispute by adding the amount claimed by the appellant against the Government to the amount claimed by Government against the appellant. If either party making a claim against the other party does not otherwise state in writing the amount of its claim, the amount claimed by such party shall be the maximum amount which such party represents in writing to the Board that it can reasonably expect to recover against the other.

12.2 *The SMALL CLAIMS (EXPEDITED) Procedure.*

(a) This procedure shall apply only to appeals where the amount in dispute is $10,000 or less as to which the appellant has elected the SMALL CLAIMS (EXPEDITED) procedure.

(b) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply: (1) Within ten days from the respondent's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the respondent shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; (2) within 15 days after the Board has acknowledged receipt of the notice of election, either party desiring an oral hearing shall so inform the Board. If either party requests an oral hearing, the Board shall promptly schedule such a hearing for a mutually convenient time consistent with administrative due process and the 120-day limit for a decision, at a place determined under Rule 17. If a hearing is not requested by either party within the time prescribed by this Rule, the appeal shall be deemed to have been submitted under Rule 11 without a hearing.

(c) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled or, if no hearing is scheduled, to close the record on a date that will allow decision within the 120 limit. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules as necessary to enable the Board to decide the appeal within 120 days after the Board has received the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure. In so doing the Board may reserve whatever time up to 30 days it considers necessary for preparation of the decision.

(d) Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in his discretion, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the Appeal. Whenever such an oral decision is rendered, the Board will subse-

quently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the date of commencement of the period for filing a motion for reconsideration under Rule 29.

(e) Decisions of the Board under the SMALL CLAIMS (EXPEDITED) procedure will not be published, will have no value as precedents, and, in the absence of fraud, cannot be appealed.

12.3. *The ACCELERATED Procedure*

(a) This procedure shall apply only to appeals where the amount in dispute is $50,000 or less as to which the appellant has made the requisite election.

(b) In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.

(c) Written decisions by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of act and conclusions. Decisons will be rendered for the board by a single Administrative Judge with the concurrence of the Chairman or a Vice Chairman or other disignated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after enteraining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decison for record and payment purposes and to establish the date of commencement of the period for filing a motion for reconsderation under Rule 29.

12.4. *Motions for Reconsideration in Rule 12 cases*

Motions for Reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedue or the ACCELERATED procedure need not be decided within the time periods prescribed by this Rule 12 for the initial decision of the appeal, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

13. *Settling the Record*

(a) The record upon which the Board's decision will be rendered consists of the appeal file described in Rule 4 and, to the extent the following items have been filed, pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the board has specifically designated be made a part of the record. The record will, at all resonable times, be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

14. *Discovery—Depositions*

(a) General Policy and Protective Orders—The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) When Depositions Permitted—After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) Orders on Depositions—The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) Use as Evidence—No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) Expenses—Each party shall bear its own expenses associated with the taking of any deposition.

(f) Subpoenas—Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 21.

15. *Interrogatories to Parties, Admission of Facts, and Production and Inspection of Documents*

(a) Interrogatories to parties—After an appeal has been filed with the Board, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the Board will determine the extent to which the interrogatories will be permitted.

(b) Admission of facts—After an appeal has been filed with the Board, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(c) Production and inspection of documents—Upon motion of any party showing good cause therefor, and upon notice, the Board may order the other party to produce and permit the inspection and copying or photographing of any documents or objects, not privileged, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot agree thereon, the Board shall specify terms and conditions in making the inspection and taking the copies and photographs.

16. *Service of Papers Other than Subpoenas*

Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers and simultaneous briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in Rule 21.

Hearings

17. *Where and When Held*

Hearings will ordinarily be held in the Washington, D.C. area. however, upon timely request and for good cause, the Board may set the hearing at another location. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, advance a hearing.

18. *Notice of Hearings*

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties.

19. *Unexcused Absence of a Party*

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

20. *Hearings: Nature; Examination of Witnesses*

(a) *Nature of Hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer such relevant evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence, subject, however, to the sound discretion of the presiding Administrative Judge or examiner in supervising the extent and manner of presentation of such evidence. In general, admissibility will depend on relevancy and materiality. Evidence which may not be admissible under the Federal Rules of Evidence may be admitted in the discretion of the presiding Administrative Judge or examiner. The weight to be attached to evidence presented in any particular form will be within the dscretion of the Board. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) *Examination of Witnesses.* Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding Administrative Judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of Title 18, United States Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

21. *Subpoenas*

(a) *General*

Upon written request of either party filed with the (clerk, recorder), or on his own motion, the Administrative Judge to whom a case is assigned or who is otherwise designated by the Chairman may issue a subpoena requiring:

(i) *Testimony at a deposition*—the deposing of a witness in the city or country where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(ii) *Testimony at a hearing*—the attendance of a witness for the purpose of taking testimony at a hearing; and

(iii) *Production of books, papers, documents, or tangible things*—in addition to (i) or (ii), the production by the witness at the deposition or hearing of relevant books, papers, documents, or tangible things designated in the subpoena.

(b) *Voluntary Cooperation*

Each party is expected (i) to cooperate and make available witnesses and books, papers, documents, or tangible things under its control as requested by the other party, without issuance of a subpoena, and (ii) to secure voluntary attendance of desired third-party witness and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for Subpoenas*

(1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books, papers, documents, or tangible things sought.

(d) *Requests to Quash or Modify*

Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for attendance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books, papers, documents, or tangible things. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; Issuance*

(1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books, papers, documents, or tangible things, at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781-1784.

(f) *Service*

(1) The Administrative Judge may arrange for service of the subpoenas or may release them to the parties for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or his deputy, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to him and tendering to him the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books, papers, documents, or tangible things he has produced.

(g) *Contumacy or Refusal to Obey a Subpoena*

In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the

court may be punished by the court as a contempt thereof.

22. *Copies of Papers*

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

23. *Posthearing Briefs*

Posthearing Briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding Administrative Judge or examiner at the conclusion of the hearing. Ordinarily, they will be simultaneous briefs, exchanged within 30 days after receipt of transcript.

24. *Transcript of Proceedings*

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Transcripts or copies of the proceedings shall be supplied to the parties at such rates as may be fixed by ( ).

25. *Withdrawal of Exhibits*

After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

Representation

26. *The Appellant*

An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, or in the District of Columbia. An attorney representing an appellant shall file a written notice of appearance with the Board.

27. *The Government*

Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or his attorney in the form specified by the Board from time to time. Whenever appellant and the Government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal. However, if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

Decisions

28. *Decisions*

Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions shall be open for public inspection at the offices of the Board in Washington, D.C. Decisions of the Board will be made solely upon the record, as described in Rule 13.

Motion for Reconsideration

29. *Motion for Reconsideration*

A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

Dismissals

30. *Dismissal Without Prejudice*

In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

31. *Dismissal for Failure to Prosecute*

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If no cause is shown, the Board may take appropriate action.

ExParte Communications

32. No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to exparte communications concerning the Board's administrative functions or procedures.

Sanctions

33. If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

Effective Date

34. These rules shall take effect on March 1, 1979.

PROPOSED REGULATORY COVERAGE AND CONTRACT CLAUSE

I. REGULATORY COVERAGE—DISPUTES PROCEDURE

Section 1-314 of the Defense Acquisition Regulation and Section 1-1.318 of the Federal Procurement Regulations are amended to provide as follows:

1. Contractor claims against the Government.

(a) As used in connection with this disputes procedure—

(1) "Misrepresentation of fact" means a false statement of substantive fact, or any conduct which leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

(2) "Claim" means a written demand for a decision of the contracting officer pursuant to the Contract Disputes Act of 1978, 41 U.S.C. 601, *et. seq.*

2. (a) Only a written submission shall constitute a claim by the contractor. The claim shall include the amount or other relief sought and appropriate supporting data. In the case of claims or amendments to claims exceeding $50,000, or with any amendment causing the total claim to exceed $50,000, the Contractor shall certify, when the Contracting Officer and the Contractor agree that the claim is ready for a decision under (f) below, as follows:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable.

Contractor's Name _____

Title _____

(b) The Government shall pay the contractor interest—

(1) On the amount found due on claims;

(2) At the rate fixed by the Secretary of the Treasury, under the Renegotiation Act, Public Law 92-41, in effect on the date the Contracting Officer receives a claim;

(3) From the date payment is due or the Contracting Officer receives the

claim, whichever is later, until the Government makes payment.

(c) If a contractor cannot support any of its claim as a result of fraud or misrepresentation of fact, then, in addition to whatever remedies or penalties may otherwise be provided by law, the Contractor shall—

(1) Pay the Government an amount equal to the unsupported part of the claim;

(2) Pay all Government costs attributable to reviewing that part of the claim;

(d) Agencies shall report all instances of suspected fraudulent claims using the procedures in (———).

(e) The Contracting Officer shall give the Contractor a decision in accordance with (f) below on any unsatisfied Government demand against the Contractor relating to the contractor.

(f) Contracting Officer's decision.

(1) When a claim cannot be satisfied or settled by agreement and a decision on the claim is necessary the Contracting Officer shall:

(i) Review the facts pertinent to the claim;

(ii) Secure assistance from legal and other advisors;

(iii) Coordinate with the contract administration office or contracting office, when appropriate.

(iv) Furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or any other method that provides evidence of receipt; and

(v) Include in the final decision:

(A) A paragraph substantially as follows: This is the final decision of the Contracting Officer. This decision may be appealed to the cognizant Board of Contract Appeals. If you decide to make such an appeal you must mail or otherwise furnish written notice thereof to the Contracting Officer, and to the Board under its Rules, within ninety days from the date you receive this decision. The notice shall indicate that an appeal is intended, should reference this decision, and identify the contract by number. In lieu of appealing to the cognizant Board of Contract Appeals you may bring an action directly in the U.S. Court of Claims, within twelve months of the date you receive this decision.

(B) A description of the claim or dispute;

(C) A reference to pertinent contract provisions;

(D) A statement of the factual areas of agreement or disagreement.

(E) A statement of the contracting officer's decision, with supporting rationale.

(F) Notification that the small claims procedure of the cognizant Board shall be applicable at the sole election of the contractor in the event the amount in dispute as a result of the final decision is $10,000 or less.

(G) Notification that the accelerated procedure of the cognizant Board shall be applicable at the sole election of the contractor in the event the amount in dispute as a result of the final decision is $50,000 or less.

(vi) Issue the decision within the following statutory time limitations:

(A) For claims not exceeding $50,000: Sixty days after receipt of the claim.

(B) For submitted claims exceeding $50,000: Sixty days after receipt of claim; provided, however, if a decision is not issued within sixty days the contracting officer shall notify the contractor of the time within which he will make the decision. The reasonableness of this time period will depend on the size and complexity of the claim and the adequacy of the contractor's supporting data and any other relevant factors.

(g) The amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party.

(h) These procedures do not affect the rights or authority of the Government regarding any demand or dispute for penalties or forfeitures prescribed by statute or regulation that any agency is specifically authorized to administer, settle, or determine, nor do they apply to requests for relief under Pub. L. 85-804.

(i) Informal Administrative Conference.

(1) At any time prior to an appeal to a Board of Contract Appeals or suit in court, an agency shall afford a contractor at least one opportunity for an informal conference with the agency for the purpose of considering the possibility of disposing of the claim by mutual agreement.

(2) This conference shall be held within thirty days of the request for such conference, or later as mutually agreeable between the contractor and the agency head or his designee. The conference shall be conducted by a designee or designees of the agency head selected from a level above the office to which the contracting officer is attached, who, if feasible, shall not have participated substantially in any prior decision on the claim.

(3) The conferees may consider any material, written or oral, relevant to the claim, but testimony or evidence shall not be taken. Any documentary materials or oral statements submitted during the conference shall not be evidence in any subsequent appeal or suit in court on the claims unless offered anew and admissible under applicable rules of evidence. Any offers of settlement or compromise during or resulting from the conference shall be without prejudice and shall not be evidence or referred to in any subsequent appeal or suit in court on the claim.

(4) If the agency conferees determine that the claim or dispute should be settled, compromised, paid, or otherwise adjusted by mutual agreement, they shall make a written report to the agency head within thirty days of the conference detailing the basis for their determination and recommending exercise of his settlement authority. The agency head shall act pursuant to his settlement authority within sixty days, or later if mutually agreeable between the contractor and the agency head, after receiving the agency conferees' report and recommendations.

(5) A request for a conference with the agency does not affect the time for commencement of a contractor's appeal to the agency board of contract appeals or filing a suit in court. However, an agency board shall stay further proceedings whenever a timely requested conference has not been conducted at the time the contractor files an appeal with the agency board until the conference is held or waived by the contractor.

II. DISPUTES CLAUSE

1. Section 7-103.12 of the Defense Acquisition Regulation and Section 1—7.102-12 of the Federal Procurement Regulation are amended to provide as follows:

The Contracting Officer shall insert the following clause in all contracts unless exempted by the head of the agency under 41 U.S.C. 603(c).

Disputes Clause

(a) If this contract is subject to the Contract Disputes Act of 1978, (41 U.S.C. 601, et. seq.) any dispute or claim relating to this contract shall be resolved in accordance with the provisions of that Act.

(b) On request, the contracting officer shall promptly furnish the contractor a copy of the regulations and procedures applicable to the resolution of claims and disputes relating to this contract.

(c) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal or action related to the contract, and comply with any decision of the Contracting Officer rendered pursuant to the Contract Disputes Act of 1978.

[FR Doc. 79-2688 Filed 1-24-79; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 20892; 70-6042]

ALLEGHENY POWER SYSTEM, INC.

Post-Effective Amendment Regarding Issuance and Sale of Short-Term Notes to Banks and to Commercial Paper Dealer; Request for Exemption From Competitive Bidding

JANUARY 18, 1979.

Notice is hereby given that Allegheny Power System, Inc. ("Allegheny"), 320 Park Avenue, New York, New York 10022, a registered holding company, has filed with this Commission a post-effective amendment to the application previously filed in this proceeding pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the amended application, which is summarized below, for a complete statement of the proposed transactions.

By orders in this proceeding dated September 21, 1977, and August 24, 1978 (HCAR Nos. 20185 and 20682), Allegheny was authorized to borrow funds during the period ending March 31, 1979, through the issuance and sale of short-term notes to banks and commercial paper to a commercial paper dealer in an aggregate amount not to exceed $70,000,000 outstanding at any one time. The notes and commercial paper were to be issued and renewed from time to time as funds were required prior to March 31, 1979, provided that no such notes or commercial paper would mature after September 30, 1979. The list of banks and maximum amounts to be borrowed were as follows:

Citibank, N.A., New York, New York	$40,000,000
The Chemical Bank, New York, New York	30,000,000
Mellon Bank, N.A., Pittsburgh, Pennsylvania	55,000,000
Pittsburgh National Bank, Pittsburgh, Pennsylvania	7,500,000
Manufacturers Hanover Bank, New York, New York	60,000,000
Irving Trust Company, New York, New York	5,000,000
Chase Manhattan Bank, N.A., New York, New York	2,500,000
	$200,000,000

The maximum amount of such borrowings at any one time outstanding was not, when taken together with any commercial paper then outstanding, to be in excess of $70,000,000.

By post-effective amendment, it is now proposed that: (1) the period for the borrowings be extended to March 31, 1980, (2) the latest maturity date be September 30, 1980, and (3) the maximum amount of bank notes and commercial paper outstanding at any one time be increased to $130,000,000.

As of January 5, 1979, Allegheny had $47,905,000 of short-term debt outstanding. It is stated that Allegheny desires to increase and extend its authority to issue short-term debt to permit it to make such investments as may be necessary to assist its subsidiaries to the greatest extent possible. The presently projected maximum investments by Allegheny in its subsidiaries in 1979 are as follows: Monogahela Power Company, $25,000,000; The Potomac Edison Company, $30,000,000; and West Penn Power Company, $25,000,000. The presently estimated 1979 construction programs of the subsidiaries are as follows: Monongahela Power Company, $70,000,000 to $75,000,000; The Potomac Edison Company, $65,000,000 to $70,000,000; and West Penn Power Company, $120,000,000 to $125,000,000.

Each note payable to a bank will be dated as of the date of the borrowing which it evidences, will mature not more than two hundred seventy (270) days after the date of issuance or renewal thereof, will bear interest at the prime or equivalent interest rate of the bank at which the borrowing is made in effect at the time of issuance, or in effect from time to time, and will be payable at any time without premium or penalty.

The proposed commercial paper will be in the form of promissory notes in denominations of not less than $50,000 nor more than $5,000,000, will be of varying maturities, with no maturity more than 270 days after the date of issue, and will not be prepayable prior to maturity. The commercial paper notes will be sold directly to the dealer, at a discount not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and of the particular maturity. The dealer may reoffer the commerical paper at a discount rate of ⅛ of 1% per annum less than the discount rate to Allegheny. Allegheny may issue commerical paper notes if (1) the interest cost thereof is equal to or less than the effective interest cost at which Allegheny could borrow the same amount from the banks named herein at that time or (2) Allegheny cannot at that time borrow the same amount for the same period of time from the banks named herein. The dealer will reoffer the commercial paper notes to not more than 200 of its customers, identified and designated in a list (non-public) prepared in advance. It is expected that the commerical paper notes will be held by the dealer's customers to maturity, but if the customers wish to resell prior to maturity, the dealer, pursuant to a verbal repurchase agreement, will repurchase the notes and reoffer them to others on said list.

The original filing stated that no commitment or agreement had been made with respect to the proposed borrowings and that Allegheny and its subsidiaries maintain balances to meet regular operating requirements at all of the banks which may vary in amount from time to time. It was stated that such balances are generally either on the basis of a percentage of the line of credit extended by such bank (for example 10%), or a higher percentage of notes outstanding (for example 20%), whichever is greater, or a percentage of the line of credit (for example 10%) plus a percentage (for example 10%) of notes outstanding, in every case on an average annual basis. If such balances were maintained by Allegheny solely to fulfill compensating balance requirements for borrowings to be made by Allegheny, the effective interest cost to Allegheny of issuing and selling the notes would be no more than 14.68% on the basis of a prime commercial credit rate of 11¾% and 15% with a prime rate of 12%.

By an earlier post-effective amendment, it was stated that certain of the banks listed above had offered to substitute fees for, or to be used in conjunction with, lower compensating balances than those set forth above. The fee arrangements vary. In some cases fees equal to a specific percentage of the prime commercial rate (for example 8½% of the prime commercial rate) are involved, while in another instance the arrangement provides that balances be maintained equal to 5% of the line of credit with an additional fee of 2½% of prime. Allegheny is not to utilize the fee arrangements unless the effective cost thereof is less than the compensating balance arrangement in effect at that bank at that time. It is stated that the fee arrangements produce an effective interest cost of issuing and selling the notes of between 13.35% and 14.05% on the basis of a prime commercial rate of 11¾% and 13.63% and 14.35% on the basis of a prime commercial credit rate of 12% rather than the 14.68% and 15.00% effective cost resulting from meeting compensating balance requirements set forth above.

Exception from the competitive bidding requirements of Rule 50 has been requested for the proposed issuance and sale of commercial paper pursuant to paragraph (a)(5) thereof, since it is not practicable to invite competitive bids for commercial paper and current rates for commercial paper for prime borrowers such as Allegheny are published daily in financial publications. Allegheny has also requested authority to file certificates under Rule 24 with respect to the issuance and sale

of commercial paper on a quarterly basis.

In all other respects the proposed transactions remain the same. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than February 13, 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 post-effective amendment to the application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as now amended or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-2547 Filed 1-24-79; 8:45 am]

[8010-01-M]

[Administrative Proceeding File No. 3-5602; File No. 81-441]

CAPITOL HILL ASSOCIATES, INC.

Application and Opportunity for Hearing

JANUARY 17, 1979.

Notice is hereby given that Capitol Hill Associates, Inc. (the "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 it from the periodic reporting requirements under Section 15(d) of the 1934 Act.

The Applicant states:

(1) On May 12, 1978, the Applicant sold all of its assets to the Republican National Committee pursuant to a Plan of Complete Liquidation and Distribution.

(2) The plan was described in the Applicant's Form 10-K for the fiscal year ending January 1, 1978 and various Form 8-K reports.

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 no later than February 12, 1979 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability if 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. 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. 79-2548 Filed 1-24-79; 8:45 am]

[8010-01-M]

[Admin. Proceeding File No. 3-5596; File No. 81-415]

CCI LIFE SYSTEMS INC.

Application and Opportunity for Hearing

JANUARY 17, 1979.

Notice is hereby given that CCI Life Systems Inc. (the "Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for an order exempting the Applicant from the requirements to file reports pursuant to Sections 13 and 15(d) of the Exchange Act.

The Applicant states in part:

1. Pursuant to a statutory merger effected on September 18, 1978, the Applicant was merged with and into Dialco Incorporated, and each outstanding share of the Applicant was surrendered for cash. As a result of the merger, the Applicant ceased to exist or to have any shareholders.

2. Dialco, Inc., the successor corporation, is jointly owned by Akzo Pharma B. V., a Netherland corporation, and Akzona, Inc, a Delaware corporation. The common stock of Akzona is registered with the Commission pursuant to Section 12(b) of the 1934 Act, and is publicly traded on the New York and Pacific Stock Exchanges.

3. Audited financial statements for the Applicant have been presented as of the latest fiscal year ended April 30, 1978 in notices sent to shareholders in connection with the merger, as well as audited interim financial statements for the quarter ended July 31, 1978.

4. As a result of the merger, there are no securities of the Applicant in the hands of the public, and there is no longer any trading market for the Applicant's securities.

In the absence of an exemption, Applicant is required to file reports pursuant to Sections 13 and 15(d) of the Exchange Act and the rules and regulations thereunder for the balance of the fiscal year ending April 30, 1979. Applicant believes that its request for an order exempting it from the provisions of Section 13 and 15(d) of the Exchange Act is appropriate in view of the fact that Applicant believes that the time, effort and expense involved in the 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 no later than Feb. 12, 1979 may submit to the Commission in writing his view or any substantial facts bearing on this application or the desireability of a hearing thereon. Any such communication or request should be addressed: 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 reasons 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. 79-2549 Filed 1-24-79; 8:45 am]

[8010-01-M]

[Rel. No. 10564; 812-4391; 812-4392]

COMMERCE INCOME SHARES, INC. AND IMPACT FUND, INC.

Filing of Application for an Order Exempting Proposed Transaction and Granting an Exemption

JANUARY 18, 1979.

Notice is hereby given that Commerce Income Shares, Inc. ("Commerce") and Impact Fund, Inc. ("Impact") (collectively, "Applicants"), 711 Polk Street, Houston, Texas 77002, both registered under the Investment Company Act of 1940 ("Act") as open-end, diversified management investment companies, filed applications on November 10, 1978, and an amendment thereto on December 26, 1978, for an order: (1) pursuant to Section 17(b) of the Act exempting from the provisions of Section 17(a) the proposed sale by Impact of its assets to Commerce in exchange for shares of Commerce, and (2) pursuant to Section 6(c) of the Act exempting from the provisions of Rule 22c-1 the issuance of Commerce shares in the proposed sale at a price based on their net asset value as of the close of business on the business day next preceding the closing of the transaction. All interested persons are referred to the applications and amendment on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants represent that the same individuals who serve Commerce as directors also serve Impact as directors, and that all but one of the officers of Impact hold the identical offices with Commerce. In addition, one of the directors and all but one of the officers of Impact and Commerce are employed by or are officers and/or directors of Funds, Inc., the investment adviser for Commerce and Impact. Accordingly, Applicants state that they may be deemed to be under common control and, therefore, that they may be affiliated persons of each other. Section 2(a)(3)(C) of the Act defines affiliated person of another person to include any person under common control with such other person.

Applicants state that pursuant to a Plan and Agreement of Reorganization ("Agreement") between Commerce and Impact, Impact will transfer all of its cash and securities, subject to Impact's retention of assets sufficient to pay its liabilities and expenses, to Commerce in exchange for Commerce's shares. Commerce will not assume liabilities of Impact in connection with the acquisition and subsequent dissolution of Impact. Commerce has been informed by Impact that all of Impact's assets consist of securities, cash, accounts receivable, claims, contract rights, and rights to tax-loss carry-forwards.

The number of shares of Commerce to be issued is to be determined by dividing the aggregate value of the assets of Impact to be transferred to Commerce by the net asset value per share of Commerce, both to be determined as of the close of business on the business day immediately preceding the closing date. Immediately after closing, Impact intends to cause the Commerce shares to be distributed to its shareholders of record, and as soon as possible thereafter, to inform each former Impact shareholder of the number of Commerce shares to which he is entitled. The valuation procedures to be applied to the Commerce shares and Impact assets are those which are set forth in the current Commerce prospectus. Applicants state that as of August 31, 1978, Commerce's and Impact's total net assets (including cash and cash equivalents) amounted to approximately $47,130,055 and $10,175,927, respectively. No tax adjustments will be made in the net assets of either Impact or Commerce to reflect differences in unrealized appreciation and realized losses which either may have in its portfolio.

Applicants state that the reorganization is contingent upon receipt of a ruling by the Internal Revenue Service to the effect that the transaction will constitute a tax-free reorganization and that no gain or loss will be recognized by Applicants or their shareholders as a result of the transaction. Applicants further represent that the Agreement is subject to approval by the holders of two-thirds of the outstanding voting securities of Impact.

Section 17(a) of the Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, knowingly to sell to or purchase from such investment company any security or other property. Section 17(b) of the Act provides, however, in part, that the Commission shall, upon application, grant an exemption from such prohibition if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve any overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned, and with the general purposes of the Act.

Applicants state that the proposed acquisition may be deemed to involve the purchase and sale of securities and other property between affiliated registered investment companies and, therefore, may be deemed to violate Section 17(a) of the Act. However, Applicants represent that the terms of the proposed reorganization are reasonable and fair and do not involve overreaching on the part of any person concerned and are consistent with the policies of each and with the general purposes of the Act. Applicants assert that the exchange will be on the basis of respective net asset values. Applicants state that as of August 31, 1978, Commerce had net unrealized appreciation of $98,478 and Commerce had realized losses of $3,223,074. Impact had unrealized appreciation of $355,068 and realized losses of $2,754,883 on that date. No tax adjustment will be made to reflect the differences in unrealized appreciation and realized losses of Applicants. Applicants assert that the potential tax consequences to an individual shareholder of the reorganized entity cannot practically be determined or accounted for in the consideration exchanged in the proposed reorganization. Moreover, Applicants state that, in any event, such tax consequences would be minor. Applicants also point out that Commerce would violate its Articles of Incorporation if it were to issue its shares at less than their current net asset value.

Applicants assert that consummation of the proposed transaction will eliminate the current duplication of certain expenses borne by the Applicants. In addition, Applicants represent that Impact's expense ratio is expected to be reduced by approximately 0.5 % as a result of the transaction. Commerce will benefit in that it will acquire compatible portfolio securities on which brokerage expenses have already been paid. Finally, Applicants contend that the investment objectives of both Commerce and Impact contain flexibility to emphasize either common stocks, bonds and/or cash equivalents, although Commerce places a greater emphasis on current income.

Rule 22c-1 under the Act provides, in part, that no registered investment company shall sell, redeem, or repurchase any redeemable security of which it is the issuer except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase of sell such security. Applicant state that because under the Agreement, the respective net asset values of each will be determined as of the close of business on the business day immediately prceeding the reorganization, the issuance by Commerce of shares of its capital stock in the reorganization may not comply with Rule 22c-1.

Section 6(c) of the Act provides, in part, that the Commission may by order, upon application, exempt any person, security, or transaction from any provision of the Act or any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants submit that the timing of the determination of net asset values of the Applicants is appropriate. Applicants submit that such timing will not give rise to the speculative activity which Rule 22c-1 was designed to prohibit. Therefore, Applicants state that the granting of the exemption is appropriate in the public interest and consistent with the protection of investors and with the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than February 12, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, be certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-2550 Filed 1-24-79; 8:45 am]

[8010-01-M]

[Admin. Proceeding File No. 3-5615; File No. 81-419]

GLOBE-UNION, INC.

Application and Opportunity for Hearing

JANUARY 17, 1979.

Notice is hereby given that Globe-Union, Inc. ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), seeking an exemption from the requirement to file reports pursuant to Sections 13 and 15(d) of the 1934 Act.

The Applicant states in part:

1. The Applicant was a publicly-held company with a class of securities registered pursuant to Section 12(b) of the 1934 Act, and was thus subject to the reporting provisions of Section 13 of the 1934 Act.

2. On October 10, 1978, the Applicant was merged with Johnson Controls, Inc. pursuant to an Agreement and Plan of Reorganization dated June 27, 1978.

3. As a result of the merger, all the issued and outstanding shares of common stock of the Applicant are now owned by, and Applicant's outstanding debentures are guaranteed by, Johnson Controls, Inc.

4. After termination of its Section 12(b) registration on October 11, 1978, Applicant is subject to the reporting provisions of Section 15(d) of the 1934 Act.

In the absence of an exemption, Applicant will be required to file certain periodic reports with the Commission, including an annual report on Form 10-K for the fiscal year ended September 30, 1978, pursuant to Section 13 of the 1934 Act, and further reports for periods ending in 1979, pursuant to Section 15(d) of the 1934 Act.

The Applicant contends that no useful purpose would be served in filing the periodic reports because Johnson Controls, Inc. now owns all of the Applicant's common stock, and its common stock is no longer publicly traded.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the Office of the Commission at 1100 L Street, Washington, D.C. 20549.

Notice is further given that any interested person not later than Feb. 12, 1979 may submit to the Commission in writing his views on any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, 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. 79-2551 Filed 1-24-79; 8:45 am]

[8010-01-M]

[Admin. Proceeding File No. 3-5614; File No. 81-438]

M.A.G. LIQUIDATING CORPORATION (FORMERLY HOUSTON FIRST FINANCIAL GROUPS, INC.)

Application and Opportunity for Hearing

JANUARY 17, 1979.

Notice is hereby given that M.A.G. Liquidating 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 Texas corporation subject to the reporting provisions of Sections 13 and 15(d) of the 1934 Act.

2. On June 29, 1978, the shareholders of the Applicant approved a proposal to sell all of the Applicant's assets and adopted a plan of complete liquidation.

3. The sale was consummated on June 30, 1978, at which time all of the Applicant's assets were purchased by HFG Stockholding, Inc., a wholly-owned subsidiary of Pennsylvania Life Company in exchange for cash and buyer's debentures.

4. The name of the Applicant was changed from Houston First Financial Group, Inc. to M.A.G. Liquidating Corporation on June 30, 1978, after the purchase.

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 ended December 31, 1978, and its quarterly report on Form 10-Q for the period ended September

30, 1978. Applicant believes that its request for an order exempting it from the provisions of Sections 13 and 15(d) of the 1934 Act is appropriate in view of the fact that Applicant believes that the time, effort and expense involved in preparation of additional periodic reports would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20005.

Notice is further given that any interested person not later than February 12, 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. 79-2552 Filed 1-24-79; 8:45 am]

[8010-01-M]

[Rel. No. 34-15504; File No. SR-NSCC-78-10]

NATIONAL SECURITIES CLEARING CORP.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 14 U.S.C. 78s (b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on Janaury 5, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

TEXT OF PROPOSED CHANGE

Rule 3 of the NCC Division of National Securities Clearing Corporation (NSCC) at paragraph (1) thereto, shall continue to read as follows until January 6, 1979:

(1) The Clearing Corporation, in its discretion, may maintain one or more clearing accounts and, in its own name or in such clearing accounts, may act for itself or may act for a clearing agency registered pursuant to the Securities Exchange Act of 1934, as amended ("registered clearing agency") in providing for, or in assisting the registered clearing agency to provide for, the prompt clearance and settlement of securities transactions by the Clearing Corporation or the registered clearing agency and the satisfaction of the Clering Corporation's or the registered clearing agency's obligations and responsibilities under the Securities Exchange Act of 1934, as amended.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The proposed rule change permits NSCC's SCC Division to interpose itself, between the NCC Division on one hand, and Midwest Clearing Corporation (MCC) and Stock Clearing Corporation of Philadelphia (SCCP) on the other, in the interfaces for processing over-the-counter (OTC) transactions, as contemplated by the Securities and Exchange Commission (the Commission) in its Order of January 13, 1977 granting NSCC's registration as a Clearing Agency (at Exchange Act Release No. 34-13163). This interpositioning permits MCC and SCCP to only have to relate to one NSCC division, the SCC Division, for purposes of interface processing, instead of requiring separate interface arrangements to be made by MC and SCCP for processing exchange listed and OTC transactions until the date on which NSCC will have completed the operational shift of OTC processing from the NCC Division to the SCC Division.

The Commission initially approved the proposed rule change on a summary basis on May 18, 1978 (at Exchange Act Release No. 34-14772). Because that approval was for a six-month period of time, which would have expired shortly before NSCC completed the operational shift described above, upon NSCC request, the Commission extended the proposed rule change (at Exchange Act Release No. 34-15334) until January 6, 1979, by which date the operational shift will have been completed.

The proposed rule change facilities the prompt and accurate clearance and settlement of securities transactions and fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions by permitting NSCC, through the NCC Division, to act in a manner which will allow a participant in the registered clearing agency to clear and settle a securities transaction with a participant in another registered clearing agency.

No comments on the proposed rule change have been solicited or received.

The Corporation does not perceive that the proposed rule change would constitute a burden on competition.

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and 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 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 15, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 18, 1979.

[FR Doc. 79-255 Filed 1-24-79; 8:45 am]

[8010-01-M]

[File No. 1-5654]

SFM CORP.

Application To Withdraw From Listing and Registration

JANUARY 16, 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 BOSTON STOCK EXCHANGE, INC. ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The common stock of SFM Corporation (the "Company") has been listed for trading on the BSE since November 28, 1967. On December 21, 1978 the stock was also listed for trading on the American Stock Exchange, Inc. ("Amex"). The Company has decided that it does not wish to maintain a dual listing for its stock.

The application relates solely to the withdrawal from listing on the BSE and shall have no effect upon the continued listing of such common stock on the Amex. The BSE has posed no objection in this matter.

Any interested person may, on or before February 16, 1979, 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. 79-2553 Filed 1-24-79; 8:45 am]

[8010-01-M]

[Admin. Proceeding File No. 3-5594; File No. 81-365]

SYCOR, INC.

Application and Opportunity for Hearing

JANUARY 17, 1979.

Notice is hereby given that Sycor, 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 the Applicant from the obligations to file all reports required to be filed pursuant to Sections 13 and 15(d) of that Act.

Applicant states in part that:

(1) Applicant, a Delaware corporation, became a wholly-owned subsidiary of Northern Telephone Limited ("NTL"), as the result of a merger completed on May 26, 1978.

(2) The merger was approved by stockholders of the Applicant at a Special Meeting held April 19, 1978, proxies for which were solicited in accordance with the requirements of Regulation 14A under the 1934 Act.

(3) The Applicant has filed a report on Form 8-K reporting consummation of the merger.

In the absence of an exemption, Applicant is 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 December 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 the 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 no later than February 12, 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: 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) and any postponements thereof. At the time after said date, and 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. 79-2554 Filed 1-24-79; 8:45 am]

[8010-01-M]

[Release No. 34-15508; File No. SR-BSPS-78-5]

BRADFORD SECURITIES PROCESSING SERVICES, INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 14, 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 proposed rule change generally represents an increase in Registrant's fees. The schedules attached as Exhibit 2 to BSPS's filing on Form 19b-4A set forth the maximum fee Registrant will charge for each of the services listed thereon.

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the rule change is to change Registrant's fee schedule to reflect more accurately and to allocate more reasonably the fees for its services, particularly in light of substantial cost increments the Registrant has experienced over the past three years.

The raising of fees still maintains our basic billing structure among our participants.

To date, we have received verbal comments from certain customers indicating that they understand the need for a fee change and asking for further information as to its impact upon them. No written comments have been received.

BSPS is of the opinion that this fee change maintains its competitive position with other registered clearing agents and competing banks.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 15, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 22, 1979.

[FR Doc. 79-2621 Filed 1-24-79; 8:45 am]

[8010-01-M]

[Rel. No. 15507; SR-MSE-78-19]

MIDWEST STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

JANUARY 18, 1979.

On September 11, 1978, the Midwest Stock Exchange, Incorporated ("MSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of proposed rule changes which make necessary modifications to the MSE's rules for the implementation and operation of an Intermarket Trading System.

Notice of the proposed rule changes together with the terms of substance of the proposed rule changes was given by publication of a Commission Release (Securities Exchange Act Release No. 34-15223, October 6, 1978) and by publication in the FEDERAL REGISTER (43 FR 47336, October 13, 1978). All written statements with respect to the proposed rule changes which were filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Sections 6 and 11A, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-2624 Filed 1-24-79; 8:45 am]

[8010-01-M]

[Rel. No. 34-15506; File No. SR-PHLX 78-22]

PHILADELPHIA STOCK EXCHANGE

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on October 30, 1978, the Philadelphia Stock Exchange, Inc. ("PHLX") filed with the Securities and Exchange Commission a proposed rule change. The PHLX has provided the Commission with the following statement of the terms of substance, basis and purpose of the proposed rule change.

STATMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The PHLX proposes to change its Rule 2002, Liability Relating to Operations of ITS, to provide an alternative method of entering commitments and receiving responses through the Intermarket Trading System (ITS) in order to relieve the specialist or specialist unit of the burden of ITS terminal operation during busy periods. In order to accomplish this, the proposed rule calls for establishment of a floor broker terminal, operated by a PHLX employee and outlines the responsibility of the employee and the floor broker as well as limit the liability of the PHLX for entry of data by the employee.

STATEMENT OF BASIS AND PURPOSE

The proposed rule change providing an alternative method of entering commitments and receiving responses through the Intermarket Trading System (ITS) is designed to foster efficiency in the operation ITS consistent with the provisions of Section 11A(a)(1) under the Securities Exchange Act of 1934, as amended.

No written comments have been received from members on the proposed rule change; however, the rule change is being proposed because of verbal comments and recommendations from specialists and specialist units.

No burden on competition will be imposed by the proposed Rule.

On or before March 1, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and 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 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 26, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 18, 1979.

[FR Doc. 79-2622 Filed 1-24-79; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Disaster Loan Area Number 1562]

PENNSYLVANIA

Declaration of Disaster Loan Area

The area of Morton Avenue, Kedron Avenue and Route 420 in the town of Morton, Delaware County, Pennsylvania, constitutes a disaster area because of damage resulting from a fire which occurred on December 19, 1978. Applications will be processed under the provisions of Public Law 94-305. Interest rate is 7⅜ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on March 22, 1979 and for economic injury until the close of business on October 19, 1979 at:

Small Business Administration, District Office, East Lobby—Suite 400, One Bala Cynwyd Plaza, 231 St. Asaphs Road, Bala Cynwyd, Pennsylvania 19004.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: January 19, 1979.

HAROLD A. THEISTE,
Acting Administrator.

[FR Doc. 79-2687 Filed 1-24-79; 8:45 am]

[4710-02-M]

DEPARTMENT OF STATE

Agency for International Development

[Redelegation of Authority No. 99.1.17]

DIRECTOR, REGIONAL ECONOMIC DEVELOPMENT, BANGKOK, THAILAND

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby revoke Redelegation of Authority No. 99.1.17 to the Director, Regional Economic Development, Bangkok, Thailand (38 FR 27848).

This revocation is effective immediately.

Dated: January 12, 1979.

HUGH L. DWELLEY,
Director, Office of Contract Management.

[FR Doc. 79-2556 Filed 1-24-79; 8:45 am]

[4910-14-M]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 79-005]

PROPOSED RECONSTRUCTION OF HIGHWAY BRIDGE ACROSS GURNET STRAIT BETWEEN BRUNSWICK AND HARPSWELL, MAINE

Notice of Public Hearing

Notice is hereby given that the Commandant has authorized a public hearing to be held by the Commander, First Coast Guard District, at the Community Center, Cundys Harbor, Harpswell, Maine, from 7:00 p.m. to 12:00 midnight on February 26, 1979. The purpose of the hearing is to consider the application from the Maine Department of Transportation for a permit to reconstruct a highway bridge across Gurnet Strait between Brunswick and Harpswell, Maine. All interested persons may present data, views and comments orally or in writing at the public hearing concerning the impact of the proposed bridge on the environment and its effect on navigation. Of particular importance at this time are effects on navigation of the proposed bridge alignment and the vertical and horizontal clearances. Presentations should include factual data to support comments presented.

The hearing will be informal. A Coast Guard representative will preside at the hearing, make a brief opening statment, and announce the procedures to be followed at the hearing. Each person who wishes to make an oral statement should notify the Commander (obr), First Coast Guard District, 150 Causeway Street, Boston, Massachusetts 02114, by February 21, 1979. Such notification should include the approximate time required to make the presentation. A transcript will be made of the hearing and may be purchased by the public. Comments previously submitted are a matter of record and need not be resubmitted at the hearing. speakers are encouraged to provide written copies of their oral statements to the hearing officer at the time of the hearing. Those wishing to make written comments only may submit those comments at the hearing, or to the Commander (obr), First Coast Guard District by March 9, 1979. Each comment should state the reasons for any objections, comments or proposed changes to the plans, and the name and address of the person or organization submitting the comment.

Copies of all written communications will be available for examination by interested persons at the office of the Commander (obr), First Coast Guard District. All comments received will be considered before final action is taken on the proposed bridge permit application. After the time set for the submission of comments, the Commander, First Coast Guard District, will forward the record, including all written comments, and his findings, conclusions and recommendations to the Commandant, U.S. Coast Guard, Washington, D.C. 20590. The Commandant will make the final determination of the bridge permit.

(Section 502, 60 Stat. 847, as amended; 33 U.S.C. 525, 49 U.S.C. 1655(g)(6)(C); 49 CFR 1.46(c)(10).)

Dated: January 18, 1979.

F.P. SCHUBERT,
Captain, U.S. Coast Guard, acting Chief, Office of Marine Environment and Systems.

[FR Doc. 79-2631 Filed 1-24-79; 8:45 am]

[4910-14-M]

[CGD 79-010]

UNITED STATES COAST GUARD ACADEMY ADVISORY COMMITTEE

Renewal and Charter

This is to give notice, in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 1) of October 6, 1972, that the charter of the U.S. Coast Guard Academy Advisory Committee has been renewed by the Secretary of Transportation for a two-year period beginning January 16, 1979 through January 16, 1981.

The U.S. Coast Guard Academy Advisory Committee was established under section 6 of an Act of Congress, Pub. L. 75-38 of April 16, 1937 (14 U.S.C. 193) as amended.

The purpose of the Advisory Committee is to examine the curriculum and faculty of the Academy and advise the Commandant of recommendations to maintain and improve the Academy's high quality.

CHARTER—U.S. COAST GUARD ACADEMY ADVISORY COMMITTEE

1. *Purpose.* The purpose of this Instruction is to promulgate the charter of the Coast Guard Academy Advisory Committee in response to the provisions of reference (a).

2. *Directives Affected.* Commandant Instruction 5420.10B is hereby canceled.

3. *Background.* The Coast Guard Academy Advisory Committee was authorized by Section 6 of an Act of Congress, Pub. L. 75-38, on 16 April 1937. This Act permitted the Secretary to appoint an advisory committee of "five persons of distinction in the field of education who shall serve without pay." Subsequently, the 81st Congress increased the membership to "seven persons of distinction in education and other fields relating to the purposes of the Academy who shall serve without pay."

4. *Objectives.* The objectives and mission of the Committee are to advise the Commandant, United States Coast Guard, on the status of the curriculum and faculty of the United States Coast Guard Academy, making recommendations for improvement and maintenance of its high quality.

5. *Membership.* The Committee will consist of seven members who are recognized persons of distinction in the field of education and other fields relating to the purpose of the Academy, and who will be appointed by the Secretary to serve three-year terms.

6. *Committee Officers.* a. The *Chairman* shall be appointed by the Secretary and shall conduct each meeting, provide opportunity for participation by each member, and ensure adherence to the agenda.

b. The *Sponsor* of the Committee shall be the Commandant, to whom the Committee shall report.

c. *Executive Director* and permanent Vice Chairman shall be the Superintendent, united States Coast Guard Academy. He shall be responsible for preparing the agenda and submitting same to Commandant (G-P) eight weeks prior to the schedule date of the meeting. He shall be the designated Federal Office required by Section 10 of the Federal Advisory Committee Act and perform the duties pertaining thereto.

d. The *Executive Secretary* shall be the Academic Dean, United States Coast Guard Academy. He will assist the chairman and the Executive Direc-

tor in discharging committee responsibilities.

e. The *Coast Guard Headquarters Liaison Officer* shall be Chief, Office of Personnel. He will be the point of contact for the Committee, Executive Director and the Executive Secretary and will provide all the necessary support services to permit the effective execution of Committee functions.

7. *Meetings.* The Committee shall meet approximately once every six months with special meetings called as necessary. Timely notice shall be published in the FEDERAL REGISTER. All meetings shall be open to the public, who shall be permitted to attend, appear before or file statements with the Committee. All members of the public may file written statements with the Advisory Committee before or after the meeting. The Committee may allow oral statements if desired and may establish procedures for their introduction. The Executive Director shall approve the calling of all meetings, approve all agenda, attend all meetings, and is authorized to adjourn any meeting whenever he determines it to be in the public interest.

8. *Subcommittees.* The Chairman is authorized, with the approval of the sponsor, to establish subcommittees from among the membership of the Committee. The subcommittee shall comply with all regulations to which the parent committee is subject.

9. *Cost.* All necessary operating expenses will be borne by the United States Coast Guard. It is estimated that the annual cost will be $5000.00 and 0.1 man-years. All members serve voluntarily without compensation, except for reimbursement for travel expenses and lodging plus $16.00 in lieu of subsistence, the total not to exceed $35.00 per day.

10. *Records Availability.* Subject to Section 552 of Title 5, U.S.C., the records reports, minutes, agenda or other documents shall be made available for public inspection and copying at a single location in the offices of the Executive Secretary.

11. *Reports.* A detailed report, including the minutes of each meeting, shall be furnished to the Commandant and shall include:

a. Persons present.

d. Complete and accurate description of matters discussed and conclusions. reached.

c. Copies of reports received, issued or approved by the Committee.

d. Certification of accuracy by the Chairman and Executive Director.

12. *Filing Date.* January 16, 1979. This is the effective date of the charter which will expire two years from that date unless sooner terminated or extended.

Interested persons may seek additional information by writing: Capt. R. M. White, U.S.C.G., Executive Secretary, Coast Guard Academy Advisory Committee, U.S. Coast Guard Academy, New London, CT 06320, or by calling: 202-43-8688.

Dated: January 22, 1979.

W.H. STEWART,
Rear Adm., U.S. Coast Guard
Chief, Office of Personnel.

[FR Doc. 79-2630 Filed 1-24-79; 8:45 am]

[4910-14-M]

[CGD 79-002]

UNITED STATES COAST GUARD RESEARCH ADVISORY COMMITTEE

Termination

This is to give notice in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 1) of October 6, 1972, that the U.S. Coast Guard Research Advisory Committee has been terminated by the Secretary of the Department of Transportation effective January 16, 1979. This action was taken in response to the review of Federal Advisory Committees requested by the Office of Management and Budget's Transmittal Memorandum No. 5, Circular No. A-63 of March 7, 1977.

Any questions concerning this termination may be directed to: Mrs. Patricia A. Shenkle, Executive Secretary, U.S. Coast Guard Research Advisory Committee, U.S. Coast Guard (G-DS/62), Washington, D.C., 20590 or by calling 202-426-1037.

A. P. MANNING,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Research and Development.

[FR Doc. 79-2629 Filed 1-24-79; 8:45 am]

[4910-13-M]

Federal Aviation Administration

AIR TRAFFIC PROCEDURES ADVISORY COMMITTEE

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee to be held February 13 through February 16, 1979, from 9 a.m. E.D.T. to 4 p.m. daily, in conference rooms 9A and B at FAA Headquarters, 800 Independence Ave., S.W., Washington, D.C.

The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify, not later than the day before the meeting, and information may be obtained from, Mr. Franklin L. Cunningham, Executive Director, Air Traffic Procedures Advisory Committee, Air Traffic Service, AAT-300, 800 Independence Ave., SW., Washington, D.C. 20591, telephone (202) 426-3725.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C., on January 15, 1979.

F. L. CUNNINGHAM,
Executive Director, ATPAC.

[FR Doc. 79-2367 Filed 1-24-79; 8:45 am]

[4910-13-M]

RADIO TECHNICAL COMMISSION FOR AERONAUTICS (RTCA); SPECIAL COMMITTEE 134—ELECTRONIC TEST EQUIPMENT FOR GENERAL APPLICATION

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Special Committee 134 on Electronic Test Equipment for General Application to be held February 15-16, 1979, Conference Room 9W67, National Center #1, Naval Electronics Systems Command, 2511 Jefferson Davis Highway, Arlington, Virginia commencing at 9:00 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of Minutes of Sixth Meeting held December 7-8, 1978; (3) Briefing on Federal and Defense Acquisition Regulations; (4) Consider Proposed Position on Service Credits for Maintenance; (5) Review Issue Paper on Warranty Shortfalls; (6) Review Issue Paper on Specification Confusion; (7) Review Issue Paper on Wasteful Cost of Obsolescence; (8) Report by *ad hoc* Group on use of Bid Sample Technique for Off-The-Shelf Electronic Test Equipment Procurement; (9) Identify Additional Issues and Establish Priorities and Work Schedule for all Issues, and (10) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should

contact the RTCA Secretariat, 1717 H Street NW., Washington, D.C. 20006; (202) 296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on January 15, 1979.

KARL F. BIERACH,
Designated Officer.

[FR Doc. 79-2366 Filed 1-24-79; 8:45 am]

[4910-13-M]

RADIO TECHNICAL COMMISSION FOR AERONAUTICS (RTCA); SPECIAL COMMITTEE 138—MINIMUM PERFORMANCE STANDARDS FOR AIRBORNE OMEGA RECEIVING EQUIPMENT

Cancellation of Meeting

This Notice announces the cancellation of the Radio Technical Commission for Aeronautics (RTCA) Special Committee 138 meeting which was scheduled for January 30 and 31, 1979, and announced in the FEDERAL REGISTER on December 26, 1978, (43 FR 60247). The meeting has been rescheduled for March 8 and 9, 1979, and a revised Notice of Meeting will be published in the near future.

Issued in Washington, D.C. on January 16, 1979.

KARL F. BIERACH,
Designated Officer.

[FR Doc. 79-2365 Filed 1-24-79; 8:45 am]

[4910-59-M]

National Highway Traffic Safety Administration

[Docket No. IP78-6; Notice 2]

GENERAL MOTORS CORP.

Grant of Petition for Inconsequential Noncompliance

This notice grants the petition by General Motors Corp. of Warren, Michigan ("GM" herein), to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.110, Motor Vehicle Safety Standard No. 110, *Tire Section and Rims for Passenger Cars.* The basis of the petition was that the noncompliance was inconsequential as it related to motor vehicle safety.

Notice of receipt of the petition was published in the FEDERAL REGISTER on July 3, 1978 (43 FR 28882) and an opportunity afforded for comment.

Approximately 1,402 1978 model Oldsmobile Cutlass Calais passenger cars equipped with bucket seats may carry tire inflation placards (required by Standard No. 110) with an incorrect seating capacity and vehicle capacity weight. The placards indicate that the front seating capacity is three persons when the correct capacity is two, that the occupant capacity is six when actually it is five, and that the total passenger capacity weight is 1,060 pounds when it is 950 pounds.

GM argued that the incorrect seating capacity noncompliance was inconsequential because the physical limitations of the vehicle precluded the addition of a third passenger in the front compartment. Further, even if the vehicle were loaded with an additional 150 pounds, its tire load limits would not be exceeded, because "they are identical to Cutlass series vehicles equipped with bench seats and six-passenger capacity." The noncompliance arose through a computer programming error which called for a five-passenger placard for vehicles with bucket seats but not for bucket seats with reclining backs. The error has now been corrected.

No comments were received on the petition.

NHTSA concurs with the petitioner's conclusion that the noncompliances are inconsequential as they relate to motor vehicle safety. The physical limitations of the bucket-seat equipped vehicles preclude the addition of a third passenger in the front compartment. If an additional 150 pounds could be added to the front compartment occupant weight, the tires would not be overloaded. Accordingly, General Motors has met its burden of persuasion, and its petition is hereby granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on January 19, 1979.

MICHAEL M. FINKELSTEIN,
Associate Administrator for Rulemaking.

[FR Doc. 79-2695 Filed 1-24-79; 8:45 am]

[4910-62-M]

Office of the Secretary

SURFACE TRANSPORTATION ADMINISTRATION

Draft Proposal to Establish

AGENCY: Department of Transportation.

ACTION: Notice to reopen comment closing date for consultative process.

SUMMARY: This Notice reopens the consultative process and extends the comment closing date, relating to the establishment of the Surface Transportation Administration, to March 2, 1979. This action is in response to a number of requests for further time to review, evaluate and respond to the proposal. In addition, since the Department does not now expect to go forward with the proposal before Spring 1979, additional comment time is available.

DATES: The consultative process is reopened and comments will continue to be received until March 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph Leo, M-21, Department of Transportation, Washington, D.C. 20590, ATTN: STA Working Group, Room 10324, 202-426-4494.

SUPPLEMENTARY INFORMATION: The Department of Transportation developed a draft proposal to establish a Surface Transportation Administration (STA) through consolidation of the Federal Highway Administration and the Urban Mass Transportation Administration. The Department initiated a consultative process which began on November 9, 1978, to solicit comments and suggestions from interested parties before developing a formal proposal for submission to the President and Congress early in 1979. The official closing date for comments expired on December 31, 1978. In order to afford more time to interested groups to comment on this proposal, the Department has decided to reopen the consultative process.

Accordingly, the comment period on the draft STA proposal is reopened until March 2, 1979.

(49 U.S.C. 1652 (e)(4))

Issued in Washington, D.C. on January 19, 1979.

RAYMOND J. SANDER,
Director of Management Planning.

[FR Doc. 79-2686 Filed 1-24-79; 8:45 am]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 9 (Rev. 4)]

DEPUTY COMMISSIONER, ET AL.

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: Authority to permit the use of government owned or leased automobiles between home and work may not be redelegated below the District director in streamlined districts. This document does not meet the criteria for significant Regulations set forth in paragraph 8 of the Treasury directive appearing in the FEDERAL REGISTER for Wednesday November 8, 1978.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Alan Beck, 1111 Constitution Avenue, NW. Room 3308, Washington, D.C. 20224, (202) 566-4868 (Not toll free).

FRANKLIN L. FINLEY,
Staff Assistant to the Assistant Commissioner (Compliance).

[Order No. 9 (Rev. 4)]

USE OF GOVERNMENT OWNED OR LEASED AUTOMOBILES BETWEEN HOME AND WORK

Pursuant to authority vested in the Commissioner of Internal Revenue by Treasury Department Order No. 151 (Revision No. 4), dated October 7, 1974, I hereby delegate authority to designate employees authorized to use government owned or leased automobiles for transportation between their domiciles and places of employment, in accordance with the provisions of 31 U.S.C. 638a, to: Deputy Commissioner, Assistant Commissioners, Assistant to the Commissioner (Public Affairs), Division Directors, Regional Commissioners, Regional Inspectors, Chief Counsel, Regional Counsel, Director of International Operations.

The authority delegated herein may be redelegated only by the officials specified in this Order, but not below Branch Chief level in other than streamlined districts, and District Director level in streamlined districts, and may not be redelegated by those officials to whom the specified officials redelegate. This supersedes Delegation Order No. 9 (Rev. 3), issued October 21, 1976.

Date of issue: January 29, 1979.

Effective Date: January 29, 1979.

JEROME KURTZ,
Commissioner.

[FR Doc. 79-2515 Filed 1-24-79; 8:45 am]

[4830-01-M]

[Delegation Order No. 4 (Rev. 7)]

DISTRICT DIRECTORS, ET AL.

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: Authority to issue summonses, to administer oaths, and certify and to perform other functions is revised to reflect the new names, titles and delegations in streamlined districts. This document does not meet the criteria for significant Regulations set forth in paragraph 8 of the Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, November 8, 1978.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Melvin M. Blaustein, 1111 Constitution Avenue, NW., Room 7526, Washington, DC 20224, (202) 566-4356 (Not toll free).

FRANKLIN L. FINLEY,
Staff Assistant to Assistant Commissioner (Compliance).

[Order No. 4 (Rev. 7)]

AUTHORITY TO ISSUE SUMMONSES, TO ADMINISTER OATHS AND CERTIFY, AND TO PERFORM OTHER FUNCTIONS

1(a). The authorities granted to the Commissioner of Internal Revenue by 26 CFR 301.7602-1(b), 301.7603-1, 301.7604-1 and 301.7605-1(a) to issue summonses; to set the time and place for appearance; to serve summonses; to take testimony under oath of the person summoned; to receive and examine books, papers, records or other data produced in compliance with the summons; and to enforce summonses, are delegated to the officers and employees of the Internal Revenue Service specified in paragraphs 1(b), 1(c) and 1(d) of this Order and subject to the limitations stated in paragraphs 1(b), 1(c), 1(d) and 6 of this Order.

(b) The authorities to issue summonses and to perform the other functions related thereto specified in paragraph 1(a) of this Order, are delegated to all District Directors, the Director of International Operations, and the following officers and employees, provided that the authority to issue a summons in which the proper name or names of the taxpayer or taxpayers is not identified because unknown or unidentifiable (hereinafter called a "John Doe" summons) may be exercised only by said officers and employees and by them only after obtaining preissuance legal review by Regional Counsel, Deputy Regional Counsel (General Litigation) or District Counsel, or the Director, General Litigation Division in the case of Inspection.

(1) Inspection: Assistant Commissioner and Director, Internal Security Division.

(2) District Criminal Investigation: Chief of Division, except this authority in streamlined districts is limited to the District Director.

(3) International Operations: Chiefs of Divisions.

(4) District Collection Activity: Chief of Division, except this authority in streamlined districts is limited to the District Director.

(5) District Examination: Chief of Division, except this authority in streamlined districts is limited to the District Director.

(6) District Employee Plans and Exempt Organizations: Chief of Division.

(c) The authorities to issue summonses except "John Doe" summonses, and to perform other functions related thereto specified in paragraph 1(a) of this Order, are delegated to the following officers and employees:

(1) Inspection: Regional Inspectors and Assistant Regional Inspectors (Internal Security) and Chief, Investigations Branch.

(2) District Criminal Investigation: Assistant Chief of Division; Chiefs of Branches; and Group Managers.

(3) International Operations: Assistant Director; Chiefs of Branches; Case Managers; and Group Managers.

(4) District Collection Activity: Assistant Chief of Division; Chiefs of Collection Section; Chiefs of Field Branches and Office Branches; Chiefs, Special Procedures Staffs; Chiefs Technical and Office Compliance Groups and Group Managers.

(5) District Examination: Case Managers and Group Managers.

(6) District Employee Plans and Exempt Organizations: Group Managers.

(d) The authority to issue summonses except "John Doe" summonses and to perform the other functions related thereto specified in paragraph 1(a) of this Order is delegated to the following officers and employees except that in the instance of a summons to a third party witness, the issuing officers' case manager, group manager, or any supervisory official above that level, has in advance personally authorized the issuance of the summons. Such authorization shall be manifested by the signature of the authorizing officer on the face of the original and all copies of the summons or by a statement on the face of the original and all copies of the summons, signed by the issuing officer, that he/she had prior authorization to issue said summons and stating the name and title of the authorizing official and the date of authorization.

(1) International Operations: Internal Revenue Agents; Attorneys, Estate Tax; Estate Tax Examiners; Special Agents; Revenue Service and Assistant Revenue Service Representatives; Tax Auditors; and Revenue Officers, GS-9 and above.

(2) District Criminal Investigation: Special Agents.

(3) District Collection: Revenue Officers, GS-9 and above.

(4) District Examination: Internal Revenue Agents; Tax Auditors; Attorneys, Estate Tax; and Estate Tax Examiners.

(5) District Employee Plans and Exempt Organizations: Internal Revenue Agents; Tax Law Specialists; and Tax Auditors.

(e) Each of the officers and employees referred to in paragraphs 1(b), 1(c) and 1(d) of this Order may serve a summons whether it is issued by him/her or another official.

2. Each of the officers and employees referred to in paragraphs 1(b), 1(c), and 1(d) of this Order authorized to issue summonses, is delegated the authority under 26 CFR 301.7602-1(b) to designate any other officer or employee of the Internal Revenue Service referred to in paragraph 4(b) of this Order, as the individual before whom a person summoned pursuant to Section 7602 of the Internal Revenue Code shall appear. Any such other officer or employee of the Internal Revenue Service when so designated in a summons is authorized to take testimony under oath of the person summoned and to receive and examine books, papers, records or other data produced in compliance with the summons.

3. Internal Security Inspectors are delegated the authority under 26 CFR 301.7603-1 to serve summonses issued in accordance with this Order by any of the officers and employees of the Inspection Service referred to in paragraphs 1(b)(1) and 1(c)(1) of this Order even though Internal Security Inspectors do not have the authority to issue summonses.

4(a). The authorities granted to the Commissioner of Internal Revenue by 26 CFR 301.7602-1(a), and 301.7605-1(a) to examine books, papers, records or other data, to take testimony under oath and to set the time and place of examination are delegated to the officers and employees of the Internal Revenue Service specified in paragraphs 4(b), 4(c), and 4(d) of this Order and subject to the limitations stated in paragraphs 4(c) and 6 of this Order.

(b) General Designations

(1) Inspection: Assistant Commissioner; Director, Internal Security Division; Director, Internal Audit Division; Regional Inspectors; Internal Auditors; and Internal Security Inspectors.

(2) District Criminal Investigation: Chief and Assistant Chief or Division: Chiefs of Branches; Group Managers; and Special Agents.

(3) International Operations: Director, Assistant Director; Chief of Divisions and Branches; Special Agents; Case Managers; Group Managers, Internal Revenue Agents; Attorneys, Estate Tax; Estate Tax Examiners; Revenue Service and Assistant Revenue Service Representatives; Tax Auditors; and Revenue Officers.

(4) District Collection Activity: Chiefs and Assistant Chiefs of Division; Chiefs of Field Branches and Office Branches; Chiefs, Special Procedures Staffs; Group Managers; and Revenue Officers. In streamlined districts to Chiefs, Collection Section; Chiefs, Technical and Office Compliance Group; Group Managers and Revenue Officers.

(5) District Examination: Chiefs of Division; Chiefs of Examination Sections; Chiefs of Examination Branches; Case Managers; Group Managers; Internal Revenue Agents; Tax Auditors; Attorneys, Estate Tax; and Estate Tax Examiners.

(6) District Employee Plans and Exempt organization: Chief of Division; Chief, Examination Branch; Chief, Technical Staff; Group Managers; Internal Revenue Agents; Tax Law Specialists; and Tax Auditors.

(7) Service Center: Chief, Examination Division; Chief, Criminal Investigation Staff; Revenue Agents; Tax Auditors; Tax Examiners in the Correspondence Examination Branch; and Special Agents.

(c) District Directors, Service Center Directors, Regional Inspectors, the Chief of Investigation Branch, and the Director of International Operations may redelegate the authority under 4(a) of this Order to aides or trainees, respectively, for the positions of revenue agent, tax auditor, tax examiner in the service center Correspondence Examination Branch, tax law specialists, revenue officer, internal auditor, internal security inspector, and special agent, provided that each such aide or trainee shall exercise said authority only under the direct supervision, respectively, as applicable of a revenue agent, tax auditor, tax examiner in the service center Correspondence Examination Branch, tax law specialist, revenue officer, special agent, internal auditor or internal security inspector.

(d) District Directors may redelegate the authority under 4(a) of this Order to Revenue Representatives and Office Collection Representatives.

5. Under the authority granted to the Commissioner of Internal Revenue by 26 CFR 301.7622-1, the officers and employees of the Internal Revenue Service referred to in paragraphs 1(b), 1(c), 1(d), and 4(b) and 4(c) of this Order are designated to administer oaths and affirmations and to certify to such papers as may be necessary under the internal revenue laws and regulations *except* that the authority to certify shall not be construed as applying to those papers or documents the certification of which is authorized by separate order or directive. Revenue Representatives and Office Collection Representatives referred to in paragraph 4(d) of this Order are not designated to administer oaths or to perform the other functions mentioned in this paragraph.

6. The authority delegated herein may not be redelegated except as provided in paragraphs 4(c) and 4(d).

7. This Order supersedes Delegation Order No. 4 (Rev. 6), issued October 1, 1978.

Date of Issue: January 29, 1979.

Effective Date: January 29, 1979.

JEROME KURTZ,
Commissioner.

[FR Doc. 79-2513 Filed 1-24-79; 8:45 am]

[4830-01-M]

REGIONAL COMMISSIONER, ET AL.

[Delegation Order No. 11 (Rev. 10)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: In streamlined districts, the authority to accept or reject offers in compromise is limited to the District Director. This document does not meet the criteria for significant Regulations set forth in paragraph 8 of the Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, November 8, 1978.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Melvin M. Blaustein, 1111 Constitution Avenue, NW., Room 7526, Washington, DC 20224, (202) 566-4356 (Not toll free).

FRANKLIN L. FINLEY,
Staff Assistant to Assistant Commissioner (Compliance).

[Order No. 11 (Rev. 10)]

AUTHORITY TO ACCEPT OR REJECT OFFERS IN COMPROMISE

The authority vested in the Commissioner of Internal Revenue by Treasury Department Order No. 150-25, dated June 1, 1953, as amended by Order No. 180 dated November 17, 1953, and Order No. 150-36 dated August 17, 1954, 26 CFR 301.7122-1 and 26 CFR 301.7701-9, and Treasury Department Order No. 150-60 dated June 3, 1964, is hereby delegated as follows:

1. Regional Commissioners of Internal Revenue are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise of tax, based solely on doubt as to liability, if the unpaid liability (including any interest, penalty, additional amount or addition to tax) is $100,000 or more. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco and firearms taxes. The authority delegated herein may not be redelegated.

2. For the Office of International Operations, the Assistant Commissioner (Compliance) is delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise of tax, based solely on doubt as to liability, if the unpaid liability (including any interest, penalty, additional amount or addition to tax) is $100,000 or more. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco and firearms taxes. The authority delegated herein may not be redelegated.

3. Regional Commissioners and the Director, Collection Division are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise based on doubt as to collectibility and those based on doubt as to both collectibility and liability if the unpaid liability (including any interest, penalty, additional amount or addition to tax) is $100,000 or more. In addition, Regional Commissioners and the Director, Collection Division are delegated authority to accept offers in compromise submitted under Section 3469 of the Revised Statutes, as amended (31 U.S.C. 194) insofar as claims arising in the administration of the Internal Revenue laws are concerned. The authorities delegated herein do not pertain to offers in compromise of liabilities arising under laws related to alcohol, tobacco and firearms taxes. The authorities delegated herein may not be redelegated.

4. District Directors, Assistant District Directors, the Director of International Operations and the Assistant Director of International Operations are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise in cases in which the liability sought to be compromised (including any interest, penalty, additional amount or addition to the tax) is less than $100,000, to accept offers involving specific penalties, and to reject offers in compromise regardless of the amount of the liability sought to be compromised. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco and firearms taxes. The authority delegated herein may not be redelegated, except that the authority to reject offers in compromise may be redelegated, but not lower than to Division Chief. The District Director in a streamlined district may not redelegate this authority.

5. Service Center Directors and Assistant Service Center Directors are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise, limited to penalties based solely on doubt as to liability, if the unpaid liability is less than $100,000, and to reject offers in compromise, limited to penalties, regardless of the amount of the liability sought to be compromised. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco and firearms taxes. This authority may be redelegated, but not lower than to Division Chief.

6. This Order supersedes Delegation Order No. 11 (Rev. 9) issued April 18, 1978.

Date of issue: January 29, 1979.

Effective Date: January 29, 1979.

JEROME KURTZ,
Commissioner.

[FR Doc. 79-2516 Filed 1-24-79; 8:45 am]

[4830-01-M]

[Delegation Order No. 8 (Rev. 7)]

REGIONAL DIRECTORS OF APPEALS, ET AL.

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The authority to sign agreements as to liability for personal holding company tax may be redelegated by District Directors in streamlined districts not lower than to GS-11 Revenue Agents. This document does not meet the criteria for significant Regulations set forth in paragraph 8 of the Treasury Directive appearing in the FEDERAL REGISTER for Wednesday November 8, 1978.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Bernard L. Meehan, 1111 Constitution Avenue NW., Room 2505, Washington, D.C. 20224, (202) 566-6849 (not toll free).

FRANKLIN L. FINLEY,
Staff Assistant to the Assistant Commissioner (Compliance).

[Order No. 8 (Rev. 7)]

AUTHORITY TO SIGN AGREEMENTS AS TO LIABILITY FOR PERSONAL HOLDING COMPANY TAX

1. The authority granted to the Commissioner of Internal Revenue and District Directors by 26 CFR 301.7701-9 and 26 CFR 1.547-2 to enter into agreements relating to liability for personal holding company tax, is hereby delegated to the following officials:

a. Regional Directors of Appeals;
b. Chiefs, Appeals Offices;
c. Associate Chiefs, Appeals Offices;
d. Director of International Operations;
e. Assistant District Directors; and
f. Chiefs of District Examination Divisions, in other than streamlined districts.

2. This authority may be redelegated only by District Directors and the Director of International Operations, who may redelegate to the Chief of Review Staff; and to Revenue Agents (Reviewers) not lower than GS-11. In streamlined districts this authority may be redelegated only by the District Director who may redelegate not lower than to GS-11 Revenue Agents.

3. This Order supersedes Delegation Order No. 8 (Rev. 6), issued October 1, 1978.

Date of issue: January 29, 1979.

Effective Date: January 29, 1979.

JEROME KURTZ,
Commissioner.

[FR Doc. 79-2514 Filed 1-24-79; 8:45 am]

[4830-01-M]

[Delegation Order No. 19 (Rev. 6)]

DEPUTY COMMISSIONER, ET AL.

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The authority to make payment for expenses incident to transfers or appointments of employees to new official stations, vacation leave travel and similar items may not be redelegated below the District Director in the streamlined districts. This document does not meet the criteria for significant Regulations set forth in paragraph 8 of the Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, November 8, 1978.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Joseph F. Kump, 111 Constitution Avenue, N.W. Room 3322 Washington, D.C. 20224 (202) 566-3135 (Not toll free).

FRANKLIN L. FINLEY,
Staff Assistant to the Assistant Commissioner (Compliance).

Payment of Expenses Incident to Transfers or Appointments of Employees to New Official Stations, Vacation Leave Travel, and Similar Items.

1. This order delegates authority vested in the Commissioner of Internal Revenue by Treasury Department Order No. 72 Revised, to authorize or approve the allowance and payment form Government funds of expenses allowable under Chapter 2, Relocation Allowances, of General Services Administration Federal Property Management Regulations Part 101-7, Federal Travel Regulations. The following officers may authorize or approve the incurrence of such expenses, and make related determinations, subject to the restrictions in the succeeding paragraphs of this order and pursuant to implementing regulations in Treasury Department Administrative Circular No. 19, as revised, and IRM 1763, Travel Handbook:

Deputy Commissioner
Assistant to the Commissioner (Public Affairs)
Assistant Commissioners
Chief Counsel
Division Directors
Director of International Operations
Director, National Computer Center
Fiscal Management Officer
Regional Commissioners
Regional Inspectors
Regional Counsel
District Directors
Service Center Directors
Director, Data Center

2. This delegation does not include the authority to agree to the payment of moving expenses by an office other than the gaining office in transfers between the Internal Revenue Sevice and another agency, department, bureau of the Treasury Department, etc.

3. This delegation does not include the authority to agree to payment of travel and transportation of new appointees to first post of duty.

4. This delegation does not include the authority to approve a period of service of less than two years, or to accept separation, without penalty, from service before the end of the year of service, with respect to employees serving outside the conterminous (contiguous 48 States and the District of Columbia) United States under circumstances requiring two years of service.

5. No redelegation of the above authority may be made except that:

(1) Regional Commissioners may redelegate, but not lower than to Branch Chiefs in the Regional Office,

(2) District Directors, Service Center Directors, and the Director, Data Center, may redelegate, but not lower than to Division Chiefs. In streamlined districts this authority may not be redelegated below the District Director.

6. The Director of International Operations and the Regional Commissioner, Western Region, may make determinations and authorizations in cases under their jurisdiction with respect to the transportation and emergency storage of privately-owned motor vehicles of Service employees appointed or transferred to posts of duty other than those located in the conterminous United States. The Fiscal Management Officer may make such determinations and authorizations with respect to all other Service employees appointed or transferred to posts of duty outside the conterminous United States. This authority may not be redelegated.

7. Delegation Order No. 19 (Rev. 5), issued August 19, 1976, is superseded.

JEROME KURTZ,
Commissioner.

[FR Doc. 79-2517 Filed 1-24-79; 8:45 am]

[4830-01-M]

[Delegation Order No. 27 (Rev. 7)]

ADMINISTRATIVE OFFICERS, ET AL.

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: In streamlined districts, the authority to administer oaths in connection with employment in the Federal Service is extended to Administrative Officers. This document does not meet the criteria for significant Regulations set forth in paragraph 8 of the Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, November 8, 1978.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Wanda Brasher, 1111 Constitution Avenue, NW, Room 1514, Washing-

ton, DC 20224 (202) 376-0530 (Not toll free).

FRANKLIN L. FINLEY,
Staff Assistant to the Assistant Commissioner (Compliance).

Authority to Administer Oaths Required by Law in Connection with Employment in the Federal Service.

A. Pursuant to the authority granted to me in Treasury Department Order No. 125 dated September 18, 1950, the incumbents of, and persons acting in, the positions listed below are hereby authorized to administer, without charge or fee, the oath of office required by Section 1757 of the Revised Statutes, as amended (5 U.S.C. 16) or any other oath required by law in connection with employment in the Federal Service:

1. *National Office.* Assistant Commissioner (Resources Management); Director and Assistant Director, Personnel Division; Chief and Assistant Chief, National Office Personnel Branch; Chief, Team Leaders, Personnel Management Specialists, and Personnel Staffing Specialists, Employment Section, National Office Personnel Branch; Chief and Appointment Clerks of the Services Section, National Office Personnel Branch; and Director and Assistant Director of International Operations.

2. *Regional Offices.* Regional Commissioner; Assistant Regional Commissioner (Resources Management); Chief, Personnel Branch; Chiefs, Personnel Management Specialists and Appointment Clerks of the Employment and Regional Office Personnel Sections, Personnel Branch; and Chiefs and Associate Chiefs, Appeals Offices.

3. *District Offices.* District Director; Assistant District Director; Chief, Resources Management Division, Chief, Personnel Branch; Chief, Employment Section, Personnel Management Specialists, Personnel Assistants and Appointment Clerks, Personnel Branch; Administrative Officer in Streamlined Districts; and the Administrative Officer or Representative of the District Director at an Area, Zone, or Local Office.

4. *Service Centers.* Director; Assistant Director; Chief, Resources Management Division; Chief, Personnel Branch; Chief, Employment Section, Personnel Management Specialists, Personnel Assistants and Appointment Clerks, Personnel Branch.

5. *Data Center.* Director; Assistant Director; Chief, Resources Management Division; Chief, Personnel Branch; Personnel Management Specialists; Personnel Assistants; Personnel Clerks; and Appointment Clerks.

6. *National Computer Center.* Director; Chief, Resources Management Division; Chief, Personnel Branch, Personnel Management Speicalists; and Appointment Clerks, Personnel Branch.

7. *Puerto Rico Collections Branch.* Director's Representative, Office of International Operations.

B. All Supervisors authorized by Section A of this Order to administer oaths are also authorized to designate in writing employees under their supervision and control who may administer such oaths.

C. Pursuant to the above authority vested in me as Commissioner of Internal Revenue, employees designated to serve as Grievance Examiners and Executive Secretaries in agency grievances are hereby authorized to administer oaths to witnesses testifying in hearings being conducted under the agency grievance process contained in IRM 0771.1. This authority may not be redelegated.

D. This Order supersedes Delegation Order No. 27 (Rev. 7), issued October 1, 1978.

JEROME KURTZ,
Commissioner.

[FR Doc. 79-2518 Filed 1-24-79; 8:45 am]

[4830-01-M]

[Delegation Order No. 35 (Rev. 10)]

REGIONAL DIRECTORS OF APPEALS, ET AL.

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The authority to enter into agreements on determinations under Section 1313(a)(4) of the Internal Revenue code of 1954 may be redelegated by the District Director no lower than to GS-11 Revenue Agents. This document does not meet the criteria for significant Regulations set forth in paragraph 8 of the Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, November 8, 1979.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Bernard L. Meehan, 1111 Constitution Avenue, N.W. Room 2505, Washington, D.C. 20224 (202) 566-6849 (Not toll free).

FRANKLIN L. FINLEY,
Staff Assistant to the Assistant Commissioner (Compliance).

Agreements as Determinations Under Section 1313(a)(4) of the Internal Revenue code of 1954

1. Pursuant to the authority granted to the Commissioner of Internal Revenue and district directors by 26 CFR 301.7701-9 and 26 CFR 1.1313(a)-4, Internal Revenue Code of 1945, relating to agreements treated as determinations, is hereby delegated to the following officials:

a. Regional Directors of Appeals;

b. Chiefs and Associate Chiefs of Appeals Offices;

c. Director of International Operations;

d. Assistant District Directors;

e. Chiefs of Examination Divisions; and

f. Chiefs of Employee Plans and Exempt Organizations Divisons.

2. In other than streamlined districts this authority may be redelegated only by District Directors and the Director of International Operations, who may redelegate to the Chief of Review Staff; to Revenue Agents and Tax Law Specialists (Reviewers) not lower than GS-11 for field examination cases; and to Revenue Agents and Tax Technicians (Reviewers) not lower than GS-9 for office examination cases. In streamlined districts, this authority may be redelegated by the District Director no lower than to GS-11 Revenue Agents.

3. This Order supersedes Delegation Order No. 35 (Rev. 9), issued October 1, 1978.

JEROME KURTZ,
Commissioner.

[FR Doc. 79-2519 Filed 1-24-79; 8:45 am]

[4830-01-M]

[Delegation Order No. 39 (Rev. 9)]

ASSISTANT COMMISSIONERS, ET AL.

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The authority to set tours of duty and overtime shall not be redelegated below the District Director in streamlined districts. This document does not meet the criteria for significant Regulations set forth in paragraph 8 of the Treasury Directive appearing in the FEDERAL REGISTER for Wednesday November 8, 1978.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Anthony D'Amata, 1111 Constitution Avenue, N.W., Room 3316, Washington, D.C. 20224 (202) 566-3161 (Not toll free).

FRANKLIN L. FINLEY,
Staff Assistant to the Assistant Commissioner (Compliance).

Tours of Duty and Overtime.

1. Pursuant to authority vested in the Commissioner of Internal Revenue by Chapter 610 of the Treasury Personnel Manual, the following officials are hereby authorized to prescribe, for personnel listed below, the official hours of duty and, when necessitated by operating requirements, to establish an administrative workweek of five 8-hour days other than Monday through Friday for individual employees or groups of employees whose services are required on Saturday or Sunday or both, and flexible tours of duty for criminal investigators consisting of five 8-hour days, Monday through Friday.

Official	Personnel
Assistant Commissioner (Resources Management)	National Office (except Data Center and National Computer Center).
Assistant Commissioner (Data Services)	Data Center and National Computer Center.
Assistant Commissioner (Inspection)	Regional Inspectors.
Director of International Operations	Employees of Office of International Operations including those stationed outside the Washington Metropolitan area.
Regional Commissioners, District Directors, and Service Center Directors.	Personnel under their supervision and control.

2. The above-named officials are required, in accordance with 5 U.S.C. 6101, to establish tours of duty for individual employees or groups of employees in accord with the following criteria:

(1) Assignments to tours of duty shall be scheduled in advance over periods of not less than one week;

(2) The basic forty-hour workweek shall be scheduled in five days, which shall be Monday through Friday *wherever possible*, and the two days outside the basic workweek shall be consecutive;

(3) The working hours in each day in the basic workweek shall be the same;

(4) The basic nonovertime workday shall not exceed eight hours;

(5) The occurrence of holidays shall not affect the designation of the basic workweek; and

(6) Breaks in working hours of more than one hour shall not be scheduled in any basic workday.

3. In accordance with 5 U.S.C. 6101, an exception to the criteria in Section 2 may be made in those instances where the authorizing official determines that application of one or more of the above enumerated criteria would result in a serious handicap in carrying out the organization's functions, or that costs would be substantially increased. Such exceptions and the reasons therefor shall be made a matter of record.

4. The authority delegated in Section 1 may be redelegated as follows:

(1) By the Assistant Commissioner (Data Services) to the Directors, Data Center and the National Computer Center; and

(2) By Regional Commissioners, Director of International Operations, District Directors, and Service Center Directors, but not lower than to: Branch Chiefs in the regional headquarters; Associate Chiefs, Appeals Offices; and Division Chiefs in Districts, Office of International Operations and Service Centers. In streamlined districts, this authority may not be redelegated below the District Director.

5. Assistant Commissioners, Regional Commissioners, Regional Directors of Appeals, Assistant Regional Commissioners, District Directors, Director of International Operations and Service Center Directors, are hereby authorized:

(1) To order or approve the performance of paid overtime duty by employees under their supervision and control, provided funds are available for such duty;

(2) To order or approve the performance of overtime duty by employees under their supervision and control for which compensatory time off will be granted in lieu of overtime pay;

(3) To order or approve the performance of work on holidays, provided funds are available for such duty; and

(4) To establish tours of duty for educational purposes under the provisions of 5 U.S.C. 6101(a)(4).

6. The authority delegated in Section 5 may be redelegated to supervisors for employees under their supervision and control.

7. This order supersedes Delegation Order No. 39 (Rev. 8), issued October 1, 1978.

JEROME KURTZ,
Commissioner.

[FR Doc. 79-2521 Filed 1-24-79; 8:45 am]

[4830-01-M]

[Delegation Order No. 42 (Rev. 11)]

REGIONAL DIRECTORS OF APPEALS, ET AL.

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: Authority to execute consents fixing the period of limitations on assessments or collection under provisions of the 1939 and 1954 Internal Revenue Codes may be extended to the Chief, Technical and Office Compliance Group, a new position in the streamlined districts.

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

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Melvin M. Blaustein, 1111 Constitution Avenue, NW. Room 7526, Washington, DC 20224, (202) 566-4356 (Not toll free).

FRANKLIN L. FINLEY,
Staff Assistant to Assistant Commissioner (Compliance).

Subject: Authority to Execute Consents Fixing the Period of Limitations on Assessment or Collection Under Provisions of the 1939 and 1954 Internal Revenue Codes.

1. Pursuant to authority vested in the Commissioner of Internal Revenue by Treasury Department Order No. 120, dated July 31, 1950; Order No. 150-2, dated May 15, 1952; 26 CFR 301.6501(c)-1; 26 CFR 301.6502-1; 26 CFR 301.6901-1(d); and 26 CFR 301.7701-9; the authority to sign all consents fixing the period of limitations on assessment or collection is delegated to the following officials:

a. Regional Directors of Appeals;
b. Service Center Directors;
c. District Directors;
d. Director of International Operations.

2. This authority may be redelegated but not below the following levels for each activity:

a. Service Centers—Chief, Accounting Branch; Chief, Correspondence Examination Branch; and Revenue Officers;

b. Collection—Chief, Office Branch and Office Groups; and Revenue Officers. In streamlined districts—Chief, Technical and Office Compliance Group, and Revenue Officers;

c. Examination—Reviewers, Grade GS-11; Group Managers; Case Managers; and Returns Program Managers;

d. Criminal Investigation Chief, Criminal Investigation Division, except this authority in streamlined districts is limited to the District Director;

e. Appeals—Appeals Officers;

f. Office of International Operations—Representatives at foreign posts; Revenue Agents, Tax Auditors, and Special Agents on foreign assignments; and levels b, c, and d, above; and

g. District Employee Plans and Exempt Organizations—Reviewers, Grade GS-11; Group Managers.

3. This Order supersedes Delegation Order No. 42 (Rev. 10), issued October 1, 1978.

JEROME KURTZ,
Commissioner.

[FR Doc. 79-2521 Filed 1-24-79; 8:45 am]

[4830-01-M]

[Delegation Order No. 51 (Rev. 3)]

CHIEF, SPECIAL PROCEDURES STAFF

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: Authority to sign proofs of claims and other documents has been extended to the Chief, Technical and Office Compliance Group a new position in streamlined districts.

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

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Melvin M. Blaustein, 1111 Constitution Avenue, NW, Room 7526, Washington, D.C. 20224, (202) 566-4356 (Not toll free).

FRANKLIN L. FINLEY,
Staff Assistant to Assistant Commissioner (Compliance).

The following officers are hereby authorized to sign proofs of claim and other documents asserting obligations incurred under the Internal Revenue laws (including taxes, penalties and interest), in order to claim and collect such obligations in any proceeding under the Bankruptcy Act and any receivership, decedents's estate, corporate dissolution, or other insolvency proceeding:

Chief, Special Procedures Staff

Chief, Technical and Office Compliance Group in streamlined districts

The authority herein delegated may not be redelegated.

This Order supersedes Delegation Order No. 51 (Rev. 2), issued July 2, 1978.

JEROME KURTZ,
Commissioner.

[FR Doc. 79-2522 Filed 1-24-79; 8:45 am]

[4830-01-M]

[Delegation Order No. 77 (Rev.12)]

REVENUE AGENTS, ET AL.

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: Authority to issue statutory notices of deficiency may be extended to Grade GS-11, Revenue Agents in streamlined districts.

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

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Bernard L. Meehan, 1111 Constitution Avenue, NW, Room 2505, Washington, DC 20224, (202) 566-6849 (Not toll free).

FRANKLIN L. FINLEY,
Staff Assistant to Assistant Commissioner (Compliance).

Authority to Issue Statutory Notices of Deficiency

1. The authority granted to the Commissioner of Internal Revenue and District Directors, by 267 CFR 301.7701-9, 26 CFR 301.6212-1, and 26 CFR 301.6861-1 to sign and send to the taxpayer by registered or certified mail any statutory notice of deficiency is hereby delegated to the following officials:

a. Regional Director of Appeals;
b. Chiefs and Associate Chiefs of Appeals Offices;
c. Director of International Operations;
d. Service Center Directors;
e. Assistant District Directors;
f. Assistant Service Center Directors;
g. Chiefs of Examination Divisions;
h. Chiefs of Correspondence Examination Branch; and
i. Chiefs of Employee Plans and Exempt Orgainzations Divisions.

2. This authority may be redelegated only by District Directors, Service Center Directors and the Director of International Operations, but not lower than Examination Division Reviewers, Grade GS-9, Revenue Agents (GS-11) in streamlined districts, and Reviewers, Grade GS-12, in Employee Plans and Exempt Organizations Divisions.

3. This Order supersedes Delegation Order No. 77 (Rev. 11), issued October 1, 1978.

JEROME KURTZ,
Commissioner.

[FR Doc. 79-2523 Filed 1-24-79; 8:45 am]

[4830-01-M]

[Delegation Order No. 80 (Rev. 2)]

ASSISTANT COMMISSIONERS, ET AL.

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: In streamlined districts, the District Director must concur in enrollments for required training courses.

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

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Orion L. Birdsall, 1111 Constitution Avenue, N.W., Room 1406, Washington, D.C. 20224 (202) 566-3197 (Not toll free).

FRANKLIN L. FINLEY,
Staff Assistant to the Assistant Commissioner, (Compliance).

Authority to Determine Correspondence Course Enrollment Requirements

1. Authority is hereby delegated to the following officials to determine the correspondence course enrollment requirements for employees under their jurisdiction. (Requirements may be established in terms of entire courses or portions of such courses.):

Assistant Commissioners
Regional Commissioners
District Directors
Service Center Directors
Director of International Operations

2. These officials determine which employees will be required to complete courses or portions of courses for effective work performance, the minimum rate at which courses shall be completed, and the amount of official time to be allowed for the preparation of each course assignment. The minimum rate shall be not less than (a) one assignment for each four hours of official time allowed and (b) one assignment per month per course unless unusual circumstances justify exceptions. Normally, the maximum official time allowed shall not exceed four hours per pay period for each course for which the employee is enrolled.

3. The immediate supervisor shall be responsible for seeing to it that enrollees meet the rate-of-completion standards and are allotted the prescribed official time.

4. This authority should be redelegated to the immediate supervisor. However, to ensure reasonable uniformity, Division Chiefs should concur in enrollments for required courses in other than streamlined districts. In streamlined districts the District Director should concur in enrollments for required courses.

5. This Order supersedes Delegation Order No. 80 (Rev. 1), issued February 18, 1963.

JEROME KURTZ,
Commissioner.

[FR Doc. 79-2224 Filed 1-24-79; 8:45 am]

[4830-01-M]

[Delegation Order No. 93 (Rev. 6)]

REGIONAL DIRECTORS OF APPEALS, ET AL.

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: In streamlined districts, the authority to consent to a redetermination of aggregations by a taxpayer, in the case of invalid basic aggregations or invalid additions, may not be extended below the District Director. This document does not meet the criteria for significant Regulations set forth in paragraph 8 of the Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, November 8, 1978.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Bernard L. Meehan, 1111 Constitution Avenue, NW, Room 2505, Washington, DC 20224. (202) 566-6849 (Not toll free).

FRANKLIN L. FINLEY,
Staff Assistant to Assistant Commissioner (Compliance).

Authority to Consent to a Redetermination of Aggregations by a Taxpayer in the Case of Invalid Basic Aggregations or Invalid Additions

1. The authority vested in the Commissioner of Internal Revenue as prescribed in 26 CFR 1.614-2(d)(5) and 26 CFR 1.614-3(f)(8) and described below is hereby delegated to Regional Directors of Appeals; Chiefs, and Associate Chiefs, Appeals Offices; District Directors; and, in other than streamlined districts, Chiefs, District Examination Divisions. In streamlined districts, this authority is not delegated below the District Director.

Consent to the reforming of aggregations by a taxpayer where the taxpayer has formed invalid basic aggregations or made invalid additions to valid or invalid basic aggregations, and

Consent, in the case of oil and gas wells where an invalid aggregation has been formed under section 614(b), to the treatment by a taxpayer of all the properties included in the aggregation, which fall within a single operating unit, under the provisions of section 614(d) rather than section 614(b) of the 1954 Code if so requested by the taxpayer.

2. In the case of oil and gas wells this delegation order shall apply only to taxable years subject to the 1954 Code beginning before January 1, 1964.

3. The authority delegated herein may not be redelegated.

4. This Order supersedes Delegation

Order No. 93 (Rev. 5), issued October 1, 1978.

JEROME KURTZ,
Commissioner.

[FR Doc. 79-2525 Filed 1-24-79; 8:45 am]

[4830-01-M]

[Delegation Order No. 102 (Rev. 6)]

ADMINISTRATIVE OFFICERS

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: In streamlined districts, the authority for labor-management relations matters may be redelegated to Administrative Officers or other appropriate management officials. Authority to negotiate basic labor-management agreements has been given the Director, Resources Management Division for National Office employees. This document does not meet the criteria for significant Regulations set forth in paragraph 8 of the Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, November 8, 1978.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Sue Barliant, 1111 Constitution Avenue, NW, Room 3316, Washington, DC 20224, (202) 370-0575 (Not toll free).

FRANKLIN L. FINLEY,
Staff Assistant to Assistant Commissioner (Compliance).

Delegation of Authority in Labor-Management Relations Matters.

1. The authority delegated to the Commissioner of Internal Revenue in Chapter 711, Treasury Personnel Manual, to administer the Labor-Management Relations Program is hereby delegated as follows:

(a) The Director, Personnel Division, is authorized:

(1) to act as the Service's representative in dealing with the national headquarters of unions;

(2) to negotiate and execute multi-unit agreements and agreements covering any amendments, corrections, alterations, substitutions and/or changes thereto;

(3) to act as final approving official on all local and multi-unit agreements, including any amendments, corrections, alterations, substitutions and/or changes thereto, subject to existing statements of Service policy;

(4) to establish and represent the Service's position on the appropriateness of units, unfair labor practice complaints, standards of conduct cases and other formal proceedings before the Department of Labor, the Federal Labor Relations Council, and the Federal Services Impasses Panel;

(5) to consult, as appropriate, with the recognized unions holding national consultation rights with the Service and to consult with the national headquarters of properly recognized unions on Service-wide issues;

(6) to determine whether a dispute arising out of a collective bargaining agreement shall be submitted to binding arbitration; and

(7) to issue interpretations of multi-unit agreements.

(b) Regional Commissioners (regarding Regional Office employees); District Directors; Service Center Directors; the Director, Data Center; the Director, National Office Resources Management Division; and the Director, National Computer Center, are authorized:

(1) to negotiate basic agreements after prior consultation with the Director, Personnel Division, or his/her designee;

(2) to negotiate local supplemental agreements subject to the terms of any controlling master agreement; and

(3) to consult, as appropriate, regarding local issues.

2. The authority delegated in 1(a) may be redelegated by the Director, Personnel Division to the Chief, Labor Relations Branch, any or all of the authorities contained in subparagraphs 1.(a)(1) through 1.(a)(7).

3. The authority delegated in 1(b) may be redelegated by the officials listed therein to their Chief, Personnel Branch, and Chief, National Office Personnel Branch, but may not be further redelegated. In streamlined districts, the District Director may also redelegate this authority to an appropriate management official, but may not be redelegated below the group manager level.

4. Delegation Order No. 102 (Rev. 5), issued October 18, 1974, is hereby superseded.

JEROME KURTZ,
Commissioner.

[FR Doc. 79-2526 Filed 1-24-79; 8:45 am]

[4830-01-M]

[Delegation Order No. 103 (Rev. 4)]

DIRECTOR, PERSONNEL DIVISION, ET AL.

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: In streamlined districts, the authority to approve premium pay authorizations may not be delegated below the District Director. This document does not meet the criteria for significant Regulations set forth in paragraph 8 of the Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, November 8, 1978.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Wanda Brasher, 1111 Constitution Avenue, NW., Room 1514, Washington, D.C. 20224, (202) 566-0530 (not toll free).

FRANKLIN L. FINLEY,
Staff Assistant to Assistant Commissioner (Compliance).

Premium Pay for Administratively Uncontrollable Overtime.

The authority delegated to the Commissioner of Internal Revenue in Chapter 550, Treasury Personnel Manual, to approve premium pay authorizations is hereby delegated as follows:

A. The Director, Personnel Division, is authorized to prescribe eligibility requirements for the payment of premium pay, and to resolve questions of application. This authority may not be redelegated.

B. The Assistant Commissioner (Inspection) is authorized to approve premium pay authorizations for Criminal Investigators under his/her jurisdiction in National Office and field positions who meet the eligibility requirements for premium pay. This authority may be redelegated by the Assistant Commissioner (Inspection) to the Director, Internal Security Division, and to the Regional Inspectors. This authority may not be redelegated by them.

C. The Director, Criminal Investigation Division is authorized to approve premium pay authorizations for Criminal Investigators in assignments under his/her control (including Criminal Investigators detailed to the National Office) who meet the eligibility requirements for premium pay. This authority may not be redelegated.

D. Regional Commissioners are authorized to approve premium pay authorizations for Criminal Investigators under their jurisdiction who meet the requirements for premium pay. This authority may be redelegated not lower than to Chiefs of the Criminal Investigation Division in the district offices or the District Director in streamlined districts.

This Order supersedes Delegation Order No. 103 (Rev. 3), issued July 2, 1978.

JEROME KURTZ,
Commissioner.

[FR Doc. 79-2527 Filed 1-24-79; 8:45 am]

[4830-01-M]

[Delegation Order No. 105 (Rev. 3)]

DEPUTY COMMISSIONER, ET AL.

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The authority for approval to engage in outside employment, business and other activities may not be redelegated below the District Director in streamlined districts. This document does not meet the criteria for significant Regulations set forth in paragraph 8 of the Treasury Directive appearing in the FEDERAL REGISTER for Wednesday November 8, 1978.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Anthony D'Amata, 1111 Constitution Avenue, NW., Room 3316, Washington, D.C. 20224, (202) 566-3161 (Not toll free).

FRANKLIN L. FINLEY,
Staff Assistant to the Assistant Commissioner Compliance.

Authorization to Engage in Outside Employment, Business, and Other Activities.

Pursuant to authority granted to the Commissioner of Internal Revenue by Chapters 250 and 735 of the Treasury personnel Manual:

1. Authority is hereby delegated to the following officials to approve or disapprove the acquisition or retention of direct or indirect interests in the manufacture of tobacco, snuff, or cigarettes, firearms, ammunition, or explosives, or in the production, rectification, or redistillation of distilled spirits, or in the production of fermented liquors, by employees under their supervision and control, except as restricted in paragraph 3. This authority may be redelegated, but not lower than to Division Directors in the National Office, Assistant Regional Commissioners in regional offices, Division Chiefs in other than streamlined districts, and service center offices, Division Chiefs in the Office of International Operations, and Assistant Regional Inspectors. In streamlined districts, this authority may not be redelegated below the District Service Center Directors, Director, Deputy Commissioner, Assistant Commissioners, Assistant to the Commissioner (Public Affairs), Regional Commissioners, District Directors, Director of International Operations.

2. Authority is hereby delegated to the following officials to approve or disapprove requests from employees under their supervision and control, except as restricted in paragraph 3, to engage in outside employment, business, and other activities. This authority may be redelegated but not lower than to Assistant Regional Inspectors and to Branch Chiefs in the National Office, regions, districts (in other than streamlined districts), and service centers and Office of International Operations. In streamlined districts, this authority may be redelegated but not lower than to Section Chiefs. Deputy Commissioner, Assistant Commissioners, Assistant to the Commissioner (Public Affairs), Regional Commissioners, District Directors, Service Center Directors, Director of International Operations.

3. The Commissioner retains the authority to approve or disapprove the acquisition or retention of direct or indirect interests in the manufacture of tobacco, snuff, cigarettes, firearms, ammunition, or explosives, or in the production, rectification, or redistillation of distilled spirits, or in the production of fermented liquors, or requests to engage in outside employment, business, and other activities, by the following officials: Deputy Commissioner, Assistant Commissioners, Assistant to the Commissioner (Public Affairs), Regional Commissioners, District Directors, Service Center Directors, Regional Inspectors, Director of International Operations.

4. Delegation Order No. 105 (Rev. 2), issued May 10, 1972, is hereby superseded.

JEROME KURTZ
Commissioner.

[FR Doc. 79-2528 Filed 1-24-79; 8:45 am]

[4830-01-M]

[Delegation Order No. 107 (Rev. 5)]

REGIONAL DIRECTORS OF APPEALS, ET AL.

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The authority to determine that certain "savings institutions" do not intend to avoid taxes by paying dividends or interest for periods representing more than 12 months may be redelegated not lower than to GS-11 Revenue Agents in streamlined districts. This document does not meet the criteria for significant Regulations set forth in paragraph 8 of the Treasury Directive appearing in the FEDERAL REGISTER for Wednesday November 8, 1978.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Bernard L. Meehan, 1111 Constitution Avenue NW., Room 2505, Washington, D.C. 20224, 202-566-6849 (not toll free).

FRANKLIN L. FINLEY,
Staff Assistant to the Assistant Commissioner (Compliance).

Authority to Determine that Certain "Savings Institutions" do not intend to Avoid Taxes by Paying Dividends or Interest for Periods Representing More than 12 Months.

1. The authority granted to the Commissioner of Internal Revenue under 26 CFR 1.461-1(e)(3)(ii) to determine that an organization referred to therein does not intend to avoid taxes (and therefore be permitted to deduct one-tenth of the amount of dividends or interest not allowed as a deduction for a taxable year under 26 CFR 1.461-1(e)(1) in each of ten succeeding taxable years) is hereby delegated to the following officials:

(a) Regional Directors of Appeals,
(b) District Directors,
(c) Director of International Operations,
(d) Chiefs, Appeals Offices,
(e) Associate Chiefs, Appeals Offices,
(f) Assistant District Directors, and
(g) Chiefs of District Examination Divisions.

2. In nonstreamlined districts this authority may be redelegated only by District Directors and the Director of International Operations, who may redelegate to the Chief of Review Staff. In streamlined districts, District Directors may redelegate this authority not lower than to GS-11 Revenue Agents.

3. This Order supersedes Delegation Order No. 107 (Rev. 4), issued October 1, 1978.

JEROME KURTZ,
Commissioner.

[FR Doc. 79-2529 Filed 1-24-79; 8:45 am]

[4830-01-M]

[Delegation Order No. 109 (Rev. 5)]

REGIONAL DIRECTORS OF APPEALS, ET AL.

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: In streamlined districts, the authority to sign agreements determining inapplicability of exclusion under Section 963 of Internal Revenue Code of 1954 may not be delegated below the District Director. This document does not meet the criteria for significant Regulations set forth in paragraph 8 of the Treasury directive appearing in the FEDERAL REGISTER for Wednesday, November 8, 1978.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Bernard L. Meehan, 1111 Constitution Avenue, NW., Room 2505, Washington, D.C. 20224, 202-566-6849 (not toll free).

FRANKLIN L. FINLEY,
Staff Assistant to the Assistant Commissioner (Compliance).

Authority to Sign Agreements Determining Inapplicability of Exclusion under Section 963 of Internal Revenue Code of 1954.

1. The authority granted to the Commissioner of Internal Revenue and to District Directors by 26 CFR 301.7701-9 and 26 CFR 1.963-6(c) to sign agreements determining that the exclusion under Section 963 of the Internal Revenue Code of 1954 does not apply to United States shareholders for certain taxable periods due to their failure to receive minimum distributions is hereby delegated to the following officials:

(a) Regional Directors of Appeals;
(b) District Directors;
(c) Director of International Operations;
(d) Chiefs, Appeals Offices;
(e) Associate Chiefs, Appeals Offices;
(f) Assistant District Directors;
(g) Assistant director of International Operations;
(h) Chiefs of District Examination Divisions; and
(i) Chief of Examination Division, Office of International Operations.

2. This authority may be redelegated only by District Directors and the Director of International Operations, who may redelegate to the Chief of Review Staff. This authority may not be delegated below the District Director in streamlined districts.

3. This Order supersedes Delegation Order No. 109 (Rev. 4), issued October 1, 1978.

JEROME KURTZ,
Commissioner.

[FR Doc. 79-2530 Filed 1-24-79; 8:45 am]

[4830-01-M]

[Delegation Order No. 116 (Rev. 3)]

DISTRICT DIRECTORS, ET AL.

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: In streamlined districts, the authority to grant extensions of time to file income and estate tax returns may not be redelegated below

the Chief, Technical and Office Compliance Group. This document does not meet the criteria for significant Regulations set forth in paragraph 8 of the Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, November 8, 1978.

EFFECTIVE DATE: January 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Melvin M. Blaustein, 1111 Constitution Avenue NW., Room 7526, Washington, D.C. 20224, 202-566-4356 (not toll free).

FRANKLIN L. FINLEY,
Staff Assistant to the Assistant Commissioner (Compliance).

Delegation of Authority to Grant Extensions of Time to File Income and Estate Tax Returns.

The authority granted to the Commissioner of Internal Revenue by 26 CFR 1.6081-1, 26 CFR 20.6081-1 and 26 CFR 301.7701-9 to grant extensions of time to file income and estate tax returns is hereby delegated to District Directors, Assistant District Directors, Director of International Operations, Assistant Director of International Operations, Service Center Directors and Assistant Service Center Directors.

The authority delegated here in for estate tax returns may be redelegated, but not below Branch Chief, Chief, Special Procedures Staff, or Chief Technical and Office Compliance Group in District Offices and Office of International Operations, and not below Senior Tax Examiners in Service Centers.

The authority delegated herein for income tax returns may be redelegated, but not below Branch Chief, Chief, Special Procedures Staff, or Chief, Technical and Office Compliance Group in District Offices and Office of International Operations, and not below full working level Tax Examiners in Service Centers.

Delegation Order No. 116, (Rev. 2), issued July 18, 1978, is superseded.

JEROME KURTZ,
Commissioner.

[FR Doc. 79-2531 Filed 1-24-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Volume No. 4]

PETITIONS, APPLICATIONS, FINANCE MATTERS (INCLUDING TEMPORARY AUTHORITIES), ALTERNATE ROUTE DEVIATIONS, AND INTRASTATE APPLICATIONS.

JANUARY 17, 1979.

PETITIONS FOR MODIFICATION, INTERPRETATION OR REINSTATEMENT OF OPERATING RIGHTS AUTHORITY NOTICE

The following petitions seek modification or interpretation of existing operating rights authority, or reinstatement of terminated operating rights authority.

All pleadings and documents must clearly specify the suffix (e.g. M1 F, M2 F) number where the docket is so identified in this notice.

An original and one copy of protests to the granting of the requested authority must be filed with the Commission on or before February 26, 1979. Such protests shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247)* and shall include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon petitioner's representative, or petitioner if no representative is named.

MC 139468 and Sub 6 and 12 (M1F) (notice of filing of petition to modify permits), filed September 29, 1978. Petitioner: INTERNATIONAL CONTRACT CARRIERS, INC. 6534 Gessner Rd. Houston, TX 77040. Representative: John T. Wirth Suite 2600 Energy Center One 717 Seventeenth Street, Denver, Co 80202. Petitioner holds a motor *contract carrier* permits in MC 139468 and Subs 6 and 12 issued August 16, 1974, October 3, 1973 and March 25, 1977 respectively. MC 139468 authorizes transportation over irregular routes, of *Metal buildings and parts therefor,* from the plantsites and storage facilities of Stran-Steel Corporation, at Houston, TX, to points in AR, LA, TN, MS, AL, GA, FL, SC, and NC, under a continuing contract(s) with Stran-Steel Corporation. MC 139468 Sub 6 authorizes transportation, over irregular routes, of *Metal buildings and parts* for metal buildings, (1) Between the plant sites of Stran-Steel Corp., at or near Houston, TX, and at or near Terre Haute, IN, and (2) From the plant site of Stran-Steel Corp., at or near Houston, TX, to points in OK, KS, NE, SD, ND, NM, CO, WY, MT, ID, UT, AZ, NV, OR, WA, and CA, under a continuing contract(s) with Stran-Steel Corp., of Houston, TX. MC 139468 Sub 12 authorizes transportation, over irregular routes, of *Buildings and building sections,* from Terre Haute, IN, and Houston, TX, to points in AK, under a continuing contract(s) with National Steel Products Company, Inc., restricted to the transportation of traffic orginating at the plant sites and facilities utilized by National Steel Products Company, Inc., of Houston, TX.

By the instant petition, petitioner seeks to modify the above authority by adding "pipe" to the commodity descriptions in the three permits and to also remove the facility limitation reference in the origin description in the lead and Sub 6, and to also delete the restriction concerning facility limitations in Sub 12.

REPUBLICATIONS OF GRANTS OF OPERATING RIGHTS AUTHORITY PRIOR TO CERTIFICATION NOTICE

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the FEDERAL REGISTER.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission on or before February 26, 1979. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 13900 (Sub-18) (2nd republication), filed November 23, 1973, published in the FEDERAL REGISTER issues of January 17, 1974 and December 14, 1978, and republished this issue. Applicant: MIDWEST HAULERS, INC., 228 Superior Street, Toledo, OH 43604. Representative: Harold G. Hernly, Jr., 118 North St. Asaph Street, Alexandria, VA 22314. A Decision of the Commission, decided August 24, 1978, and served September 20, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier,* by motor vehicle, over irregular routes, in the transportation of *General commodities* (except articles of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Cincinnati, OH, Minneapolis and St. Paul, MN, Milwaukee, WI, Chigago, IL, St. Louis, MO and Houston, TX, on the one hand, and, on the other, Memphis, TN, New Orleans, LA, Dallas, Forth Worth, and San Antonio, TX, Kansas City, MO, Phoenix and Tucson, AZ, Salt Lake City, UT, Reno and Las Vegas, NV, Fresno, Oakland, Los Angeles, San Francisco, Sacramento, San Diego, San Jose, and Santa Fe Springs, CA, Portland, OR, and Seattle, Spokane, and Tacoma, WA, restricted to the transportation of traffic when moving on the bills of lading of freight forwarders as defined

* Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

in section 402(a)(5) of the act. Applicant is permitted to tack the authority granted herein with its existing motor common carrier authority at Cincinnati, OH, Houston, TX, Minneapolis and St. Paul, MN, Milwaukee, WI, Chicago, IL, and St. Louis, MO, to serve points in IL, IN, MN, MO, OH, MI, KY, PA, NY, MA, RI, CT, NJ, MD, WI, and the District of Columbia. Applicant is fit, willing, and able properly to perform this service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate applicant's actual grant of authority.

MC 29643 (Sub-10F) (republication), filed March 28, 1978, published in the FEDERAL REGISTER issue of May 25, 1978, and republished this issue. Applicant: WALSH TRUCKING SERVICE, INC., 50 Burney Avenue, Massena, NY 13662. Representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, NY 10048. A Decision of the Commission, Division 2, decided December 15, 1978, and served January 9, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of *General commodities* (except Classes A and B explosives, articles of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Albany, NY, on the one hand, and, on the other, points in Clinton County, NY, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to delete the restriction.

MC 95876 (Sub-229F) (republication), filed February 21, 1978, published in the FEDERAL REGISTER issue of April 6, 1978, and republished this issue. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue North, St. Cloud, MN 56301. Representative: Robert D. Gisvild, 1000 First National Bank Bldg., Minneapolis, MN 55402. A Decision of the Commission, Review Board Number 1, decided November 22, 1978, and served December 5, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of (1) *Lumber and millwork*, from Pine Bluff, AR; and (2) *lumber and furniture*, from Sheridan, AR, to points in CO, IL, IN, IA, KS, KY, MI, MN, NE, ND, OH, PA, SD, and WI, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate applicant's actual grant of authority.

MC 115841 (Sub-623F) (republication), filed march 29, 1978, published in the FEDERAL REGISTER issue of May 19, 1978, and republished this issue. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 27919. Representative: E. Stephen Heisley, 666 11th St., NW., Washington, DC 20001. A Decision of the Commission, Review Board Number 1, decided December 18, 1978, and served January 10, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of *Foodstuffs* (except in bulk), from the facilities of Welch Foods, Inc., at Lawton, MI, to points in AR, KS, NE, MO, NM, OK, and TX, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate AR in lieu of AK, as a destination point.

MC 141820 (Sub-1) (republication), filed December 7, 1977, published in the FEDERAL REGISTER issue of February 2, 1978, and republished this issue. Applicant: ROMAN RURAK, 319 Eckford Street, Brooklyn, NY 11222. Representative: Sidney J. Leshin, 575 Madison Avenue, New York, NY 10022. A Decision of the Commission, by the Initial Decision of Administrative Law Judge Harold J. Sarbacher, served October 31, 1978, becomes effective January 3, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *contract carrier*, by motor vehicle, over irregular routes, in the transportation of *Passengers and their baggage*, in charter operations, beginning and ending in Brooklyn, NY, and extending to the District of Columbia and points in CT, FL, MA, NJ, NY, PA, and VA, under contract with the Polish & Slavic Center, Inc., of Brooklyn, NY, and Greenpoint Human Services—People For People, Inc., of Brooklyn, NY, will be consistent with the public interest and the national transportation policy, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate the grant of contract carrier authority in lieu of common carrier authority.

MC 144450 (Sub-1F) (republication), filed March 21, 1978, published in the FEDERAL REGISTER issue of May 11, 1978, and republished this issue. Applicant: HARRISON TRANSFER & STORAGE CO., a Corporation, P.O. Box 2276, Augusta, GA 30903. Representative: R. Frank Allen, 412 Old Evans Road, Martinez, GA 30907. A Decision of the Commission, Review Board Number 1, decided December 27, 1978, and served January 11, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of *Used household goods*, between points in Richmond, Columbia, Burke, Jefferson, Lincoln, McDuffie, Emanuel, Glascock, Jenkins, Screven, Warren, Taliferro, and Wilkes Counties, GA, and Aiken, Edgefield, Allendale, Barnwell, Hampton, and McCormick Counties, SC, restricted to the transportation of traffic having a prior or subsequent movement in containers 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, and decontainerization of such traffic, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate the grant of common carrier authority in lieu of contract carrier authority, and add a restriction.

FINANCE APPLICATIONS NOTICE

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to Sections 11343 (formerly Section 5(2)) or 11349 (formerly Section 210a(b)) of the Interstate Commerce Act.

An original and one copy of protests against the granting of the requested authority must be filed with the Commission on or before February 26, 1979. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's *General Rules of Practice* (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's repre-

sentative, or applicant, if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC-F-13833F. Authority sought for purchase by: (A) SANBORN'S MOTOR EXPRESS, INC., 550 Forest Ave., Portland, ME 04101, and (AA) ARKANSAS-BEST FREIGHT SYSTEM, INC., P.O. Box 48, Fort Smith, AR 72002 of a portion of the operating rights of M & M TRANSPORTATION CO., DEBTOR IN POSSESSION, 750 Third Street, New York, NY 10017, and for acquisition by (A) H. Blaine Sanborn and Dwight L. Sanborn of 550 Forest Ave., Portland, ME and (AA) Arkansas Best Corporation, 100 So. 21st Street, Fort Smith, Arkansas 72901, of control of such rights through the transaction. Representatives: Herbert Burstein, One World Trade Center, New York, NY 10048. Mary E. Kelley, 11 Riverside Ave., Medford, MA 02155. Don A. Smith, 510 North Greenwood, Box 43, Fort Smith, AR 72902. Operating rights sought to be transferred: That portion of Certificate No. 69275 authorizing the transportation of General Commodities, with exceptions, over regular routes: Between New York, NY and York, PA: (Pennsylvania portion is between Philadelphia and York) Between Newark, NJ amd Junction U.S. Hwys 222 and 30.: (Pennsylvania portion is part of route between NJ-PA State line and Junction U.S. Hwys 222 and 30) Between Junction U.S. Hwy 22 and NJ Hwy 31 and Scranton, PA.: (Pennsylvania portion is part of route between NJ-PA State line and Scranton, PA) Between Scranton, PA and junction PA Turnpike Northeast Extension, and PA Turnpike, serving Allentown, PA, as an off-route point: Between junction PA Turnpike and U.S. Hwy 422, and Philadelphia, PA.: Between junction PA Hwy 100 and U.S. Hwy 22, and York, PA.: Between New York, NY, and Harrisburg, PA.: (Pennsylvania portion is that part of the route between NJ-PA State line and Harrisburg, PA) Between junction NJ Turnpike and U.S. Hwy 46, and junction U.S. Hwy 46 and NJ Hwy 31.: (no Pennsylvania portion) Between junction U.S. Hwy 22 and NJ Hwy 24, and Hackettstown, NJ.: (no Pennsylvania portion) Between junction U.S. Hwy 22 and NJ Hwy 31, and Flemington, NJ.: (no Pennsylvania portion) Between Allentown, PA, and Stroudsburg, PA.: Between junction U.S. Hwy 22 and PA Hwy 512, and Pen Argyl, PA.: Between Allentown, PA, and Hazelton, PA.: Between Allentown, PA, and Tamaqua, PA.: Between Allentown, PA, and Kutztown, PA.: Between Allentown-Bethlehem, PA, and Doylestown, PA.: Between Allentown, PA, and Lansdale, PA.: Between junction U.S. Hwy 309 and PA Hwy 29, and Spring City, PA.: Between junction PA Hwy 29 and 100, and Boyertown, PA.: Between Scranton, PA, and Honesdale, PA.: Between Scranton, PA, and Tobyhanna, PA.: Between Scranton, PA, and Danville, PA.: Between Scranton, PA, and Daleville, PA.: Between junction U.S. Hwy 11 and PA Hwy 315, and Wilkes-Barre, PA.: Between Wilkes-Barre, PA, and Blakeslee, PA.: Between Wilkes-Barre, PA, and West Nanticoke, PA.: Between Wilkes-Barre, PA, and Hazelton, PA.: Between junction U.S. Hwy 309 and PA Hwy 437, and Hazelton, PA.: Between Hazelton, PA, and Shickshinny, PA.: Between Reading, PA, and Sunbury, PA.: Between Pottsville, PA, and Minersville, PA.: Between Reading, PA, and Phoenixville, PA.: Between junction PA Hwy 10 and 724, and West Chester, PA.: Between Kennett Square, PA, and junction PA Hwy 82 and U.S. Hwy 322.: Between Reading, PA, and Lancaster, PA.: Between Lancaster, PA, and Morgantown, PA.: Between Lititz, PA, and Brownstown, PA.: Between Reading, PA, and Lebanon, PA.: Between York, PA, and Harrisburg, PA.: Between junction Interstate Hwy 83 and PA Hwy 181, and York Haven, PA.: Between York, PA, and Harrisburg, PA.: Between Elizabethtown, PA, and Annville, PA.: Between Marietta, PA, and Manheim, PA.: Between York, PA, and Dillsburg, PA.: Between York, PA, and Gettysburg, PA.: Between junction U.S. Hwy 30 and PA Hwy 116, Littletown, PA.: Between Hanover, PA, and Gettysburg, PA.: Between Hanover, PA, and York Springs, PA.: Between Hanover, PA, and East Berlin, PA.: Between Gettysburg, PA, and Dillsburg, PA.: Between Hanover, PA, and Spring Grove, PA.: Between York, PA, and New Freedom, PA.: Between junction U.S. Hwy 30 and PA Hwy 616, and Railroad, PA.: Between York, PA, and Delta, PA.:

Service is authorized (1) to and from all intermediate points except those located on PA Turnpike, PA Turnpike Northeast Extension, NJ Turnpike and interstate Hwy and are not specifically named; and (2) to and from all points within 5 miles of said routes as off-route points except those routes which are interstate Hwys and PA Turnpike, PA Turnpike Northeast Extension, and NJ Turnpike.

RESTRICTION: (1) Service at described points in PA is restricted to shipments from, to, or through New York, NY, Camden, NJ or points in NJ on the regular routes described above; (2) Service at described points in NJ is restricted to transportation of shipments moving from, to or through New York, NY, or points in PA on routes described above; (3) operations over above routes is restricted against service at any off-route point not located in NJ or PA; (4) service is also restricted against service in those portions of commercial zones of authorized points which are not located in NJ or PA; (5) the regular route authority is not severable by sale or otherwise from underlying irregular route authority hereinafter described.

REGULAR ROUTES: GENERAL COMMODITIES, with exceptions between York Springs, PA and the plant site of the Sylvania Shoe Manufacturing Corp. and its affilates at Mount Holly Springs, PA, serving no intermediate points. IRREGULAR ROUTES: General commodities, with exceptions, (A) between New York, NY on the one hand, and, on the other, Camden, NJ and points in that part of NJ north of and including Mercer and Middlesex Counties; and points in that part of PA on and east of a line beginning at the MD-PA State line and extending along U.S. Hwy 15 to junction U.S. Hwy 11, thence along U.S. Hwy 11 to junction U.S. Hwy 6; and on and south of U.S. Hwy 6 from the said junction of U.S. 6 and 11 to the PA-NY State line. (B) Between Camden, NJ and points in the above described territory in NJ, on the one hand, and, on the other, points in the above described territory in PA.

The applicants propose to split the restriction described above, which limits service under the regular and irregular route authority, to traffic moving from, to, or through New York, NY, points in New Jersey north of and including Mercer and Middlesex Counties, NJ, and Camden, NJ.

The portion of authority ARKANSAS-BEST FREIGHT SYSTEM, INC. seeks to purchase would be limited to service between Camden, NJ on the one hand, and, on the other, the described irregular route area in PA and the corresponding regular routes within PA, subject to the restrictions described above, including that relative to Camden, NJ. Arkansas-Best would be obliged to traverse the Camden, NJ gateway in providing service at involved Pennsylvania points.

SANBORN'S MOTOR EXPRESS, INC. seeks to purchase that portion of the involved regular and irregular route authority subject to the restrictions which would limit service to traffic moving from, to, or through New York, NY and points in that part of NJ north of and including Mercer and Middlesex Counties, NJ which would result in it being permitted to provide service (a) between New York, NY, on the one hand, and, on the other, points in that part of New Jersey north of and including Mercer and

Middlesex Counties, NJ and points on described regular routes within such Counties and (b) between New York, NY and points in New Jersey north of and including Mercer and Middlesex Counties, NJ on the one hand, and, on the other, points in that part of Pennsylvania on and east of a line beginning at the Maryland-Pennsylvania State line and extending along U.S. Hwy 15 to junction U.S. Hwy 11, thence along U.S. Hwy 11 to junction U.S. Hwy 6; and on and south of U.S. Hwy 6 from the said junction of U.S. Hwy 6 and 11 to the Pennsylvania-New York State line, over irregular and described regular routes. Sanborn's would also acquire the regular route authority between York Springs, PA and the plant site of the Sylvania Shoe Manufacturing Corp., at Mount Holly Springs, PA.

SANBORN'S MOTOR EXPRESS, INC. and ARKANSAS-BEST FREIGHT SYSTEM, INC. are both motor common carriers of general commodities with exceptions. SANBORN'S MOTOR EXPRESS, INC. is authorized to operate in the States of: ME, NH, VT, MA, RI, CT, NY, NJ, PA.

ARKANSAS-BEST FREIGHT SYSTEM, INC. is authorized to operate in the States of: AL, AR, CT, DE, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MS, MO, NY, NJ, NC, OH, OK, PA, RI, SC, TN, TX, and WI.

Application has been filed for temporary authority under Section 210a(b).

MC-F-13842F. Transferee: SHANAHAN'S EXPRESS, INC., 2201 Garry Road, Cinnaminson, N.J. 08077. Transferor: P. Callahan, Inc., 5240 Comly Street, Philadelphia, Penna. 19135. Representative: Maxwell A. Howell, Esquire, 1100 Investment Building, 1511 K Street, N.W., Washington, D.C. 20005. Authority sought for purchase by transferee of a portion of the operating rights of transferor set forth in MC-20894, and for acquisition by James J. Shanahan, same address as transferee, of control of such rights through the purchase. Operating rights sought to be transferred: *General commodities*, with usual exceptions, as a *common* carrier, of property, by motor vehicle, over *regular* routes, between Red Bank NJ, and New York, NY serving the intermediate and off-route points of Mechanicsville, Cliffword, Morgan, South Amboy, Woodbridge, Elizabeth, Newark, South Kearny, Little Silver, Sea Bright, Rumson, Fair Haven, Highlands, Atlantic Highlands, Navesink, Leonardo, Belford, Port Monmouth, Keansburg, Union Beach, Keyport, Middletown, Hazlet, Perth Amboy, Boyton Beach, Sewaren, Port Reading, Carteret, Maurer, Chrome, Grasselli, Tremley, Avenel, Elizabethport, and Port Newark, NJ: From Red Bank over NJ Highway 35 to South Amboy, NJ, thence over U.S. Highway 9 to junction U.S. Highway 1, thence over U.S. Highway 1 via Newark, NJ, to Jersey City, NJ, and thence across the Hudson River to NY, and return over the same route. Transferee is authorized to operate as a common carrier, by motor vehicle, in PA and NJ. Application has not been filed for temporary authority under section 210a(b).

MCF—13860F. Authority sought for purchase by CENTRAL OKLAHOMA FREIGHT LINES, INC., 2945 North Toledo, Tulsa, OK 74415, of a portion of the operating rights of BURK MOTOR FREIGHT, INC., 209 N. Berry Street, Burkburnett, TX 76354, and for the acquisition by Jack E. Tucker, 2945 North Toledo, Tulsa, OK 74415, of control of such rights through the transaction. Transferee's attorney: R. H. Lawson, 106 Bixler Bldg., 2400 N.W. 23rd, Oklahoma City, OK 73107. Transferor's attorney: David B. Schneider, Morgan and Brown, P.O. Box 1540, Edmond, OK 73034. Operating rights sought to be transferred: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), Between Wichita Falls, Tex., and Oklahoma City, Okla., serving the intermediate points of Burkburnett, Tex., Randlett, Taylor, Waurika, Addington, Comanche, Beckett, Duncan, Marlow, and Rush Springs, Okla. From Wichita Falls over U.S. Highway 277 to junction U.S. Highway 70 west of Randlett, Okla., thence over U.S. Highway 70 to junction U.S. Highway 81, east of Waurika, Okla., thence over U.S. Highway 81 to junction H. E. Bailey Turnpike, and thence over H. E. Bailey Turnpike to Oklahoma City, and return over the same route. Between Randlett and Comanche, Okla., serving the intermediate points of Walters and Corum, Okla. From Randlett over H. E. Bailey Turnpike to junction Oklahoma Highway 53 west of Walters, Okla., and thence over Oklahoma Highway 53 to Comanche, and return over the same route. Transferee is authorized to operate as a regular route common carrier in the State of Oklahoma. application has been filed for temporary authority under section 210 a(b). (Hearing site: Oklahoma City, OK). Note: MC-121739 (Sub 4F) is a directly related matter.

MC-F-13869F. Authority sought for purchase by BRUNSWICK TRANSPORTATION COMPANY, INC., Elm and Middle Streets, Brunswick, ME 04011, of a portion of the operating rights of CAPITAL TRANSIT, INC., DBA CONCORD COACH LINES, South Main Street, Concord, NH 03301, and for acquisition by Albert Z. and Maurice J. Ouellette, of Brunswick, ME, and Raymond L. and Robert J. Ouellette, of South Portland, ME, of control of the rights through the purchase. Applicants' attorney: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Operating rights sought to be purchased: Common carrier, over irregular routes, of *passengers and their baggage* in one-way and round trip special operations in tour service, beginning and ending at points in Belknap, Carroll, Coos, Hillsborough, Merrimack, Rockingham, and Strafford Counties, NH, and points in the part of Grafton County, NH, on and east of a line beginning at the Grafton-Merrimack County line and extending along U.S. Highway 4 to Cannan, NH, thence along NH Highway 118 to its junction with NH Highway 112, near North Woodstock, NH, thence along NH Highway 112 to its junction with NH Highway 116 near Easton, NH, thence along NH Highway 116 to Franconia, NH, thence along NH Highway 18 to its junction with U.S. Highway 3 near Franconia Notch, NH, thence along U.S. Highway 3 to the Grafton-Coos County line, and extending to points in the United States, including AK, but excluding HI, and subject to a stated restriction. Vendee is authorized to operate under MC-109495 as a common carrier of passengers and their baggage over described regular routes in Maine and in special and charter operations, beginning and ending at points in certain counties in Maine and extending to points in the United States, except HI. Duplicating authority for roundtrip special operations beginning and ending at Coos County, NH, will result, but transferee seeks no severable duplicating authority. Application has not been filed for temporary authority under 49 U.S.C. 11349.

MC-F-13870F. Authority sought for purchase by Watkins Motor Lines, Inc., P.O. Box 1636, Lakeland, FL 33802, of a portion of the operating rights of George Transfer and Rigging Company, Incorporated, P.O. Box 500, Parkton, MD 21120, of control of such rights through the purchase by Watkins Associated Industries, Inc. and Bill Watkins. Applicant's representatives: Paul M. Daniell, Suite 1200, 235 Peachtree Street, N.E., Atlanta, GA 30303 and John Guandolo, 502 Solar Building, 1000 16th Street, Washington, DC 20423. Operating rights sought to be purchased: The Transferor's general commodity irregular route authority between Victoria and Kenbridge, VA on the one hand, and, on the other, Hanover, PA; Balimore, MD; Washington, DC; and, points in VA and NC (Sub-38, In Part) and the Transferor's general commodity irregular route authority between the site

of carrier's terminal at or near South Hill, VA on the one hand, and , on the other, points in NC, serving said terminal site for purpose of joinder with carrier's existing operating rights (Sub-44). Vendee is authorized to operate as a common carrier in all states in the US except AK and HI. Application has not been filed for temporary authority under Section 210a(b) of the Act. (Hearing site: Washington, DC)

MC-F-13875F. Authority sought for purchase by GLESS BROS., INC., P.O. Box 219, Blue Grass, IA., 52726, of a portion of the operating rights of KATUIN BROS., INC., P.O. Box 311, Ft. Madison, IA., 52627, and for acquisition by STEVEN BERGER AND RICHARD POWELL of Blue Grass, IA., of control of such rights through the purchase. Transferee's attorney: Larry D. Knox, 600 Hubbell Building, Des Moines, IA., 50309, Transferors' representative: Carl E. Munson, 469 Fisher Bldg., Dubuque, IA., 52001. Operating rights sought to be transferred: Salt, as a common carrier over irregular routes from Rock Island, IL., to points in IA., with restrictions. Vendee is authorized to operate as a common carrier within the States of IA, IL, WI, IN, MN, NE, ND, SD, MO, AR, KS, KY and TN. Application has been filed for temporary authority under section 210a(b).

NOTE.—If a hearing is deemed necessary, applicants request it be held in Des Moines, IA.

MC-F-13878F. Authority sought for control by ROGER CROUCH ENTERPRISES, INC., 5310 St. Joseph Avenue, St. Joseph, MO., 64505 of INDUSTRIAL CITY LINES, INC., 5310 St. Joseph Avenue, St. Joseph, MO., 64505, through a stock exchange. Applicant's attorney. E. Wayne Farmer Linde Thomson Fairchild Langworthy & Kohn, City Center Square—27th Floor, 12th & Baltimore, P.O. Box 26010, Kansas City, MO., 64196. Principal operating routes of Industrial City Lines, Inc. as a contract carrier sought to be controlled: 1) Regular route specified commodity authority authorizing the transportation of *Fresh Fruits and Vegetables, Lumber, Sand, Coal, Building Materials, Empty Fruit Baskets, Chemicals used in spraying* and *Spraying Materials*, from and to specified points in KS and MO over specified routes; 2) Regular and irregular routes specified commodity authority authorizing the transportation of Beer and Cereal Beverages and Empty Beer and Cereal Beverage Containers from and to specified points in MO and NE over specified routes; 3) Irregular route specified commodity authority authorizing the transportation of Fresh Fruits and Vegetables, Malt Beverages, Empty Malt Beverage Containers, Damaged Shipments, Beer, Empty Beer Container, Hardware, Wagons, Saddlery, Glassware and Cans from and to specified points in MO, NE, SD, CO, WY, AR, MN, OK, IL, IA and KS. The aforementioned summary is generally the commodities and territory involved but does not precisely define the scope of operations of Industrial City Lines, Inc. ROGER CROUCH ENTERPRISES, INC. holds no authority from this Commission, However, ROGER CROUCH ENTERPRISES, INC. is the sole shareholder of MISSOURI-NEBRASKA EXPRESS INC., operating under MC-22509 and subs thereunder as a common carrier in the States of IA, MO, NE, KS, MN, WI, IL, and AR. (Hearing site: Washington, D.C. or Kansas City, MO).

MC-F-13879F. Authority sought for a purchase by SUNDERMAN TRANSFER, INC., P.O. Box 63, Windom, MN, 56101, of a portion of the operating rights of AJAX TRANSFER COMPANY (BB) and LTL PERISHABLES, INC. (BBB), both of which Transferors are located at 550 East 5th Street South, South Saint Paul, MN 55075, and for acquisition by L. E. Sunderman and Eugene Sunderman, both of Windom, MN, of control of the rights sought to be acquired through the purchase. Applicant Transferee's Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108; and Applicant Transferors' Representative: Kenneth O. Petrick, 550 East 5th Street South, South Saint Paul, MN 55075. Operating rights sought to be purchased: (BB) (1) Frozen foodstuffs (except commodities in bulk, in tank vehicles), and (2) Frozen meats and meat by-products unfit for human consumption (except commodities in bulk, in tank vehicles), from the facilities of Wiscold, Inc., at or near Beaver Dam, WI, to points in IL, IA, MI, MN, ND, and SD, as fully described in MC-138896 (Sub-7); and (BBB) meats, meat products and meat byproducts, as described in Section A 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 Howard, SD to points in IA, NE and MN, restricted to traffic originating at and destined to the named points, and frozen foods (except in bulk) from Sioux Falls, SD, to points in IA, NE and MN, restricted to traffic originating at the facilities or Nordica Frozen Foods, Inc., at Sioux Falls, SD, and destined to the named points, as described in MC-135874 (Sub-15). Transferor Ajax Transfer Company (BB) would retain that portion of MC-138896 (Sub-7) which authorizes service from the facilities of Wiscold, Inc., at or near Milwaukee, WI; and thus a split of operating authority is proposed. Vendee is authorized to operate as a contract carrier pursuant to MC-125103 within that part of the United States in and east of ND, SD, NE, CO, OK and TX, but holds no authority to operate as a common carrier. Dual operations are involved. Application has not been filed for temporary authority under section 210a (b).

MOTOR CARRIER OF PASSENGERS

MC-F-13880F. Authority sought for purchase by DAYTON & SOUTHEASTERN LINES, INC., 2600 Willowburn Avenue, P.O. Box 26040, Dayton, Ohio 45426, of the operating rights of Bus America, Inc., 2600 Willowburn Avenue, P.O. Box 26040, Dayton, Ohio 45426 and for acquisition by Carl Schaefer Jr., 321 Stuckhardt Drive, Trotwood, Ohio 45426 of control of such rights through the purchase. Applicant's attorney: Earl N. Merwin, Attorney at Law, 85 East Gay Street, Columbus, Ohio 43215. Operating rights sought to be purchased: *passengers and their baggage and newspapers and express in the same vehicle with passengers*, between Columbus, Ohio, and Lima, Ohio, serving all intermediate points: From Columbus over U.S. Highway 33 to New Hampshire, Ohio, thence over Ohio Highway 196 to junction Ohio Highway 117, and thence over Ohio Highway 117 to Lima, and return over the same route. Between junction U.S. Highway 33 and Ohio Highway 161 and New California, Ohio, serving all intermediate points: from junction U.S. Highway 33 and Ohio Highway 161 Over Ohio Highway 161 to Plain City, Ohio, thence over U.S. Highway 42 to New California, and return over the same route. Between junction U.S. Highway 33 and County Road 152 and junction Ohio Highway 292 and U.S. Highway 33, serving all intermediate points: from junction U.S. Highway 33 and County Road 152, over County Road 152 to junction Ohio Highway 292, thence over Ohio Highway 292 via East Liberty, Ohio, to junction U.S. Highway 33, and return over the same route. Between junction U.S. Highway 33 and County Road 153 and junction Ohio Highway 540 and U.S. Highway 33, serving all intermediate points: from junction U.S. Highway 33 and County Road 153, over County Road 153 to Zanesville, Ohio, thence over County Road 5 to junction County Road 25, thence over County Road 25 to junction Ohio Highway 540, and thence over Ohio Highway 540 to junction U.S. Highway 33, and return over the same route. Between junction U.S. Highway 33 and Ohio Highway 117 and junction Ohio Highway 366 and Ohio Highway 33, serving all intermediate points: from Junction U.S. Highway 33 and Ohio Highway 117, over Ohio Highway 117 via Huntsville, Ohio, to junction Ohio Highway 366,

thence over Ohio Highway 366 via Russells Point, Ohio, to junction U.S. Highway 33, and return over the same route.

The above described authority to transport passengers was issued pursuant to an application filed on or before January 1, 1967, and therefore, incidental charter operations in interstate or foreign commerce may be conducted under rules and regulations prescribed by the Commission pursuant to section 208 (c) of the Interstate Commerce Act, as amended November 10, 1966.

IRREGULAR ROUTES: *passengers and their baggage, in charter and special operations, in round-trip sightseeing and pleasure tours,* beginning and ending at points in Allen, Athens, Auglaize, Belmont, Coshocton, Franklin, Fairfield, Guernsey, Harrison, Hocking, Jefferson, Licking, Logan, Meigs, Morgan, Muskingum, Perry, Pickaway, Ross, Union, and Washington Counties, Ohio, and extending to points in the United States (including Alaska, but excluding Hawaii).

IRREGULAR ROUTES: *passengers and their baggage, in charter and special operations, in round-trip sightseeing and pleasure tours,* beginning and ending at points in Delaware County, Ohio, and extending to points in the United States (including Alaska but excluding Hawaii).

REGULAR ROUTES: *passengers and their baggage and newspapers and express in the same vehicle with passengers and their baggage,* between Delaware, Ohio, and Marysville, Ohio, serving all intermediate points, over U.S. Highway 36. Between Delaware, Ohio, and Dublin, Ohio, serving all intermediate points: From Delaware over U.S. Highway 42 to its junction with Ohio Highway 745, thence over Ohio Highway 745 to Dublin, and return over the same route. From Delaware over U.S. Highway 42 to its junction with Ohio Highway 257 to Dublin, and return over the same route. Between Columbus, Ohio, and Dublin, Ohio, serving all intermediate points: From Columbus, Ohio over Ohio Highway 315 to its junction with Ohio Highway 161, thence over Ohio Highway 161 to Dublin, and return over the same route. Between Lima, Ohio, and Wapakoneta, Ohio, serving all intermediate points: from Lima over Ohio Highway 65 to its junction with Ohio Highway 33, thence over Ohio Highway 33 to Wapakoneta, and return over the same route. RESTRICTION: the authority granted in the paragraph next above is restricted against transporting passengers whose entire ride is between Lima and Wapakoneta. Between St. Marys, Ohio, and Dayton, Ohio, serving all intermediate points: From St. Marys over Ohio Highway 66 to its junction with U.S. Highway 36, thence over U.S. Highway 36 to its junction with Ohio Highway 48, thence over Ohio Highway 48 to Dayton, and return over the same route. RESTRICTION: the authority granted in the paragraph next above is restrictd against transporting any passengers whose entire ride is between Lima, Ohio, and Dayton, Ohio, and between Wapakoneta, Ohio and Dayton, Ohio. Between Celina, Ohio, and New Hampshire, Ohio, serving all intermediate points: from Celina over Ohio Highway 29 to U.S. Highway 33, thence over U.S. Highway 33 to New Hampshire, and return over the same route. Between the junction of Taywood Road and Ohio Highway 48 (Montgomery County, Ohio) and Dayton, Ohio, serving all intermediate points: from the junction of Taywood Road and Ohio Highway 48 over Taywood Road to Westbrook Road, thence over Westbrook Road to its intersection with Salem Bend Drive, thence over Salem Bend Drive to its intersection with Shiloh Springs Road, thence over Shiloh Springs Road to its intersection with Olive Road, thence over Olive Road to its intersection with Free Pike, over Free Pike to its intersection with Salem Avenue, thence over Salem Avenue to Dayton, and return over the same route. Between the junction of Free Pike and Olive Road, and Dayton, Ohio, serving all intermediate points: over Olive Road to Wolf Creek Pike, thence over Wolf Creek Pike to Dayton, Ohio. Between Englewood, Ohio and Dayton, Ohio, serving all intermediate points, over Ohio Highway 48. Between Dayton, Ohio, and Xenia, Ohio, serving all intermediate points, over U.S. Highway 35 and Dayton Xenia Pike. ALTERNATE ROUTES FOR OPERATING CONVENIENCE ONLY: *passengers and their baggage and newspapers and express in the same vehicle with passengers and their baggage,* between Lima, Ohio and Wapakoneta, Ohio, serving no intermediate points, over Interstate Highway 75. RESTRICTION: the authority granted in the paragraph next above is restricted against transporting passengers whose entire ride is between Lima and Wapakoneta. Between Dayton, Ohio, and Xenia, Ohio, serving no intermediate points over U.S. Highway 35.

IRREGULAR ROUTES: *passengers and their baggage in round-trip charter operations,* beginning and ending at points in Champaign, Greene, Miami, Preble, Shelby, and Montgomery (except charter operations that begin and end in the cities of Dayton, Kettering, Moraine, West Carrollton, Miamisburg, and Miami Township) Counties, Ohio, and extending to points in the United States, including Alaska but excluding Hawaii. *Passengers and their baggage in special operations, in round-trip, sightseeing and pleasure tours,* beginning and ending at points in Champaign, Greene, Miami, Preble, Shelby, and Montgomery Counties, Ohio, and extending to points in the United States, including Alaska but excluding Hawaii. Vendee is authorized to operate as a common carrier, over regular routes, in Indiana, Kentucky and Ohio. Application has not been filed for temporary authority under Section 210 a(b).

MC-F-13881F. Authority sought for purchase by GENE'S INC., 6975 Brookville-Salem Road, Brookville, Ohio 45309, of a portion of the operating rights of Gene's Inc., 10115 Brookville-Salem Road, Clayton, Ohio 45315, and for acquisition by Charles E. Foreman, 1400 Talbott Tower, Dayton, Ohio 45402, of control of such rights through the purchase. Attorney, Paul F. Beery, 275 East State Street, Columbus, Ohio 43215; vendee's attorney, James R. Stiverson, 1396 West Fifth Avenue, Columbus, Ohio 43212. The operating rights sought to be acquired are set forth in Certificate MC-133977 and Subs 4, 5, 6, 7, 10, 12, 16, 19, 23 and 24, and Permit MC-134238 Subs 2, 3, 5, 8 and 9. The certificated authority encompasses foodstuffs from Washington Court House, Ohio, to points in 38 states and D.C.; fertilizer, fertilizer material, etc. from St. Bernard and Orrville, Ohio, to points in Kentucky, Indiana and Michigan; and polystyrene articles from Troy, Ohio, generally to that part of the United States on and east of U.S. Highway 85; and ice cream, etc. between Bowling Green, Ohio, and points in eight states. The permit authority encompasses dairy products, ice cream and fruit juices variously from plantsites and storage facilities of the Kroger Company to destinations located on and east of U.S. Highway 85, limited to a transportation service to be performed under a continuing contract or contracts with the Kroger Company of Cincinnati, Ohio. Dual operations have been approved. GENE'S, INC. of Brookville, OH, holds no authority from this Commission. However Charles E. Foreman controls GENE'S, INC. Charles E. Foreman is the controlling shareholder of Springfield Warehousing Co., Inc., a non-carrier, which in turn is the controlling shareholder of Thomas Kappel, Inc., a contract carrier by virtue of Permit MC-107006 and Subs 2 and 3 thereunder, which generally encompass automotive parts and iron and steel articles between specified points in Ohio, Illinois, Indiana, Kentucky, Michigan and West Virginia. All of the above-described authorities are over irregular routes. The authorities sought to be transferred by Gene's Inc. are more fully described in Certificate No. MC-

133977 and subs thereunder and Permit No. MC-134238 and subs thereunder. Approval of the proposed transaction will not result in vendee acquiring duplicating authority.

MC-F-13882F. Authority sought for control by FREDERICK TRANSPORT LIMITED, R.R. 6, Chatham, Ontario, Canada, and also George Frederick, Robert Frederick and Thomas E. Broadwood, R.R. 6, Chatham, Ontario, Canada, of Preston Feed & Seed Limited, R.R. 4, Cambridge, Ontario, Canada. Attorney: Jeremy Kahn, Suite 733 Investment Building, Washington, D.C. 20005. Operating rights to be controlled: soybean meal, in bulk, from points in Illinois, Indiana and Ohio to ports of entry on the International Boundary Line; grain and grain products and feed ingredients, dry, in bulk, between ports of entry on the International Boundary Line on the one hand, and on the other, points in Michigan, Illinois, Indiana and Ohio, both under contract with Maple Leaf Mills Limited; and grain and grain products in bulk, between ports of entry on the International Boundary Line on the one hand, and, on the other, points in Michigan, New York, Ohio and Pennsylvania, as more fully described in permits MC-127353, and MC-127353 Sub No. 2, and certificate MC-135421 (Sub No. 2). Frederick is authorized to operate as common carrier of specified commodities, including dry commodities in bulk, between ports of entry on the International Boundary Line, and 27 states in the eastern portion of the United States, as more fully described in certificates in MC-116519 and Sub Nos. thereunder. Approval of this transaction will result in the applicant being in control of both common and contract motor carrier operation in the states of Illinois, Indiana, Ohio and Michigan. Approval of this transaction will also include some duplicating authority to serve points in Michigan, New York, Ohio and Pennsylvania. An application for temporary authority under Section 11349 of the Interstate Commerce Act has been filed.

MC-F-13883F. Authority sought for purchase by ZELLMER TRUCK LINES, INC., P.O. Box 343, Granville, IL 61326, a portion of the operating rights of Katuin Bros., Inc., P.O. Box 311, Fort Madison, IA 52627, and for acquisition by Henry Zellmer of control of the rights through purchase. Representatives: E. Stephen Heisley, 666 Eleventh Street, N.W., No 805, Washington, DC 20001; Carl E. Munson, 469 Fischer Bldg., Dubuque, IA 52001. Operating rights sought to be purchased; (1) *Molybdenum compounds, molybdenum ores, molybdenum concentrates, molybdenum concentrates, molybdenum chemicals, molybdenum alloys, sulphuric acid, and tungsten concentrates* (except in bulk and those which because of size or weight require the use of special equipment (a) from the facilities of AMAX, Inc. at or near Fort Madison, IA to points in the United States (except IA, AK and HI), (b) from the facilities of AMAX, Inc., located at or near Langeloth, PA to points in the United States (except AK, HI, MD, MI, NJ, NY, OH, PA, and WV), (2) *materials and supplies used in the production and distribution of the commodities in (1) above* (except in bulk and those which because of size or weight require the use of special equipment) from points in the United States (except IA, AK, HI) to the facilities of AMAX, Inc., at or near Fort Madison, IA, restricted to transportation performed under a continuing contract or contracts with AMAX, Inc. Vandee is authorized to operate as a *common carrier* in the States of MN, IL, WI, NE, IN, MI, MO, SD, IA, KS, KY, CO, ND, OH, WY. Application has been filed for temporary.

MC-F-13884F Authority sought for purchase by SYSTEM 99, 8201 Edgewater Drive, Oakland, California 94621, a portion of the operating rights of FARRAGUT BAGGAGE & TRANSFER CO., INC., 945 E. 17th Street, P.O. Box 50406, Tucson, Arizona 85703, and for acquisition by M.D. Gilardy, L.A. Dore', Jr. and E. R. Preston also of Oakland, California, of the control of the rights through the purchase. Attorney: Michael A. Bernstein, 1441 E. Thomas Road, Phoenix, Arizona 85014. Operating rights sought to be purchased: General commodities, with exceptions as a common carrier, over regular routes between all points within the vicinity of Tucson, Arizona, as more fully described in MC-98852 (Sub-No. 2). Vendee is authorized to operate pursuant to Certificate No. MC-98327 as a common carrier in the States of AZ, CA, NV, ID, OR and WA. Approval of the application will result in minor duplication within the commercial zone of Tucson, AZ. Application has been filed for temporary authority under Section 210a(b).

MC-F-13885F. Authority sought for purchase by GELCO COURIER SERVICES, INC., P.O. Box 1975, St. Paul, MN 55111 of the operating rights of LOOMIS COURIER SERVICE, INC., 390 4th Street., San Francisco, CA., 94107 and for acquisition by INTERNATIONAL COURIERS CORPORATION, P.O. Box 1975, St. Paul MN., 55111 and GELCO CORPORATION, 1 Gelco Dr., Eden Prairie, MN., 55344 of control of such rights through the transaction. Attorneys: Jack Goodman, Axelrod, Goodman, Steiner & Bazelon, 39 S. LaSalle St., Chicago, IL., 60603, and Melvin Rosenbloom, P.O. Box 1975, St. Paul, MN., 55111. Transferor's Attorney: Melvin Bailet, 55 Battery St., Seattle, WA., 98121. Operating rights sought to be transferred are as a common and contract carrier of Cash letters, Commercial Papers, documents, and written instruments as are used in the business of Banks and banking institutions; Commercial Account Commodities; Commercial documents; Business records; Accounting and auditing media; Automated data processing media, and Advertising materials, over irregular routes, from, to and between points in the States of WA, OR, ID, CA, and HI. Transferee is authorized to transport specified commodities over irregular routes, as a common and contract carrier, from to and between points in the States of AR, CA CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MO, NE, NH, NJ, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, and WY. Dual operations are involved, Duplicating authority is involved. Application has been filed for temporary authority under Section 210a(b). (Hearing site: San Francisco, CA).

MC-F-13886F Authority sought for purchase by NEW DEAL DELIVERY SERVICE, INC., 206 West 37th Street, New York, NY 10018, of a portion of the operating rights of S.T.S. MOTOR FREIGHT, INC., 107 Evergreen Road, Stratford, NJ 08084, of control of such rights through the transaction. Attorney: Arthur J. Piken, Piken & Piken, Esqs., One Lefrak City Plaza, Flushing, NY 11368. Operating rights sought to be transferred: General commodities, except those of unusual value, Classes A and B explosives, livestock, live fish, and poultry, new furniture, motion picture films, silk, household goods as defined by the Commission, and those commodities requiring the use of tank equipment for their transportation, as a common carrier, over regular routes between Philadelphia, PA, and Trenton, NJ, serving the intermediate point of Camden, NJ, and the off-route point of Bristol, PA: From Philadephia over US Hwy 1 to Trenton, and return over the same route. Also return from Trenton over US Hwy 206 to Bordentown, NJ, then over US. Hwy 130 to Philadephia. Alternate route for operating convenience only: General commodities, except those of unusual value, Classes A and B explosives, livestock, live fish and poultry, new furniture, motion picture films, silk, household goods as defined by the Commission, and those commodities requiring the use of tank equipment for their transportation, between Philadelphia, PA, and junction US Hwys 130 and 1, located approximately 1 mile northwest of Milltown, NJ, in connection with carrier's regular-route operations, authorized

herein, serving no intermediate points, but serving junction US Hwys 130 and 1, for the purposes of joinder only: From Philadephia over city streets to junction US Hwy 130, then over US Hwy 130 to junction US Hwy 1 near Milltown, NJ, and return over the same route. Vendee is authorized to operate as a common carrier in the States of NY, NJ, CT, PA, and DE. Application has not been filed for temporary authority under section 210a(b).

OPERATING RIGHTS APPLICATION(S) DIRECTLY RELATED TO FINANCE PROCEEDINGS

The following operating rights application(s) are filed in connection with pending finance applications under Section 11343 (formerly Section (5(2)) of the Interstate Commerce Act, or seek tacking and/or gateway elimination in connection with transfer applications under Section 10926 (formerly Section 212(b)) of the Interstate Commerce Act.

An original and one copy of protests to the granting of the authorities must be filed with the Commission on or before February 26, 1979. Such protests shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) and include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon applicant's representative or applicant if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC-121739 (Sub-No. 4F), Filed December 13, 1978. Applicant: BURK MOTOR FREIGHT, INC. P.O. Box 387, Burkburnett, TX 76354. Representative: David B. Schneider, P.O. Box 1540, Edmond, OK 73034. Authority sought to operate as a *common carrier* over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Wichita Falls, Texas and the junction of U.S. Highway 277 and U.S. Highway 70, serving all intermediate points. From Wichita Falls over U.S. Highway 277 to the junction of U.S. Highway 70 and U.S. Highway 277, and return over the same route. (Hearing site: Oklahoma City, OK.)

NOTE.— The purpose of this applicaion is to enable to continue operations over the above deseribed route. This application is directly related to a finance proceeding docketed MC-F-13860F, published in a previous section of this FR issue.

MOTOR CARRIER ALTERNATE ROUTE DEVIATIONS

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before February 26, 1979.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

MOTOR CARRIERS OF PROPERTY

MC 29555 (Deviation No. 26), BRIGGS TRANSPORTATION CO., North 400, Griggs-Midway Bldg., St. Paul, MN 55104, filed December 20, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From Minneapolis/St. Paul, MN over US Hwy 169 to junction Interstate Hwy 90, then over Interstate Hwy 90 to junction Interstate Hwy 29, then over Interstate Hwy 29 to Sioux City, IA, then over US Hwy 77 to Fremont, NE, then over US Hwy 275 to Omaha, NE, and (2) From Minneapolis/St. Paul, MN over US Hwy 169 to junction MN Hwy 60, then over MN Hwy 60 to junction Interstate Hwy 90, then over Interstate Hwy 90 to junction Interstate Hwy 29, then over Interstate Hwy 29 to Sioux City, IA, then over US Hwy 77 to junction US Hwy 73 at Winnebago, NE, then over US Hwy 73 to Omaha, NE, and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Minneapolis/St. Paul, MN over Interstate Hwy 35 to junction MN Hwy 50, then over MN Hwy 50 to Farmington, MN, then over MN Hwy 3 to Faribault, MN, then over Interstate Hwy 35 (US. Hwy 65) to Owatonna, MN, then over US Hwy 218 to Waterloo, IA, then over US Hwy 63 to junction US Hwy 6, then over US Hwy 6 to Omaha, NE and return over the same route.

MOTOR CARRIER ALTERNATE ROUTE DEVIATIONS

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Passengers (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before February 26, 1979.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

MOTOR CARRIERS OF PASSENGERS

MC 2866 (Deviation No. 15) (Cancels Deviation No. 9), EDWARDS MOTOR TRANSIT COMPANY, 3446 Charlotte St., Pittsburgh, PA 15201, filed January 11, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage* and *express* and *newspapers* in the same vehicle with passengers, over deviation routes as follows: (1) From Youngstown, OH over Interstate Hwy 680 to juction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 480 (Gate 13, Ohio Turnpike), then over Interstate Hwy 480 to junction Interstate Hwy 77, then over Interstate Hwy 77 to Cleveland, OH, with the following access route: (a) From Warren, OH over OH Hwy 82 to junction OH Hwy 5, then over OH Hwy 5 to junction Interstate Hwy 80 (Gate 14, OH Turnpike), and (2) From Youngstown, OH, over Interstate Hwy 680 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction OH Hwy 21 (Gate 11, OH Turnpike), then over OH Hwy 21 to junction Miller road, then over Miller road to junction Interstate Hwy 77, then over Interstate Hwy 77 to Cleveland, OH, with the following access route: (a) From Warren, OH over OH Hwy 82 to junction OH Hwy 5, then over OH Hwy 5 to junction Interstate Hwy 80 (Gate 14, OH Turnpike), and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over a pertinent service route as follows: From Youngstown, OH over US Hwy 422 to Cleveland, OH and return over the same route.

MC 29957 (Deviation No. 19), CONTINENTAL SOUTHERN LINES, INC., Box 8435, Jackson, MS 39204, filed January 11, 1979. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express*, and *newspapers* in the same vehicle with passengers, over a deviation route as follows: From Chester, IL over IL Hwy 150 and the Mississippi River Bridge to junction MO Hwy 51, then over MO

Hwy 51 to junction Interstate Hwy 55, then over Interstate Hwy 55 to junction US Hwy 61, then over US Hwy 61 to Cape Girardeau, MO and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over a pertinent service route as follows: From Chester, IL over IL Hwy 3 to junction IL Hwy 146, then over IL Hwy 146 and the Mississippi River Bridge to Cape Girardeau, MO and return over the same route.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-2512 Filed 1-24-79; 8:45 am]

[7035-01-M]

[Notice No. 14]

ASSIGNMENT OF HEARINGS

JANUARY 22, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

No. MC-144343F, Florida Car Transport, Inc., now assigned for hearing on January 30, 1979, at Miami, Florida is canceled and dismissed.

I&SM No. 29941, Restructured Class Rates, R.M.M.T.B., October 1978, now being assigned for pre-hearing conference on February 6, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

No. MC-69833 (Sub-No. 131F), Associated Truck Lines, Inc., now assigned for hearing on March 13, 1979, at Columbus, Ohio is canceled and dismissed.

No. MC-123407 (Sub-No. 438F), Sawyer Transport, Inc., now assigned for hearing on January 11, 1979, at St. Paul, Minnesota is canceled and dismissed.

No. MC-143910 (Sub-No. 4F), New Hampshire Continental Express, Inc., now assigned February 21, 1979, Washington, D.C. is canceled transferred to Modified Procedures.

No. MC-114211 (Sub-No. 346F), Warren Transport, Inc., now assigned January 30, 1979, at Portland, Oregon, is canceled transferred to Modificed Procedure.

H. G. HOMME, Jr.
Secretary.

[FR Doc. 79-2636 Filed 1-24-79; 8:45 am]

[7035-01-M]

FOURTH SECTION APPLICATION FOR RELIEF

JANUARY 22, 1979.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before February 9, 1979. FSA NO. 43655, Southwestern Freight Bureau, Agent's No. B-796, rates on hulls, cottonseed, peanut or soybean, from, to and within Southwestern Territory, in Supplement 84 to its Tariff 235-E, ICC 5166, to become effective February 12, 1979. Grounds for relief—revised rate structure.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-2637 Filed 1-24-79; 8:45 am]

[7035-01-M]

[Notice No. 151]

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 on or before February 26, 1979. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon 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.

REPUBLICATION

MC-FC-77907, filed October 16, 1978. Transferee: GREEN COUNTRY EXPRESS, INC., 16 West Brady, Tulsa, OK 74103. Transferor: C & P Transportation, Inc., 47 North Rockford Avenue, Tulsa, OK 74120. Representative: G. Timothy Armstrong, Esquire, 6161 North May Avenue, Oklahoma City, OK 73112. Authority sought for purchase by transferee of that portion of the operating rights of transferor set forth in Certificate of Registration No. MC-121637 (Sub-No. 2), issued April 4, 1978, as follows: General commodities, with exceptions, over specified routes, between Tulsa, OK and LaBarge, OK, and between Tulsa, OK and Pryor, OK. Transferee presently holds no authority from this Commission. Application for temporary authority under Section 210a(b) has not been filed. This republication of the notice of December 1, 1978, is necessary to show the correct description of the operating rights sought to be transferred.

MC-FC-77965, filed December 19, 1978. Transferee: MARK PRODUCTS & SERVICES, INC., Box 354, Chatham, MA 02633. Transferor: Gringeri Bros. Transportation Co., Inc., M. G. Sherman, Trustee in Bankruptcy, 18 Tremont Street, Boston, MA 02108. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Authority sought for purchase by transferee of a portion of the operating rights of transferor set forth in Certificate NO. MC-117758 (Sub 4) issued October 24, 1975, as follows: Such commodities as require special equipment by reason of size or weight, between points in a defined area in MA, on the one hand, and, on the other, points in RI, CT and defined areas in NY, NH and VT. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under Section 210a(b).

MC-FC-77970, filed December 21, 1978. Transferee: ALL-AMERICAN MOVING SYSTEMS, INC., 58 Hubbard Rd., Youngstown, OH 44505. Transferor: Douglas Moving & Transfer Company, 483 Industrial Rd., Youngstown, OH 44509. Representative: E. H. Van Deusen, Esq., 220 West Bridge St., P.O. Box 97, Dublin, OH 43017. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC-69376, issued May 10, 1973, as follows: *Household goods* as defined by the Commission, between

points in Mahoning County, Ohio, on the one hand, and, on the other, points in New York, Pennsylvania, West Virginia, and the Lower Peninsula of Michigan. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

MC-FC-77972, filed December 21, 1978. Transferee: GRAHAM BELL doing business as B & W TRUCKING, P.O. Box 281, 1 Porter Street, Gloucester, MA 01930. Transferor: Gringeri Bros. Transportation Co., Inc., c/o/ M. G. Sherman, 18 Tremont Street, Boston, MA 02108. Representative: George C. O'Brien, 12 Vernon Street, Norwood, MA 02062. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate No. MC-117758 Sub 3 and portion of MC-117758 authorizing the transportation of bananas, from Baltimore, MD, Philadelphia, PA, NY, NY Commerical Zone, and Weehawken, NJ, and Albany, NY to points in MA, RI and ME. An application for temporary authority under Section 210a(b) has also been filed.

H. G. HOMME, JR.,
Secretary.

[FR Doc. 79-2638 Filed 1-24-79; 8:45 am]

[7035-01-M]

[Notice No. 15]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 19, 1979.

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 paricular portion of authority upon which it relies. Also, the portestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 124078 (Sub-892TA), filed October 17, 1978, and published in the FR issue of December 15, 1978, and republished as corrected this issue. Applicant: SCHWERMAN TRUCKING COMPANY, 611 South 28 Street, Milwaukee, WI 53215. Representative; Richard H. Prevette (same as above). Cement, in bulk, in tank vehicles from Ragland, AL to Brinkley, AR, for 180 days. An underlying ETA seeks 90 days of authority. SUPPORTING SHIPPER(S): Pampa Concrete Co., Inc., 220 W. Tyng, Pampa, TX 79065. SEND PROTEST TO: Gail Daugherty, Transportation Assistant, ICC, U. S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202. The purpose of this republication is to show Ragland, AL.

H. G. HOMME, JR.,
Secretary.

[FR Doc. 79-2635 Filed 1-24-79; 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-191 Amdt. 1; Jan. 19, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition and closure of item to the January 24, 1979, agenda.

TIME AND DATE: 10 a.m. (after regular Board meeting), January 24, 1979.

PLACE: Room 1011, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 13. BIA briefing on ongoing consultations with U.S.S.R. and Netherlands Antilles and Jamaica.

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: On Friday, January 19, 1979 Member O'Melia requested that BIA staff brief the Board on the present situation and possible future strategies and actions concerning the ongoing, negotiations with the U.S.S.R., the Netherlands Antilles and Jamaica. Accordingly, the following members have voted that agency business requires the addition of this item to the January 24, 1979 agenda and that no earlier announcement of this addition was possible:

Member Richard J. O'Melia
Member Elizabeth E. Bailey
Member Gloria Schaffer

This meeting will concern the Board's views on the ongoing negotiations with the U.S.S.R., the Netherlands Antilles and Jamaica. Public disclosure, particularly to foreign governments with whom the United States is or will be negotiating, of the opinions, evaluations, and strategies of the Board and its staff could seriously compromise the ability of the United States Delegations to achieve agreements which would be in the best interests of the United States. Accordingly, the following Members have voted that public observation of this item would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552b(c)(9)(B) and 14 CFR 310b.5(9)(B) and that the meeting on this item will be closed:

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. Elias Rodriguez, and Mr. Stephen H. Lachter.

Office of the Managing Director: Mr. John R. Hancock.

Bureau of International Affairs: Mr. Donald A. Farmer, Jr., Mr. Rosario J. Scibilia, Ms. Sandra W. Gerson, Mr. Francis S. Murphy, Mr. Donald L. Litton, Ms. Mary I. Pett, Mr. James S. Horneman, Mr. Ivars V. Mellups, Mr. Richard M. Loughlin, Mr. Willard L. Demory, and Mr. Richard Stair.

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, 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 and Ms. Patricia Kennedy.

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 310.b5(9)(B) and that the meeting may be closed to public observation.

PHILIP J. BAKES, Jr.,
General Counsel.

[S-166-79 Filed 1-23-79; 3:24 pm]

[6730-01-M]

2

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 10 a.m., January 31, 1979.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Report on notation items disposed of during December 1978.
2. Report of the Secretary on times shortened for submitting comments on section 15 agreements pursuant to delegated authority during December 1978.
3. Report of the Secretary on applications for admission to practice approved during December 1978, pursuant to delegated authority.
4. Assignment of informal dockets by the Secretary during December 1978.
5. Informal Docket Nos. 390(I): *Cummins Engine* v. *United States Lines, Inc.;* 391(I): *Cummins Engine* v. *American President Lines, Ltd.;* 392(I): *Cummins Engine Co.* v. *Maersk Line, Ltd.*—Petition of claimant for reconsideration.

Portion closed to the public:

1. Agreement No. 10135-6: Application for extension of the Far East and Pacific Westbound Conferences Member Lines Discussion Agreement.
2. Agreement No. 8200-5: Expansion of scope of the agreement to include overland and intermodal matters.
3. Agreement Nos. 9929-3, et al. (Combi Lines Joint Service Agreement)—Decision on Remand of Interim Approval Order.
4. Docket No. 77-4: Agreement Nos. 9902-3, 9902-4, 9902-5, and 9902-6, modification of Euro-Pacific Joint Service Agreement—Discussion of the record.
5. Docket No. 76-14: Agreement No. 10116-1, Extension of pooling agreement in the eastbound and westbound trades between Japanese ports and ports in California, Oregon, and Washington—Decision on request for oral argument and possible consideration of the record.

CONTACT PERSON FOR MORE INFORMATION:

Francis C. Hurney, Secretary, 202-523-5725.

[S-164-79 Filed 1-23-79; 2:44 pm]

[6735-01-M]

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

JANUARY 23, 1979.

TIME AND DATE: 10 a.m., January 19, 1979.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Closed (pursuant to 5 U.S.C. 552b(c)(10)).

MATTER CONSIDERED: Part of this meeting involved the Commission's participation in a civil action, namely, *Anschutz Coal Corp.* v. *Federal Mine Safety and Health Review Commission*, No. 78-1840, pending 10th Circuit Court of Appeals.

VOTE: Voting to close that part of the meeting: Commissioners Waldie (Chairman), Lawson, Nease, and Backley. It was determined by this vote that Commission business required that this meeting be closed. Further, the Commission members voted to hold the meeting immediately on the basis that agency business so required and to issue public notice as soon as practicable.

ATTENDANCE: Present at that closed part of the meeting were: Commissioners Waldie (Chairman), Lawson, Nease, and Backley; Al Treherne; Robert Phares; Mary Masulla; James Lastowka; Arthur Sapper; Daniel Delacey; General Counsel Robert Pleasure, and Joanne Kelley and Carolyn Crittenden, Secretaries.

CONTACT PERSON FOR MORE INFORMATION:

Joanne Kelley, Staff Assistant, 202-653-5632.

[S-165-79 Filed 1-23-79; 2:58 pm]

[6750-01-M]

4

FEDERAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: FR 44, January 19, 1979, page No. 4094.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2 p.m., Thursday, January 25, 1979.

CHANGES IN THE AGENDA: The Federal Trade Commission has changed the date of its previously announced meeting of Thursday, January 25, 1979, 2 p.m., to Friday, February 9, 1979, 2 p.m.

[S-163-79 Filed 1-23-79; 1:14 pm]

[7020-02-M]

5

INTERNATIONAL TRADE COMMISSION.

TIME AND PLACE: 2 p.m., Friday, January 26, 1979.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Emergency meeting—less than 10 days prior notice. Open to the public.

MATTERS TO BE CONSIDERED: 1. Further consideration of the report in Investigation 332-87 (U.S. Western Steel Market).

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-161-79 Filed 1-23-79; 11:29 am]

[4110-39-M]

6

NATIONAL COUNCIL ON EDUCATIONAL RESEARCH.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-2571-78 filed, December 20, 1978; 11:51 a.m.

TIME AND DATE: 2 p.m.-5 p.m., February 2, 1979. 9 a.m.-12:45 p.m., February 3, 1979.

PLACE: Room 823, National Institute of Education, 1200 19th Street NW., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

February 2, 1979

1. Approval of minutes of November 3, 1978 meeting (2 p.m.-2:05 p.m.).
2. Director's report (2:05 p.m.-2:50 p.m.).
3. Comments on council seminar (2:50 p.m.-3:20 p.m.).
4. NCER review process (3:20 p.m.-3:50 p.m.)
5. Discussion of fiscal year 1980 budget (3:50 p.m.-4:30 p.m.).
6. Preparation for discussion with the panel on labs and centers (4:30 p.m.-5 p.m.).

February 3, 1979

1. Session with the Panel on Labs and Centers (9 a.m.-11:30 a.m.).
2. Council Discussion About Further Actions (11:30 a.m.-12 Noon).
3. Lunch.

PERSON TO CONTACT FOR INFORMATION:

Peter Gerber, Staff Director, 202-254-7900. Ella L. Jones, Administrative Coordinator, 202-254-7900.

PETER H. GERBER,
Chief, Policy & Administrative Coordination, National Council on Educational Research.

[S-160-79 Filed 1-23-79; 11:29 am]

[7910-01-M]

7

THE RENEGOTIATION BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 4095, January 19, 1979.

PREVIOUSLY ANNOUNCED DATE AND TIME OF MEETING: Tuesday, January 23, 1979; 10 a.m.

MATTERS TO BE CONSIDERED: Regular board meeting.

CHANGE IN MEETING: Date changed to: Tuesday, January 30, 1979, 10 a.m.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: January 23, 1979.

HARRY R. VAN CLEVE,
Acting Chairman.

[S-162-79; Filed 1-23-79; 11:38 am]

federal register

THURSDAY, JANUARY 25, 1979
PART II



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM

[4110-02-M]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 190—BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM

AGENCY: Office of Education, HEW.

ACTION: Final regulation.

SUMMARY: This rule revises and consolidates all Basic Educational Opportunity Grant regulations other than those contained in the Family Contribution Schedules. The regulations, resulting from a notice of proposed rulemaking published on May 15, 1978, more clearly define the administration of the program and implement relevant portions of the Education Amendments of 1976 and the Middle Income Student Assistance Act.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the FEDERAL REGISTER. The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT:

Mr. William Moran, Acting Chief, Basic Grants Policy Section, Division of Policy and Program Development, ROB-3, Room 4318, 400 Maryland Avenue, S.W., Washington, D.C. 20202, (202) 472-4300.

SUPPLEMENTARY INFORMATION:

A. Overview of the Program and the Regulations

The Basic Educational Opportunity Grant Program is intended as a means of assisting students in the continuation of their training and education at the postsecondary level by providing a "foundation" or "floor" of financial aid to help defray educational costs. The program's entitlement feature distinguishes it from other financial aid programs administered by the Office of Education.

The Basic Grant Program was established by the Education Amendments of 1972 and began operation in the 1973-74 academic year with an appropriation of $122.1 million. During that year approximately 185,000 students received awards ranging from $50 to $452. The program has experienced dramatic growth since its first year of existence, and, during the 1978-79 award period, estimates indicate that nearly 2.4 million students will receive awards ranging from $50 to $1,600 based on an appropriation of $2.168 billion.

The regulations for the Basic Grant Program may be divided into two broad categories: the Family Contribution Schedules and the Administrative and Technical regulations. The Family Contribution Schedules are the formulas used in determining a student's eligibility for a Basic Grant on the basis of need. The legislation governing the program requires that these schedules be submitted annually for public comment and for review by both Houses of Congress. The remaining program regulations—concerning institutional administration of the program, computation of awards, and all other matters except those included in the annually published Family Contribution Schedules—are referred to as the Administrative and Technical regulations.

The new Administrative and Technical regulations published here supersede previous regulations published in the FEDERAL REGISTER on November 6, 1974, December 2, 1974, and August 10, 1976. In preparing this revision of the Basic Grant regulations, three major objectives were established: first, to write the regulations as clearly and concisely as possible; second, to incorporate the applicable provisions of the Education Amendments of 1976 and the Middle Income Student Assistance Act; and third, to respond to problems in the operation of the program which were not adequately addressed in the former regulations.

The notice of proposed rulemaking from which these regulations result was published in the FEDERAL REGISTER on May 15, 1978, and public comment was solicited. Copies of the NPRM were mailed by the Office of Education to financial aid administrators and fiscal officers at more than 6,000 eligible postsecondary institutions as well as to a number of student groups, education associations, and other interested parties. Public hearings were conducted in Washington, D.C. on May 31, in Chicago on June 2, and in San Francisco on June 5. A total of 40 people representing numerous organizations presented their views on the proposed regulations at these hearings. Additionally, during the 30-day period for public comment, 275 letters were received from individuals, institutions, and educational organizations containing comments, criticisms, recommendations, and questions on nearly every section of the proposed regulations. All comments were given careful consideration in the development of the final regulations. A summary of these comments and the Office of Education responses to them is included as an appendix to these regulations. The comments and responses appear in the numerical sequence of the regulations and are identified with the section number and title of the regulation to which they refer.

B. Summary of Major Issues

Among the issues on which comments were received, three areas of concern were predominant. The first of these concerned the differentiation in treatment in the proposed regulations between proprietary institutions and public and private non-profit institutions regarding the admission to an eligible program of persons not having a high school diploma or GED certificate.

Under the proposed regulations, an eligible proprietary institution was limited to those proprietary schools that restrict their enrollment of regular students to high school graduates or their equivalent. The definition of an eligible program in a proprietary institution included only those programs which, among other things, admitted as regular students only high school graduates or their equivalent. Section 190.4, the student eligiblity section, provided that Basic Grants could be awarded only to regular students. Finally the definition of a regular student described that student, in effect, as a student who enrolls in an institution for the purpose of obtaining a degree or certificate in a program which that institution is qualified to give. As a result of these provisions, non-high school graduates or non-GED certificate holders attending proprietary institutions were ineligible to receive Basic Grants. Furthermore, their presence in a degree or certificate program at a proprietary institution made both that program and that institution ineligible so that no student attending that program would be able to receive a Basic Grant.

Numerous comments were received objecting to these provisions. Many felt that proprietary schools were being unfairly singled out in contrast to public and non-profit private institutions, and that non-high school graduates were being unfairly treated.

The difference in treatment between proprietary institutions and public and non-profit private institutions was based upon the statutory definitions of those terms as they existed at the time the proposed regulations were published. Therefore a different treatment was not only proper, it was required.

Briefly, the historical background for the difference in treatment resulting from the statute is as follows. Before the enactment of the Education amendments of 1976, one requirement of institutional eligibility was

that an institution must admit as regular students only persons with a high school diploma or the recognized equivalent. The Education Amendments of 1976 amended the Higher Education Act of 1965 by providing that public and private non-profit institutions could also admit as regular students "persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution." This statutory change in institutional eligibility requirements did not affect proprietary institutions. However, the Middle Income Student Assistance Act has now extended this change in institutional eligibility requirements to proprietary institutions. Consequently, all differences in treatment in the definitions in Subpart A of the proposed regulations which had been based upon the differing statutory definitions have been removed in the final regulations.

The second major area of concern on which comment was received related to a new procedure for calculating Basic Grants which was proposed for term-based institutions using credit hours. This procedure was set forth in § 190.64 of the NPRM. As described in the following paragraphs, under that procedure a part-time student's award would more accurately reflect his or her enrollment status. However that procedure would also involve an additional calculation for each student. Many commenters felt the extra work load necessitated by this additional calculation would outweigh the advantage of greater equity which the proposed procedure was intended to provide.

In order to receive a Basic Grant, a student must be at least half-time. Current program regulations define students as either full-time, three-quarter-time or half-time. A student enrolled for more credits than the amount needed to be considered half-time but less than the amount needed to be considered three-quarter-time is considered a half-time student and receives an award computed as one-half of the amount a student would receive at a full-time status.

Similarly, a student enrolled at less than full-time but more than three-quarter-time is considered three-quarter-time for Basic Grant purposes and receives an award computed as three-quarters of the amount a full-time student would receive.

Under the proposed rule, students enrolled less than full-time would no longer have been divided into two categories. Rather, it was proposed that a student's status as part-time would reflect the exact degree that the student's enrollment is related to full-time enrollment status. The proposed rule would have required that the institution calculate a part-time student's award according to the number of credit hours that student was enrolled in for that term.

For example, a student enrolled in 11 credit hours would receive a three-quarter-time award under the current procedures. Under the NPRM, the student would receive $^{11}/_{12}$ of the full-time award for a term. The issue raised by the commenters was whether the increased equity to the student is worth the increased administrative burden to the institution.

The vast majority of commenters preferred the current procedures where students are defined as either full-time, three-quarter-time, or half-time. Several said the proposal made such a small difference in the amount of the award that it was not worth the effort it would require on the part of the institution or the inconvenience it would create for the student because of additional delays in making payment.

Based on the suggestions of the majority of the commenters, the Commissioner has decided to maintain the current award calculation procedures for those institutions which use terms and measure progress by the credit hour.

The Basic Grant Validation effort—and § 190.77 of the proposed regulations which is intended to provide the regulatory basis for that effort—was the third major area of concern on which considerable public comment was received.

Beginning with the 1978–79 award period, the Office of Education has initiated an expanded effort to insure the accuracy of the information on which the student's Basic Grant eligibility is calculated. Basically, this effort consists of two separate processes. The first is an attempt to prevent or minimize errors at the time of application through the use of computerized edit checks in the processing system. As applications are edited, those not meeting established criteria are either returned to the applicant for verification or processed with a printed edit check assumption on the SER. Currently, more than 250 statements relating to edit checks may be printed on the SER. The second is the Basic Grant validation effort—a detailed and extensive procedure for verifying the data which appears on the SER.

In authorizing the second of these two processes, the Office of Education has, in § 190.77 of the regulations, outlined (1) the authority for such a verification effort, and (2) the general responsibilities that the Commissioner, the institution, and the student will have in their respective rules. The actual mechanics of the process have not been detailed in the regulation, but rather will be published and distributed as procedures.

The response of the financial aid community to this concept of verification of information has been mixed. The vast majority of people concede the necessity of this type of activity, but disagree in a number of areas about the specifics of what should be done. Many individuals were concerned about the timing of this requirement and suggested various alternative courses of action to alleviate the timing problem, such as postponement for one year, or voluntary compliance for the first year. In addition, many people felt that the Office of Education should centrally verify all applications which need such action either before or after a Student Eligibility Report is generated rather than require that this action be performed by the institutions.

Several people also offered a number of specific suggestions related to the actual mechanics of the verification process. Since a Validation Procedures Handbook had already been published to acquaint the financial aid community with the anticipated new procedures, many of those specific comments dealt with those procedures. In this area, the commenters voiced their preferences on a number of items including (1) the actual dollar or percentage figures which would be used as tolerance levels as far as the degree of accuracy of applicant information is concerned; (2) whether the institution should be able to calculate and disburse awards when errors are known to be on the Student Eligibility Report, but when a correction of those errors would cause only a minimal change in the applicants award; (3) whether Supplemental applications should be verified; (4) what type of documentation should be accepted; and (5) how institutions and students would handle situations where requested documentation from various agencies (i.e., Social Security Administration, Public Welfare Offices, etc.) proved unusually hard to acquire.

Institutional officers were also concerned about a number of potential consequences which they foresaw if § 190.77 were to become effective. Basically these types of problems were related to either (1) costs to be incurred by the school both in terms of dollars and time, and (2) problems that verification will cause those students who are asked to comply.

As a result of the comments received on § 190.77 a number of revisions have been made to clarify and more precisely define the responsibilities of the student, the institution, and the Commissioner. Although it is realized that institutions may need to institute ad-

ditional administrative processes as a result of the validation effort, the Commissioner believes that, in order to ensure the integrity of the program, information used in determining Basic Grant eligibility must be as accurate as possible. The validation effort is intended to achieve this objective.

The public comments and OE responses about the areas of concern described above are set forth in detail in Appendix A.

(Catalog of Federal Domestic Assistance No. 13.539 Basic Educational Opportunity Grant Program.)

Dated: November 16, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

Dated: January 13, 1979.

HALE CHAMPION,
Acting Secretary of Health, Education, and Welfare.

Part 190 of Title 45 of the Code of Federal Regulations is amended by revising Subparts A, B, E, F, and G and by adding Subpart H, to read as follows:

PART 190—BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Subpart A—Scope, Purpose and General Definitions

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190.2 General definitions.
190.2a Special terms.
190.3 Institution of higher education.
190.4 Eligible student.
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190.7 Institutional eligibility.
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Subpart E—Costs of Attendance

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190.51 General attendance costs.
190.52 Attendance costs for students in correspondence study programs.
190.53 Attendance costs for students whose program length exceeds the academic year at institutions using clock hours.
190.54 Attendance costs for incarcerated students.
190.55 Attendance costs for students at U.S. Armed Forces academies.

Subpart F—Determination of Basic Grant Awards

190.61 Submission process and deadline for Student Eligibility Report.
190.62 Calculation of a Scheduled Basic Grant at full funding.
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190.64 Calculation of a Basic Grant for a payment period.
190.65 Calculation of Basic Grants for a term which occurs in two award periods.
190.66 Transfer student: attendance at more than one institution during an award period.
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Subpart G—Administration of Grant Payments—Regular Disbursement System

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190.75 Determination of eligibility for payment.
190.76 Frequency of payment.
190.77 Verification of information on the SER—withholding of payments.
190.78 Method of disbursement—by check or credit to student's account.
190.79 Affidavit of educational purpose.
190.80 Recovery of overpayments.
190.81 Recalculation of a Basic Grant award.
190.82 Fiscal control and fund accounting procedures.
190.83 Maintenance and retention of records.
190.84 Submission of reports.
190.85 Audit and examination.

Subpart H—Administration of Grant Payments—Alternate Disbursement System

190.91 Scope.
190.92 Institutional agreement—Alternate Disbursement System (ADS).
190.93 Change in ownership and change to the Regular Disbursement System (RDS).
190.94 Calculation and disbursement of awards by the Commissioner of Education.
190.95 Termination of enrollment and refund.
190.96 Maintenance and retention of records; access for purpose of audit.

AUTHORITY: Section 411 of the Higher Education Act of 1965 as added by Section 131(b) of Public Law 92-318, 86 STAT 247-251 as amended (20 U.S.C. 1070a), unless otherwise noted.

Subpart A—Scope, Purpose and General Definitions

§ 190.1 Scope and purpose.

The Basic Educational Opportunity Grant (Basic Grant) Program awards grants to help financially needy students meet their costs of post-secondary education.

(20 U.S.C. 1070a.)

§ 190.2 General definitions.

As used in this part:

Academic year: (a) A period of time in which a full-time student is expected to complete the equivalent of at least 2 semesters, 2 trimesters or 3 quarters at institutions using credit hours; or

(b) At least 900 clock hours of training for each program at institutions using clock hours.

(20 U.S.C. 1088(c)(1).)

Act: Title IV-A-1 of the Higher Education Act (HEA) of 1965, as amended.

Award period: The period of time between July 1 of one year and June 30 of the following year.

Clock hour: The equivalent of—

(a) A 50 to 60 minute class, lecture or recitation; or

(b) a 50 to 60 minute faculty supervised laboratory, shop training, or internship.

Commissioner: The U.S. Commissioner of Education or his/her designee.

Enrolled: Completion of registration requirements at the institution a student is attending.

Enrollment status:

(a) At those institutions using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours, enrollment status equal's a student's credit hour work loan categorized as either full-time, three-quarter-time, or half-time.

(b) At those institutions which measure progress by clock hours or which measure progress by credit hours or units but do not use semesters, trimesters, quarters, or other academic terms, enrollment status equals a student's work load categorized by the following fraction:

$$\frac{\text{the credit or clock hours the student is expected to take in a payment period}}{\text{the credit or clock hours that a full-time student would take in an academic year.}}$$

Full-time student: An enrolled student who is carrying a full-time academic work load (other than by correspondence) as determined by the institution and which is applicable to all students enrolled in a particular program. However, the institution's full-time standard must equal or exceed one of the following minimum requirements:

(a) 12 semester hours or 12 quarter hours per academic term in those institutions using standard semester, trimester or quarter hour systems;

(b) 24 semester hours or 36 quarter hours per academic year for institutions using credit hours to measure progress but not using semester, trimester or quarter systems, or the prorated equivalent for programs of less than one academic year;

(c) 24 clock hours per week for institutions using clock hours;

(d) In those institutions using both credit and clock hours, if the sum of the following fractions is equal to or greater than one:

$$\frac{\text{number of credit hours per term}}{12} + \frac{\text{number of clock hours per week}}{24}$$

(e) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks; or

(f) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic work-load of a full-time student.

(20 U.S.C. 1088(c)(2).)

Good standing: The eligibility of a student to continue attending the institution in which he/she is enrolled in accordance with the standards of the institution.

Half-time student: (a) An enrolled student who is carrying a half-time academic work load as determined by the institution and which amounts to at least half the work load of a full-time student. (see full-time student).

(b) A student enrolled solely in a program of study by correspondence who is carrying a work load of at least 12 hours of preparation of work per week. However, regardless of the work load, no student enrolled solely in correspondence study will be considered more than a half-time student.

Nonprofit institution: An institution owned and operated by one or more nonprofit corporations or associations where no part of the net earnings of the institution benefits any private share holder or individual.

(20 U.S.C. 1141(c).)

Payment schedule: (a) A table showing a full-time student's Scheduled Basic Grant for a given award period. This table, published by the Commissioner, is based on—

(1) The Expected Family Contribution Schedules described in Subparts C & D;

(2) Attendance costs as defined in Subpart E; and

(3) The amount of funds available for making Basic Grants.

(b) The *Payment Schedule* also includes the *Disbursement Schedules* which are tables showing the grant amounts three-quarter and half-time students would receive for an academic year.

Scheduled Basic Grant: The amount of a Basic Grant which would be paid to a full-time student for a full academic year.

State: The States of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands and the Northern Mariana Islands.

(20 U.S.C. 114(b); 20 U.S.C. 1088(a)).

Student Eligibility Report (SER): A report provided to the applicant showing the amount of his/her expected family contribution.

Three-quarter-time student: An enrolled student who is carrying a three-quarter-time academic work load as determined by the institution and which amounts to at least three-quarters of the work load of a full-time student (see full-time student).

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who:

(a) Has not been awarded a baccalaureate or first professional degree; and

(b) Is in an undergraduate course of study which usually does not exceed 4 years, or is enrolled in a 5-year program designed to lead to a first degree. (A student enrolled in any other length program is considered an undergraduate student for only the first 4 years.)

(20 U.S.C. 1070a unless otherwise noted.)

§ 190.2a Special terms.

(a) *Eligible program:* An undergraduate program of education or training which—

(1) Admits as regular students only persons who—

(i) Have a certificate of graduation from a secondary school (high school diploma),

(ii) Have the recognized equivalent of a high school diploma, (The recognized equivalent of a high school diploma is defined in paragraph (d) of this section.) or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located, and have the ability to benefit from the education or training offered. An institution must document a student's ability to benefit from the training offered on the basis of a standardized test, other measurement instrument, practicum examination, or other verifiable indicators such as written recommendations from professional educators, counselors, or persons who are not employed or affiliated with the institution; and

(2) (i) Leads to a bachelor, associate or undergraduate professional degree,

(ii) Is at least a two-year program which is acceptable for full credit toward a bachelor degree,

(iii) Is at least a 1-year program leading to a certificate or degree, which prepares students for gainful employment in a recognized occupation. (A 1-year program is defined in § 190.3(c)), or

(iv) Is, for a proprietary institution of higher education, at least a six-month program leading to a certificate or degree, which prepares students for gainful employment in a recognized occupation. (A six-month program is defined in § 190.3(d).)

(b) *An eligible program of study by correspondence* must be designed to require at least 12 hours of preparation a week.

(c) *Regular student:* A person who enrolls in an eligible program at an institution of higher education for the purpose of obtaining a degree or certificate.

(d) *Recognized equivalent of a high school diploma* means—

(1) A General Education Development Certificate (GED), or

(2) A state certificate received after a student has passed a State authorized examination, which that State recognizes as the equivalent of a high school diploma.

(e) *Payment period—General.*

(1) An institution must have at least two payment periods calculated in accordance with subparagraph (e)(2) if it—

(i) measures progress in clock hours, or

(ii) measures progress in credit hours or units but does not use academic terms.

(2) If the student's academic year is within one award period and the student's educational program is not less than a full academic year—

(i) The first payment period is the first half of the student's academic year, and

(ii) The second payment period is the second half of the student's academic year.

(3) If the student's academic year is NOT within one award period or the student's educational program is LESS than a full academic year—

(i) The first payment period is the first half of the hours the student is scheduled to complete within the award period, and

(ii) The second payment period begins when the first payment period ends and ends when the student completes all hours he/she was scheduled to complete between the beginning of the second payment period and June 30.

(4) A student with incompleted hours for the second payment period of any award period may complete them during the following award period. In this case, the first payment period of the new award period begins when the student finishes all carried over hours for which he/she was paid.

(f) *Payment period—Academic terms/credit hour institutions.* For those institutions which use academic terms and measure progress in credit hours, a payment period is a span of time which corresponds with each semester, trimester, quarter or other academic term.

(20 U.S.C. 1070a.)

§ 190.3 Institution of higher education.

An institution of higher education is a public, private nonprofit or proprietary institution.

(a) *A public or private nonprofit institution of higher education* is an educational institution which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma, or

(ii) Have the recognized equivalent of a high school diploma, or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located, and have the ability to benefit from the training offered. (An institution must document a student's ability to benefit from the training offered in accordance with the procedures set forth in § 190.2a(a)(1)(iii).)

(3) Is legally authorized to provide an education program beyond secondary education in the State in which the institution is physically located;

(4) Provides—

(i) An educational program for which it awards an associate, baccalaureate, advanced or professional degree,

(ii) At least a 2-year program which is acceptable for full credit towards a baccalaureate degree, or

(iii) At least a 1-year training program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation, and

(5) Is—

(i) Accredited by a nationally recognized accrediting agency or association,

(ii) Approved by a State agency recognized by the Commissioner as a reliable authority on the quality of public postsecondary vocational education in its State, if the institution is a public postsecondary vocational educational institution.

(iii) An institution which has satisfactorily assured the Commissioner that it will meet the accreditation standards of an agency or association within a reasonable time, considering the resources available to the institution, the period of time it has operated and its efforts to meet accreditation standards, or

(iv) An institution whose credits are accepted on transfer by at least 3 accredited institutions on the same basis as transfer credits from fully accredited institutions.

(b) *A proprietary institution of higher education* is an educational institution which—

(1) Is not a public or other nonprofit institution;

(2) Is in a State;

(3) Admits as regular students only persons who—

(i) Have a high school diploma, or

(ii) Have the recognized equivalent of a high school diploma, or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located, and have the ability to benefit from the training offered. (An institution must document a student's ability to benefit from the training offered in accordance with the procedures set forth in § 190.2a (a)(1)(iii).)

(4) Is legally authorized to provide postsecondary education in the State in which it is physically located;

(5) Provides at least a 6-month program of training to prepare students for gainful employment in a recognized occupation;

(6) Is accredited by a nationally recognized accrediting agency or association,

(7) Has been in existence for at least 2 years. The Commissioner considers a school to have been in existence for two years if it was legally authorized to provide, and has provided, a training program on a continuous basis to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation period) preceding the date of application for eligibility; and

(8) Has entered into an agreement which the Commissioner has determined will insure that the availability of assistance to students under Title IV of HEA has not resulted in, and will not result in, increased tuition, fees or other charges to its students.

(c) *One year training program.* A program which is at least—

(1) 24 semester or trimester hours or units, or 36 quarter hours or units, at an institution using credit hours or units to measure progress,

(2) 900 clock hours of supervised training at an institution using clock hours to measure progress; or

(3) 900 hours of preparation in a correspondence program.

(d) *Six month training program.* A program which is at least—

(1) 16 semester or trimester hours or 24 quarter hours at institutions using credit hours or units to measure progress;

(2) 600 clock hours of supervised training at an institution using clock hours to measure progress; or

(3) 600 hours of preparation in a correspondence program.

(20 U.S.C. 1141(a), 20 U.S.C. 1088(b)(3).)

§ 190.4 Eligible student.

(a) A student is eligible to receive a Basic Grant if the student—

(1) Is a regular student,

(2) Is enrolled in good standing as at least a half-time undergraduate student at an institution of higher education;

(3) Is enrolled in an eligible program as a regular student, as defined in § 190.2a; and

(4) (i) Is a U.S. citizen or National,

(ii) Is a permanent resident of the U.S.,

(iii) Is in the U.S. for other than a temporary purpose and can provide evidence from the Immigration and Naturalization Service of his/her intent to become a permanent resident, or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands, or the Northern Mariana Islands.

(b) A member of a religious order, community, society, agency or organization—who is pursuing a course of study in an institution of higher education will be considered as having a family contribution of not less than $1,601 if that religious order—

(1) Has as a primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3)(i) Has directed the member to pursue the course of study, or

(ii) Provides subsistence support to its member.

(20 U.S.C. 1070a.)

§ 190.5 Duration of student eligibility.

(a) A student is eligible to receive a Basic Grant for the period of time re-

quired to complete an undergraduate course of study. That period is usually 4 academic years, but may be extended up to one additional year if—

(1) The student is pursuing a 5-year course of study designed to lead to a first degree; or

(2) The student is or will be required to enroll in a noncredit remedial course of study.

(b) For the purpose of paragraph (a), a noncredit remedial course of study is a course of study for which no credit is given toward an academic degree and which is designed to increase the ability of the student to pursue an undergraduate course of study leading to such a degree.

(c) The Commissioner will subtract from each student's period of eligibility, any period for which the student has received a Basic Grant. The eligibility used during an award period will be calculated by dividing the student's actual Basic Grant Award for that award period, by the student's Scheduled Basic Grant for that award period.

(d) If a student has received an overpayment in an award period, the overpayment will not be used in calculating the amount of eligibility used.

(20 U.S.C. 1070a.)

§ 190.6 Basic Grant payments from more than one institution.

A student will not be entitled to receive Basic Grant payments concurrently from more than one institution or from the Commissioner and an institution.

(20 U.S.C. 1070a.)

§ 190.7 Institutional eligibility.

(a)(1) An institution of higher education is eligible to participate in the Basic Grant Program if it meets the appropriate definition set forth in § 190.3, and is in compliance with the applicable provisions of part 168 of this title, "Standards of Administrative Capability and Financial Responsibility."

(2) If an institution becomes eligible during an award period, a student enrolled and attending that institution will be eligible to receive a Basic Grant for the payment period during which the institution became eligible and any subsequent payment period.

(b)(1) An institution of higher education becomes ineligible to participate in the Basic Grant Program if it no longer meets the applicable definition set forth in § 190.3, or if its eligibility is terminated under Subpart H of part 168 of this title.

(2) If an institution becomes ineligible during an award period, an eligible student who submitted a valid SER to the institution (or to the Commissioner if the institution participates under the Alternate Disbursement System (ADS) before the date the institution became ineligible, will be paid a Basic Grant for—

(i) the payment period that the student completed before the institution became ineligible, and

(ii) the payment period in which the institution became ineligible.

(c) An institution participating in the program under ADS which becomes ineligible must provide the Commissioner with the name and enrollment status of each student who applied for and was determined eligible for a Basic Grant who was attending the institution when its eligibility was terminated.

(d) An institution participating in the program under the Regular Disbursement System which becomes ineligible must supply to the Commissioner—

(1) The name and enrollment status of each eligible student who, during the award period, submitted a valid SER to the institution before it became ineligible.

(2) The amount of funds paid to each Basic Grant recipient for that award period;

(3) The amount due to each student eligible to receive a Basic Grant through the end of the payment period; and

(4) An accounting of the Basic Grant expenditures for that award period to the date of termination.

(20 U.S.C. 1070a.)

§ 190.8 Consortium agreements.

(a) A consortium agreement is a written agreement between at least two institutions which enables an enrolled student in an eligible program at one institution to take courses at other institutions which apply towards his/her certificate or degree at the first institution.

(b) If two eligible institutions have entered into a consortium agreement, the institution at which the student is enrolled and expects to receive a degree or certificate calculates and pays the student's Basic Grant.

(c) The institution which calculates and pays the student a Basic Grant must take into account courses taken by the student at both institutions in determining the student's enrollment status and cost of attendance.

(20 U.S.C. 1070a.)

§ 190.9 Determination of enrollment status under special circumstances.

(a) *Non-credit remedial courses.*

(1) When calculating a student's enrollment status, the institution may not, and the Commissioner will not, count any course in a program of instruction leading to a high school diploma or the recognized equivalent of a high school diploma, even if the course is necessary to enable the student to complete the degree or certificate program.

(2) Except as provided in subparagraph (1), in determining a student's enrollment status, the institution will include any non-credit remedial course in which the student is enrolled. If a non-credit remedial course is not measured by clock or credit hours, the institution must determine the equivalent number of clock or credit hours which should be included for that work.

(b) *Combination of regular and correspondence study.* If an eligible student takes correspondence courses from either his/her own institution or another institution under a consortium agreement with the student's institution, the correspondence work which will be included in determining the student's enrollment status is that amount of work which—

(1) Applies toward the student's degree or certificate or is remedial work necessary for the student or to proceed in his/her course of study;

(2) Is completed within the period of time required for regular course work; and

(3) Does not exceed one-half of the student's total course load for that payment period.

(20 U.S.C. 1070a.)

§ 190.10 Administrative cost allowance to participating schools.

(a)(1) Any participating institution is eligible to receive an administrative cost allowance when funds are appropriated by Congress for this purpose.

(2) If funds are sufficient, each participating institution will be paid not more than $10 per year for each student who receives a Basic Grant. (No institution may count a Basic Grant recipient more than once in an award period.)

(3) All funds a school receives under this section must be used to provide consumer information in accordance with 45 CFR 178, and for additional costs of administrating student financial aid programs under title IV of HEA.

(b) If appropriated funds for any fiscal year are insufficient to pay full allowances, payments will be proportionately reduced. If additional funds become available for any fiscal year in which payments were reduced, allowances will be increased proportionately to the reductions.

(20 U.S.C. 1070a(d).)

Subpart B—Application Procedures for Determining Expected Family Contribution

§ 190.11 Application.

(a) As the first step to receiving a Basic Grant, a student applies on an approved form to the Commissioner to have his/her expected family contribution determined. Facsimile copies of this form are not acceptable.

(b) The student, and where relevant the student's parents or spouse, must submit accurate and complete information as of the date the application is signed.

(c) The address provided by the student must be his/her residence and not the address of the school, unless the student resides at the school.

(20 U.S.C. 1070a(b)(2).)

§ 190.12 Certification of information.

(a) The applicant, and where relevant the applicant's parents or spouse, will provide (if requested by either the Commissioner or the school) information or documents, including a copy of Federal Income Tax Returns, necessary to verify the accuracy of the information provided.

(b) Failure to provide the requested documentation may make the applicant ineligible to receive a Basic Grant.

(20 U.S.C. 1070a(b)(2).)

§ 190.13 Deadline for filing applications.

For each award period the Commissioner will establish application filing cut-off dates for determining expected family contributions.

(20 U.S.C. 1070a(b)(1).)

§ 190.14 Notification of expected family contribution.

The Commissioner will send to each eligible applicant a "Student Eligibility Report"(SER) which states the amount of the applicant's expected family contribution and information used in that computation.

(20 U.S.C. 1070a.)

§ 190.15 Applicant's request for recomputation of expected family contribution because of clerical or arithmetic error.

(a) An applicant may request a recomputation of the expected family contribution if he/she believes a clerical or arithmetic error has occurred, or if the information submitted was inaccurate when the application was signed.

(b) A request for recomputation must be made on an approved form and must be received by the Commissioner no later than the annual cut-off date unless the recomputation is necessary because of a request made by the Commissioner to verify information.

(20 U.S.C. 1070a(b)(2).)

§ 190.16 Request for recomputation of expected family contribution because of extraordinary circumstances.

In filing an application to have an expected family contribution determined, an applicant may provide financial information relating to the tax year immediately following the base year if the conditions in §§ 190.39 or 190.48 apply.

(20 U.S.C. 1070a.)

Subpart C—(Expected Family Contribution for Dependent Students)

Subpart D—(Expected Family Contribution for Independent Students)

Subpart E—Costs of Attendance

§ 190.51 General attendance costs.

Except as provided in §§ 190.52 through 190.55, the following are recognized as a student's costs of attendance:

(a) *Tuition and fees:* (1) The amount charged to a full-time student by the institution for tuition and fees for an academic year.

(2) Tuition and fees may include travel costs within the United States required for completion of a course of study, but not for travel between the student's residence and the institution, or for travel outside the United States.

(b) *Room and board:*

(1) The amount charged the student by the institution under a contract for:

(i) Room and board for the academic year,

(ii) Room, plus an allowance of $625 for board for the academic year, or

(iii) Board plus an allowance of $475 for room for the academic year,

(2) If no contract is entered into for either room or board, an allowance of $1,100 for the academic year whether or not the student lives with a parent, or

(3) If an institution enters into a contract with the student for room and/or board for less than 7 days a week, a daily rate will be computed based upon the standard allowance and used for those days not covered by the contract. This amount will be added to the costs established under clauses (i), or (ii), or (iii) of subparagraph (b)(1), whichever is applicable.

(c) An allowance of $400 will be made for books, supplies, and miscellaneous expenses for the academic year.

(d) An institution may not charge a student who receives a Basic Grant more than it charges a student enrolled in that same program who does not receive a Basic Grant.

(20 U.S.C. 1070(a)(2)(B)(iv).)

§ 190.52 Attendance costs for students in correspondence study programs.

(a) If a student is enrolled in a correspondence study program, only the costs of tuition and fees charged the student for that program for an academic year will be recognized as a student's costs of attendance. However, room and board costs incurred for fullfilling a required period of residential training will be recognized as a cost of attendance.

(b) These room and board costs will be—

(1) Based on institutional charges; or

(2) Determined according to the costs established in § 190.51(b) and prorated in the same ratio as the course work completed in residential training bears to the course work for the academic year.

(20 U.S.C. 1070a.)

§ 190.53 Attendance costs for students whose program length exceeds the academic year at institutions using clock hours.

Costs for students who are charged tuition and fees for a program whose length exceeds the length of the academic year at institutions measuring progress in clock hours will be calculated by adding—

(a)

$$\text{Institutional charges} \times \frac{\text{clock hours in the academic year}}{\text{clock hours in the program}}$$

(b) Room and/or board as described in § 190.51(b) if not determined in paragraph (a) of this section; and

(c) An allowance of $400 for books, supplies and miscellaneous expenses.

(20 U.S.C. 1070(a)(2)(B)(iv).)

§ 190.54 Attendance costs for incarcerated students.

(a) Costs of attendance for eligible students who are incarcerated and for whom at least one-half of room and board expenses are provided include—

(1) Tuition and fees charged a full-time student for an academic year; and

(2) An allowance of $150 for books and supplies.

(b) Costs of attendance for eligible students who are incarcerated and for whom less than one-half of room and board expenses are provided will be the same as those allowed for students who are not incarcerated.

(20 U.S.C. 1070(a)(B)(iv).)

§ 190.55 Attendance costs for students at U.S. Armed Forces academies.

Students enrolled at the U.S. Military Academy at West Point, the U.S. Naval Academy, the U.S. Air Force Academy or the U.S. Coast Guard Academy are considered to have no cost of attendance.

(20 U.S.C. 1070a(2)(B)(iv).)

Subpart F—Determination of Basic Grant Awards

§ 190.61 Submission process and deadline for student eligibility report.

(a) (1) A student applies for a Basic Grant by submitting a valid "Student Eligibility Report" (SER) to his/her institution or to the Commissioner if that institution is participating in the Basic Grant Program under the Alternate Disbursement System (ADS).

(2) The SER is considered valid only if all information used in the calculation of the expected family contribution is complete and accurate when the application was signed. Institutions are entitled to rely on SER information except under conditions set forth in § 190.77.

(b) Except as noted in § 190.77, to receive a Basic Grant, a student who enrolls before May 1 of an award period must submit the SER to his/her institution on or before May 31 of that award period.

A student who enrolls for the first time in the award period on or after May 1 of that award period may submit the SER to the institution on or before June 30 of that award period.

(c) A student attending an institution participating in the Basic Grant Program under the ADS has an additional ten days to submit the SER to the Commissioner: June 10 for those who enroll before May 1, and July 10 for those who enroll on or after May 1.

(d) A student who submits an SER to an institution when he/she is no longer enrolled and eligible for payment at that institution may not be paid a Basic Grant.

(20 U.S.C. 1070a(b)(2).)

§ 190.62 Calculation of a Scheduled Basic Grant at full funding.

(a) When funds are available to satisfy all payments, the Commissioner will pay each eligible, full-time student for a complete academic year a Scheduled Basic Grant which is the lowest of:

(1) The difference between $1,800 and the expected family contribution stated on the applicant's SER;

(2) 50 percent of the applicant's cost of attendance; or

(3) The difference between the cost of attendance and expected family contribution.

(b) Notwithstanding paragraph (a) of this section, no payment will be made if the student's Scheduled Basic Grant is less than $200.

(20 U.S.C. 1070a(a)(2).)

§ 190.63 Calculation of a Scheduled Basic Grant at less than full funding.

(a) When funds are not available to satisfy all payments, the Commissioner will pay each eligible full-time student for a complete academic year a Scheduled Basic Grant which is the lowest of:

(1) The difference between $1,800 and the expected family contribution, reduced in accordance with section 411(b)(3) of the Act;

(2) 50 percent of the applicant's costs of attendance; or

(3) The difference between the costs of attendance and expected family contribution.

(b) Notwithstanding paragraph (a) of this section, no payment will be made if—

(1) The student's award is less than $50; or

(2) When calculated at full funding, the Scheduled Basic Grant is less than $200. (See § 190.62(a).)

(20 U.S.C. 1070a(b)(3).)

§ 190.64 Calculation of a Basic Grant for a payment period.

(a) At those institutions using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours, a student's Basic Grant for each payment period is calculated as follows:

(1) Determine his/her enrollment status for the term,

(2) Based upon that enrollment status, determine his/her annual award from the Payment Schedule (full-time students), or one of the Disbursement Schedules (Part-time students), as appropriate,

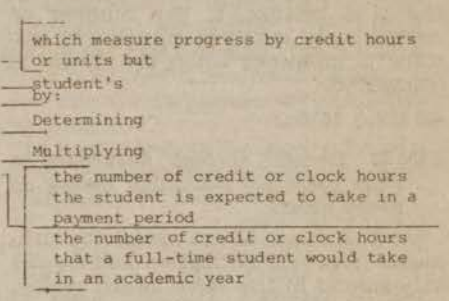
(3) Divide the amount determined in subparagraph (2) by the number of terms in an academic year if those terms are of equal length.

(4) If those terms are not of equal length, determine that portion of the award derived in subparagraph (2) which reflects the proportion of the academic year represented by that term. However, a payment for any term may not exceed 50% of the award determined in subparagraph (2). To insure this, payments for unequal terms must be adjusted if necessary.

(b) At those institutions which measure progress by clock hours or which measure progress by credit hours or units but do not use semesters, trimesters, quarters or other academic terms, a student's Basic Grant for each payment period is calculated by:

(1) Determining the student's Scheduled Basic Grant; and

(2) Multiplying the Scheduled Basic Grant by:



(c) Notwithstanding paragraphs (a) and (b) of this section, a student may not receive a Basic Grant if the amount which the student would receive, projected on the basis of a full academic year, would be less than either $200 at full funding or $50 at less than full funding.

(20 U.S.C. 1070a.)

§ 190.65 Calculation of Basic Grants for a term which occurs in two award periods.

(a) Students who—

(1) Attend institutions which measure progress by credit hours and use semesters, trimesters, quarters or other academic terms, and

(2) Enroll in a term which occurs in two award periods—will be paid in accordance with the rules set forth in the remainder of this section.

(b)(1) The entire term will be considered to occur within one award period.

(2) The institution will determine the award period in which the term will be placed.

(3) The determination made in subparagraph (b)(2) must be the same for all Basic Grant recipients.

(4) If the institution places the term in the first award period, it must pay the student with funds from the first award period.

(5) If the institution places the term in the second award period, it must pay the student with funds from the second award period.

(c) The institution may not make a payment which will result in the student receiving more than his/her Scheduled Basic Grant award for that award period.

(d)(1) If an institution offers a series of mini-sessions which occurs in two award periods, the combined sessions will be treated as one term. A student may not receive more than one term's award for completing any combination of these sessions.

(2) The institution must determine the student's enrollment status for the entire term. The enrollment status for the entire term will be based upon—

(i) The total number of credits enrolled for in all sessions if that

number is known when the award is calculated, or

(ii) a projected number of credits based upon the credits enrolled for in the first session, if the number of credits to be taken in subsequent sessions is unknown when the award is calculated.

(20 U.S.C. 1070a.)

§ 190.66 Transfer student: attendance at more than one institution during an award period.

(a) If a Basic Grant recipient withdraws from one institution and enrolls at a second in the same award period, the student must submit an SER to the second institution, or to the Commissioner for an institution participating in the program under ADS.

(b) The second institution (or the Commissioner for ADS schools) calculates the student's award according to § 190.64.

(c) The second institution (or the Commissioner for ADS schools) pays a Basic Grant for only that portion of the award period in which the student is enrolled at that institution. The grant must be adjusted to ensure that the student does not exceed the Scheduled Basic Grant for that award period.

(d) A transfer student must repay any amount received in an award period which exceeds the Scheduled Basic Grant.

(20 U.S.C. 1070a.)

§ 190.67 Correspondence study.

A student, enrolled in a program of study by correspondence will be paid according to the following procedures:

(a) The institution prepares a written schedule for submission of lessons. This schedule must reflect a work load of at least 12 hours of preparation per week. It is used to determine the length of the program.

(b) The student's Basic Grant for an award period is calculated by:

(1) Determining the Scheduled Basic Grant according to §§ 190.62 or 190.63, whichever is appropriate, and

(2) Multiplying the Scheduled Basic Grant by the lesser of the following fractions:

$$\frac{1}{2} \quad \text{or} \quad \frac{\text{hours of preparation in the award period}}{\text{hours of preparation in the academic year}}$$

(This procedure insures that students in a program of study by correspondence are paid as half-time students.)

(d) A student will receive 2 equal payments for an award period. The first payment will be made after the student has submitted 25 percent of the lessons scheduled for the award period.

(e) The final payment will be made after the student has submitted 75 percent of the lessons scheduled for the award period.

(20 U.S.C. 1070a.)

Subpart G—Administration of Grant Payments—Regular Disbursement System

§ 190.71 Scope.

This subpart deals with program administration by an institution of higher education that has entered into an agreement with the Commissioner to calculate and pay Basic Grant awards.

(20 U.S.C. 1070a.)

§ 190.72 Institutional agreement—regular disbursement system (RDS).

(a) The Commissioner may enter into an agreement with an institution of higher education under which the institution will calculate and pay Basic Grants to its students. The agreement will be on a standard form provided by the Commissioner and will contain the necessary terms to carry out this part.

(b) The Commissioner will send a Payment Schedule for each award period to an institution that has entered into an agreement under paragraph (a) of this section.

(20 U.S.C. 1070a.)

§ 190.73 Termination of agreement—regular disbursement system.

(a) *Termination by Commissioner.* The Commissioner may terminate the agreement with an institution by giving—

(1) 30 days written notice; or

(2) Less than 30 days written notice if it is necessary to prevent the likelihood of a substantial loss of funds to the Federal government or to students.

(b) *Information provided.* The institution must provide the following information to the Commissioner if the Commissioner terminates the agreement:

(1) The name and enrollment status of each eligible student who submitted a valid SER to the institution before the termination date;

(2) The amount of funds the institution paid to Basic Grant recipients for the award period in which the agreement is terminated;

(3) The amount due to each student eligible to receive a Basic Grant through the end of the award period; and

(4) An accounting of Basic Grant expenditures to the date of termination.

(c) *Termination by institution.* The institution may terminate the agreement by giving the Commissioner written notice. The termination becomes effective on June 30 of that award period. The institution must carry out the agreement for the remainder of the award period.

(d) *Termination because of change in ownership which results in a change of control.* The agreement automatically terminates when an institution changes ownership which results in a change of control. The Commissioner will enter into an agreement with the new owner if the institution complies with requirements set forth in § 149.66 of the "Eligibility Regulations." (45 CFR 149.66.)

(e) If an agreement is terminated, the Commissioner will pay an institution's students ONLY if it enters into an ADS agreement. (See § 190.92.)

(20 U.S.C. 1070a.)

§ 190.74 Advancement of funds to institutions.

The Commissioner will advance funds for each award period, from time to time, to RDS institutions, based on his/her estimate of the institution's need for funds to pay its Basic Grant students.

(20 U.S.C. 1070a(b)(3)(A).)

§ 190.75 Determination of eligibility for payment.

(a) An institution may pay a Basic Grant to a student only after it determines that the student—

(1) Meets the eligibility requirements set forth in section 190.4;

(2) Is enrolled in good standing;

(3) Is maintaining satisfactory progress in his/her course of study;

(4) Is not in default on any National Defense/Direct Student Loan made by that institution or on any Guaranteed Student Loan received for attendance at that institution; and

(5) Does not owe a refund on a Basic Grant, a Supplemental Grant or a State Student Incentive Grant received for attendance at that institution.

(b)(1) Before making any payment to a student for an award period, the institution must confirm that he/she continues to meet the criteria set forth in paragraph (a) of this section.

(2) However, if an eligible student submits an SER to the institution and becomes ineligible before receiving a payment, the institution must pay only the amount which it determines could have been used for educational purposes before the student became ineligible.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself BEFORE the end of the payment period, the institution may pay a Basic

Grant to the student for the entire payment period.

(d) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself AFTER the end of the payment period, the institution may neither pay the student a Basic Grant for that payment period nor make adjustments in subsequent Basic Grant payments to compensate for the loss of aid for that period.

(e) Conditions under which students who are overpaid grants may continue to receive Basic Grants are as follows:

(1) *Overpayment of a Basic Grant.* If an institution makes an overpayment of a Basic Grant to a student, it may continue to make Basic Grant payments to that student if (i) the student is otherwise eligible, and (ii) it can eliminate the overpayment in the award period in which it occurred by adjusting the subsequent Basic Grant payments for that award period.

(2) *Overpayment of a Basic Grant due to institutional error.* In addition to the exception provided in subparagraph (1) of this paragraph, if the institution makes an overpayment of a Basic Grant to a student as a result of its own error, it may continue to make payments to that student if:

(i) The student is otherwise eligible, and

(ii) The student acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment on a Supplemental Grant.* An institution may continue to make Basic Grant payments to a student who receives an overpayment on a Supplemental Grant if:

(i) The student is otherwise eligible, and

(ii) It can eliminate the overpayment by adjusting subsequent financial aid payments (other than Basic Grants) in the same award period in which it occurred.

(f) An institution, in determining whether a student is in default on a loan made under the Guaranteed Student Loan Program, may rely upon the student's written statement that he/she is not in default unless the institution has information to the contrary.

(g) Conditions under which students who are in default on loans made for attendance at that institution may receive Basic Grants are as follows:

(1) *Guaranteed Student Loans.* An institution may pay a Basic Grant to a student who is in default on a Guaranteed Student Loan if the Commissioner (for federally insured loans) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *National Defense/Direct Student Loan.* An institution may pay a Basic Grant to a student who is in default on a National Defense/Direct Student Loan made at that institution, if the student has made arrangements, satisfactory to the institution, to repay the loan.

(3) The Commissioner considers a National Defense Student Loan, a National Direct Student Loan, or a Guaranteed Student Loan which is discharged in bankruptcy to be in default for purposes of this section.

(h) For purposes of this part—

(1) Overpayment of a grant means that a student received payment of a grant greater than the amount he/she was entitled to receive;

(2) Supplemental Grant is a grant authorized under Title IV-A-2 of the HEA;

(3) State Student Incentive Grant is a grant authorized under Title IV-A-3 of the HEA;

(4) National Defense Student Loan is a loan made under Title II of the National Defense Education Act;

(5) National Direct Student Loan is a loan made under Title IV-E of the HEA, and

(6) Guaranteed Student Loan is a loan made under Title IV-B of the HEA.

(20 U.S.C. 1070a, 20 U.S.C. 1070b et seq, 20 U.S.C. 1087aa et seq, 20 U.S.C. 1071 et seq, and 20 U.S.C. 1088f.)

§ 190.76 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) Only one payment is required if a portion of an academic year occurring within one award period is less than three months.

(c) The institution may pay funds due a student for any completed period in one lump sum. The student's enrollment status will be determined according to work already completed.

(20 U.S.C. 1070a.)

§ 190.77 Verification of information on the SER—withholding of payments.

(a)(1) The Commissioner may require that a student verify the information submitted on the application and included on the SER, by submitting appropriate documentation to the institution or to the Commissioner.

(2) The Commissioner may also require that the institution withhold payment of a student's grant until the institution or the Commissioner determines that the student has supplied the correct information.

(b) If an institution believes that any information on the SER used in calculating the student's expected family contribution is inaccurate, or if the application is chosen by the Commissioner for verification, the institution must request that the student verify the information on the SER.

(c) The Commissioner will establish and publish—

(1) Procedures to be used in verifying information for selected students ("Validation Procedures"), and

(2) The conditions under which payments will be made for these students.

(d)(1) If a student makes a correction which results in a change in his/her expected family contribution, the student must submit the SER to the institution, and the institution must recalculate the student's award based on the verified SER. Any overpayment must be repaid by the student.

(2) If the documentation requested by the institution under this section does not verify the information on the SER, or if the student does not correct the SER, the institution must forward the student's name, social security number and other relevant information to the Commissioner in accordance with the procedures referenced in paragraph (c) of this section.

(e) A student corrects an SER by—

(1) Providing accurate information on the SER;

(2) Getting the appropriate signatures on the SER; and

(3) Re-submitting the SER to the Commissioner.

(f) If an institution has documentation which indicates that the information used to calculate the student's expected family contribution on the SER is inaccurate, it may not pay a Basic Grant for any award period until the student corrects the error or verifies the data.

(g) If an institution believes, but cannot document, that inaccuracies exist on the SER, it may not withhold payments unless authorized by the Commissioner. These cases must be forwarded to the Commissioner.

(h)(1) If the Commissioner requests documentation, the student must comply within a time period set by the Commissioner.

(2)(i) If the student provides the requested documentation on time, he/she will be eligible for Basic Grant payments based upon the verified SER.

(ii) If the verified SER is submitted to the institution after the appropriate deadline as specified in § 190.61, but within an established time period to be determined by the Commissioner, the student may be paid only up to the amount withheld because of the verification process.

(3) If the student does not provide the requested documentation within the established time period—

(i) The student will forfeit the Basic Grant for the award period,

(ii) Any grant payments received must be returned to the Commissioner, and

(iii) No further Basic Grant applications will be processed for that student until documentation has been provided or the Commissioner decides there is no longer need for documentation.

(20 U.S.C. 1070a.)

§ 190.78 Method of disbursement—by check or credit to student's account.

(a) The institution may pay a student either directly by check or by crediting his/her account with the institution. The institution must notify the student of the amount of money he/she can expect to receive, and how he/she will be paid.

(b)(1) The institution may not make a payment to a student for a payment period until the student is registered for that period.

(2) The earliest an institution can directly pay a registered student is 10 days before the first day of classes of a payment period.

(3) The earliest an institution can credit a registered student's account is 3 weeks before the first day of classes of a payment period.

(c) The institution must return to the Basic Grant account any funds paid to a student who, before the first day of classes—

(1) officially or unofficially withdraws, or

(2) is expelled.

(d)(1) If an institution pays a student directly, it must notify him/her when it will pay the Basic Grant award.

(2) If a student does not pick up the check on time, the institution must keep that check for 15 days after the date the student's enrollment for that award period ends.

(3) If the student has not picked up the check at the end of the 15 day period, the institution may credit the student's account for any amount owed to it for the award period.

(4) A student forfeits the right to receive any remaining Basic Grant payment if he/she does not pick up the check within the specified period of time.

(5) Notwithstanding subparagraph (4) of this paragraph, the institution may, if it chooses, pay a student who did not pick up the check, through the next payment period.

(20 U.S.C. 1070a.)

§ 190.79 Affidavit of educational purpose.

No Basic Grant may be paid unless the student has filed a notarized affidavit with the institution he/she attends which—

(a) Is on a form approved by the Commissioner;

(b) States that the grant money will be used solely for educational expenses at the institution; and

(c) Is notarized by someone who does not recruit students for the institution.

(20 U.S.C. 1088g.)

§ 190.80 Recovery of overpayments.

(a)(1) The student is liable for any overpayment made to him/her.

(2) Also, the institution is liable for an overpayment it makes to a student if the regulations indicate that the payment should not have been made. The institution must restore those funds to the Basic Grant account even if it cannot collect the overpayment from the student.

(b) If an institution makes an overpayment for which it is not liable, it must help the Commissioner recover the overpayment by—

(1) Making a reasonable effort to contact the student and recover the overpayment; and, if unsuccessful,

(2) Providing the Commissioner with the student's name, social security number, amount of overpayment and other relevant information.

(20 U.S.C. 1070a.)

§ 190.81 Recalculation of a Basic Grant award.

(a) *Change in expected family contribution.* (1) If the student's expected family contribution changes the institution must recalculate the Basic Grant Award.

(2) Except as provided in § 190.77(h)(2)(ii), the institution must adjust the award and pay the student the amount he/she is entitled to for the award period if the expected family contribution is recalculated because of—

(i) A clerical or arithmetic error under § 190.15, or

(ii) Extraordinary circumstances which affect the expected family contribution under §§ 190.39 and 190.48.

(3) If a student's expected family contribution is recalculated because of a correction of the information requested under §§ 190.12 or 190.77, the student's Basic Grant for the award period must be adjusted. Where possible, the adjustment must be made within the same award period.

(4) If the recalculation takes place in a subsequent award period, the student will be

(i) Eligible to receive payment unless prohibited under the provisions of § 190.77(h) and

(ii) Required to return any overpayment at the time of recalculation.

(b) *Change in enrollment status.*

(1) If an institution decides that a student's enrollment status has changed during a payment period, it may (but is not required to) establish a policy under which the student's award may be recalculated.

(2) If such a policy is established, it must apply to all students.

(3) If a student's award is recalculated, the institution determines the total amount the student is entitled to for the entire payment period by taking into account—

(i) The portion of the payment period at the original enrollment status;

(ii) The portion of the payment period at the new enrollment status; and

(iii) Any change in the student's cost of attendance.

(20 U.S.C. 1070a.)

§ 190.82 Fiscal control and fund accounting procedures.

(a)(1)(i) An institution must receive and process all Basic Grant funds through one identifiable bank account.

(ii) This account may be an existing one (preferably one maintained for Federal funds) if the institution maintains adequate accounting records to account for the Basic Grant funds separately from the other funds in that account.

(iii) At no time may the Basic Grant funds in this bank account be less than the balance indicated in the institution's accounting records for these funds.

(2) The institution must account for the receipt and expenditure of Basic Grant funds in accordance with generally accepted accounting principles.

(b) A separate bank account for Basic Grant funds is not required. However, the institution must notify any bank in which it deposits Basic Grant funds of all accounts in that bank in which it deposits Federal funds. This notice can be given by either:

(i) Including in the name of the account the fact that Federal funds are deposited therein; or

(ii) Sending a letter to the bank listing the accounts in which Federal funds will be deposited. A copy of this letter must be retained in the institution's files.

(c) Except for funds received under § 190.10, funds received by an institution under this part are held in trust for the intended student beneficiaries and may not be used or hypothecated for any other purpose.

(20 U.S.C. 1070a.)

§ 190.83 Maintenance and retention of records.

(a) Each institution must maintain adequate records which include the fiscal and accounting records that will be required under § 190.82 and records indicating—

(1) The eligibility of all enrolled students who have submitted a valid SER to the institution;

(2) The name, social security number, and amount paid to each recipient;

(3) The amount and date of each payment;

(4) The amount and date of any overpayment that has been restored to the program account;

(5) The "Student Eligibility Report" for each student;

(6) The student's cost of attendance;

(7) How the student's full or part-time enrollment status was determined; and

(8) The student's enrollment period.

(b) The institution must make the records listed in paragraph (a) available for inspection by the Commissioner's authorized representative at any reasonable time in the institution's offices. It must keep these records for five years after it submits an accounting of each award period's funds to the Commissioner.

(c) The institution must keep records involved in any claim or expenditure questioned by Federal audit until resolution of any audit questions.

(d) An institution may substitute microfilm copies in lieu of original records in meeting the requirements of this section.

(20 U.S.C. 1070a.)

§ 190.84 Submission of reports.

The institution must submit the reports and information the Commissioner requires in connection with the funds advanced to it and must comply with the procedures the Commissioner finds necessary to ensure that the reports are correct.

(20 U.S.C. 1070a.)

§ 190.85 Audit and examination.

(a) *Federal audits.* The institution must give the Secretary, the Comptroller General of the United States, or their duly authorized representatives, access to the records specified in §§ 190.82 and 190.83 and to any other pertinent books, documents, papers and records.

(b) *Non-Federal audits.* The institution must audit or have audited under its direction all Basic Grant Program transactions to determine at a minimum—

(1) The fiscal integrity of financial transactions and reports; and

(2) If such transactions are in compliance with the applicable laws and regulations. Such audits will be performed in accordance with HEW's "Audit Guide" for the Basic Grant Program.

(3) The institution must have an audit performed at least once every two years.

(c) The institution must submit audit reports to the institution's local regional office of HEW's Audit Agency. It must give the Audit Agency and the Commissioner access to records or other documents necessary to the audit's review.

(20 U.S.C. 1070a.)

Subpart H—Administration of Grant Payments—Alternate Disbursement System

§ 190.91 Scope.

This subpart deals with program administration by an institution of higher education under the Alternate Disbursement System (ADS). Under the ADS, the Commissioner calculates and pays the Basic Grant awards.

(20 U.S.C. 1070a.)

§ 190.92 Institutional agreement—Alternate Disbursement System (ADS).

(a) Under ADS, the Commissioner will calculate and pay Basic Grant awards to students enrolled in an institution which has entered into an agreement to carry out this subpart.

(b) Under this agreement, the institution agrees to:

(1) complete OE Form 304 for each eligible student, as specified in § 190.94; and

(2) maintain and keep records as specified in § 190.96.

(20 U.S.C. 1070a.)

§ 190.93 Change in ownership and change to the Regular Disbursement System (RDS).

(a) *Change to RDS.* The Commissioner may enter into an agreement with an ADS institution which wishes to participate in the program under the Regular Disbursement System. However, the agreement will go into effect July 1 of the succeeding award period.

(b) *Termination because of change in ownership that results in a change in control.* (1) An ADS agreement terminates when an institution changes ownership that results in a change in control. (2) The Commissioner may enter into an agreement with the new owner if the institution complies with the requirements set forth in § 149.66 of the "Eligibility Regulations," (45 CFR 149.66).

(20 U.S.C. 1070a.)

§ 190.94 Calculation and disbursement of awards by the Commissioner of Education.

(a) An eligible student enrolled in an institution participating in the Basic Grant Program under the ADS applies to the Commissioner for a Basic Grant according to the following procedures:

(1) The student submits an SER to his/her institution and obtains an OE Form 304 from the institution;

(2) The student completes the OE Form 304, including the affidavit of educational purpose described under § 190.79, and submits it to the institution;

(3) On the OE Form 304 the institution certifies that the student—

(i) Meets eligibility requirements of § 190.4,

(ii) Is maintaining satisfactory progress in his/her course of study,

(iii) Does not owe a refund on grants received for attendance at that institution under the Basic Grant, the Supplemental Grant, or the State Student Incentive Grant Programs, and

(iv) Is not in default on any National Defense/Direct Student Loan made by the institution or on any Guaranteed Student Loan received for attendance at that institution. (In determining whether a student is in default on a GSL, the institution may rely on a written statement provided by the student unless the institution has information to the contrary); and

(4) The institution returns the SER and OE Form 304 to the student, who then submits these documents to the Commissioner. Both documents must be received by the Commissioner on or before the deadline dates described in § 190.61.

(b) If an institution believes that the information on an SER may be in error, the institution must notify the student and request documentation or correction. Any case not resolved by the institution should be reported to the Commissioner.

(c) The Commissioner will calculate a student's award in accordance with Subpart F of this part and will pay the student once every payment period.

(20 U.S.C. 1070a.)

§ 190.95 Termination of enrollment and refund.

(a) The institution must inform the Commissioner of the date when a student officially or unofficially withdraws or is expelled during a payment period for which that student was paid.

(b) A student who officially or unofficially withdraws or is expelled from an institution before completion of 50 percent of a payment period for which he/she has been paid, will refund a prorated portion of the payment as determined by the Commissioner.

(20 U.S.C. 1070a.)

§ 190.96 Maintenance and retention of records.

(a) An institution under the ADS must establish and maintain—

(1) Records relating to each Basic Grant recipient's enrollment status, and attendance costs at the institution; and

(2) Records showing when each recipient was enrolled.

(b) The institution must make these records available at the geographic location where the student will receive his/her degree or certificate of course completion, and must keep them for five years following a recipient's last date of enrollment.

(c) The institution will make available to the Commissioner, the Secretary, the Comptroller General of the United States, and their authorized representatives, pertinent books, documents, papers and records for audit and examination during the five year retention period.

(d) An institution may substitute microfilm copies in lieu of original records in meeting the requirements of this section.

(20 U.S.C. 1070.)

APPENDIX A—SUMMARY OF COMMENTS AND RESPONSES

Set forth below is a summary of the public comments received on the proposed Basic Grant Administrative and Technical regulations and the Office of Education responses to those comments. Generally, the comments and responses appear in the numerical sequence of the regulations and are identified with the section number and title of the section to which they refer.

§ 190.2 General Definitions.

(a) *academic year*

Comment. Several commenters asked if institutions with a longer academic year than the minimum provided in § 190.2(a) could use their longer academic year as their institutional standard. One commenter suggested the insertion of the phrase "at least" prior to § 190.2(a)(1) to indicate that the definition merely establishes minimum criteria for an institution's academic year, and that the institution has the flexibility to adhere to a longer one if it so chose.

Response. An institution with a longer academic year than the minimum provided in § 190.2(a) must use that longer year as the institution's standard. To that end the Commissioner has adopted the commenter's suggestion to insert the phrase "at least" in the definition of an "academic year."

900 Clock Hour Minimum

Comment. The 900 clock hour minimum requirement for each program during an academic year is regarded by many commenters as too stringent. Several questioned the logic behind the 900 figure. They indicated that if a student completed a thirty-six week course at 24 clock hours per week the student would accumulate only 864 clock hours, and suggested a reduction to at least that number of clock hours as a minimum requirement.

One commenter recommended the adoption of a standard of 750 clock hours for a one year program as the minimum number of clock hours used to measure an academic year. Another suggested a reduction to 800 clock hours on the basis of an eight month academic year which is the equivalent of two semesters or three quarters.

A majority of commenters disagreed with the 900 clock hour minimum on the basis of the recent changes in the Veterans' Administration requirements. The requirements for a full-time student at clock hour institutions receiving Veterans benefits was reduced from 24 clock hours a week to 18 clock hours in theory oriented courses and 22 clock hours in laboratory or workshop oriented courses. Utilizing these new clock hour requirements, the commenters suggested an academic year ranging from 648 to 792 clock hours. Several other commenters pointed to the lack of consistency between the 900 clock hour requirement and the Veterans' Administration requirements of 648 to 792 and suggested that this inconsistency would greatly increase record-keeping and monitoring of students who are recipients under both programs.

Full-time student

Many commenters disagreed with the proposed definition. Several questioned the continued viability of requiring 24 clock hours per week as a facet of the definition. These commenters, referring to the recent action of the Veterans' Administration, recommended that the Office of Education revise the full-time student definition to address these changes and thereby eliminate the inconsistency among the various student assistance programs. The proposed regulation requiring 24 clock hours per week was further criticized as being inconsistent with the notice of proposed rulemaking recently published for the Guaranteed Student Loan Program which required 25 clock hours per week for a full-time student. These commenters suggested that the current criteria for full-time student status of 18 clock hours per week for theory related coursework and 22 clock hours per week for laboratory or workshop related coursework used by the Veterans' Administration be adopted by the Office of Education.

Citing the history of the clock hour requirement another commenter recommended that, since the Office of Education originally adopted the then current Veterans' Administration requirement of 25 clock hours per week in its original definition, consistency of treatment requires that the Office of Education reduce the number of clock hours required to the Veterans' Administration minimum.

Response. The recommendations for revising the number of clock hours in an academic year have not been adopted. The Commissioner believes that 900 clock hours is the appropriate equivalent of two semesters, two trimesters or three quarters.

The 900 clock hours equivalent was calculated in the following manner. A one year program was considered to be one academic year of approximately nine months, or 36 weeks in length. A full-time student in a clock hour program was considered full-time if he or she was taking 25 clock hours per week. Nine hundred hours is the product of multiplying 25 x 36. The Commissioner has subsequently reduced the minimum number of clock hours a student must take to be full-time but this change was undertaken for the convenience of having the definition of half-time study equal one-half of full-time study.

The Commissioner does not believe that the action of the Congress in reducing the number of hours that a veteran must take in a clock hour program to be considered a full-time student requires a similar change in the Basic Grant program.

Congress reduced the number of hours required for full-time study to permit a certain limited class of students, basically Vietnam era veterans, to receive a larger grant. If the Commissioner reduced the definition of a full-time student and an academic year to the level included in the veterans education benefits program legislation, the effect would be all encompassing and not limited to a particular class of students. While the Commissioner believes in the desirability of uniformity where appropriate, he believes that the definitions included in the proposed rule more accurately reflect full-time study. Therefore, the definition of an academic year of 900 clock hours and full-time study in a clock hour program of 24 clock hours a week will not be changed.

(c) *award period*

Comment. Two commenters questioned the need for the term and suggested that the term "fiscal year" be used in place of "award period." One commenter recommended that the dates of the Federal fiscal year—October 1 and September 30th—be used in place of the July 1 and June 30th dates.

Response. The suggestions were not adopted. To provide consistency with all title IV Programs, the name for the period of time between July 1 of one year and June 30 of the subsequent year was changed in the notice of proposed rulemaking. The definition is now standard for all Title IV Programs and remains in the final regulation unamended.

(d) *clock hour*

Comment. Two commenters suggested that the definition specify either a 50 or a 60 minute class period as the standard in the interest of clarity. One commenter felt that the clock hour definition was too restrictive. The commenter suggested that some institutional clock hours may be as little as 45 minutes in length, and requested that the exact extent of time in minutes be left to the institution's complete discretion.

Response. The suggestions were not adopted. The Commissioner believes that the current definition is reasonable and that it allows for sufficient institutional flexibility. Additionally, it is consistent with other Title IV Programs.

(g) *enrollment status*

Comment. One of the proposed revisions included in the May 15 NPRM was a new procedure for calculating awards at term-based institutions which use credit hours. Under the proposed rule students enrolled less than full-time would no longer be divided into three-quarter and half-time categories. Rather, it was proposed that a student's part-time status would reflect the exact degree that his/her enrollment related to full-time status. For example, a student enrolled for 11 credit hours would receive 11/12 of a full-time award for the term instead of receiving an award as a three-quarter-time student.

Many commenters suggested that this fractional concept not be implemented. One

commenter stated that, in effect, the institution must employ multiple payment schedules for a variety of "cost" situations in each of the fractional enrollment status situations. Another criticized the proposed definition as "unmeasurably difficult, time consuming and frustrating." A third suggested that the costs to the institutions in performing these calculations are much more severe than the actual dollar differences lost or gained by using the current range of credit hours. Another requested a postponement of the implementation of this fractional concept to give the financial aid community more time to reflect upon the concept and to react to the proposed change. Several commenters alluded to the difficulty of reprogramming their computer operations for the 1978-79 award period if this fractional concept becomes effective with the publication of the final regulation.

Response. For the reasons stated by the commenters, the fractional concept of enrollment status has been omitted in the final regulations. Instead enrollment status will refer to a student's status as a full-time, three-quarter-time or half-time student. A definition of three-quarter-time student status has been incorporated in the final regulation. For those institutions which use credit hours and academic terms, the final regulation does not embody a change in the method of calculating awards from the procedure under the old regulation.

Comment. Three commenters criticized the 12 semester or 12 quarter hour requirement for full-time student status as being inadequate. Citing the fact that most institutions require between 15 and 18 hours per term for eight semesters or 12 quarters, a full-time student, according to the definition in § 190.2(h)(1) and (2), would not have completed the degree requirements within four years and yet not be eligible for a fifth year grant. One commenter suggested raising the minimum requirement to 15 credit hours while another suggested 18 credit hours per term.

Response. The suggestions were not adopted. The criteria set forth in § 190.2(h)(1) and (2) are only minimum criteria. An institution must use the actual credit hours required of a full-time student at that institution in determining whether a student is full-time if that number is at least as much as the minimum numbers included in the definition. The definition is not intended to limit an institution's requiring more than the minimum, rather the definition provides a minimum number of credit hours to be considered full-time status under the Basic Grant Program.

Comment. A majority of commenters suggested that, in place of the proposed full-time student definition, the definition applicable in the Supplemental Educational Opportunity Grant (SEOG) Program regulations be adopted for Basic Grants. The change was also suggested by several of the financial aid organizations, arguing that the adoption of the SEOG Program definition would achieve two goals: (1) increased clarity and a simplification of the regulation, and (2) provide greater uniformity of definitions among the Title IV Programs.

One commenter cited the proposed full-time student definition as an example of over-regulation. In the commenter's opinion, the Office of Education, in attempting to address every conceivable type of full-time student situation, has created an unworkable definition. Another commenter believed that the proposed definition created an intrusion into the activities of non-traditional and innovative institutions by forcing them to choose one of the proposed minimum requirements.

Response. The suggestion to adopt the relevant subsection of the SEOG Program regulation was not adopted. Full-time student status under the SEOG Program has no relation to the amount of money a student receives. However under the Basic Grant Program full-time status is directly related to the amount of grant funds a student receives. The Commissioner does not believe that the definition is an example of over-regulation. On the contrary, the definition puts forth minimum standards in an effort to establish a base for the consistent treatment of all Basic Grant recipients.

(i) *good standing*

Comment. One commenter questioned the distinction between good standing and satisfactory progress. Another suggested that it is confusing to have a definition of good standing and not a definition of satisfactory progress and recommended the final regulation include a written definition of satisfactory progress. A third commenter recommended deletion of the definition.

Response. The recommendation to include in the final regulation a definition of satisfactory progress was not adopted. The Commissioner believes that an institution should develop its own standards of satisfactory progress.

An institution must have a written standard of satisfactory progress which is applicable for all student recipients of Title IV funds in order for its students to receive those funds. The content is strictly an institutional concern. Satisfactory progress is an evaluation of a student's efforts to achieve an educational goal within a given period of time. Accordingly, in formulating its standard, the institution should take into consideration the normal time frame for completing a course of study and must have some means, such as grades or work projects completed, which can be measured against a norm.

The recommendation to delete the definition of good standing has not been adopted. The term is taken directly from the authorizing legislation (Higher Education Act (HEA) of 1965 as amended, SEC 411(a)(1)). A conceptual difference exists between good standing and satisfactory progress. Good standing means that a student is capable of continuing enrollment, while satisfactory progress means that the student is proceeding in a positive manner toward fulfilling degree or cerfificate requirements.

(o) *Student Eligibility Report*

Comment. Three commenters suggested that the name Student Eligibility Report (SER) is confusing to students and their families and recommended that the report be called a Basic Grant Report. Two commenters thought the definition was misleading and would confuse students. One commenter recommended that the definition indicate that the report is provided by the Office of Education.

Response. The final regulation has not been amended. The Commissioner does not believe that the definition or the title of the report are confusing or misleading to students. The name of the report has been used for the last five years of the program and a change in nomenclature now would create the very confusion the commenters wished to prevent.

(q) *undergraduate student*

Comment. A number of respondents questioned the meaning and purpose of § 190.2(p)(2) particularly the concluding sentence which states that a student is considered an undergraduate student for only the first four years of a course of study which may be longer in duration.

Response. This statement is designed to clarify the status of students whose academic program may be five, six or more years in length. Program experience indicates that there has been confusion as to the duration of undergraduate status. Therefore, this clarifying sentence was inserted in the regulation.

Comment. Several commenters were dissatisfied with the proposed definition. One suggested adding the word "eligible" to delineate an undergraduate course of study. Another suggested clarifying the definition by substituting the phrase "completed the academic work toward a baccalaureate" for the term "awarded a baccalaureate," on the justification that a student not awarded a degree but having completed the requirements would be eligible to receive additional Basic Grant awards.

Response. The suggestions for amendments were not adopted. The insertion of the word "eligible" would render the definition redundant. In the case of the term "awarded", a student is considered an undergraduate until he or she has been awarded a baccalaureate. Using the suggested language would require a financial aid officer to know exactly at what point a student has sufficient credits to graduate and would not take into account a student's change of program or major.

§ 190.2a Special Terms.

§ 190.2a(b) *Eligible Program in a proprietary institution*

(c) *Regular student*

§ 190.3(b) *Proprietary Institution of higher education*

§ 190.4 *Eligible student*

Under the proposed regulations, an eligible proprietary institution was limited to those proprietary schools that restrict their enrollment of regular students to high school graduates or their equivalent. The definition of an eligible program in a proprietary institution included only those programs which, among other things, admitted as regular students only high school graduates or their equivalent. Section 190.4, the student eligibility section, provided that Basic Grants could be awarded only to regular students. Finally, the definition of a regular student described that student, in effect, as a student who enrolls in an institution for the purpose of obtaining a degree or certificate in a program which that institution is qualified to give. As a result of these provisions, non-high school graduates or non-GED certificate holders attending proprietary institutions were ineligible to receive Basic Grants. Furthermore, their presence in a degree or certificate program at a proprietary institution made both that program and that institution ineligible so that no student attending that Program would be able to receive a Basic Grant.

Numerous comments were received objecting to these provisions. Many felt that proprietary schools were being unfairly singled out in contrast to public and non-profit pri-

vate institutions, and that non-high school graduates were being unfairly treated.

The difference in treatment between proprietary institutions and public and non-profit private institutions was based upon the statutory definitions of those terms as they existed at the time the proposed regulations were published. Therefore, a different treatment was not only proper, it was required.

Briefly, the historical background for the difference in treatment resulting from the statute is as follows. Before the enactment of the Education Amendments of 1976, one requirement of institutional eligibility was that an institution must admit as regular students only persons with a high school diploma or the recognized equivalent. The Education Amendments of 1976 amended the Higher Education Act of 1965 by providing that public and private non-profit institutions could also admit as regular students "persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution." This statutory change in institutional eligibility requirements did not affect proprietary institutions. However, the Middle Income Student Assistance Act has now extended this change in institutional eligibility requirements to proprietary institutions. Consequently, all differences in treatment in the definitions in Subpart A of the proposed regulations which had been based upon the differing statutory definitions have been removed in the final regulations.

§ 190.2a(a) *Eligible Program*

Comment. Three commenters asked that the term "GED Certificate" used in § 190.2a(a)(1)(ii) be supplemented to include several of the State equivalency program certificates.

Response. The recommendation has been adopted. In addition to specifying the General Education Development Certificate, the final regulation also makes reference to recognized state equivalencies.

Comment. One commenter requested that parallel language be used in § 190.2a(a)(1)(iii) and § 190.3(a)(iii) and suggested instead of "may benefit" the use of the phrase "have the ability to benefit." The commenter argued for the parallel language because the latter phrase (§ 190.3(a)(iii)) is taken directly from the authorizing legislation (HEA 1965 as amended, Sec. 411(a)(1)).

Response. The suggestion has been adopted and parallel language has been incorporated in the final regulation.

Comment. One commenter asked for a definition of the terms "gainful employment" and "recognized occupation" as these terms appear in § 190.2a(b)(3).

Response. The suggestion has not been adopted. These terms will be defined in the forthcoming proposed regulations regarding Eligible Institutions, which will govern institutional participation in all Title IV programs.

(f) *Payment period—General*

Comment. Several commenters objected to the distinction made in the proposed regulations between clock hour and credit hour institutions. One commenter questioned the distinction and suggested that it would result in inequitable treatment for students in proprietary institutions.

Five commenters voiced concern over what they felt was excessive monitoring of students under either the payment period proposed in the regulation or the alternative payment period proposed in the Preamble.

Four commenters requested clarification as to how to treat absences for short illness, family death, or other such non-voluntary situations in which the student incurs clock hour absence if the proposed definition of payment period published in the regulation were adopted in the final regulation. One commenter requested that if the payment period method proposed in the regulation were adopted, specific guidelines should be made part of the regulation indicating any tolerance levels that would be operative in the situation of non-voluntary absences.

Commenters, however, were generally in favor of the payment period proposed in the regulation as being the most equitable to students.

Response. The recommendation of many of the commenters to adopt the concept of a payment period with a fixed number of clock hours has been adopted and incorporated in the final regulation.

The question of the treatment of absences under the payment period method using a fixed number of clock hours warrants some discussion. Under this method a student may not be paid a second payment until all the clock hours for which the student was paid in the first payment period are completed. However, if the institution allows a certain number of hours of absences which do not have to be made up in order to complete the academic year, those allowable hours of absences may be taken into account in determining when the second payment should be made. This concept of payment period was developed as a response to questions from proprietary institution officials as to how to treat those students whose hours of attendance may fluctuate.

§ 190 Institution of Higher Education.

(a) *public or other non-profit institution*

Comment. One commenter requested the insertion of the term "usually" in § 190.3(a)(2)(i) and (ii) so that extraordinary students who are sometimes accepted by universities and colleges before they complete their high school education would not be in question.

Response. No change was made in the regulation. The Commissioner believes that extraordinary students accepted for admission by colleges and universities before they complete their high school education are generally above the age of compulsory school attendance. They would thus not pose a problem to the institution's eligibility status.

Comment. Several commenters criticized the inclusion in § 190.3(a)(2)(iii) of both the "ability to benefit from the training offered" clause and the documentation required of the institution. Citing the fact that it is an institutional matter to determine who has the ability to benefit, one commenter stated that the means of determining ability to benefit is a matter of institutional decision making. Another commenter considered the wording an unwarranted intrusion by the Federal Government into the admissions process of the institution.

Three commenters objected to the ability to benefit sections as endangering the "open door" policy of most community colleges. One commenter stated that this section, if unamended, will be used to deny potentially capable students any chance to attempt higher education. Another commenter suggested that the present rules governing satisfactory progress are a much more appropriate point to assess a student's ability to benefit from the training offered by local public postsecondary educational institutions.

Several other commenters criticized the "linkage" of the definition of public and non-profit institutions and the definition of regular student.

These commenters argued that the linkage presumes upon the ability of the institution of higher education to determine whom it should or should not admit to its academic programs. One commenter complained that the definition of a public or non-profit institution of higher education intruded upon the integrity of the institution's decision making process with respect to its academic programs and overall educational philosophy.

Two commenters voiced the opinion that this section (190.3(a)) violates Section 432 of the General Education Provisions Act of 1970, which prohibits a department or agency of the Federal Government from exercising any direction, supervision or control over the curriculum, program of instruction, administration or personnel at any educational institution. Whom an institution admits as a student, the commenter stated, should be the institution's decision alone.

One commenter suggested an addition to the criteria of § 190.3(a)(2)(iii). As part of the test as to whether a student "has the ability to benefit," performance (where applicable) at a secondary school be included. This, the commenter said, would obviate the necessity of "subjecting" to the same test all those beyond the age of compulsory school attendance.

Another commenter stated that documenting a student's ability to benefit by using requirements beyond the normal admissions requirements was an unrealistic additional burden to place upon an institution. Further, the commenter complained it is discriminatory because no similar requirement exists requiring tests and recommendations for high school graduates or GED certificate holders. This commenter recommended the deletion of the ability to benefit section of § 190.3 (a)(2)(iii).

Response. No change was made. The Education Amendments of 1976 expanded the definition of a public and non-profit private institution of higher education in section 1201(a) of the Higher Education Act by allowing those institutions to admit as regular students persons above the age of compulsory school attendance who had the ability to benefit from the training offered. Before this revision, those institutions could admit as regular students only high school graduates or their equivalent. Similarly, the Middle Income Student Assistance Act amended this definition of a proprietary institution of higher education to allow proprietary institutions to admit as regular students the same type of individual.

The Commissioner is merely giving effect to these statutory provisions by requiring each institution to document that the persons it admits as regular students who do not have a high school diploma or an equivalent degree, can, in fact, benefit from the education or training it offers.

These statutory and regulatory provisions affect the open door admission policy of institutions only if the students enrolled under the policy are admitted as regular students. Moreover, the Commissioner believes this requirement is consistent with the open door policy which is to provide a higher education opportunity to students with a potential to benefit from that experience.

Comment. Two commenters objected to the more stringent requirements of § 190.3(a)(4)(iii) and § 190.3(c)(2) for program lengths in comparison to the program lengths in proprietary institutions as stated in § 190.3(b)(5) and § 190.3(d)(2). One commenter stated that, in the community college sector, particularly in the areas of adult education and night school instructional programs, the community college frequently functions exactly like a proprietary institution because the programs are of identical length. Yet this commenter stated, the program in the community college is ineligible while the exact same program in a proprietary school is eligible. The other commenter stated that the two should be treated in a like manner since both are fulfilling virtually the same community and social purpose.

Response. The recommendation to reduce program lengths for public and private nonprofit institutions has not been adopted. The one and two year program distinctions are taken directly from the statute (HEA 1965 as amended, Section 1141(a)) and are retained in the final regulation.

Comment. One commenter suggested the language of § 190.3(a)(5)(i) be clarified by inserting "accredited by a nationally recognized accrediting agency or association," on the basis that statutory legislation uses this language to define postsecondary institutions for program purposes. Another commenter questioned the use of the unspecific language in § 190.3(b)(6) regarding accrediting agencies.

Response. The recommendation has been accepted and incorporated in the final regulation in § 190.3(a)(5)(i) and § 190.3(b)(6). The final regulation now uses the language exactly as in the statute.

Comment. Another commenter stated that § 190.3(a)(5)(iii) violates 20 U.S.C. 1141(a)(5)(A) which places the burden on the Commissioner to determine "satisfactory assurance" and not the opposite as proposed in the regulation. The commenter suggested the section be revised to conform to the statute.

Response. The recommendation to revise the language of this subsection has not been adopted. The regulation retains the original language because, contrary to the commenter's interpretation of the subsection, there is no contravention of the statute in the present wording.

Comment. In § 190.3(a)(5)(iv) the phrase "fully accredited" was objected to by one commenter on the grounds that the term accreditation is a plenary term (i.e., complete in itself) and a school is either accredited or not accredited.

Response. The recommendation has been adopted and the final regulation has been amended.

(c) *One year training program, and (d) Six month training program.*

Comment. As was discussed above under § 190.2(a) academic year, many commenters thought the 900 clock hour requirement for a one year program was too stringent. Most of the commenters on these sections tended to treat the terms "academic year" and "one year training program" as synonymous.

Several commenters also thought that the 600 clock hour requirement for a six month program was too stringent. Specifically, four commenters voiced confusion over § 190.3(d)(2) because the proposed regulation no longer specifies a calendar basis as a facet of the program length and requested clarification of the issue. One commenter asked whether an eligible program exists if the student's program is fifteen weeks in duration and the student is in class for 40 clock hours a week.

Many of these commenters asked that the one year, and six month training program definitions be explained both in clock hours and in calendar months of study thereby allowing some institutional flexibility in these matters.

Finally, one commenter thought the definition of the six month training program as proposed in the regulation would cause confusion. This commenter recommended an insertion in the definition which would state that Basic Grant awards for programs less than 900 clock hours must be proportionally reduced. This insertion, she believed, would clarify this problem and prevent institutions from miscalculating awards.

Response. The recommendation to define one year, and six month training programs in terms of calendar months has not been accepted. The purpose of defining these programs of training solely in terms of clock hours and not in length of calendar months is to provide a means of measurement for the programs, not in terms of the length of time either program takes to complete, but in terms of the actual amount of training that occurs.

The discussion of how the 900 clock hour minimum was derived has been set forth in the comments and responses relating to § 190.2.

Those institutions which have had six month training courses which do not equal the 600 clock hour figure will, if the institutions wish that the programs retain their eligibility, be required to readjust their programs slightly to meet the 600 clock hour requirement.

Finally, the Commissioner does not believe that it is necessary to indicate in § 190.3(d) that Basic Grant awards must be proportionately reduced if a program is less than the length of the institution's academic year. Under § 190.64 Basic Grant awards must be proportionately reduced if a program is less than the length of the institution's academic year.

In response to a question of one of the commenters, a 15-week, 40-hour a week program would satisfy the 600 clock hour requirement. Of course, in that case, a full-time student would be one who is taking 40 hours a week, not 24.

Comment. Several commenters requested the insertion of the phrase "including those institutions that use such credit hours to measure progress" to § 190.3(d)(1) to include institutions which historically have operated on clock hours but award credit in terms of semester or quarter units.

Response. The phrase was inadvertently omitted in the notice of proposed rulemaking. The recommendation has been adopted and incorporated in the final regulation.

§ 190.4 Eligible Student.

Comment. Four commenters questioned the use of the word "intends" in the discussion of citizenship under § 190.4(a)(3). One commenter requested that the final regulation specifically list the eligible visa classifications of the Immigration and Naturalization Service. Another stated that it is difficult to prove "intent," for students regularly claim that they plan on becoming permanent citizens when they have no real intention of this or they have not taken any steps to achieve this.

Response. The recommendation was adopted in a modified form. The regulation provides authority for allowing students who can provide evidence from the Immigration and Naturalization Service that they have the intent to become permanent residents to be eligible. The Basic Grant Handbook and the application instructions delineate those acceptable visa classifications and other applicable eligible Immigration and Naturalization Service (INS) documents. Those classifications have not been listed in the regulation because they are subject to change by the INS. Students in the U.S. only on a student visa, of course, are not eligible for Basic Grant assistance.

Comment. Four commenters requested the insertion of the clarifying phrase "and has not been awarded a baccalaureate or first professional degree" in § 190.4(a)(1).

Response. The suggestion has not been adopted. The definition of undergraduate student includes the criteria suggested by the commenter under § 190.2(q) which defines an undergraduate student as one who has not received a baccalaureate or first professional degree.

Comment. Ten commenters suggested changes in § 190.4(b) regarding the ineligibility of members of religious communities for Basic Grants and suggested the adoption of the applicable section of the Supplemental Educational Opportunity Grants Program regulations (§ 176.9(d)) for reasons of clarity and standardization of Title IV Program language.

Response. The recommendations have not been adopted. While the concept is the same for both programs, the nature of the Basic Grant program requires that the prohibition of eligibility for members of religious orders be stated in a different manner than it is in the Supplemental Educational Opportunity Grant program.

Comment. Two commenters suggested revising the language of § 190.4(b) because although monotheist religious community members are excluded from participating in the Basic Grant Program, polytheist religious community members are not. One commenter requested that this inconsistency be recitified in the final regulation.

Response. The recommendation for revision has not been adopted. The Commissioner believes that the intent of the regulation is sufficiently understood to mean members of any religious community.

§ 190.5 Duration of Student Eligibility.

Comment. One commenter asked whether the non-credit remedial course of study must be required of the student by the institution for the student to be eligible for the additional eligibility period.

Response. Yes, these courses will extend a student's duration of eligibility beyond four full years only if the institution requires that the student take them.

Comment. Five commenters suggested substituting the term "baccalaureate" for

"academic" in § 190.5(b). Community college students are often required to enroll in remedial courses that are granted credit towards the community college's degree but are not transferable to a baccalaureate-granting institution.

Response. The suggestion was not adopted. The term "academic degree" is taken directly from the authorizing legislation (HEA 1965 as amended, Sec. 411(a)(4)(B)).

Comment. Three commenters argued that the phrase "non-credit remedial course of study" in § 190.5(a)(2) be replaced by "remedial, developmental or supportive coursework including a reduced rate of credit accumulation," in an effort to help the educationally disadvantaged who may be given some credit for remedial work.

Response. The suggestion was not adopted at this time because § 190.5(a)(2) is taken directly from the authorizing legislation.

Comment. Two commenters complained that § 190.5(c) was confusingly written and that the present wording was unclear. Several others questioned the intent and asked for the section to be clarified or eliminated.

Response. The suggestion to clarify the language of this section has been adopted. The intent is to explain the method of calculating the amount of eligibility that a student has used for a given award period.

Comment. Four commenters questioned the need for § 190.5(d) and asked for its deletion.

Response. The suggestion has not been adopted. § 190.5(d) clarifies the status of an overpayment in the calculation of the eligibility used by the student.

§ 190.7 Institutional Eligibility

Comment. One commenter suggested that § 190.7(a)(2) could be interpreted to permit an eligible student to continue to receive Basic Grants throughout his or her enrollment even if the institution later becomes ineligible. This commenter recommended adding the clause "in which the institution is eligible" to the conclusion of the subsection. The clause would then place the appropriate limitation on payments.

Response. The suggestion has not been adopted. The student must, of course, be enrolled in an eligible institution, as well as meet other eligibility criteria set forth in the regulation, in order to receive a Basic Grant.

Comment. One commenter questioned the lack of retroactivity in § 190.7(a)(2) which would not allow a student to receive a Basic Grant prior to the payment period in which an institution established its eligibility.

Response. The suggestion to institute retroactivity was not adopted. In the past, in the absence of regulations on the issue, the Commissioner allowed an institution which had become eligible sometime during the award period to pay its eligible students for the entire award period. However, it is felt that a student should not be retroactively paid a Basic Grant for attendance at what was an ineligible institution. Under the final regulation a student will be able to be paid for the payment period in which the institution becomes eligible and subsequent payment periods.

Comment. Four commenters criticized the language of § 190.7(b)(2) as being unclear. One suggested that § 190.7(b)(2) would be interpreted that if a student had not submitted an SER as of the date of the institution's ineligibility, the student could receive payment for prior payment periods, but not for the current one. Another recommended that the first sentence of § 190.7(b)(2) is redundant because it repeats the stipulations of § 190.7(a)(2).

Response. The suggestion requesting clarification was adopted. This regulation sets forth the responsibilities an institution has to pay its students for the current and prior payment period when that institution becomes ineligible.

The suggestion concerning the stipulation that a student had submitted a valid SER has been adopted by the Commissioner and has been incorporated in the final regulation.

Comment. One commenter stated that § 190.7(b)(3) be revised to include a student who has accepted an offer of admission to an institution and who submits the SER to the institution, or to the Commissioner under the Alternate Disbursement System, but has not enrolled, be paid a Basic Grant.

Response. The suggestion was not adopted. A student who merely accepted an offer of admission to an institution but had not yet enrolled when the institution loses its eligibility has never enrolled or attended an eligible institution and therefore may not be paid a Basic Grant.

§ 190.8 Consortium Agreements

Comment. One commenter suggested that this section should address agreements between eligible and ineligible institutions.

Response. the recommendation was not adopted. For all Title IV Programs, agreements between eligible and ineligible institutions will be discussed in the notice of proposed rulemaking regarding institutional eligibility for participation in Title IV Programs. The Commissioner does not believe it is appropriate to discuss this issue in a single program's regulation.

Comment. Two commenters requested that the institution in a consortium agreement which the student is attending be allowed to process and pay a student's Basic Grant award if that student is taking all his or her courses that term at that institution. They suggested that this be the case even if that institution is not the one at which the student is expecting to receive a degree or certificate.

Response. The suggestion has not been adopted. In order to be eligible to receive a Basic Grant a student must be a candidate for a degree or certificate at a particular institution. If a student is studying under a consortium agreement at another institution of higher education, the student is not a degree or certificate candidate at that institution, but merely taking courses transferable towards that degree or certificate. Since the student will not be awarded a degree or certificate at that institution, the institution at which the student is a degree or certificate candidate should process and pay the Basic Grant.

Comment. One commenter asked what costs of attendance should be used for a consortium student, particularly if the student has no direct educational costs at the "home" institution. The commenter recommended that if the student is enrolled in only one institution for a given period that institution should calculate and pay the student's Basic Grant.

Response. The costs of education to be used are those incurred by the student at the institution at which he or she is taking courses. The educational costs incurred by the student under a consortium agreement can be easily ascertained by the "home" institution even if the student incurs no cost for a given period at that institution. If the consortium agreement is an ad hoc agreement between two eligible institutions for one or two students, the educational costs the student would incur at the other institution could be itemized as part of this consortium agreement.

§ 190.9 Determination of enrollment status under special circumstances

Comment. Three commenters stated that the phrase "non-credit remedial courses" was unclear and confusing in the context of current postsecondary terminology. One commenter asked if "developmental" or "basic" courses are included under this phrase. Another asked if preparatory GED courses, which are non-credit and remedial in nature, are to be included in this category. A third suggested that the term "non-credit" be deleted since many two year institutions award credit for these courses which is applicable towards a two year degree.

Response. It should be noted that if an institution gives credit for courses in an eligible program towards the degree or certificate awarded for that program, those courses will count in determining the enrollment status. This is based on the definition of enrollment status found in § 190.2. For courses for which credit is not given towards the degree or certificate and which are remedial in nature, the phrase "non-credit remedial courses" is used and is taken directly from the authorizing legislation. This legislation does not include a distinction between a two year and a four or five year academic degree. Developmental, supportive or basic courses could be included within the meaning of non-credit remedial courses as long as the institution does not award credit for these courses which may be used by the student to fulfill academic degree requirements. However, non-credit remedial courses which are also preparatory GED courses, or for which high school credit is given, do not count in the determination of the enrollment status.

Comment. One commenter suggested that a limit on the number of remedial courses a student may carry in conjunction with credit work during a given term.

The limit suggested was that remedial course work not exceed three-fourths of the total course work a student carries during the first payment period of the first academic year. The commenter stated that a limit was necessary otherwise students in special programs would carry so much remedial work as to preclude completion of studies in a reasonable period of time.

Response. The recommendation was not adopted. The Commissioner believes that the limitation proposed would unwarrantedly interfere with the internal academic functions of participating institutions. Furthermore, a limitation would act as a detriment to those educationally disadvantaged students who may require additional remedial course work beyond the proposed limitation. Under § 190.5, "Duration of Student Eligibility," a student who has completed institutionally required non-credit remedial course work and who cannot complete the requirements for his or her academic or first professional degree within the normal four years, is eligible for additional grant assistance of up to one academic year.

Comment. One commenter indicated that there was a contradiction between § 190.9(b)

and the definition of half-time student (§ 190.2(j)) concerning correspondence course workload and requested clarification of the contradiction by revising the regulation of § 190.9(b) to include a student's particular status with regard to full or half-time.

Response. The definition of half-time student in § 190.2 is not intended to address the student situation found in § 190.9(b) but refers only to the student who is enrolled solely in a correspondence course of study. That section has been clarified to indicate that. Section 190.9(b) has also been clarified to explain how the enrollment status of a student is figured when he or she enrolls in both correspondence and regular coursework.

§190.10 Administrative cost allowance to participating schools.

Comment. Several commenters appeared to be confused as to the use of the proposed administrative allowance. Several indicated that the allowance would not compensate the institution for its expenditures under § 190.77. In several other comments there seemed to be a misunderstanding of the priority of attribution of this allowance. Another commenter assumed that this allowance was designated solely to reimburse the institution for staff salaries and the commenter suggested that the allowance would be inadequate for this purpose.

Response. The use of the proposed administrative allowance is clearly set forth in § 190.10(a). All allowance funds must be used first to provide consumer information to prospective and enrolled students. These consumer information requirements, 45 CFR 178, were published as final regulations on December 1, 1977. After the requirements of 45 CFR 178 are met, any remaining allowance funds may be used to help defray the cost of administration of Title IV Programs.

Comment. Three commenters suggested that the 4% administrative allowance be extended to the Basic Grant Program.

Two other commenters expressed discontent with the $10.00 amount per recipient as being inadequate to offset the expenses incurred by the institution.

Response. The authorizing legislation specifically provides for an allowance of not more than $10.00 per Grant recipient. The 4% allowance is not applicable to the Basic Grant Program under the current law.

Comment. Four commenters requested that paragraph (a) be revised to include those students eligible for Basic Grants "who have been processed by the institution."

Response. The recommendation was not adopted. The authorizing legislation refers to a "payment of $10 per academic year for each student enrolled in that institution who is receiving a Basic Grant . . . for that year."

SUBPART B

§ 190.11 Application

Comment. One commenter asked if a facsimile duplicate Basic Grant application form could be used to apply for a Basic Grant.

Response. No. In order to apply for a Basic Grant the applicant must use one of the approved Multiple Data Entry forms or a Basic Grant application. A fascimile is not an approved form. For the 1978-79 award period, the Office of Education has permitted two need analysis services not participating in Multiple Data Entry to preprint on facsimile Basic Grant applications the financial information taken from the application of those need analysis services. However, the Office of Education does not plan to permit this deviation from normal procedures in future years.

Comment. One commenter felt that paragraph (c) is unnecessary and should be deleted.

Response. Paragraph (c) was not deleted. The Office of Education believes this paragraph is necessary because of repeated instances of abuse in the past, when SER's were mailed directly to the school. Mandating that the student receive the SER through the mail at his/her residence helps to ensure that an institution does not have access to an SER for a student who is not enrolled at that institution. Additionally, mailing the SER directly to the student is consistent with a fundamental concept of the Basic Grant Program which is that the student may choose to attend any eligible institution and receive the grant.

Comment. One commenter stated that the clause "resides at the school" was unclear. Does this mean that the student's legal permanent residence must be at the school, or simply that the student is currently living in on-campus housing?

Response. The clause "resides at the school" means that the student is living at the school during the award period for which the Basic Grant is to be received, but not necessarily that the school is his/her permanent residence.

Comment. Several commenters stated that incarcerated students or students from disadvantaged, ghetto neighborhoods should be able to use the institution's address because of the difficulty they may experience receiving the Student Eligibility Report in the mail.

Response. Under the current system of processing applications there is no way to identify students who are incarcerated or live in disadvantaged neighborhoods. Therefore, these SER's must be mailed directly to the student.

§ 190.12 Certification of information.

Comment. One commenter recommended that the provision be added that "failure to provide requested documentation will make the applicant ineligible to receive Basic Grant assistance."

Response. That has been added to the regulation.

Comment. One commenter suggested that the following be added: "The applicant . . . will provide (if requested *by either the Commission or the school*) . . ."

Response. The final regulation has been amended to include this suggestion.

§ 190.14 Notification of expected family contribution.

Comment. One commenter stated that the phrase "expected family contribution" should not be used in the regulations. Rather, the phrase "eligibility index," which is more familiar to aid officers and students, should be used.

Response. The phrase "expected family contribution" is that which is used in the legislation. Therefore, it is also used in the regulations. "Eligibility index" is used on the Student Eligibility Report because of the problems which arose using "expected family contribution," where families thought that they actually had to contribute that amount in order to receive the Basic Grant.

§ 190.15 Applicant's request for recomputation of expected family contribution because of clerical or arithmetic error.

Comment. Two commenters asked whether the statement that the corrections had to be made "on an approved form," meant that they were to be made on the Student Eligibility Report as they are now.

Response. No change from current procedures is intended by this section. The "approved form" referred to is the Student Eligibility Report.

SUBPART E

§ 190.51 General attendance costs.

Most of the comments on § 190.51 concern three separate issues. The first issue concerns the use of average rather than actual room and board costs at institutions which have variable on-campus room and board charges. The second area of concern is a need to increase the standard allowance for room, board, and miscellaneous expenses. The third issue concerns the establishment of separate commuter and non-commuter budgets.

Comment. Many commenters said that the requirement to use actual rather than average room and board costs in determining the Basic Grant budget requires frequent revision of awards, causes unnecessary administrative burdens, and leaves students uncertain about the amount of their awards since they are subject to revision. According to many commenters, use of average cost is highly preferable. Several commenters said that it was inconsistent with the entitlement concept to vary student's awards depending upon the life styles they choose, presumably in the case of different residence hall plans. These same commenters suggested that a standard maintenance allowance be established for on- and off-campus students.

Response. Because the authorizing legislation stipulates that the actual cost of attendance will be used to determine the amount of the Basic Grant award, it is not legally permissible to incorporate average room and board costs into the Basic Grant budget.

Comment. Many commenters said that the standard allowances for room and board and miscellaneous expenses should be raised to account for increases in the cost of living since they were established for the 1973-74 award period. There was a wide range of suggested bases upon which the allowances could be increased. One commenter suggested the use of average regional costs. Some commenters said that the standard allowances should be raised to reflect increases in the Consumer Price Index since 1973. A few commenters did, however, realize the cost implications of increasing the Basic grant maintenance allowances.

Response. The Commissioner believes that the room and board allowances are adequate at the current time. However, the Office of Education is planning to undertake a survey of room and board costs at colleges in various parts of the country to determine whether the off-campus room and board allowances should be raised.

Comment. Two commenters said that Basic Grant awards should be based on the student budget used to determine eligibility for the campus-based programs.

Response. This proposal also could not be implemented because the specific items to be included in the Basic Grant cost of attendance are set forth by the statute while the campus-based budget may include other items to reflect an individual student's actual situation.

Comment. There was a wide range of comments about the determination of room and board allowances for those students who do not live on campus. While most of the commenters favored a distinction between the budgets of commuters and non-commuters, there was no clear consensus of opinion about the method to determine these figures. For instance, three commuters suggested that two off-campus budgets be established—dependent upon whether or not students live with their parents. Several commenters said that the allowances for off-campus residents not living with parents should be average, residence hall costs. Another commenter suggested that commenters should have a room and board allowance which is the lesser of an average on-campus cost or a standard off-campus cost. One commenter suggested that, for students living on-campus, either the average on-campus budget or a commuter room and board allowance should be used.

Response. The Commissioner does not feel that there is sufficient evidence to warrant an attempt to differentiate among categories of students who live off-campus. There was no general agreement among commenters about a suggested means of determining the various budgets.

Comment. One commenter said that the off-campus allowance of $1,100 should be revised to allow for differences in marital status or household size.

Response. The Basic Grant maintenance allowances are designed to reflect average subsistence expenses of a student, regardless of the student's marital status or household size.

Comment. One commenter posed a question about the requirement of charging a Basic Grant recipient the same as any other student. He asked whether a student attending a proprietary school, but enrolled in a program contracted for by an outside school, can have different costs than those students who are enrolled in the proprietary school's program.

Response. Yes, there can be different costs for different programs, even though the program may involve the same course work. For example an institution may provide one program and contract for another, and the costs of the two programs may differ. An Institution must charge a Basic Grant recipient the same amount as all other students in the same program. The regulation provides that the distinguishing factor in the amount of tuition charged may not be based upon whether or not the student is a Basic Grant recipient.

Comment. One commenter said that proration of board costs when a student is charged for less than 7 days should be clarified. Should proration be based upon institutional costs or the $1,100 allowance. § 190.51(b)(3)(v)(1).

Response. Proration should be based upon the standard allowance. The institution should determine the number of days in its academic year, then divide the standard allowance by that number of days to derive a daily average cost. The daily average should be multiplied by the number of days in the academic year not covered by the contract for room and/or board. Institutional charges for the academic year should be added to the allowance calculated above, resulting in a total cost for the academic year.

Comment. One commenter said that the cost of necessary child care should be included as a separate attendance cost.

Response. The authorizing legislation stipulates that the cost of attendance means "the actual per-student charges for tuition, fees, room and board (or expenses related to reasonable commuting), books, and an allowance for such other expenses as the Commissioner determines by regulation to be reasonably related to attendance at the institution at which the student is in attendance." Based upon this legislation, the Commissioner has not included child care costs in allowable costs of attendance. The basic Grant Program is a formula program which attempts to treat students equally. Therefore, special costs incurred by students, including child care, are not included. These costs may be included when determining the amount of campus-based aid (Supplemental Educational Opportunity Grant, College Work-Study, and National Direct Student Loan programs) for which the student is eligible.

Comment. Two commenters asked how institutions that charge tuition and fees by credit hour determine tuition and fee costs under the proposed regulations.

Response. The method of determining the tuition and fees component in the Basic Grant cost of education has not changed from previous regulations. For a full-time student, tuition and fees to be included would be the amounts charged to that student for the academic year. For part-time students, tuition and fees to be included are the tuition and fees charged to the typical full-time student for an entire academic year. Each institution must determine its typical full-time course load. The reduction in an award for a part-time student is reflected in the Disbursement Schedules.

Comment. One commenter asked, if a student has to travel outside the United States as a part of his or her course of study, would costs associated with travel within the United States be included as a separate fee item in the Basic Grant cost of attendance. For instance, if an anthropology student had to travel to the Yucatan, would costs associated with travel to Miami be included.

Response. If an institution requires travel (such as field trips) within the United States in order for the student to complete his or her course of study, fees related to that travel may be included in the student's Basic Grant cost of education. If the ultimate destination of the travel is outside the United States, costs associated with any portion of that trip may not be included as a separate item in the cost of attendance.

Comment. One commenter said that allowances for travel costs should be deleted. Why allow them for some students, but not others?

Response. Travel costs may be included in the Basic Grant cost of attendance only if these costs are part of the tuition and fees paid to the institution and the institution requires this travel (for purposes such as field trips) for completion of the course of study. Allowance for travel costs are not intended to cover transportation between the institution and the student's home which is not related to a specific program of course requirement.

§ 190.53 Attendance costs for students whose program length exceeds the academic year at institutions using clock-hours.

Comment. One commenter said that since it is possible for a student to complete more than one academic year during an award period, the tuition cost for the course length should be used. Another commenter said that § 190.53 should be dropped because the Basic Grant cost of attendance and award calculation procedures already prorate awards.

Response. A student may not receive a Basic Grant for more than one academic year's worth of work in an award period. Therefore, only the costs of attendance for that academic year should be used. Section 190.53 is intended to determine the cost of attendance for the portion of the program constituting an academic year. It does not result in the proration of an award. It merely reflects the costs the award is intended to meet.

Comment. A number of commenters said that prorating tuition cost to the length of the academic year at institutions measuring course length in clock hours results in reduction of awards compared to institutions measuring progress by credit hours and using academic terms..

Response. The commenters' assertions are incorrect. The tuition cost for both types of institutions must be based upon attendance for an academic year. In each case the student is paid for one academic year in an award period. Thus, if a clock hour institution has a 12 month, 1200 hour program, but considers its academic year to be 900 rather than 1200 hours, the tuition to be used in the Basic Grant budget must be prorated for 900 hours. Similarly, if a credit hour institution has two regular semesters and a summer term, but considers its academic year as being only the two semesters, the Basic Grant budget includes only the tuition for the regular terms.

An institution may, of course, define its academic year as greater than the minima set forth in § 190.2(a). If either type of institution does so and thus includes tuition for this longer academic year in its Basic Grant Budget, it may disburse a full Scheduled Basic Grant only for completion of the longer academic year.

Comment. One commenter questions whether § 190.53 would reflect a student's costs for a complete academic year regardless of when within the award period the student's academic year began. The commenter suggested adding the following language, "The student's allowable institutional charges shall be those direct school costs incurred during a student's full-time attendance during an entire academic year."

Response. The regulation will reflect the cost for the entire academic year in all cases. The recommendation for changing the wording was not adopted. The Commissioner feels that the wording in the new regulation more specifically addresses the determination of attendance costs for an academic year and is preferable to the suggested wording.

§ 190.54 Attendance costs for incarcerated students.

Comment. One commenter asked whether a program for incarcerated students can have a different academic year than a program for regular students (4 quarters instead of 3 quarters).

Response. Yes. An institution may establish a separate academic year for a particular program. If an institution establishes a program specifically for incarcerated students, the institution could define the academic year differently.

Comment. One commenter requested that funding be increased to 75% of the cost of education. Another commenter suggested that entire tuition and fee costs should be covered by a Basic Grant, plus a $10/credit hour allowance should be provided when books are not supplied.

Response. The authorizing legislation for the Basic Grant Program establishes that the amount of the Basic Grant may not exceed 50% of the cost of education.

Comment. One commenter suggested substitution of a prorated system for inclusion of room and board charges for the existing formula—incarcerated students often contribute ⅓ of their net income, if employed, for room and board.

Response. Incarcerated students generally forego significant monetary compensation for their work in exchange for their maintenance. Since the Basic Grant application does not request in-kind compensation, it is not desirable and would be highly confusing to allow for the inclusion of prorated room and board charges.

Comment. One commenter suggested that allowable attendance costs for incarcerated students be modified to include transportation costs to and from school.

Response. Because the transportation costs of incarcerated students are usually provided by the incarceration facility, the Commissioner feels that it is not necessary to add a separate allowance for transportation costs.

The $400 miscellaneous expense allowance for students who are not incarcerated is intended to be applied not only for books and supplies, but also other costs such as laundry, transportation and other miscellaneous expenses. The allowance for incarcerated students is limited to an amount considered adequate for books and supplies, because generally the other costs the miscellaneous expenses allowance is intended to cover are met for incarcerated students by the incarceration facility.

Comment. One Commenter said that it is unclear whether we mean to distinguish between mandatory or voluntary participants in half-way houses.

Response. The regulation does not distinguish between mandatory and voluntary participants in half-way houses.

SUBPART F

§ 190.61 Submission process and deadline for Student Eligibility Report.

Comment. Several commenters said that the language in § 190.61(c) does not agree with the language in § 190.61(b). Paragaph 190.61(b) provides that a student "who enrolls *before May 1* of an award period" must submit the SER to the institution on or before May 31. Paragraph 190.61(c), setting submission deadlines for students participating under the Alternate Disbursement System, referred to students enrolling "on or before May 1."

Response. In accordance with this suggestion, we have adjusted 190.61(c) to be consistent with 190.61(b). The last sentence of 190.61(c) now reads, ". . . for those who enroll before May 1, and July 10 for those who enroll on or after May 1."

Comment. One commenter said that no cut-off dates should be set since they eliminate students who enroll late in the award year from receiving a grant.

Response. The deadline dates for processing of applications and corrections, as well as the deadline dates for submission of the SER to the institution, are not intended to prevent students who enroll late in the year from receiving Basic Grants, but rather are necessary for proper administration of the Program. Applications are made available to students more than fourteen months before the March 15 deadline date for filing. In most cases, this is a sufficient amount of time for students to apply and receive an SER, since most students do enroll in post-secondary education early in the award period, and those who do not, usually make plans in advance for financial aid.

For the Basic Grant Program, the funding cycle corresponds with the award period, that is, July 1 to June 30. The Family Contribution Schedules and Payment Schedule are approved by Congress each year and are in effect for a specific award period. Each award period's funds must be accounted for and the accounts closed out within a reasonable period of time after the end of the award period, in order to make possible a responsible administration of Basic Grant funds.

The authorizing legislation gives the Commissioner the authority to set a deadline date by which applications must be filed. The regulations specify that the student must submit the SER to the school prior to May 31, or, in cases where the student enrolls on or after May 1, the student must submit the SER no later than June 30. Institutions are then required to submit Progress Reports by July 15, which account for all of the funds disbursed during the privious award period. Clearly, given the volume of applications (3.6 million in 1977-78) and the amount of Federal dollars involved (1.6 billion in 1977-78), sound fiscal administration of the Program is of the utmost importance. This involves setting the necessary deadline dates for students and institutions.

Comment. One commenter suggested the following addition to § 190.61(d), "Unless in the judgment of the financial aid officer a delay was caused by resubmitting of the SER or the filing of a supplemental application for which the applicant was not principally responsible." Another commenter suggested that § 190.61(d) be amended to say: "If a student was legitimately enrolled, the Basic Grant payment could be made in a subsequent enrollment period, but prior to June 30 of the fiscal year the student was deemed eligible." These commenters felt that this section in the proposed regulations would cause a hardship to students who had to make corrections.

Another commenter cited instances in which incarcerated students submit a Basic Grant application during one semester, but have completed the semester and are no longer enrolled by the time the SER is returned. The commenter suggested adding the following language, "Awards may be claimed by colleges in any semester following attendance for incarcerated students, provided the student was registered at the time of application for a Basic Grant award." One commenter suggested that § 190.61(d) be changed to allow a student to be paid for any portion of an academic year that he or she is in attendance if a valid SER is submitted during that same academic year.

Response. Deadlines for the submission of valid SER's are necessary for the proper administration of the Basic Grant Program. Because the application system is open to students for over 14 months, the Commissioner feels that applicants are afforded an adequate opportunity to apply for a Basic Grant and receive a valid SER. To waive the deadlines for some applicants and not others would not treat everyone equitably.

Comment. One commenter suggested that § 190.61(d) be changed to, "A student who submits an SER to an institution at the time he/she is no longer eligible to receive a Basic Grant or is no longer enrolled and attending a program at that institution may not be paid a Basic Grant." (Directed specifically to the problem of graduate students who were undergraduates during the prior term.)

Response. This concept has been inserted into the final regulation.

§ 190.62 Calculation of a Scheduled Basic Grant at full funding.

Comment. Two commenters disagree with the ½ cost concept.

Response. The half cost limitation in the Basic Grant Program is mandated by the program statute.

Comment. One commenter stated that the Basic Grant $200 minimum award under full funding discriminates against home study/correspondence students.

Response. No change was made in the regulation. The authorizing legislation requires that, under full funding, the minimum Basic Grant award is $200. This provision applies to all Basic Grant recipients, regardless of the kind of program in which they may be enrolled.

§ 190.63 Calculation of a Scheduled Basic Grant at less than full funding.

Comment. One commenter did not understand why an award of less than $200 for an academic year is allowed when the program is not fully funded.

Response. The authorizing legislation establishes a minimum award of $50 for an academic year if the program is not fully funded. When the program is not fully funded, the law provides a schedule of reductions. When these reductions are applied to a student's award as calculated under the full funding requirements, the reduced award must meet the $50 minimum.

§ 190.64 Calculation of a Basic Grant for a payment period.

Proposed Computation procedures for students enrolled at less than full-time status at institutions using terms.

Comment. The Office of Education received considerable comment about the effect of the proposed award calculation procedures on institutions which use terms, and measure progress by credit hours. A summary of these comments follows.

Several commenters favored the exact proration (10/12, 11/12, etc.) presented in the proposed regulation.

Various other commenters said the proposed calculation procedure would not be a problem at schools with fixed class sched-

ules, schools with few part-time students, or schools with automated systems.

Several commenters agree with the concept of the proposed computational procedure, but think it is too late to implement it for 1978-79. Programming changes would be needed at large institutions. It could also be confusing since different procedures have been published (1978-79 Payment Schedule). Another commenter suggested that the new procedures be delayed until financial aid officers have a chance to review them, and, if implemented, until institutions have time to put them into practice.

The vast majority of commenters preferred the current procedures. Many of them said that the proposed regulations would be a disincentive for students to carry a full-time load, would increase administrative costs and time, and would encourage institutions to make one payment per term. Current procedures are adequate and less complicated. One commenter said the additional equity is not worth the added confusion.

Several commenters said the proposed difference in the amount of the award is not worth the effort it would require because of a small difference in the award, the delay in making payment, and additional administrative burden.

Many commenters said that multiplying by enrollment status will lead to more mistakes in calculating grants than occur by entering a figure from the payment or disbursement schedule. They felt that the three payment schedules should be retained.

One commenter said that exact degree of equity for part-time students provided by the proposed regulations is unnecessary. The commenter felt the program should be geared to full-time students.

One commenter said the new procedures do not eliminate the need for part-time payment schedules, but actually require additional ones.

One commenter said that a one hour change would require recomputation since enrollment status would change. Another commenter said that the institution should not recalculate if a student drops from 12 to 11 or 10 units because the student is still, for all intents and purposes, full-time.

One commenter said that preliminary calculation is impossible when the student projects the number of courses rather than the number of credit hours.

Response. Based on the suggestions of the majority of the commenters, the Commissioner has decided to maintain the current award calculation procedures for those institutions which use terms and measure progress by credit hour. Therefore, three payment schedules will be maintained for these institutions.

Comment. There were a few comments received about the effect of the proposed calculation procedures for institutions which measure progress by clock hour. One commenter said that awards for clock hour institutions should be based on months, as is currently done. Another commenter said there are problems with award calculation for beauty schools because different states have different requirements for the number of clock hours.

Response. The Commissioner has decided to implement the procedures discussed in the proposed regulations. As noted in the discussion of "payment period," the new procedure is intended as a response to questions from clock hour schools about how to compute awards for students whose hours of attendance fluctuate.

Comment. One commenter asked, in reference to § 190.64(b), whether an institution can excuse absence and still pay students at the the mid-point.

Response. No, a clock-hour institution may only make a second payment to a student after he/she has completed the number of clock hours for which originally paid. This section was designed to eliminate the problem of students attending class intermittently.

Comment. One commenter asked how a school pays if it measures progress in terms of clock hours, but uses terms, the last of which overlaps award periods. One commenter asked how this section affects institutions with staggered starting dates, i.e., monthly.

Response. An institution must follow the procedures outlined in § 190.64(b) to determine awards if it uses clock hours to measure progress, regardless of whether it also uses terms. The concept of an academic term is not relevant to this method of calculation.

With regard to the second comment, these procedures are followed regardless of whether all students enter on a set date or if student enrollment dates are staggered. A calculation would have to be done for each student at the time he or she enters school.

Comment. Concerning the use of clock or credit hours rather than months, one commenter questioned whether the amount of the grant will be less under the new calculation proposed in § 190.64(b).

Response. Under the new procedure, the amount of the grant may be slightly higher or lower than the amount determined under previous procedures. However, on the basis of a study of public reponse to the current regulations, as well as comments on the proposed regulations, the Commissioner has decided that the most equitable and precise way of calculating awards at clock hour institutions or at institutions without terms is on the basis of the number of credit or clock hours required for the academic year, rather than eight months. The eight month proration factor has become less pertinent to the situation at many institutions since they are instituting innovative schedules, mini-terms, accelerated terms, etc.

§ 190.65 Calculation of Basic Grants for a term which occurs within two award periods.

Comment. Many commenters stated that the proposed rule would create an unnecessarily cumbersome process. It was noted by some commenters that the proposed rule would require an institution to calculate the award twice for any term which occurs within two award periods, once for each award period separately. Other commenters stated that under the proposed rule it was unclear what procedures to follow if a student was ineligible for a Basic Grant during one of the award periods involved. The majority of commenters felt that the institution should be able to pay for the entire term from one award period's funds.

Response. The proposed rule governing computations for a term occurring within two award periods was intended to simplify those computations. However, because of the number of questions raised by commenters, the Commissioner feels that the proposal still leaves financial aid officers with an unduly complex process for computing awards.

After considering several alternatives, with the primary goal being to provide the simplest possible means for computing awards for students enrolled in terms which occur in two award periods, the regulation has been amended. It provides that if a term begins in one award period and ends in another, the institution must designate that term as "belonging" entirely to one or the other of the two award periods. The calculation of all student awards for the entire session will then be based on the SER for the award period designated by the institution and the portion of eligibility used by the student will be attributed to that award period.

§ 190.66 Transfer student: attendance at more than one institution during an award period.

Comment. Many commenters requested clarification regarding how to determine a Basic Grant when a student transfers during the award period and the costs of education differ at the two institutions.

Response. A transfer student's Basic Grant is initially calculated the same way as any other student's Basic Grant, i.e., the award is determined using the student's eligibility index, enrollment status, and cost of attendance at the institution. That award is then divided by the number of terms in the academic year of the institution to determine the award for each term. However, once that award has been calculated, the financial aid officer can ensure that the student does not exceed his or her eligibility by calculating the amount of eligibility already used at the previous school, and adjusting the current payment, if necessary. To do this, the aid officer needs to know the amount received and the student's Scheduled Basic Grant at the previous school. For instance, a full-time student with an eligibility index of zero attends school A, where the cost of attendance is $3,200. Using that cost of attendance, that student's Scheduled Basic Grant, i.e., the amount which would be paid to a full-time student for a full academic year, is $1,600. The student receives an $800 disbursement for the first semester. The student has received 50% of a Scheduled Basic Grant. The student transfers to school B and continues in full-time status, where the cost of education is $2,025. Using the cost of attendance, the scheduled Basic Grant for the student at school B is $1,012. At school B the student will receive 50% of $1,012, which is $506. No adjustment is necessary in this example, since the student only received one-half of the applicable Scheduled Award for a semester's attendance at each institution.

Another full-time student with an eligibility index of 600 attends school X for the first two quarters where the cost of attendance is $2,100. That student's Scheduled Basic Grant is $1,062, and he/she will receive a disbursement of $352 for each quarter—two-thirds of the Scheduled Basic Grant. The student then transfers to school Y, a semester institution, for the last semester of the academic year. The student enrolls full-time at school Y where the cost of attendance is $4,500. The student's Scheduled Basic Grant at school Y is $1,090 and the student would normally receive a disbursement of one-half of that amount ($545) for the remaining semester in his/her academic year. However, since the student

has already received two-thirds of his/her Scheduled Award at the previous institution, he/she can only receive one-third of his/her Scheduled Award at this institution, i.e., $363 for that semester.

Comment. Many commenters stated that the wording of the proposed regulation was inaccurate since a transfer student does not "reapply" for a Basic Grant at the new school. The student simply submits a duplicate copy of the Student Eligibility Report.

Response. The Commissioner agrees and the final regulation has been amended.

Comment. Many commenters expressed concern over the requirement that institutions collect a financial aid transcript on all transfer students who receive Basic Grant assistance. Some of the commenters also thought that the Office of Education should monitor the amount received by a transfer student.

Response. The Basic Grant proposed rules do not require an institution to obtain a financial aid transcript. These regulations require only that the institution to which a student transfers adjust the student's Basic Grant payment to avoid an overpayment of a Basic Grant. However, a notice of proposed rulemaking concerning fiscal and administrative standards for institutions participating in Title IV programs, published on August 10, 1978, does require the financial aid transcript. If that proposed requirement becomes effective as a final regulation, schools will have the necessary information from the previous institution to adjust the Basic Grant. In the meantime, in order to avoid making overawards to students, institutions may wish to require on their own initiative that transfer students provide financial aid transcripts.

The Office of Education currently does monitor the amount of Basic Grant assistance received by a student each year. However, the monitoring system detects an overaward after the payments have been made. These new requirements for adjustment of the transfer student's award are an attempt to avoid the overaward before it is made.

Comment. Many commenters stated that the second institution should not be held liable for any overaward. Some mentioned that a dishonest student could conceal the fact that he or she is a transfer student or could have transferred more than once.

Response. The Basic Grant regulations would find the second institution liable for an overaward only if the institution knows that the student has transferred and knows the Scheduled Basic Grant at previous school(s) and the amount the student received there.

§ 190.67 Correspondence study.

Comment. Concerning paragraph (a) one commenter suggested that we substitute the following language: "The institution prepares a written schedule for *satisfactory completion* of lessons . . ." Satisfactory completion would replace submission.

Response. No change was made in the regulation. "Schedule for submission" means that the student would actually submit the completed lessons to the school according to the schedule. Whether or not the lessons were completed safisfactorily would be up to the institution's standards and practices. If the student is not maintaining satisfactory progress, the institution would then withhold payment.

Comment. One commenter suggested that the entire grant be disbursed when the student completes either 25% or 50% of the program. One disbursement would reduce the administrative burden on the school.

Response. No change was made in the regulation. The Commissioner agrees that the school's administrative burden would be reduced if only one payment were required. However, just as is the case for non-correspondence schools, correspondence schoods are required to make two payments to the student every award period. This ensures that the student actually is participating in the program of study at the time the disbursement is made. Requiring two disbursements per award period provides greater control over the funds. This provides two points in time when the student's eligibility for payment must be established.

Comment. One commenter suggested the requirement that, for students enrolled in correspondence study, Basic Grants must be credited toward tuition and none disbursed to the student.

Response. No change was made in the regulation. As with any institution, participating correspondence schools already have the authority to credit the student's account for tuition and fees. However, correspondence schools participating under the Regular Disbursement System will have two ways to disburse the Basic Grant, by crediting the student's account, or paying it directly to the student.

SUBPART G

§ 190.72 Institutional agreement—Regular Disbursement System.

Comment. One commenter stated that the regulations should either outline the content of the agreement or the agreement should be open for public comment using the standard process of publishing the proposed agreement in the FEDERAL REGISTER.

Response. The terms of agreement, which must be signed by each eligible institution wishing to participate in the Title IV programs, has not been published in the FEDERAL REGISTER. It is not required that this document be published in the FEDERAL REGISTER and the Commissioner believes no useful purpose would be served by such publication.

Comment. One commenter stated that a deadline date by which the Commissioner will send the payment schedule each year would help assure schools that they will receive them early. this could help in institutional operations planning.

Response. An annual deadline date for distribution of the Payment Schedule has not been set. The Office of Education publishes and distributes the Payment Schedule as early as possible each year. The Schedule is developed as soon as all of the necessary variables become final, such as the amount of the appropriation and the award level.

§ 190.73 Termination of agreement—Regular Disbursement System.

Comment. Several commenters stated that in paragraph (a), Termination by Commissioner, schools are not given due process. They suggested that termination of the agreement by the Commissioner should follow procedures similar to those outlined in the Limitation, Suspension and Termination (L, S, and T) regulations.

Response. The termination of the RDS Agreement means that the institution will no longer act as the Office of Education's agent in disbursing the funds. However, students at that institution will continue to receive Basic Grant funds if an ADS agreement is signed. Because the students will continue to receive the funds, procedures such as those under L, S, and T are not necessary.

Comment. One commenter stated that the regulation setting forth the Commissioner's authority to terminate the agreement immediately if there is a risk of loss of funds is excellent. OE must have the ability to stop funds while legal negotiations take place.

Response. The Office of Education agrees.

Comment. Several commenters noted that the Commissioner can terminate the RDS agreement upon less than 30 days notice, whereas a school must wait until the end of an award period to terminate the agreement. The school should be able to terminate the RDS agreement after 30 days notice.

Response. This section has not been changed. The Commissioner must have the authority to terminate the RDS agreement upon notice in order to protect the interests of both the government and the students. Termination of the RDS agreement at the request of the institution takes effect on the last day of the award period in which the termination is requested to ensure a smooth transition from RDS to ADS. If an institution is having substantial difficulty in administering the program, the Commissioner has the authority to terminate the agreement during an award period if necessary.

Comment. Several commenters stated that if a school's agreement is terminated because of change in ownership, students attending the school should have their awards honored through the end of the award period.

Response. An institution must establish eligibility in order to participate in the Title IV programs. It should be noted that not only does the RDS agreement terminate upon a change of ownership, but also the institution's Agreement with the Commissioner to participate in all Title IV programs terminates. If the institution changes ownership after institutional eligibility has been established, institutional eligibility must be reaffirmed under the new ownership. The Commissioner believes that the reaffirmation of eligibility should be able to be accomplished during the award period in which the change of ownership occurred.

Comment. Two commenters questioned why the agreement would automatically terminate because of a change in ownership. Would it not be possible to have the agreement extended, not to be terminated unless the necessary papers are not signed within a certain period of time. This would prevent a time period where students would not receive their Basic Grants.

Response. The Commissioner believes that proper stewardship of Federal funds requires that a new owner reaffirm an institution's eligiblity and sign a new Agreement with the Commissioner to participate in the Title IV programs. By signing the Terms of Agreement, the new owner acknowledges his or her responsibility to properly administer Federal funds available to students at that institution.

§ 190.74 Advancement of funds to institutions.

Comment. Several commenters stated that the school, and not the Commissioner, should determine the amount of funds it

will receive if the school can demonstrate that another figure is more appropriate.

Response. The proposed regulation was not changed. No change from the current procedure is intended under this provision. Currently, the amount of funds advanced to an institution is based upon the number of Basic Grant recipients at the school in the previous year. Proper administration of funds requires that the Commissioner not allow an undue surplus of funds to be held at an institution during an award period. When an institution needs additional funds, the funds are provided. Because the Basic Grant is an entitlement, funds will be provided to the institution to pay all of the Basic Grant recipients at that institution.

§ 190.75. Determination of eligibility for payment.

Comment. Concerning subparagraphs (a)(4), (a)(5) and (g)(2), several commenters suggested that these provisions should be changed to say that the student is not in default on a loan made at *any* institution, or does not owe a refund on a grant made at *any* institution.

Response. No change was made to the regulation. The statute clearly provides that the student may not owe a refund on Title IV grants received at that institution or be in default on a National Direct Student Loan or a Guaranteed Student Loan made for attendance at that institution. The regulation has been written to be consistent with the legislation.

Comment. Concerning satisfactory progress, two commenters noted that the preamble to the NPRM states that institutional standards of satisfactory progress "establish a framework for evaluating a student's efforts to achieve an educational goal within a given period of time . . . the institution needs to know the normal time frame for completion of the course . . ." What is a reasonable number of quarters/semesters for a full-time student to complete a baccalaureate degree?

Response. The language from the preamble referred to by the commenters was included to give schools some direction as to what satisfactory progress should measure. This was in response to the numerous inquiries which were received concerning this issue. However, the Office of Education does not intend to dictate an institution's standards, nor determine what the proper length of a course would be. This would be strictly an institutional determination.

Comment. Concerning paragraph (b), several people made the comment that if the intent of the Basic Grant program is to help students working towards completion of a degree or certificate, how can prorated payments be made to students who have already withdrawn from school.

Response. This paragraph has not been amended. The section provides for payment if the eligible student becomes ineligible before actually receiving the payment. If a student has submitted an SER while eligible for payment, the student has completed his/her responsibilities for receipt of a Basic Grant, and the Office of Education believes that the student is entitled to a portion of the Basic Grant to cover educational costs the student incurred during his or her enrollment. Therefore, the student is entitled to a portion of the Basic Grant, even if payment has been delayed.

Comment. Concerning paragraph (b), two commenters asked if payments to students who have already withdrawn from school could reflect costs incurred for books, supplies and miscellaneous expenses.

Response. Yes. The payment is an amount which the school determines could have been used for educational purposes before the student became ineligible. The cost incurred for books, supplies and miscellaneous expenses may be included in this determination.

Comment. Concerning paragraph (b), one commenter stated that the payment to a student who has already withdrawn from school should not be reduced if it would all go towards institutional charges. Rather, the entire payment should be made and the refund policy should go into effect, proportioning the funds back to the programs from which they were disbursed. Otherwise the student may have a disproportionate loan burden if the NDSL or GSL was processed before the Basic Grant was disbursed.

Response. The suggestion in this comment is possible under the proposed rule as it is written. If the institutional charges equal or exceed the amount of the Basic Grant scheduled to be disbursed, that amount may be disbursed for those charges. Of course, if there is a refund, a portion of that refund must be returned to the Basic Grant account.

Comment. Concerning paragraph (b), one commenter suggested that, when paying a student who has already withdrawn from school, the calculation of the amount to be paid should be based solely on the fraction of the period of attendance up to the time of withdrawal divided by the length of the entire payment period.

Response. This suggestion is not prohibited by the proposed rule. The institution has discretion in determining an amount to which the student is eligible. This may, in some cases, be a prorated amount.

Comment. Concerning paragraph (c), one commenter stated that the words "may pay" should be changed to "*must* pay," because if the student has re-established satisfactory progress, the institution should pay him or her.

Response. The commenter's suggestion has not been adopted. The option to pay within a payment period remains with the institution.

Comment. Many commenters stated that paragraphs (c) and (d) are invasions on the institutional prerogative for developing its own standards and procedures, infringing on statutory authority for determining satisfactory progress.

Response. The regulation has not been changed. Paragraphs (c) and (d) do not infringe upon an institution's discretion in developing its own standards and practices for academic progress. These sections provide clarification concerning the time frame for when the determination is made. This allows a determination of unsatisfactory progress to be reversed and payment made if it can be done before the end of the payment period. The regulation makes the necessary clarification that, if a payment period has passed during which a student was denied payment because of not making satisfactory progress, no retroactive payment may be made for that payment period.

Comment. One commenter stated that allowing the student to be paid if he/she was overpaid because of institutional error is fair to the student.

Response. The Commissioner agrees with the commenter.

Comment. Concerning subparagraph (e)(2)(ii), Overpayment of a Basic Grant due to institutional error, several commenters stated that merely allowing the student to agree to repay the overpayment in a reasonable period of time provides a large loophole and also conflicts with § 190.80(a). The commenter suggested that the subparagraph should be changed to "The student acknowledges in writing the amount of the overpayment and an adjustment in subsequent financial aid payments eliminates the overpayment in the same award period in which it occurred."

Response. The Commissioner disagrees with this comment and no change has been made in the final regulation. The institution itself determines if satisfactory arrangements have been made for repayment and if the time for repayment is reasonable and, the institution's decisions are subject to review by the Office of Education in a program review. The school is also liable to the Office of Education for the amount of any overpayment made because of its own error, whether that amount is collected from the student or not. The language of § 190.80(a) has been clarified in this final regulation.

Comment. Concerning subparagraphs (e)(1) and (2), two commenters suggested that it should be possible to eliminate an overpayment by adjusting subsequent Basic Grant payments in the award period in which it occurred *or the next award period.*

Response. The Commissioner disagrees with the commenters and no change has been made in the regulation. The statute authorizes a specific amount of money to the student for a specific period of time, i.e., a Scheduled Basic Grant award for an award period. Because the Basic Grant covers an award period, it is permissible to adjust payments within the award period to eliminate the overpayment. Also, repayment of an overpayment (i.e., an educational debt from a previous year) is not an allowable cost in determining a student's need for the current year.

Comment. Concerning subparagraph (e)(3)(ii)—Overpayment on a Supplemental Grant, two commenters suggested that the section be changed to "an adjustment in subsequent financial aid payments (*including Basic Grants*) eliminates the overpayment in the same award period in which it occurred . . ." This change would permit a Basic Grant to be reduced to eliminate an overpayment of a Supplemental Grant which had occurred in the same award period.

Response. The commissioner disagrees with the commenter and no change has been made in the final regulation. The student is entitled to a specific amount under the Basic Grant Program. That amount may not be adjusted to repay overpayments from other financial aid programs, even if the overpayment occurred in the same award period.

Comment. Concerning subparagraphs (e)(3)(ii), (g) (1) and (2), one commenter stated that these sections will weaken the financial aid officer's ability to correct errors and prevent abuse, and that these sections should be eliminated. Other commenters thought that these paragraphs are excessively prescriptive and infringe upon institutional discretion for handling overpayments.

Response. The Commissioner disagrees and no change has been made in the final regulation. These provisions do not weaken

the aid officer's ability to prevent abuse. They do not require him to take action but rather increase his/her discretion in handling these kinds of cases. Under these provisions the school *may* (not must) pay a Basic Grant to a person whose SEOG overpayment can be eliminated through adjustment. A student in default on a Guaranteed Student Loan *may* (not must) be paid only if the Commissioner (for an FISL) or guarantee agency (for a GSL) determines that satisfactory arrangements have been made to repay the loan. A student in default on an NDSL *may* (not must) be paid only if the *institution* determines that the student has made satisfactory arrangements to repay the loan. In all cases, the institution, the Commissioner or the loan guarantee agency has discretion, and not the student. Therefore, these sections will not weaken the aid officer's control but rather enhance it.

§ 190.76 Frequency of payment.

Comment. Two commenters asked whether more than one payment is required if a semester is four months in length and occurs within one award period.

Response. No. The commenters are making inferences from the stated rule. The rule only covers the situation where a portion of a student's academic year occurring in one award period is less than three months. It does not cover the situation where any portion of a student's academic year occurring in one award period is three months or more.

Comment. One commenter asked if the lump sum payment for courses completed referred to in paragraph (c) would include courses which were failed?

Response. Yes. As long as the student has completed the course, regardless of final grade, and did not withdraw from the class before the end of the term, he/she may be paid for that course.

§ 190.77 Verification of information on the SER—withholding of payments.

Comment. The vast majority of commenters indicated that they agreed with the concept of verification of information. However, some also expressed a desire to have the implementation of this section postponed for one year, so that additional time could be spent studying the problem. Others wished that the verification process could be a pilot program, with voluntary participation by individual institutions or that schools could be allowed to use their own systems of verification. Along this line, one commenter suggested that the Office of Education's prescribed procedure should be used for those cases which the Commissioner picks, but that the institution's procedures could be used for other validation cases (those the institution decides to validate). Several other commenters, however, thought that validation was unnecessary and that it would result in lower income students dropping out of school.

Response. The Office of Education considers validation a necessary and useful tool in helping to ensure that determinations of eligibility for Basic Grant assistance are made in an equitable and consistent manner. While the institution will incur additional responsibilities due to this section, the Commissioner does not believe that it would be advisable to either postpone what is almost universally considered to be a very necessary aspect of need-based student aid, or to require validation activities from only a limited number of institutions. Further, to allow each institution to use its own method of verifying information, either for part or for all of its validation cases would appear to be inconsistent with the formula nature of the Basic Grant Program. While the Commissioner realizes that the specific application of this section will result in an additional responsibility for each student involved, he does not feel that it will overwhelm any student to the point that the student will be forced to withdraw from school.

Comment. Several commenters suggested that the documentation of information should become a function of the application process and that the necessary verification should be accomplished before the Student Eligibility Report is mailed to the student. One specific suggestion along these lines was that the Office of Education should require that an official tax form be sent in with each application. Towards the same purpose, another commenter suggested that legislation allowing an exchange of information from the Internal Revenue Service to the Office of Education would be helpful.

Response. While the Office of Education readily agrees that it would be simpler for the institutions if all necessary documentation were to be provided prior to the issuance of an SER to the student, the offsetting delays involved with centrally verifying all validation cases would cause a severe hardship for the students involved. The Commissioner believes that by spreading the cases throughout the universe of over 6,000 eligible institutions which disburse Basic Grant awards, the impact, in terms of time lost to the student, will be minimal. Further, the closer scrutiny that an aid officer can give at the local level should produce a more accurate eligibility index in most cases. The specific suggestion of requiring an official tax form with each application is impractical because some Basic Grant recipients come from families who have not filed Federal Income Tax Returns in the base year.

Comment. Several commenters thought that the Office of Education should centrally verify the pertinent information. Several of these individuals also felt that it was not the role of the financial aid officer to verify the information. Others, along these same lines, felt that individual institutions should be required to verify applicant information only if a sufficient administrative allowance was provided to them.

Response. As indicated in the previous response, the Commissioner believes that while validation is necessary, the Office of Education should attempt to inconvenience the student as little as possible. Centrally verifying information would not help to achieve this goal. Rather, the financial aid officer, with his or her firsthand knowledge, experience, and direct communication with the student, is in a much better position to expedite the validation process.

Comment. Several commenters suggested that different types of applicants should be treated differently. For example, one person thought that incarcerated students should not have to comply with all aspects of the validation process since their families would be less likely to cooperate in providing the requested information than other families. Others thought that dependent applicants with only non-taxable income from sources such as Social Security, Disability Insurance, Aid to Families with Dependent Children, etc. should not have to have their information verified.

Response. Due to the formula nature of the Basic Grant Program, the regulation treats all applicants the same. While the families of incarcerated students may be less willing to cooperate than other families, other identifiable groups may also have special problems. Discretionary judgment in the regulation as to who should comply with validation requests would be inconsistent with the nature of this program. This reasoning would also apply to dependent applicants with only non-taxable income. In addition, it would not be desirable to set up a situation where any applicant could avoid validation solely by reporting only non-taxable income, regardless of the accuracy of that report.

Comment. One commenter felt that there was confusion with the use of the two terms "validation" and "verification", and suggested that we choose one term and use it consistently.

Response. In the actual regulation, the word "verification" is used consistently since the regulation authorizes the Commissioner or the institution to seek documentation which will verify that information which is pertinent to the calculation of the student's eligibility index. In the Procedures Handbook, the Office of Education has chosen to use the term "validation" to indicate that payment of a Basic Grant may only be made on a valid SER. In addition, the term validation had been used previously to encompass similar activities conducted by the Office of Education. The Commissioner feels that the use of the two terms in these contexts in understandable.

Comment. Several commenters suggested that, when a discrepancy on the Student Eligibility Report is found, the financial aid officer should be able to recalculate the student's eligibility index and pay the student accordingly. At a later date, the Office of Education would verify the financial aid officer's calculation.

Response. The Commissioner agrees in part with this comment. Therefore, § 190.77 has been expanded to incorporate this concept on a limited basis. Basically, the Commissioner feels that the financial aid officer should be allowed to recalcualte and disburse a Basic Grant award prior to the receipt of the "valid" SER when the change from the original eligibility index to the valid one will be minimal in terms of the award amount.

Comment. Several commenters thought that the Office of Education should provide additional authority for the financial aid officer to withhold payments from students when inaccuracies are suspected but not proven.

Response. The Office of Education feels that there is already ample authorization in the current regulation for withholding of payment. The institution, of course, must withhold payment when they have documentation indicating that discrepancies exist on the SER. Additionally, if it believes, but cannot document that discrepancies exist, § 190.77(g) provides for the withholding of payments when documentation is not available or is not provided, if authorized by the Commissioner.

Comment. Section 190.77(c) of the NPRM states, "If an institution *can* document . . . it may not pay a Basic Grant . . . until the student corrects the error or verifies the data." One commenter felt that this could

be interpreted to require verification of 100% of the Basic Grant applicants in order to insure that virtually no Basic Grant payments would be made on any invalid Student Eligibility Reports. In other words, would the school be held responsible for a payment on an invalid Student Eligibility Report which it did not know was invalid but which it "could have known?"

Response. In response to the commenter's confusion about the wording, the regulation was amended. Simply stated, an institution is prohibited from making payments if it has documentation at the institution which indicates the information on the SER is incorrect. Therefore, an institution would not be held responsible for making payment on an invalid SER if the only way it could have known the information was inaccurate was to conduct an investigation of information outside the institution.

Comment. Several commenters suggested that the requirement in § 190.77(f)(2) of the NPRM that the institution forward the student's name, etc. to the Commissioner be changed. Basically, it was felt that this information should not be forwarded when the student has not been paid, does not want to pursue the validation nor receive his or her grant, and the institution has followed all pertinent procedures.

Response. The Commissioner agrees and will publish procedures which will state that an unresolved validation case need not be referred to the Office of Education if all of the following conditions are met:

a) the procedures have been followed,

b) no payment of Basic Grant funds has been made for academic year 1978–79, and

c) the student does not want to pursue the validation and does not want to receive payment of a Basic Grant for 1978–79.

The final regulation has been amended to reflect this change.

Comment. Several commenters expressed concern about § 190.77(g)(2) of the NPRM. One felt that the provisions of this section would allow a student to receive more than he or she was entitled to, while several others wanted the financial aid officer to be able to determine whether a Student Eligibility Report submitted after the appropriate deadline was so submitted due to a delay caused by the verification process for which the applicant was not principally responsible. In such a case, it was suggested that the financial aid officer would pay the student the entire amount based on the valid Student Eligibility Report.

Response. This regulation was written to ensure that the student would receive only the amount to which he or she was entitled. It will accomplish this since the student will be paid his or her Basic Grant based upon the correct eligibility index when the valid SER is submitted on time. Of course, if the student supplies the documentation in a timely fashion, and that documentation verifies the data on the original SER, then the student will have already submitted a valid SER to the school. In that case, there will not be a problem with the deadline date. If, however, the verification process results in a corrected SER, and that corrected (valid) SER is submitted after the deadline, the student will, at the time the valid SER is submitted, be eligible for payment. The deadline date for submission of a valid SER will be waived for such a student because of the validation process. However, the amount that the student will be entitled to will be limited to the amount that he or she would have received, calculated on the SER which was submitted prior to the deadline date. This limited exception to the deadline date is put into the regulations since the Office of Education feels that the student should not be penalized by the deadline when the Basic Grant Program required a procedure which caused the delay in the submission of the SER. On the other hand, the Commissioner feels that such a student should not receive an additional benefit that other students do not receive. Thus, since the student had supplied the original information and had submitted the original SER upon which he or she expected to be paid, he or she should not benefit by an increase in that expected award unless the corrected (valid) SER is submitted prior to the deadline. This same rule would apply to any student whether he or she was required to comply with validation procedures or not. Consequently, § 190.77(h)(2) states that such a student may be paid his or her Basic Grant based on a valid SER, but may receive only up to the amount previously withheld, i.e., the amount the student would have received from the original SER.

Comment. One commenter suggested that § 190.77(g)(3)(iii) of the NPRM should limit to one award period, the period of time for which the Office of Education would not process a recalcitrant applicant's future applications.

Response. The Office of Education feels that if a student does not provide requested documentation (as the student indicated he or she would when he or she signed the application), the student should be prohibited from applying for future Basic Grants until the documentation has been provided or the Commissioner decides that there is no longer a need for that documentation. This provision is expected to provide added incentive for a student to comply with the request for documentation. Limiting the period of time to one award period would, of course, limit the Commissioner's flexibility in such matters and would probably be too weak to be effective as an incentive.

Comment. Several commenters felt that the Office of Education should include the complete validation procedure (as published in the Validation Procedures Handbook) in the Notice of Proposed Rulemaking, and that public comment should be solicited on the specific procedures. Along these same lines, several commenters suggested that the precise responsibilities of the Commissioner, the institution, and the student should be delineated in the FEDERAL REGISTER.

Response. The commenters' suggestion was not adopted. The Validation Handbook merely sets forth procedures that institutions are to follow in verifying information submitted by an applicant. As such the Commissioner did not believe it necessary to publish the handbook as part of the Notice of Proposed Rulemaking. The Commissioner will, however, publish various specialized procedures in the FEDERAL REGISTER. Moreover, the Commissioner welcomes comments and suggestions about the procedures contained in the Handbook that will result in the improvement of the validation effort.

Comment. Several commenters were concerned that some schools (community colleges for example) might receive a disproportionately large share of the Office of Education's requests for validation. And some suggested that there should be some assurance that no one school would have more than 10% of its Basic Grant recipients picked for validation by the Commissioner.

Response. While the Commissioner does not expect that any one school or type of school will receive an unusually large share of requests for validation, he does not feel that it would be appropriate in the regulation to limit the number of people who, by location or any other factor, could have their SER's verified. Since the whole purpose of this section is to help ensure that Basic Grant assistance is indeed based on accurate information, the Office of Education would not want to be restricted by arbitrary parameters from verifying the data of any particular applicant. Further, since the institution the student attends may not be known by the Commissioner at the time the application is submitted, the student's institution cannot be a relevant factor in determining whether he or she will be selected for validation.

Comment. Several commenters also addressed topics related to the actual mechanics of the validation process. Such points as the tolerance level that should be used, the potential problem of securing cooperation from public agencies (Social Security, Welfare, etc.), and the need to verify supplemental applications were highlighted.

Response. Since these questions pertain to the mechanics of the process, as opposed to specific points in the regulation itself, they will not be addressed here but rather will be forwarded to the Validation staff for study.

§ 190.78 Method of disbursement—by check or credit to a student's account

Comment. Several commenters thought that § 190.78(b)(1) of the NPRM was in conflict with subparagraphs (b)(2) and (b)(3). Subparagraph (b)(1) stated that no payment may be made until the student is registered; subparagraph (b)(2) stated that the earliest a direct payment may be made is 10 days before the first day of classes; subparagraph (b)(3) stated that the earliest a payment can be credited is 3 weeks before the first day of classes.

Response. The regulation has been clarified to indicate that a student must always be registered to be eligible for payment.

Comment. Several commenters suggested that the Office of Education should modify § 190.78(b) to allow each institution to use its own judgment as to when it disburses funds to the student (within a payment period). The general feeling expressed in these comments was that it is often desirable to disburse funds earlier than either the three week or ten day limitation. Additionally, some of these comments indicated that the Office of Education should distinguish between a credit to the student's account which involves an actual transfer of funds and a notation of a commitment to that account which indicates that a transfer of funds will be made at a later time. Still others thought that if the Office of Education keeps § 190.78(c), then it should not matter how soon funds are disbursed to a student as a credit to his or her account.

Response. § 190.78(b)(1) establishes the principle that a student must be registered for a payment period before he or she can be paid for that payment period. Since Basic Grant funds are intended to be used by a student for educational expenses related to his or her attendance at an institution, this seems to be a reasonable limitation. However, when a student "registers" for a pay-

ment period as much as several months in advance, the certainty that he or she will actually attend that period decreases. Thus, sections 190.78 (b)(2) and (b)(3) have been added to lessen the likelihood of disbursing funds for a student who will not actually commence attendance, while, at the same time, allowing the institution some flexibility to disburse money that might be needed sometime prior to the first day of classes. When this regulation addresses the question of a credit to the student's account, it should be understood that that means an actual disbursement of Basic Grant funds. Thus, the limitation of ". . . . Three weeks beofe the first day of classes . . ." refers to an actual transfer of Basic Grant funds. An institution may, of course, note on the student's account that a specific amount of Basic Grant funds will be transferred to that account at a later date. An actual disbursement is not being made under this procedure and could not be made until the time specified in the regulation.

The Commissioner feels that these limitations ensure that Basic Grant funds are disbursed in and for the period for which they are intended.

Comment. Several commenters suggested that § 190.78(b)(1) be changed from "registered" to "accepted for enrollment."

Response. The Commissioner disagrees. For reasons outlined in the previous comment, the Commissioner feels that this provision is quite reasonable and does not wish to liberalize it further.

Comment. Several commenters suggested that we clarify § 190.78(b)(3) by adding the words "to the student's account" after the word "credited."

Response. The Commissioner agrees and the wording has been added.

Comment. Several commenters suggested that the Office of Education add a section to § 190.78 which would mandate that the institution pay a Basic Grant within a certain number of days from the beginning of classes.

Response. The recommendation has not been adopted. The Commissioner feels that flexibility should be allowed to accommodate various types of institutional procedures.

Comment. Several commenters expressed concern about the ramifications of what was § 190.78(c) in the proposed rules. The majority of these commenters indicated that it would be next to impossible for schools to comply with this requirement. While many of these same commenters agreed that the student should be informed that his or her grant would be paid as a credit to his or her account, they did not feel that it was necessary for the student to know the exact time that such a transaction would take place, especially in view of the fact that the institution might be unable to determine in advance exactly when such a transaction would be possible.

Response. The Commissioner agrees and has deleted what was § 190.78(c) in the proposed rules. Section 190.78(a), however, has been expanded slightly to require not only that the institution inform the student how he or she will be paid, but also how much money he or she can expect. The Commissioner feels that these requirements will not be unduly difficult for the institution, while at the same time, they will provide the student with the information that he or she may need. The specific disbursements (times and amounts) should, of course, be readily identifiable from the institution's records.

Comment. One commenter suggested that a new section should be added to § 190.78 which would allow the Commissioner to terminate the eligibility of an institution which defrauded a student.

Response. The Commissioner feels that adequate authority already exists for a termination of the Regular Disbursement System Agreement in such a situation (§ 190.73(a)). Actual termination of institutional eligibility for any or all Title IV Programs is covered in the Limitation, Suspension, and Termination regulations (45 CFR 168, Subpart H). Institutional misrepresentation regarding the nature of its programs, its financial charges, or the employability of its graduates is covered in the proposed regulations on Fiscal and Administrative Standards (45 CFR 168) published on August 10, 1978.

Comment. Several commenters objected to the inclusion of students who "unofficially withdraw" in § 190.78(d). Their concern was that schools would not know if a student "unofficially withdrew" since their instructors did not take attendance. Others thought that the students should be responsible for returning the funds in situations of withdrawal or expulsion (some limited this comment only to withdrawals) before the first day of class. And, others thought that the individual institution ought to be able to follow its own guidelines and refund policy in determining if any funds should be returned to the Basic Grant account.

Response. "Unofficial withdrawal" refers to situations where the student leaves the institution without completing official withdrawal procedures. This provision does not require institutions to change current procedures for withdrawing students. Rather, the institution determines to the best of its ability the date on which the student left the institution.

Since the purpose of the Basic Grant program is to provide financial assistance for the pursuit of postsecondary education, the Commissioner feels that disbursements should not be made if a student does not even begin to attend his or her classes, but rather withdraws from his or her educational pursuit prior to the beginning of a term. Further, the early disbursement of funds to a student (either as a credit or as a direct disbursement) authorized in § 190.78(b) is provided for institutional administrative convenience and, of course, for the benefit of the student. If the student never attends classes, the whole basis for making the disbursement is negated. For this reason the institution's refund policy would not be applicable in such a situation. If an institution chooses to disburse early (prior to the beginning of classes), it must be able to determine whether or not a student begins classes in order to comply with this regulation.

Comment. Several commenters expressed concern that under § 190.78(c), they would incur expenses in the processing of grants for those applicants who withdrew or were expelled before the first day of class but they would be unable to collect the administrative allowance for them.

Response. Section 190.10(a) authorizes an administrative cost allowance for each student who receives a Basic Grant. Thus, when a student withdraws or is expelled before the first day of classes, and all Basic Grant funds are returned to the Basic Grant account, according to § 190.78(c), no administrative allowance would be paid for that student. It is not anticipated that any institution would have many students who would withdraw or be expelled prior to the first day of classes and who could also have had Basic Grant funds disbursed to them which would then have to be returned. In order to avoid the possibility of incurring unrecoverable processing costs in such an instance, the institution may choose to postpone making disbursements until the student begins attending classes.

Comment. Several commenters suggested under § 190.78(d)(2), that the time that the school should have to hold the student's check should be considerably shorter than "15 days after the last date . . . of the student's enrollment for that award period." While some commenters suggested specific substitutes others thought that each school should be allowed to use its discretion in the matter. Some of these commenters cited potential problems in reporting and recordkeeping under this rule. Many of these commenters also thought that the overriding principle ought to center around the concept of student responsibility in this matter. On the other hand, a few commenters thought that the institution should have to hold the student's check for a longer period of time than is set forth in the Notice of Proposed Rulemaking. In addition, some of these felt that the institution should have to send the student a certified letter notifying him or her of the impending forfeiture of the grant 10 days prior to the effective date of that forfeiture. Also, a great many of the commenters indicated that it is impractical to keep a specific check for a period of time beyond 30 or 60 days. They suggested instead that the original could be destroyed, and a replacement could be reissued.

Response. This regulation was written in response to a number of inquiries from students that the Office of Education has received in the past related to their problems in receiving their Basic Grant checks. The Commissioner feels that both the institution's administrative convenience and the student's entitlement should be considered in this area. Thus, the regulation attempts to achieve a compromise between these two, sometimes conflicting, goals. While the student certainly must exercise responsibility in this area, the institution must be somewhat flexible in order to be responsive to unusual circumstances. Fifteen days after the last date of the student's enrollment in the award period appears to be reasonable for both parties. However, the Commissioner does not feel that the institution should have to engage in extraordinary measures (such as the mailing of certified letters) to inform the student about an impending forfeiture of a check. And, of course, an institution may cancel any check and reissue a duplicate rather than hold the original check, if it chooses to do so.

Comment. One commenter suggested that the word "may" in § 190.78(d)(3) should be changed to "shall" since subparagraph (e)(4) addresses itself to a forfeiture of "any remaining Basic Grant payment" if the check has not been picked up within the specified time period.

Response. The Office of Education does not feel that such a change is necessary. The institution, under § 190.78(d)(3), has the option of crediting the students account for any amount owed if the student has not picked up the check in time. Under subpara-

graph (d)(4), the student forfeits any remaining Basic Grant payments. The words "any remaining Basic Grant payments," in subparagraph (d)(4) would take into consideration a school's action under subparagraph (d)(3). A change to "shall" from "may" would mandate an action that most institutions will choose anyway, but which should be their option.

Comment. One commenter suggested that the Office of Education add a new section to § 190.78 which would state that the student has a limited time period to contest the school's calculation of his award.

Response. Since the Basic Grant is based on an entitlement concept, the Commissioner feels that a student should not be denied what is due to him or her if a mistake is made by either the Office of Education or an institution. Thus, a limited time period to contest a school's calculation will not be mandated by regulations.

Comment. One commenter suggested that a new section should be added to § 190.78 which would allow an institution to use an incarcerated student's Basic Grant to cover all legitimate expenses accrued by the student in the event that the incarcerated student cannot continue his or her educational program at the institution either because he or she was transferred from one correctional facility to another, or because he or she had his or her education interrupted by a correctional facility decision.

Response. Sections 190.76, 190.64, 190.65, and 190.66 establish the requirements for the frequency and the calculation of payments which must be made for a student. Any student may, for a variety of reasons, interrupt his or her education at a point when he or she still owes money to the institution. The Commissioner does not feel that it would be appropriate to single out incarcerated students in this regard and allow Basic Grant payments to them which would not be allowed to other students.

§ 190.79 Affidavit of Educational Purpose

Comment. While several commenters suggested that all of § 190.79 be dropped from the regulations, the majority of commenters suggested two changes. First, they suggested that the word "notarized" be dropped, and second, they suggested that the affidavit be incorporated on the application form. In addition, related to the notarization function, one commenter suggested that the Office of Education define the term "recruit" used in § 190.79(c).

Response. The regulation was not changed. Section 498 of the Higher Education Act of 1965, as amended (20 U.S.C. 1088g), requires the student to sign an affidavit. An affidavit is a written statement made under oath or affirmation before a notary public or other person authorized under State law to administer such an oath or affirmation. Since the affidavit is required for all Title IV programs, the institution is the logical place for the student to complete this requirement. Thus, incorporating the affidavit on the application would not be a viable alternative. Concerning the last portion of the comment, the Commissioner intends the term "recruit" to be used in its normal context and does not feel that a special definition of the word is necessary.

Comment. One commenter suggested that the word "form" in § 190.79(a) be changed to "format." This, it was felt, would accomplish two things. First, institutions could incorporate the required wording on other institutional documents rather than on a separate form. Second, if change in the wording is mandated by the Office of Education, institutions would have more flexibility in form design and would be able to respond quicker with their own document rather than wait for the "approved form" of the Commissioner.

Response. The word "form" does not mean an OE approved document, but rather that the wording of the affidavit is the same as the wording prescribed by the statute. Under the current regulation, the institution has the option of incorporating the affidavit into another institutional form (for example, an award letter) if it chooses.

§ 190.80 Recovery of Overpayments

Comment. Several commenters indicated that the term "reasonable" in § 190.80(b)(1) is not precise enough. Some of them suggested that the Office of Education define what is meant by "a reasonable effort."

Response. The Commissioner feels that the term reasonable, although not precise in nature, does have a readily understood meaning. The Commissioner does not feel that specific procedures should be established in this area, since various situations might call for different action on the part of the institution.

Comment. One commenter suggested that the Office of Education add a section to § 190.80 which would provide (possibly on the progress report) a mechanism for carrying over payments due and recoveries from prior award periods similar to provisions for the National Direct Student Loan Program.

Response. Basic Grant funds are appropriated yearly and are intended by Congress to be used for a specific purpose in a specified time period. The National Direct Student Loan Program, of course, makes use of a continuing revolving fund and, therefore, the situation is not similar. Thus, as is presently being done, overpayments recovered by the institution must be deposited in the appropriate Basic Grant Account, or returned to the Office of Education if that account is no longer open at the school.

Comment. Several commenters suggested that in § 190.80, the Office of Education should establish some sort of incentive for the institutions. For example, one person suggested that there should be a monetary compensation for the institution if it recovers overpayments which resulted from non-institutional errors. Another suggested that the schools should be able to use "recovered funds" for their campus-based programs.

Response. Regarding the latter suggestion, as indicated in the previous response, Basic Grant funds are appropriated by Congress for a specific purpose. Thus, recovered funds from this program can not be used for other programs. And, implementation of the former suggestion would require an amendment to the statute and a separate appropriation from Congress for that purpose.

Comment. One commenter suggested that, in order to facilitate compliance with § 190.80(b)(2), the Office of Education should provide official forms.

Response. The Commissioner does not feel that an official form for such a purpose is necessary. To comply with this section, the institution could simply write a letter to the Commissioner containing the appropriate information.

§ 190.81 Recalculation of a Basic Grant award.

Comment. Several commenters suggested that under § 190.81(b), recalculation should be mandatory. On the other hand, one commenter indicated that she was happy with this section, since it provides an opportunity for each institution to develop its own policy in this area. The commenter, however, wondered whether the institution's policy had to be written.

Response. The Commissioner does not feel that a recalculation (under § 190.81(b)) should be mandatory. If the school does opt for such a policy, it would have to be consistently applied to all students and should be available to students in writing as part of the terms and conditions of financial aid programs outlined under the provisions of the Student Consumer Information Regulations.

Comment. Several commenters thought that the language in § 190.81(a)(3) appeared to be both permissive and mandatory. ("... The student's Basic Grant . . . must be adjusted. *Where possible*, the adjustment *must be* made within the same award period." (Emphasis added)). They, therefore, were unsure as to the Office of Education's intent with this portion of the regulations.

Response. There is not a conflict with the present language of § 190.81(a)(3). Under the condition stated there, the student's Basic Grant *must* be adjusted. Even though it will not always be possible to make the adjustment in the same award period, the adjustment *must* still be made. The regulation does however state that *where possible* the adjustment must be made within the same award period. An example of a situation where the adjustment could not be made in the same award period would be where a correction necessitated by § 190.77 was processed late in the award period in question, or early in the subsequent award period.

Comment. Several commenters also thought that § 190.81(a)(1) should be expanded to indicate under what circumstances and within what time frame the required action (the recalculation of the student's award) would have to be taken. Several of these commenters also stated that the term "eligibility index" should be used in place of the term "expected family contribution."

Response. The regulation's intent is to indicate that the institution must recalculate the student's award whenever the student's eligibility index has changed. The circumstances under which recalculation must be made are set forth in subparagraphs (a)(2) and (3) of this section. As to the time frame involved, the provisions of § 190.61 would be applicable here as they would in any other situation unless otherwise noted.

For the Basic Grant Program, the terms "eligibility index" and "expected family contribution" are synonymous. In the interest of consistency the term "expected family contribution" will be kept.

§ 190.82 Fiscal control and fund accounting procedures.

Comment. A number of commenters suggested that the requirement for maintaining a separate account for Federal funds (found in § 190.82) was unnecessary and burdensome for institutions. Further, some of these commenters thought that this requirement was in conflict with other program regulations as well as with information previously disseminated by the Office of Management and Budget. As an alterna-

tive to this requirement, some people suggested that "problem schools" be treated as an exception, but that most institutions should simply be allowed to maintain separate ledgers to accomplish the same purpose. On the other hand, several commenters thought that the requirement was an excellent idea, and that it would alleviate problems which have been encountered in the past with some schools when Federal and institutional funds have been kept in a single account. One commenter suggested that the bank should be notified in writing that federal funds are deposited in the account, or that the name of the account should indicate that federal funds are deposited there. This requirement would be identical to one which has been in the regulations for the campus-based programs for several years. However, several commenters, although agreeing that the requirement was an excellent idea, suggested that it did not belong in the Basic Grant regulations since it pertained to all Title IV programs. They, therefore, suggested that it should be deleted from this regulation package and incorporated into the proposed regulations for Fiscal and Administrative Standards which were published as a Notice of Proposed Rulemaking on August 10, 1978.

Response. Because of the generally negative reaction to the requirement for a separate bank account for Title IV funds which was included in § 190.82 of the NPRM and in the proposed regulations for Fiscal and Administrative Standards, published on August 10, 1978, the separate account requirement has not been included in the final regulations. Rather, § 190.82 contains the same requirement that is included in the regulations for the campus-based programs, i.e., a separate bank account is not required, however, the institution must notify its bank of the accounts in which it has deposited Federal funds.

Comment. Several commenters suggested that although the requirement for validity of all information submitted by the institution is included in the terms of agreement, such a statement reiterating this requirement should be included in § 190.82.

Response. The Commissioner feels that adequate authorization for requirements in this area can be found in § 190.72 and § 190.92.

Comment. One commenter thought that the wording of § 190.82 ("Funds received * * * under this part are held in trust for the intended student beneficiaries and may not be used * * * for any other purpose") precludes the use of an administrative expense allowance and, thus, should be changed.

Response. The Commissioner agrees and the final regulation has been clarified.

§ 190.83 Maintenance and retention of records.

Comment. Regarding the maintenance of records, several commenters suggested that in § 190.83(a)(1) the Office of Education change the wording from "The eligibility of all enrolled students who have applied for Basic Grants" to "the eligibility of all enrolled students who have submitted a valid SER to the institution." Other commenters suggested limitations on who they would have to keep records on by stating that such phrases as "all grant recipients" or "*valid* SER's" should be used in the appropriate places.

Response. The intention of § 190.83(a)(1) is to include only those students who have submitted valid SER's to the institution. The final regulation has been amended accordingly.

Comment. Concerning § 190.83(a)(1), one commenter wondered what the term adequate records meant. Further, the commenter asked if the institution would be required to keep separate individual records or would it be sufficient for the information to be maintained in appropriate offices throughout the institution, e.g., on the student's account card in the business office, on the academic record in the Registrar's office, etc.

Response. The term "adequate records" is intended to mean those records which are enumerated in this section. Where the institution chooses to keep the records would be up to them. The records, of course, do have to be retrievable and available for inspection at the institution's offices as is required under subparagraph (b).

Comment. Several commenters indicated that the requirement of five years in § 190.83 was excessive. Along this same line, several people suggested that either three years be used, or that records would only have to be kept until they were audited.

Response. The requirement of five years is consistent with not only other Title IV program regulations, but also with Section 434(a) of the General Education Provisions Act (20 U.S.C. 1232c(a)).

Comment. Regarding the retention of the Social Security number in § 190.83(a)(2), one commenter indicated that the school's policy regarding the privacy of student information did not require students to disclose their Social Security numbers. Rather, that school assigned a University identification number to each student.

Response. The student's Social Security number is already on the Student Eligibility Report (and in fact is required for Basic Grant application purposes). Thus, when the school retains the SER, they will retain the Social Security number.

§ 190.85 Audit and examination.

Comment. Several commenters suggested that the requirement in § 190.85(b)(2) for an audit to be conducted annually or at least every two years be modified. While some people favored audits every year, and others favored biennial audits, others suggested that some small schools should not have to undergo audits (or that the audit procedures should be substantially modified in those cases). Several people also suggested that the Office of Education include some definitive language to spell out exactly which schools (based on size and complexity of their program) must have annual audits. Paramount in many of these comments was the cost implication involved in meeting this requirement. In fact, several of these same commenters also suggested that the Office of Education provide funds for the audits it is requiring.

Response. Section 190.85(b)(2) has been modified to require that an audit be performed at least once every two years. An institution may, of course, have an audit more frequently if it chooses to do so. While the Office of Education recognizes the validity of institutional complaints concerning the costs of a program audit, the authorizing statute does not permit the recovery of these costs except for the amount remaining from the administrative cost allowance after the provisions of the Student Consumer Information regulations have been met.

Comment. Concerning the "HEW Audit Guide" mentioned in § 190.85(b)(2), several commenters indicated that one did not exist yet. Thus, they wanted to know what they should use.

Response. The "HEW Audit Guide" for the Basic Grant Program has been published and mailed to all eligible institutions. If an institution has not yet received a copy it should contact the contact person for these regulations.

Comment. One commenter questioned the necessity of auditing all transactions as is required in § 190.85(b). Instead, he suggested that the audit guide should specify the confidence levels required, and set different confidence levels depending on the size of the program.

Response. All Basic Grant Program transactions must, of course, be available for audit. The procedures that the auditor will use in each case will be set forth in the "HEW Audit Guide."

Comment. One commenter indicated that it was misleading to imply in § 190.85(b) that the institution could conduct internal audits themselves.

Response. Section 190.85(b) indicates that the audit is to be done by the institution or at the institution's direction. In the majority of cases, this will mean that the audit will be done by an independent private accounting firm hired by the institution. However, in some cases an internal audit staff of the institution may be available to perform these audits. In these instances, the internal auditor must meet the standard of independence as defined by the United States General Accounting Office in its publication, "Standards for Audits of Governmental Organizations, Programs, Activities, and Functions."

SUBPART H

§ 190.94 Calculation and disbursement of awards by the Commissioner of Education.

Comment. Concerning paragraph (b), one commenter stated that validation should be performed by the Office of Education for students attending Alternate Disbursement System (ADS) schools.

Response. Verification for students at an ADS institution will be performed by the Office of Education.

§ 190.95 Termination of enrollment and refund.

Comment. One commenter asked if the school is required to notify the Office of Education of a change in enrollment status under paragraph (a).

Response. No, such notification is not required.

Comment. Two commenters suggested that the word "unofficially" be deleted from paragraph (a) because schools would not know if the student has unofficially withdrawn.

Response. The regulation has not been changed. "Unofficial withdrawal" refers to situations where the student leaves the institution without completing official withdrawal procedures. This provision does not require institutions to change current procedures for withdrawing students. Rather, the institution determines to the best of its ability the date on which the student left the institution.

Comment. Concerning paragraph (b) two commenters disagreed with the student having to refund a prorated portion determined by the Commissioner. One commenter suggested that the student should refund a portion which is consistent with the institution's refund policy. The other commenter suggested that this section should be amended to require the student to refund the lesser of a prorated portion of the Basic Grant, or the amount remaining to the student following payment of all outstanding room, board and tuition payments for the payment period.

Response. No change has been made to this section. Under the Alternate Disbursement System, all payments and refunds must be calculated by the Office of Education. Incorporation of each institution's refund policy or each student's outstanding bills into the central system is administratively infeasible. A pro rata refund is the only method which can be handled through central administration of the Program.

[FR Doc. 79-2291 Filed 1-24-79; 8:45 am]

federal register

THURSDAY, JANUARY 25, 1979
PART III



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Community Planning and Development

■

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Application Submission Date

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Community Planning and Development

[Docket No. N-79-909]

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

AGENCY: Department of Housing and Urban Development; Assistant Secretary for Community Planning and Development.

ACTION: Notice of application submission date—Financial Settlement Fund.

FOR FURTHER INFORMATION CONTACT:

Peter Rowan, 202-755-1871.

Pursuant to Section 570.484, Chapter V, Title 24 of the Code of Federal Regulations which requires the establishment of submission deadlines for the filing of applications for Categorical Program Settlement Grants, the Secretary is establishing the application date with respect to grants for funding the financial settlement, and to the extent feasible, the completion of projects assisted under the categorical grant programs terminated by Congress in 1974.

Accordingly, applications are invited from units of general local Governments in which projects assisted under the Urban Renewal Program are located which cannot be financially settled or completed, without supplemental financial assistance. To be considered for funding at this time, complete applications must be received by the appropriate HUD Area Office by close of business, February 28, 1979. For full program information see Subpart H. Part 570, Chapter V, Title 24 of the Code of Federal Regulations, which was published June 6, 1978, 43 FR 24656.

Issued at Washington, D.C., January 18, 1979.

ROBERT C. EMBRY, Jr.,
Assistant Secretary for Community Planning and Development

[FR Doc. 79-2616 Filed 1-24-79; 8:45 am]

federal register

THURSDAY, JANUARY 25, 1979
PART IV



DEPARTMENT OF TRANSPORTATION

Coast Guard

■

SUSPENSION AND REVOCATION PROCEEDINGS

Temporary Documents

[4910-14-M]

Title 46—Shipping

CHAPTER 1—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 78-024]

PART 5—SUSPENSION AND REVOCATION PROCEEDINGS

Temporary Documents

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the regulations governing the issuance of temporary documents during the pendency of appeals of suspension and revocation orders to the Commandant and revokes redundant regulations concerning the release of records. The Administrative Law Judge hearing the case presently forwards each denied request for a temporary document the Commandant for final action. This amendment makes the Administrative Law Judge's decisions concerning the issuance of a temporary document final in the absence of further appeal of that decision, and eliminates the necessity of the Commandant reviewing each denial of a temporary document.

EFFECTIVE DATE: January 25, 1979.

FOR FURTHER INFORMATION CONTACT:

Commander Charles H. King, Jr., Office or Merchant Marine Safety (G-MMI-2/82), Room 8205, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (202 426-2215).

SUPPLEMENTARY INFORMATION: Since this is a matter relating to agency procedure and practice, under 5 U.S.C. 553(a)(2) notice and public procedure are unnecessary. Under 5 U.S.C. 553(d)(3), the amendments may be made effective in less than thirty days after publication in the FEDERAL REGISTER since they clarify appeal procedures for merchant seamen. This rule has been reviewed under the Department of Transportation's "Policies and Procedures for Simplification, Analysis, and Review of Regulations" (43 FR 9582, March 8, 1978). A final evaluation has been prepared, and has been included in the public docket.

DRAFTING INFORMATION

The principal persons involved in drafting this amendment are: Commander Charles H. King, Jr., Project Manager, Office of Merchant Marine Safety, and Edward J. Gill, Jr., Project Attorney, Office of the Chief Counsel.

DISCUSSION OF AMENDMENT

A merchant seaman who has had his document suspended or revoked by an order of an Administrative Law Judge may request the issuance of a temporary document that would be valid during the pendency of his appeal of the suspension or revocation to the Commandant. The change to the regulation will make the Administrative Law Judge decision denying the issuance of a temporary document final in the absence of an appeal of that decision. If the Administrative Law Judge's does not authorize the issuance of a temporary document, the merchant seaman may appeal to the Commandant requesting that the Commandant review the Administrative Law Judge's decision concerning the temporary document. The amendment will relieve the Commandant of the burder of reviewing every denial of a request for a temporary document. The Commandant will now review only those cases in which an appeal has been made by the seaman.

The regulations dealing with the release of records (46 CFR 5.55) are being deleted because the substance of the regulations is in Title 49 of the Code of Federal Regulations and this reference is set out in 46 CFR 5.50-1. It is unnecessary and superfluous to have two sets of regulations on the same subject.

Accordingly, Part 5 of Title 46 of the Code of Federal Regulations is amended as follows:

1. By revising § 5.30-15(a) and (b) to read as follows:

§ 5.30-15 Temporary documents.

(a) A person who has appealed from a decision suspending or revoking a document and/or license may file a written request for a temporary document and/or license with the Administrative Law Judge who rendered the decision, or with any Officer in Charge, Marine Inspection, for forwarding to such Administrative Law Judge. Action on the request will be taken by the Administrative Law Judge. However, if the hearing transcript has been forwarded to the Commandant, the request for a temporary document is forwarded by the Administrative Law Judge to the Commandant for final action.

(1) If the request for a temporary document is denied by the Administrative Law Judge, the individual denied the document may appeal the denial, in writing, to the Commandant within 10 days.

(b) The Administrative Law Judge or the Commandant grants the request for a temporary document based on:

(1) Whether the service of the individual involved on board a vessel at the time of the request, or immediately thereafter, is compatible with the requirements for safety of life and property at sea.

(2) The individual's prior record.

* * * * *

Subpart 5.55 [Deleted]

2. By deleting Subpart 5.55.

(Sec. 633, 63 Stat. 545, as amended (14 U.S.C. 633); R.S. 4450 (46 U.S.C. 239); sec. 6(b)(1), 80 Stat. 937 (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b))

Dated: January 20, 1979.

J. B. HAYES,
Admiral, U.S. Coast Guard
Commandant.

[FR Doc. 79-2668 Filed 1-24-79; 8:45 am]

federal register

THURSDAY, JANUARY 25, 1979
PART V



DEPARTMENT OF ENERGY

Economic Regulatory Administration

■

AMENDMENTS TO IMPOSE THE ENTITLEMENT OBLIGATION ON THE FIRST PURCHASE OF PRICE CONTROLLED DOMESTIC CRUDE OIL

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Parts 211, 212]

[Docket No. ERA-R-78-12]

AMENDMENTS TO IMPOSE THE ENTITLEMENT OBLIGATION ON THE FIRST PURCHASE OF PRICE-CONTROLLED DOMESTIC CRUDE OIL

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is proposing to amend its domestic crude oil allocation (or entitlements) program to impose the entitlement purchase obligation on the first purchase of price-controlled domestic crude oil, regardless of whether the purchaser is a refiner, reseller, or some other user of crude oil.

Under this proposal, the ERA would announce in advance of each calendar quarter the entitlement prices for lower tier and uppper tier crude oil, respectively for each month of the quarter. Since all transactions after the first sale would reflect the entitlement obligation, resellers of crude oil would not be required to certify to their purchasers the volumes and per-barrel price of lower tier, upper tier, and exempt crude oil sold in each transaction, thus reducing the current regulatory burden on both resellers and refiners and the potential evasion of price controls downstream of the producer. In addition, shifting the entitlement purchase obligation from refiners to first purchasers would automatically assure that entitlement obligations attach to nonrefining uses of price-controlled domestic crude oil.

This proposal is intended to be the first phase in ERA's effort to simplify the crude oil price controls by eventually using the entitlements program, rather than the ceiling price regulations, to regulate first sale prices of domestic crude oil.

DATES: Comments by March 23, 1979, 4:30 p.m. Requests to speck by March 2, 1979, 4:30 p.m. Hearing dates: Denver, Colorado hearing: March 8, 1979, 9:30 a.m.; Washington, D.C. hearing; March 13, 1979, 9:30 a.m.

ADDRESSES: All comments and requests to speak for Washington hearing to: Public Hearing Management, ERA Docket No. ERA-R-78-12, Department of Energy, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461. Requests to speak for Denver hearing—Robert Drawe, 1075 South Yukon Street, P.O. Box 26247, Belmar Branch, Lakewood, Colorado 80226. Hearing locations: Washington hearing—Room 2105 2000 M Street, N.W., Washington, D.C. 20461; Denver hearing—Room 269, U.S. Post Office Building, 1323 Stout Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), Economic Regulatory Administration, 2000 M Street, N.W., Room 2214B, Washington, D.C. 20461 (202) 254-5201.

William L. Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, N.W., Room B110, Washington, D.C. 20461 (202) 634-2170.

Douglas W. McIver (Entitlements Program Office), Economic Regulatory Administration, 2000 M Street, N.W., Room 6128I, Washington, D.C. 20461 (202) 254-8660.

Daniel J. Thomas (Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street, N.W., Room 2310, Washington, D.C. 20461 (202) 254-7477.

Samuel M. Bradley (Office of General Counsel), Department of Energy, 12th & Pennsylvania Avenue, N.W., Room 5134, Washington, D.C. 20461 (202) 566-9565.

SUPPLEMENTARY INFORMATION:

I. Background
A. Discussion of Comments
B. Relationship to Other Rulemakings
II. Proposed Amendments
A. General
B. Principal Definition Changes
C. Effect of Proposal on First Purchasers
D. Effect of Proposal on Refiners
E. Reporting Requirements
F. Special Provisions for Transition Period
III. Request for Additional Comments
IV. Written Comment and Public Hearing Procedures.

I. Background

On April 5, 1978, we issued a notice of inquiry (43 FR 15158, April 11, 1978) requesting public comment on simplifying the crude oil price control program by using an entitlements-based crude oil price system, rather than the present ceiling price regulations, as the primary mechanism for regulating first sale prices of domestic crude oil. We stated that the principal objectives of such a system were to expand the role of the market system in determining specific transaction prices in sales of domestic, price-controlled crude oil and to eliminate as much of the current regulatory burden on crude oil producers, resellers and refiners as possible without affecting current benefits of price controls to consumers. We also indicated that an entitlements-based crude oil price control system could permit the elimination of ceiling prices on first sales of domestic crude oil as well as price controls on crude oil resellers. We identified and requested comment on a wide variety of issues and possible regulatory actions concerning the simplification of the existing ceiling price and entitlements programs generally and the entitlements-based price control system in particular. These included the desirability of establishing the entitlement price for a calendar quarter rather than a month; the desirability and feasibility of imposing the entitlement obligation on the first purchaser of crude oil; the legality of eliminating ceiling prices on crude oil prior to May 1979 (when authority under the EPAA is discretionary rather than mandatory); and the desirability of establishing different entitlement prices for discrete gravity ranges of crude oil.

A. Discussion of Comments

In response to our April 5 notice, we received 70 written comments. Public hearings were held in Houston, Texas on May 22, 1978, at which 5 persons testified, and in Washington, D.C. on May 24-25, at which 23 persons testified. The commenters included major, large independent, and small refiners, independent producers, crude oil resellers, trade and industry associations, a consumer group, and two federal agencies.

Although the commenters were nearly unanimous in their support of any effort to remove unnecessary regulatory controls and to restore the influence of the marketplace in domestic crude oil pricing practices, a slight majority of the commenters opposed the entitlements-based price control system. Most of the firms which opposed the proposal urged us to concentrate our efforts on a phased decontrol of domestic crude oil prices rather than a new regulatory system which would perpetuate price controls. However, of the commenters which opposed the proposal, few offered substantive support for their position other than general apprehension over the uncertainties and disruptions involved in a significant change in the status quo.

The principal arguments that were raised in opposition to the entitlements-based price control system were: 1) the system would not reduce appreciably the reporting burdens for producers, refiners or resellers, and the confusion and uncertainty which normally follows any major regulatory change would outweigh the benefits of the system; 2) since the system would continue the present crude oil pricing categories, the composite price limitation, the small refiner bias and entitlements exceptions relief for particular refiners, it would not promote market-determined pricing; 3) the fluctuations

in world and domestic crude oil prices would require repeated adjustments in the pre-determined entitlement price to compensate for previous forecast inaccuracies, creating cashflow problems for many refiners and general uncertainty in the marketplace; and 4) the likely increase in low-sulfur crude oil prices would cause producers of medium and high-sulfur crude oils to lose an equivalent amount of revenues unless there were an overall rise in the average domestic crude oil price. Many of the commenters expressed the view that it would be inappropriate to adopt the proposal at this time since the composite price requirements on first sales of domestic crude oil as well as other mandatory price controls expire on May 31, 1979, and it is unclear whether the President will use his discretionary authority to continue controls.

The overwhelming majority of the small refiners who submitted comments opposed the entitlements-based price control system. In general, they argued that, without the continuation of allocation controls on crude oil, the major integrated refiners would decline to sell their production to small and independent refiners and would outbid them for production controlled by independent producers. The result for small and independent refiners would be significantly higher crude oil costs and near total dependence on imported crude oil.

Most of the commenters who supported the concept of an entitlements-based crude oil price control system contended that its successful implementation depended upon the adoption of various complementary regulatory changes. Thus, for example, several independent and major refiners argued that without modification of the small refiner bias and elimination of entitlement purchase exemptions, some refiners would be in a position to outbid all other refiners for access to crude oil from their historical sources. Many commenters stated that the present ceiling price controls should be removed immediately upon implementation of the new system to permit the market place to determine the proper differentials among different grades and qualities of crude oils. Some commenters argued that the new system would be effective only if the entitlement value varies with crude oil gravity, while others contended that a variable entitlement price would so complicate the system as to make it unworkable. Finally, as discussed more fully below, many firms expressed the view that shifting the entitlement obligation from refiners to first purchasers would facilitate the transition to an entitlements-based crude oil price system.

Both the Department of Justice and the Bureau of Competition of the Federal Trade Commission urged us to adopt the entitlements-based price control system. They both expressed the view that it would enhance significantly competition within the petroleum industry, provided that controls on first sale prices of domestic crude oil and crude oil resellers were removed and the entitlement obligation were imposed on the first sale of domestic crude oil.

We have carefully considered the written comments received and the testimony given at the public hearings. On the basis of these comments, we have decided not to propose an entitlements-based crude oil price control system at this time. Notwithstanding that the majority of the commenters opposed the proposal, the information received in this proceeding has persuaded us that such a system would accomplish the objectives which we outlined in our April 5, 1978 Notice. However, we believe it would be desirable to implement the system in phases in order to lessen the disruptive effects and uncertainties which necessarily follow a major regulatory change. Accordingly, as the first phase in the implementation of and to facilitate the transition to an entitlements-based price system, we are proposing in this proceeding to modify the structure of the entitlements program to impose the entitlement purchase obligation on the first sale of price-controlled domestic crude oil. During the pendency of this rulemaking, we will continue to evaluate the comments submitted in response to the April 5 notice, particularly the comments addressed to the eighteen specific issues raised in the notice.

As expressed in many of the comments, a first purchaser entitlements program should significantly reduce the public and private costs associated with crude oil price controls, since such a system eliminates the need for tracking the various price tiers of domestic crude oil from the wellhead to the refiner. In addition, since all transactions after the first sale would reflect the entitlement purchase obligation, such a system should help reduce the potential evasion of price controls that now can occur downstream of the producer, since there would be less opportunity for a reseller to profit from the evasion on controls. In this regard, since any evasion scheme that occurred under this system would have to occur at the production level, it should be easier to detect such conduct than it has been under the present system where miscertifications can occur anywhere between the wellhead and the refinery gate. Finally, since the entitlement purchase obligation is imposed on the first purchaser regardless of eventual end use, the proposal would eliminate the need for special regulations to include nonrefining uses of crude oil in the entitlements program.

In deciding to propose the first sale entitlements program, we gave serious consideration to the concern reflected in some comments that the addition of aproximately 100 to 150 new participants (i.e., first purchasers other than refiners) to the entitlements program potentially could create confusion and uncertainty with respect to settlement of entitlement transactions, particularly where the accountability and financial stability of a first purchaser is questionable. However, we have concluded that, on balance, the advantages of a first purchaser entitlements program outweigh these disadvantages. In any event, as discussed below, we are requesting comments on whether we should strengthen existing provisions that are designed to ensure that all firms perform reliably in the settlement of their entitlements transactions.

B. RELATIONSHIP TO OTHER RULEMAKINGS

On November 1, 1978 (43FR 52104, November 8, 1978), we issued a notice of proposed rulemaking to expand the coverage of the entitlements program to include the nonrefining uses of price-controlled domestic crude oil. The proposal presented in this notice to shift the entitlement purchase obligation from refiners to first purchasers would automatically result in including all nonrefining uses of domestic crude oil in the entitlements program (unless a specific exception were made), since the entitlements obligation would attach at the point of first sale regardless of the ultimate use of the oil. Accordingly, the issues raised in and the comments submitted in response to the November 1 notice will be considered in the context of this rulemaking and, in the event we determine to adopt a final rule imposing the entitlement purchase obligation on first purchasers, we will terminate the nonrefining uses proceeding.

II. PROPOSED AMENDMENTS

A. GENERAL

Under the proposed "first purchaser" entitlements program, each first purchaser (regardless of whether the purchaser is a refiner, reseller or some other user of crude oil) of price-controlled domestic crude oil would be required to purchase one entitlement for each barrel of old oil and a fraction of an entitlement for each barrel of upper tier crude oil purchased in a month. However, consistent with our November 1 proposal with respect to nonrefining uses, first purchasers

would not incur an entitlement obligation with respect to old oil and upper tier oil sold to producers for purposes of crude oil production, provided that the producer certifies to the first purchaser that the crude oil will be used for production purposes. We would announce the monthly entitlement prices for old oil and upper tier crude oil in advance of each calendar quarter to permit first purchasers to establish their prices to their purchasers. Thus, resellers' invoices would reflect the appropriate entitlement obligation associated with the crude oil sold.

Refiners would be issued entitlements each month based on their crude oil runs to stills multiplied by the National Domestic Crude Oil Supply Ratio (DOSR), as is presently done. As is also the case under the present entitlements program, the sale and purchase of entitlements would take place in the second month following the month in which crude oil is run to stills. Thus, although the proposal provides for the determination of the entitlement prices on a quarterly basis, first purchasers and refiners would continue to report their first sale transactions and runs to stills, respectively, on a monthly basis.

Since under this proposal all transactions after the first sale would include the entitlement obligation (except crude oil sold for purposes of crude oil production), the provision requiring resellers of crude oil to certify the volumes and per barrel prices of lower tier, upper tier, and exempt crude oil sold in each transaction could be eliminated. For the same reason, firms (except producers) which consume price-controlled domestic crude oil for nonrefining uses will obtain such crude oil subject to the cost-equalizing effects of the entitlements program. In this regard, refiners and other firms (except producers with respect to price-controlled crude oil used for production purposes) would be deemed to have crude oil runs to stills (and thus receive entitlements) for any volume of domestic crude oil consumed for nonrefining uses.

B. PRINCIPAL DEFINITION CHANGES

Under the proposal, "first purchaser" would be defined in § 211.62 as any firm which acquires domestic crude oil in the "first sale" as that term is defined in § 212.72 of the Mandatory Petroleum Price Regulations. Since "first purchasers" rather than refiners would incur the entitlement obligations for purchases of price-controlled domestic crude oil, the term "entitlement" in § 211.62 would be redefined as the right for a particular month of a first purchaser to include one barrel of deemed old oil in its adjusted crude oil purchases in that month. Similarly, since first purchasers would not be required to certify the volumes of lower tier, upper tier and exempt crude oils sold in each transaction, and thus refiners would not report their receipts of these crude oil pricing categories, the numerator of the "National domestic crude oil supply ratio", as defined in § 211.62, would be based on the adjusted purchases of all first purchasers, rather than the "adjusted crude oil receipts" of all refiners, as is done currently.

The proposed regulations also would add a new definition of "adjusted crude oil first purchases" to provide for reporting by first purchasers of retroactive adjustments on a current basis in the same manner that refiners presently report such adjustments under the definition of "adjusted crude oil receipts." In this regard, as discussed more fully below, we are proposing to amend § 211.67(j) of the entitlements program regulations to permit first purchasers, as well as refiners, to correct clerical and other "reporting errors" by the filing of amended monthly reports.

C. EFFECT OF PROPOSAL ON FIRST PURCHASERS

The principal regulatory change to the entitlements program under this proposal is an amendment to § 211.67(b) [Required purchase of entitlements by refiners] to require each first purchaser of price-controlled domestic crude oil to purchase one entitlement for each barrel of old oil and a fraction of an entitlement for each barrel of upper tier crude oil purchased in a month. Refiners that own and consume their own crude oil production would, of course, be first purchasers as to that production, since the definition of "first sale" in § 212.72 of the price regulations provides that in the case of transfers between affiliated entities, the "first sale" will be imputed to occur as if in arms-length transactions.

As discussed above, imposing the entitlement purchase obligation on the first sale of price-controlled domestic crude oil automatically would include nonrefining uses of crude oil in the entitlements program since, in the absence of an express exemption, all transactions after the first sale would reflect the entitlement purchase obligation. However, consistent with our November 1 proposal to include nonrefining uses of price-controlled crude oil within the entitlements program, the proposed amendment to § 212.67(b) would exempt from the entitlement purchase obligation sales of lower tier and upper tier crude oil to crude oil producers for purposes of crude oil production, provided that the producer-purchaser certifies to the seller (first purchaser) that the crude oil would be used for production purposes.

On June 15, 1978 (43 FR 26540, June 20, 1978), we adopted a graduated system of reducing the entitlement obligations of (that is, increasing the number of entitlements issued to) refiners which report low-gravity California lower tier and upper tier crude oil in their adjusted crude oil receipts based on the weighted average gravity of the crude oil. Under the first purchaser system, we propose to give effect to these adjustments for California price-controlled crude oil at the first-purchaser level. Accordingly, the proposed amendment to § 211.67(b) provides a graduated system for reducing the entitlement obligations of first purchasers of California lower tier and upper tier crude oil that is similar to the system which we adopted on June 15, 1978. Since resellers play a relatively small role in the distribution of California crude oil, we believe that this approach will not frustrate our objectives underlying the June 15, 1978 amendments of better equalizing the after-entitlement costs to refiners of controlled and uncontrolled crude oil in California and providing greater incentives for refiners to purchase price-controlled California crude oil at prices that will enhance the potential for maximum domestic crude oil production. However, comments are sought on the impact, if any, of giving effect to the California entitlement adjustments at the first purchaser level on the wellhead prices of price-controlled California crude oil.

Since all transactions after the first sale, regardless of the pricing category of the crude oil involved, would be based on a price which includes the entitlement cost, the proposed regulations delete the certification requirement in § 212.131(b) applicable to resales of price-controlled domestic crude oil. The deletion of the certification requirements should substantially lessen the current regulatory burden on crude oil resellers and the potential for price violations by resellers based on miscertifications.

We would publish the entitlements notice specified in § 211.67(i) in the second month following the transaction month, as is currently done. § 211.67(i) would be amended to provide that the list would specify the number of barrels of deemed old oil purchased by each first purchaser and the number of entitlements required to be purchased by each first purchaser. With regard to first purchasers that are also refiners, the entitlements list would specify the entitlement obligations net of entitlement issuances and, if appropriate, the entitlement issuances net of entitlement obligations.

§ 211.67(i) also would be amended to provide that, in advance of each calen-

dar quarter, we would fix the price at which entitlements would be sold and purchased in each month of the quarter. The entitlement price under this proposal would be established to accomplish the objective under the present entitlements program of roughly equalizing refiners' crude oil acquisition costs.

Since the entitlement prices would be established in advance of each quarter, it will be necessary for us to project the weighted average delivered costs to refiners of imported and domestic crude oils for the quarter. In the case of *domestic* crude oils, these projections would be based on available historical data and projected first sale price increases. The projections regarding old oil and upper tier crude oil would, of course, be consistent with the schedule of monthly first sale price adjustments for the quarter.

With the elimination of the tier certification requirement, refiners would not report to us their weighted average *delivered* costs of domestic crude oils by tier. Consequently, in projecting the delivered costs of domestic crude oils, it would be necessary for us to impute the national average cost of transporting domestic crude oils from the lease to the refinery. In this regard, we are proposing to require refiners to continue reporting their receipts and delivered costs of Alaska North Slope (ANS) and Naval Petroleum Reserves (NPR) crude oils. Since ANS and NPR crude oils are not typically sold through resellers, we believe that refiners would be able to identify and report their delivered costs of such crude oils.

In light of these considerations, proposed § 211.67(i)(4) provides that the entitlement price would be calculated as the difference between the projected weighted average delivered cost per barrel to refiners of old oil and such projected weighted average delivered cost of imported crude oil, ANS crude oil, stripper well crude oil, incremental tertiary crude oil and other exempt domestic crude oils. Consistent with our recent notice of proposed rulemaking (43 FR 52186, November 8, 1978) regarding incentives to promote increased production of domestic crude oil, the above method for calculating the entitlement price would eliminate the current 21¢ penalty for refiners' receipts of imported crude oil. As we indicated in the November 8 notice, we have tentatively concluded that the 21¢ penalty may be imposing an inappropriate burden on those refiners that are dependent upon imported crude oil.

We invite comments on the appropriateness and feasibility of calculating the entitlement price in the manner described above. You are encouraged to offer alternative calculation methods. In particular, we request comments on the feasibility of establishing a single entitlement price for an entire quarter, rather than a separate entitlement price for each of the three months of the quarter, as proposed.

Finally, we are proposing to amend § 211.67(m) [Adjustments to crude oil and product costs] to permit first purchasers that are crude oil resellers to pass through the cost of entitlements to their purchasers. Proposed § 211.67(m)(2)(ii) would permit crude oil resellers to include in their monthly "costs and expenses associated with sales of crude oil," as defined in § 212.182 of the reseller price regulations contained in Subpart L of Part 212, the entitlement obligations incurred with respect to the crude oil sold in that month.

D. EFFECT OF THE PROPOSAL ON REFINERS AND NONREFINING END-USERS

Generally speaking, the shifting of the entitlement purchase obligation with respect to price-controlled domestic crude oil from refiners to first purchasers should lessen the current regulatory burden for refiners, inasmuch as refiners would not be required to keep track of and report to us the volumes and costs of lower tier, upper tier and exempt crude oil included in their crude oil receipts each month. In this regard, the current provisions designed to require refiners to account for price-controlled domestic crude oil as to which they have received the competitive benefits associated with its lower acquisition cost would be eliminated. Thus, the proposed regulations would delete the present provisions applicable to exchanges of crude oil (§ 211.67(g)) and certification by non-refiners (§ 211.67(l)). An exception is § 211.67(f), which governs transactions under the crude oil buy/sell program (§ 211.65). § 211.67(f) would be amended to provide that where a refiner-seller arranges for a refiner-buyer to acquire Price-controlled crude oil in a first sale to satisfy the refiner-seller's sales obligation under § 211.65, the refiner-seller would be deemed to be the first purchaser.

With the exception of the amendment discussed above applicable to entitlement adjustments for California price-controlled crude oil, imposing the entitlement purchase obligation on first purchasers would not involve a change in other special entitlements adjustments provisions, such as, for example, the provisions regarding the small refiner bias,[1] petroleum substitutes, and East Coast residual fuel oil.

Since refiners and other firms (except producers with respect to crude oil used for production) would acquire all price-controlled domestic crude oil, regardless of its end use, subject to the cost-equalizing effect of the entitlements program, the cost for such volumes would be approximately equivalent to the weighted average cost of uncontrolled crude oil. Proposed § 211.67(d)(9) provides that a refiner's crude oil runs to stills would (except for purposes of computing the small refiner bias) be deemed to include those volumes of domestic crude oil consumed by that refiner as other than a refinery feedstock. Proposed § 211.67(d)(10) would provide for entitlement issuances to firms other than refiners on the same basis as a refiner with respect to those volumes of domestic crude oil consumed for nonrefining uses. The effect of these provisions would be to render the after-entitlement cost for domestic crude oil consumed for nonrefining uses equivalent to the cost of crude oil used as a refinery feedstock.

E. REPORTING REQUIREMENTS FOR FIRST PURCHASERS, REFINERS, AND NONREFINING END-USERS

In order to implement the proposed first purchaser program, we are proposing to amend the refiner reporting requirements contained in § 211.66 and the reporting forms for first purchasers (FEA-P124-M-1) and refiners (ERA-49) currently used in connection with the entitlements and crude oil price control programs. Section 211.66(h) [Monthly report] presently requires refiners to report the volumes and costs by tier of all crude oils included in their crude oil receipts each month. The proposed amendment to § 211.66(h) would require refiners to report the total volumes and average costs of all domestic crude oil (excluding ANS and NPR crude oils), ANS and NPR crude oils, an imported crude oil included in their crude oil receipts in the second month prior to the month in which the report is filed. In addition, refiners would be required to report the volumes of domestic crude oil consumed for purposes other than refining (excluding lease use). Finally, refiners would be required to report their crude oil runs to stills for the reporting month, as is currently done.

We are proposing to revise the present first purchaser reporting form (FEA-P124-M-1) to require the following new information of first purchasers (including refiners that are first purchasers):

(a) The volumes (separately stated) of lower tier crude oil and upper tier crude oil (i) consumed by the first purchaser on a lease for crude oil production purposes and (ii) sold to a produc-

[1] On November 14, 1978, the ERA proposed amendments to the entitlements program to reduce the level of benefits received under the small refiner bias (43 FR 54652, Novermber 22, 1979).

er for consumption on a lease for crude oil production purposes.

(b) The volumes and weighted average gravity of California lower tier crude oil and upper tier crude oil included in the first purchases.

(c) Any permitted or requried adjustments to the volumes of lower tier, upper tier and California lower tier and upper tier crude oil included in the purchases of the first purchaser.

For firms other than refiners and producers which consume domestic crude oil for a nonrefining use, proposed § 211.66(l) would require such firms to report the volumes of domestic crude oil so consumed for purposes of receiving entitlements. Finally, the proposed amendments to § 211.66(i) would require any firm (that is, first purchaser, refiner and nonrefining user of crude oil) which is required to buy or sell entitlements to file the monthly entitlement transaction report specified in § 211.66(i). Currently, only refiners and "eligible firms" are required to file this form.

We are interested in receiving specific comments on the reporting requirements as proposed and, in particular, whether any further modifications to the reporting requirements should be made.

F. SPECIAL PROVISIONS FOR TRANSITION PERIOD

In the event we adopt a final rule imposing the entitlement purchase obligation on first purchasers, it will be necessary to ensure that all price-controlled domestic crude oil is properly accounted for during the transition period between the present entitlements program and the first purchaser entitlements program. Thus, under proposed § 211.67(n), the provisions of §§ 211.62, 211.66, and 211.67, as they existed prior to the effective date of the final rule, would govern entitlement issuances and purchase requirements after the effective date with respect to receipts and runs to stills of price-controlled domestic crude oil prior to the effective date of the proposed rule. To illustrate, if the proposal were adopted effective April 1, 1979, in April and May refiners would be required to file with the ERA the monthly report specified in § 211.66 with respect to their crude oil receipts and runs to stills in February and March, respectively, pursuant to the regulations in effect prior to April 1, 1979. Similarly, ERA would issue in April and May the entitlement notice for February and March, respectively, and refiners would be required to consummate their entitlement purchase and sale transactions for February and March by the end of April and May, respectively, pursuant to the regulations in effect prior to April 1, 1979.

Proposed § 211.67(n) also provides that any price-controlled domestic crude oil purchased (including crude oil in transit or in inventory) prior to the effective date of this proposed rule and sold after such effective date would be deemed, in this one instance only, to be a first purchase of price-controlled domestic crude oil in the month following the effective date of the proposed rule. In addition, any volume of crude oil received by any firm *after* the effective date of the proposed rule pursuant to an exchange subject to present § 211.67(g) in which price-controlled domestic crude oil was given up *prior* to the effective date of the rule would be deemed to be a first purchase of price-controlled domestic crude oil at the time it is received. In the event this proposal is adopted, we will take appropriate measures to ensure that no price-controlled domestic crude oil is unaccounted for during the transition between the present program and the first purchaser program.

The following two examples will illustrate the operation of proposed § 211.67(n). For the purposes of these examples, assume that the entitlement obligation is imposed on first purchases effective April 1, 1979. In the first example, a firm purchases lower tier crude oil in March 1979 and sells that crude oil in April. Under proposed § 211.67(n), the firm which sold the crude oil after April 1 (irrespective of whether it is a first purchaser of the crude oil) would be considered a first purchaser of the crude oil and would be required to include the crude oil in its adjusted crude oil purchases for April (which would be reported in June). Thus, the firm would be required to satisfy the entitlement purchase requirement associated with the crude oil.

For the purposes of the second example, assume that Refiner a acquires lower tier crude oil in March and enters into an exchange agreement with Refiner B whereby Refiner A will deliver the lower tier crude oil to Refiner B on March 30 in exchange for crude oil to be delivered April 15.[2] Under proposed § 211.67(n), Refiner A would be required to treat the crude oil received April 15 as a first purchase of *lower tier* crude and therefore satisfy the entitlement obligation associated with the lower tier crude oil.

III. REQUEST FOR ADDITIONAL COMMENTS

Comments are requested on all aspects of the proposed first sale entitlements program described in this notice. You are encouraged to provide your own analysis of any regulatory problems which could develop if the proposal is adopted and to recommend alternatives to the regulatory provisions set forth in this notice. In addition to the specific comments requested in other sections of this notice, we invite comments on the issues discussed below:

1. Shifting the entitlement purchase obligation from refiners to first purchasers may pose a cash flow problem (that is, a requirement for increased working capital) in the second month following the adoption of the first purchaser system for certain refiners that acquire price-controlled crude oil from first purchasers/resellers. The following example illustrates this potential cash flow problem.

For the purposes of the example, assume that the entitlement purchase obligation is imposed on first purchasers effective April 1, 1979 and that a refiner purchases and receives delivery of deemed old oil from a reseller in April. In May, when the reseller's invoice normally is payable, the refiner would be required to pay to the reseller a price for the oil that will reflect the entitlement obligation the reseller has paid on the deemed old oil. The total will be approximately equal to the market price for uncontrolled oil.

Under the current entitlements program, the refiner would not have been required to buy entitlements until the *second* month (*i.e.*, June) after the receipt of the deemed old oil. As is done currently, under the proposal the refiner would not receive entitlement issuances for its April runs to stills until June. Thus, in May the refiner would be required to make a cash outlay for crude oil at market prices irrespective of whether it would have been a purchaser or seller of entitlements under the present program.

This cash flow problem does not apply to refiners which purchase crude oil directly from the producer (or from their own production division) as opposed to through a reseller. As first purchasers, such refiners would not be required to buy entitlements for April crude oil receipts until June, when they receive entitlement issuances for their April runs to stills.

We have not been able to determine whether and to what extent refiners will experience a cash flow problem of the type described above. However, it appears that the impact, if any, of the cash flow problem would be greatest upon small refiners (those having refining capacity less that 175,000 barrels per day), since many of them purchase a significant portion of their crude oil supply through resellers and they may not have, or be unable to

[2] Under present § 211.67(g), Refiner A is deemed to retain the lower tier crude oil exchanged away and is required to include the lower tier crude oil in its crude oil receipts at the time the imported crude oil constitutes a crude oil receipt, that is, after April 15.

borrow, sufficient working capital to finance the entitlement obligations in the second month of the first purchaser system.

We invite comments on all aspects of the cash flow problem. In particular, comments are requested on whether you believe that refiners would be able to recover any increased working capital costs in the marketplace. If not, is it desirable and necessary to adopt a regulatory provision designed to alleviate the cash flow problem? What type of provision would be appropriate? Should all small refiners that acquire price-controlled domestic crude oil from resellers be eligible for such relief, or would it be appropriate to limit the relief to only the smallest small refiners (for example, those with capacity under 50,000 barrels per day), or only to small refiners with a demonstrated hardship? Should refiners other than small refiners be elgible for such relief? Commenter who believe they would experience a cash flow problem of the type described above are requested to submit detailed financial data which would show the nature and magnitude of the problem.

2. Some crude oil resellers also may experience a cash flow change as a result of imposing the entitlement obligation on first purchasers. Thus, for example, where there are two or more resellers in the distribution chain between the producer and the ultimate refiner purchaser, the reseller purchasing deemed old oil from a first purchaser would be required to pay the first purchaser a price for the oil that reflects the first purchaser's entitlement obligation. The second reseller may experience a cash flow change if it is required to make full payment to the first purchaser before it sells the crude oil to a refiner. Although we anticipate that resellers would adjust their business arrangements to avoid problems from such changes in cash flow, we invite comments on the necessity of a regulatory provision that deals with this potential problem.

3. A number of refiners have expressed concern to us that under the present entitlements program refiners that are dependent upon imported crude oil and thus are required to sell entitlements are penalized by the time lag between the time such crude oil is booked into inventory and receipt of entitlements revenues. For example, a refiner that processes imported crude oil currently carries $1.42 (the value of the runs credit in September) per barrel of inventory cost on behalf of the refiner that processes lower tier crude oil for about 75 days. Assuming a marginal cost of money of 10% per annum, this cost to the imported crude oil refiner is approximately 3¢ per barrel in carrying charges. On the other hand, the refiner processing lower tier crude oil enjoys a benefit of approximately 14¢ per barrel, inasmuch as it has the use of the net entitlement obligation (approximately $6.71 for September 1978) for this 75-day period.

Under a first purchaser entitlements program, refiners that acquire price-controlled domestic crude oil from resellers may incur a similar penalty since they would be required to pay the resellers the entitlement obligations associated with crude oil receipts in a particular month approximately five weeks before they receive entitlement issuances for their runs to stills in that month. The resellers, of course, would enjoy the benefit of the use of the entitlement monies for this five-week period.

We are interested in receiving comments on all aspects of this issue and, in particular, the desirability and feasibility of a regulatory solution, such as, for example, establishing a separate entitlement price that would reflect the time value of the entitlement price for firms that may be penalized in the manner described above.

4. As indicated above, a number of the comments submitted in response to our April 5 notice on Simplification of Crude Oil Price Controls expressed concern that some first purchasers may not perform reliably in the entitlements market. Specifically, some refiners expressed the belief that certain resellers which enter the market only occasionally as first purchasers may be difficult to identify or may attempt to avoid their entitlement purchase obligations. We invite comments on whether we should adopt regulatory measures to deal with this problem and, if so, what type of measures would be the most effective and the least burdensome. For example, would it be desirable and feasible to require first purchasers to deposit their entitlement monies with a central or regional escrow agent, who would then purchase entitlements from refiners? Should all first purchasers be subject to such a requirement? If not, what criteria should we use to determine which resellers would be subject to the requirement?

In addition to or in lieu of the escrow agent mechanism, should we adopt a provision that would permit us to impose sanctions against any firm which fails to purchase or sell entitlements and, if so, what type of sanctions? We are particularly interested in receiving specific and detailed comments on this issue and, if warranted, we may adopt one or more measures designed to ensure that all firms perform reliably in purchasing and selling entitlements.

5. Under our November 1, 1978 nonrefining uses proposal, refiners and non-refiners (except producers with respect to crude oil used for crude oil production) would receive entitlements only for lower tier and upper tier crude oil consumed for nonrefining uses. However, under this proposal such firms would receive entitlements for nonrefining uses of *all* domestic crude oil, since the elimination of the § 212.131(b) certification requirement would make it impossible for them to distinguish between price-controlled and uncontrolled domestic crude oil. We invite comments on whether such firms should also receive entitlements for imported crude oil consumed for nonrefining uses. In addition, comments are sought on whether any nonrefining uses (for example, crude oil used for bunker fuel) should be ineligible for entitlement issuances.

6. Under present § 211.67(j), in adjusting entitlement issuances or purchase requirements to reflect refiners' reporting errors, we are required to give effect to any differential between the entitlement price for the month in which the correction is reflected as compared with the entitlement price for the month as to which the reporting error is made. We invite comments on whether § 211.67(j) should be amended to provide that such adjustments also would give effect to any change in the domestic crude oil supply ratio.

IV. Written Comment and Public Hearing Procedures

A. Written Comments

You are invited to participate in this proceeding by submitting data, views or arguments with respect to the proposals set forth in this notice of proposed rulemaking. Comments should be submitted by 4:30 p.m., e.s.t., March 23, 1979 to the address indicated in the "Addresses" section of this notice and should be identified on the outside envelope and on the document with the docket number and the designation: "First Purchaser Entitlements Program." Fifteen copies should be submitted.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of such information or data and to treat it according to our determination.

B. Public Hearings

1. *Procedure for Request to Make Oral Presentation.* The times and places for the hearings are indicated in the "Dates" and "Addresses" sections of this preamble. If necessary to present all testimony, a hearing will be continued to 9:30 a.m. of the next

business day following the first day of the hearing.

If you have any interest in the proposals in this notice, or represent a group or class of persons that has an interest, you may make a written request for an opportunity to make oral presentation by 4:30 p.m., e.s.t., March 2, 1979. You should be prepared to give a concise summary of the proposed oral presentation. You should also provide a phone number where you may be contacted through the day before the hearing.

If you are selected to be heard, you will be so notified before 4:30 p.m., e.s.t., March 6, 1979, and will be required to submit one hundred copies of your statement to the appropriate address indicated in the "Addresses" section of this preamble before 4:30 p.m., e.s.t. on March 12, 1979 for the Washington, D.C. hearing and, for the Denver hearing, to the hearing room by 9:30 a.m. of the date of the hearing.

2. *Conduct of the Hearings.* We reserve the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An ERA official will be designated to preside at each of the hearings. These will not be judicial-type hearings. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at either of the hearings to the addresses indicated above for requests to speak before 4:30 p.m., of the day before the hearing. If you wish to have a question asked at a hearing, you may submit the question, in writing, to the presiding officer. The ERA or, if the question is submitted at a hearing, the presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer. The question will be asked of the witness by the presiding officer.

Any further procedural rules needed for the proper conduct of a hearing will be announced by the presiding officer.

Transcripts of the hearings will be made and the entire record of each of the hearings, including the transcripts, will be retained by the ERA and made available for inspection at the DOE Freedom of Information Office, Room GA-152, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript of a hearing from the reporter.

As required by section 7(a)(1) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments.

Executive Order 12044 (43 FR 12661, March 24, 1978) requires that a regulatory analysis be prepared for all regulations which will result in "an annual effect on the economy of $100 million or more" or will result in "a major increase in costs or prices for individual industries, levels of government or geographic regions." We have determined that neither of these threshold criteria for the preparation of a regulatory analysis is met by the proposed rule. However, since the proposal involves significant regulatory changes, we have prepared a preliminary regulatory analysis which examines the various potential impacts of the proposal. Copies of the preliminary regulatory analysis may be obtained from ERA's Office of Public Information, Room B-110, 2000 M Street, N.W., Washington, D.C. You are invited to provide comments on the preliminary regulatory analysis at the time you submit comments on the proposed rule. Such comments will be taken into account before the preparation of a final regulatory analysis on any final rule that may be adopted.

Pursuant to the requirements of section 404(a) of the Department of Energy Organization Act (Pub. L. 95-91), this proposed rule is being referred, concurrently with the issuance hereof, to the Federal Energy Regulatory Commission for a determination whether the proposed rule may significantly affect any function within the Commission's jurisdiction pursuant to section 402 (a)(1), (b), and (c)(1) of the Act.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Parts 211 and 212 of Chapter II, Title 10 of the Code of Federal Regulations, are proposed to be amended as set forth below.

Issued in Washington, D.C., January 19, 1979.

DAVID J. BARDIN,
Administrator,
Economic Regulatory Administration.

1. Section 211.62 is amended by adding the definitions of "Adjusted crude oil purchases" and "First purchaser" in proper alphabetical order, and by revising the definitions of "Entitlement," "National domestic crude oil supply ratio," "Old oil," and "Upper tier crude oil" to read as follows:

§ 211.62 Definitions.

* * * * *

"Adjusted crude oil purchases" means the crude oil purchases of a first purchaser in a particular month the composition of which has been adjusted to reflect any invoice which is received in that month for domestic crude oil purchased by that first purchaser in any previous month, and which has the effect of increasing or decreasing the volume of old or upper tier crude oil reported by that first purchaser for such previous month, in cases where such previously reported volume was based on either a prior invoice or a good faith estimate (based on that first purchaser's past experience as to the old and upper tier crude oil content of domestic crude oil of the same origin) as to the old and upper tier crude oil content of that crude oil delivery.

* * * * *

"Entitlement" means, for a particular month the right of the first purchaser owning the entitlement to include one barrel of deemed old oil (as provided in § 211.67(b)), in its adjusted crude oil purchases in that month. The issuance and transfer of entitlements shall be evidenced on records maintained by the ERA.

* * * * *

"First purchaser" means any firm which acquires domestic crude oil in the first sale as defined in § 212.72 of this chapter.

* * * * *

"National domestic crude oil supply ratio" means, for a particular month, the volume of deemed old oil (as defined in § 211.67(b)(2)) included in the aggregate adjusted crude oil purchases of all first purchasers, decreased by a number of barrels of old oil equal to the number of entitlements issuable to small refiners under § 211.67(e) and the number of entitlements deducted from the entitlement purchase requirements of all first purchasers

under § 211.67(b)(3) and the number of entitlements issuable under § 211.67(a)(5), divided by the sum of the total volume of the crude oil runs to stills for all refiners for that month and thirty percent (30%) of the total volume of imports of eligible products by eligible firms for that month, *provided* that, for the period July 1, 1978 through June 30, 1979, the reference herein to thirty percent (30%) shall read fifty percent (50%). The calculation of the national domestic crude oil supply ratio for each month shall take into account entitlement purchase or sale requirements resulting from the correction of reporting errors pursuant to paragraph (j) of § 211.67.

* * * * *

"Old oil" means old crude oil as defined in §§ 212.72 and 212.75 of this chapter, except that old oil included in a first purchaser's adjusted crude oil purchases or a refiner's adjusted crude oil receipts shall not include condensate recovered at the inlet side of a gas processing plant.

* * * * *

"Upper tier crude oil" means, (i) for the period February 1, through August 31, 1976, new crude oil as defined in §§ 212.72 and 212.75 of this chapter and crude oil produced and sold from a stripper well lease as defined in § 212.74 of this chapter, and (ii) effective September 1, 1976, new crude oil as defined in §§ 212.72 and 212.75 of this chapter, except that upper tier crude oil included in a first purchaser's adjusted crude oil purchases or a refiner's adjusted crude oil receipts shall not include condensate recovered at the inlet side of a gas processing plant.

* * * * *

2. Section 211.66 is amended by revising paragraphs (h) and (i) and by adding a new paragraph (l) to read as follows:

§ 211.66 Reporting requirements.

* * * * *

(h) *Monthly report.* On or prior to the fifth day of each month, commencing with the month of ———, 1979, each refiner shall file with the ERA a report certifying the following information as to the second month prior to the month in which the report is filed:

(1) The estimated volume (to the best of the knowledge of the certifying officer) of domestic crude oil (excluding Alaska North Slope and Naval Petroleum Reserve crude oils) included in the crude oil receipts of that refiner.

(2) The estimated volumes (to the best of the knowledge of the certifying officer), stated separately, of Alaska North Slope and Naval Petroleum Reserve crude oils included in the crude oil receipts of that refiner.

(3) The volume of crude oil runs to stills of that refiner, taking into account, and specifying the amount of, the adjustments provided for in § 211.67(d).

(4) The volume of domestic crude oil consumed by that refiner for purposes other than refining.

(5) The weighted average costs (including transportation costs to the refinery) for that refiner for (i) domestic crude oils (excluding Alaska North Slope and Naval Petroleum Reserve crude oils), (ii) Alaska North Slope and Naval Petroleum Reserve crude oils, and (iii) imported crude oil included in that refiner's crude oil receipts. For refiners required to file transfer pricing report forms under § 212.84 of this chapter, the weighted average cost of imported crude oil reported under this subparagraph should be derived from the landed costs set forth in such reports.

(6) Such other information as the ERA may request.

(i) *Monthly transaction report.* On or prior to the tenth day of each month, commencing with the month of ———, 1979, each refiner, eligible firm, first purchaser or other firm that was required to purchase or sell entitlements for the third month prior to the month in which the report is filed shall file with the ERA a report certifying its purchases or sales of entitlements for that prior month.

* * * * *

(l) *Special report for crude oil consumed for non-refining uses.* On or prior to the fifth day of each month, commencing with the month of ———, 1979, each firm other than a refiner or producer (with respect to crude oil consumed on the lease for crude oil production purposes) that purchases domestic crude oil for consumption by that firm for purposes other than refining shall file with the ERA a report certifying the volumes of domestic crude oil so consumed.

3. Section 211.67 is amended by deleting the last sentence of subparagraph (2) of paragraph (a), by deleting subparagraph (4) of paragraph (a), by renumbering subparagraph (5) of paragraph (a) as subparagraph (4), by revising paragraphs (b) and (c), by adding new subparagraphs (9) and (10) to paragraph (d), by revising paragraph (f), by deleting paragraphs (g) and (h) and reserving them for future use, by revising subparagraphs (1), (2) and (4) of paragraph (i), by revising subparagraphs (1) and (3) of paragraph (j), by revising paragraph (k), by deleting paragraph (l) and reserving it for future use, by revising subparagraph (2) of paragraph (m), and by adding a new paragraph (n) to read as follows:

§ 211.67 Allocation of domestic crude oil.

* * * * *

(b) *Required purchase of entitlements by first purchasers.*

(1) For each month, commencing with the month of ———, 1979, each first purchaser of domestic crude oils the first sale of which is subject to the provisions of Part 212 of this chapter shall purchase a number of entitlements effective for that month equal to the number of barrels of deemed old oil purchased by that first purchaser in that month; *provided that* this subparagraph (1) of paragraph (b) shall not apply to purchases of lower tier or upper tier crude oil sold to crude oil producers for purposes of crude oil production, provided that the producer certifies to the seller that the crude oil will be used for production purposes. Entitlement purchases required under this paragraph (b) with respect to a particular month shall be effected by the close of the second month following that month.

(2) To calculate the number of barrels of deemed old oil included in a first purchaser's adjusted crude oil purchases for purposes of the definition of national domestic crude oil supply ratio in § 211.62 of this subpart, each barrel of old oil shall be equal to one barrel of deemed old oil and each barrel of upper tier crude oil shall constitute a fraction of a barrel of deemed old oil, such fraction to be fixed by the ERA by the ——— day of the month preceding the calendar quarter for which such fraction shall be effective.

(3) For each month, commencing with the month of ——— 1979, the number of entitlements required to be purchased under paragraph (b)(1) of this section by each first purchaser shall be decreased by: (i) the number of barrels of California lower tier crude oil purchased by that first purchaser in that month multiplied by a fraction, the numerator of which is $2.38 plus or minus $.09 for each degree API gravity (or fraction thereof) by which the weighted average gravity of all California lower tier crude oil purchased in that month either falls below or exceeds, respectively, 18 degrees API, and the denominator of which is the entitlement price for that quarter; and (ii) the number of barrels of California upper tier crude oil purchased in that month multiplied by a fraction, the numerator of which is $1.45 plus or minus $.09 for each degree API gravity (or fraction thereof) by which the weighted average gravity of all California upper

tier crude oil purchased in that month either falls below or exceeds, respectively, 18 degrees API, and the denominator of which is the entitlement price for that quarter; *provided that* the dollar value by which the entitlement obligation is reduced for a barrel of such California crude oil shall not exceed the dollar value of the entitlement obligation associated with such crude oil. Each first purchaser shall calculate and report the weighted average gravity of California lower tier crude oil and California upper tier crude oil separately, and in calculating such weighted average gravities shall (A) determine the gravity of such crude oil for each purchase of such crude oil in that month on the basis of the gravity of such crude oil at the time it is purchased and (B) determine a single monthly weighted average gravity for such crude oil by weight averaging (on a volumetric basis) all of such crude oil purchased in that month.

* * * * *

(c) *Refiners and other firms issued entitlements.* For each month, commencing with the month of ———, 1979, each refiner that has been issued entitlements for that month shall sell such entitlements and any firm other than a refiner, including any eligible firm as defined in § 211.62, that has been issued entitlements shall sell such entitlements.

* * * * *

(d) *Adjustments to volume of crude oil runs to stills.*

* * * * *

(9) Commencing with the month of ———, 197——, the volume of a refiner's crude oil runs to stills in a particular month for purposes of the calculations in paragraph (a)(1) of this section and the calculations for the national domestic crude oil supply ratio (without giving effect to the provisions of paragraph (e) of § 211.67) shall include the number of barrels of crude oil consumed (other than as a refinery feedstock) by that refiner or blended into a refined petroleum product or residual fuel oil by that refiner and sold to any firm other than a refiner for consumption by that firm for purposes other than refining.

(10) Notwithstanding any other provisions of this section, any firm other than a refiner shall be eligible for entitlement issuances on the same basis as a refiner under paragraph (d)(9) of this section with respect to those volumes of crude oil consumed by that firm for purposes other than refining; *provided* that, this subparagraph (10) shall not apply to those volumes of crude oil consumed by a producer for purposes of crude oil production.

* * * * *

(f) *Transactions under § 211.65.* Effective for sales for the allocation period commencing ———, 1979 under § 211.65 of this subpart, and notwithstanding the provisions of subparagraph (1) of paragraph (b) of this section, a refiner-seller shall be deemed to be a first purchaser as to any volume of domestic crude oil acquired by a refiner-buyer in a first sale as defined in § 212.72 of this chapter, where such first sale is made to satisfy such refiner-seller's sales obligations under § 211.65 of this subpart.

(g) *Reserved.*

(h) *Reserved.*

(i) *Issuance and transfer of entitlements.* (1) The ERA shall issue entitlements for each month (effective for the month of ——— 1979 and subsequent months) pursuant to a notice issued on the fifteenth day of the second month following that month.

(2) Each notice published by the ERA evidencing the issuance of entitlements under this section shall specify as to a particular month the national domestic crude oil supply ratio, the name of each refiner or other firm to which entitlements have been issued, the number of barrels of deemed old oil purchased by each first purchaser, the number of entitlements issued to each such refiner or other firm, the number of entitlements required to be purchased or sold by each such refiner, first purchaser or other firm, and the price at which entitlements shall be purchased and sold.

* * * * *

(4) On or about the tenth day preceding each calendar quarter, the ERA shall fix and publish the prices at which entitlements shall be sold and purchased for each month during the calendar quarter. The entitlement price shall be equal to the differential between the projected weighted average cost per barrel to refiners of old oil, and such projected weighted average costs of imported crude oil, ANS crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter, such costs to be equivalent to the projected delivered costs to the refinery.

* * * * *

(j) *Reporting errors.* (1) Refiners, first purchasers and other firms, including eligible firms, shall correct any errors contained in reports filed pursuant to § 211.66, or reports filed pursuant to statutory authority, by filing an amended report for the particular month. Based on any reporting errors so corrected, the ERA in its discretion may adjust entitlement issuances to the refiner or other firm or adjust the entitlements purchase obligations of the first purchaser, refiner or other firm in one or more months subsequent to the month in which the amended report is filed with the ERA, by issuing fewer entitlements than the number otherwise issuable, by requiring the refiner or eligible firm to purchase entitlements in order to correct for excess entitlements issued in a prior month or by issuing entitlements over and above the number otherwise issuable to compensate for too few entitlements having been issued in such prior month or by requiring a first purchaser to purchase entitlements to compensate for insufficient entitlement purchase obligations for a prior month. All entitlement issuances or purchase requirements under this subparagraph shall give effect to any differential between the entitlement price for the month in which any correction is reflected as compared with the entitlement price for the month as to which the reporting error was made (except with respect to corrections to volumes of crude oil runs to stills where a corresponding adjustment to crude oil receipts was made as contemplated by the term "adjusted crude oil receipts" in § 211.62) and such other factors as the ERA deems appropriate.

* * * * *

(3) For purposes of this paragraph, errors required to be corrected by the filing of amended reports include (i) clerical errors, and (ii) inaccurate estimates as to the domestic crude oil pricing composition of a particular volume of crude oil where the refiner or first purchaser had no basis, in prior experience or otherwise, on which to make that estimate.

* * * * *

(k) *Failure to consummate transactions.* The ERA may direct first purchasers, refiners or other firms, including eligible firms, that have not purchased the required number of entitlements under this section for a particular month to purchase such required number of entitlements at a price specified by the ERA from any first purchaser, refiner or other firm, including an eligible firm, that has entitlements for such month available for sale. The ERA may direct first purchasers, refiners, or other firms, including eligible firms, that have entitlements available for sale to sell such entitlements at a price specified by the ERA to first purchasers, refiners, or other firms, including eligible firms,

that have not purchased their required number of entitlements under this section.

(l) *Reserved.*

(m) *Adjustments to crude oil and product costs.*

* * * * *

(2) *Resellers and retailers.* (i) The sales revenues from entitlements sold pursuant to this section by resellers or retailers of refined petroleum products and residual fuel oil shall be subtracted from the cost of the product in inventory for which the entitlements were issued, so as to reduce the weighted average unit cost of that product in inventory computed pursuant to § 212.92 of this chapter.

(ii) The reseller's costs and expenses associated with sales of crude oil as defined in § 212.182 of this chapter in a month may include the cost of entitlements associated with the crude oil sold in the month.

* * * * *

(n) *Savings provision; deemed old oil purchased prior to ———, 1979 and sold after ———, 1979.* (1) The provisions of this section and §§ 211.62 and 211.66 as in effect on ———, 1979 shall govern entitlement purchase and sale requirements which arise after ———, 1979 with respect to refiners' crude oil runs to stills and adjusted crude oil receipts for any month prior to ———, 1979.

(2) Any firm that purchased old oil or upper tier crude oil prior to ———, 1979 and sells such crude oil after ———, 1979, shall be deemed a first purchaser as to such crude oil, irrespective whether the firm acquired the crude oil in a first sale as defined in § 212.72 of this chapter, and shall include the volumes of such crude oil in its adjusted crude oil purchases for the month of ———. In addition, any firm which receives crude oil after ———, 1979, pursuant to an exchange or matching purchase and sale transaction of the type described in paragraph (g)(1) of this section as in effect prior to ———, 1979, in which old oil or upper tier crude oil is exchanged away prior to ———, 1979, shall be deemed a first purchaser as to such crude oil received after ———, 1979 and shall include in its adjusted crude oil purchases for the month in which such crude oil is received the volumes of old oil or upper tier crude oil exchanged away prior to ——, 1979.

§ 212.131 [Amended]

4. Section 212.131 is amended by deleting paragraph (b) and by redesignating paragraph (c) as paragraph (b).

§ 212.185 [Amended]

5. Section 212.185 is amended by deleting paragraph (c).

[FR Doc. 79-2589 Filed 1-24-79; 8:45 am]

federal register

THURSDAY, JANUARY 25, 1979
PART VI



DEPARTMENT OF TRANSPORTATION

Coast Guard

■

VESSEL NUMBERING AND CASUALTY AND ACCIDENT REPORTING; STATE NUMBERING AND CASUALTY REPORTING SYSTEM

[4910-14-M]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER S—BOATING SAFETY

[CGD 76-155]

PART 173—VESSEL NUMBERING AND CASUALTY AND ACCIDENT REPORTING

PART 174—STATE NUMBERING AND CASUALTY REPORTING SYSTEM

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: A change is being made to the accident reporting regulations which would reduce the number of recreational boating accidents which must be reported to the Coast Guard. Present reporting requirements result in accidents being reported in which the Coast Guard has minimal interest. One other change will require States to list the cause of accidents on the accident report forwarded to the Coast Guard. These changes will reduce the reporting burden and increase the usefulness of the report. Similarly, the time period allowed for reporting certain accidents will be extended. A proposed change to the vessel numbering requirements is being withdrawn. Also being withdrawn is a proposal to change the Application for a Certificate of Number which will be included in a more comprehensive change to the Application.

EFFECTIVE DATE: February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. David R. Gauthier, Office of Boating Safety (G-BLC-3/TP42), Room 4308, Department of Transportation, Trans Point Building, 2100 Second Street SW., Washington, D.C. 20590, 202-426-4176.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking concerning this amendment was published in the FEDERAL REGISTER issue of November 10, 1977 (42 FR 58722). Interested persons were invited to submit written comments to the Coast Guard before December 27, 1977.

DRAFTING INFORMATION

The principal persons involved in the drafting of this rule are: Mr. D.R. Gauthier, Project Manager, Office of Boating Safety and Ms. Mary Ann McCabe, Project Attorney, Office of Chief Counsel.

DISCUSSION OF COMMENTS

Eleven comments, including nine from state boating law administrators, one from the National Transportation Safety Board (NTSB), and one from the public, were received.

Numbering: Exemption of Tenders of Documented Yachts. Of the nine State boating law administrators who responded, eight expressed opposition to the proposal to exempt tenders of documented yachts from the vessel numbering requirements of 33 CFR 173.13 and 173.27. Reasons expressed were law enforcement problems connected with the multiple uses of small boats used as tenders and a reluctance to extend a financial benefit to a class of boaters seen by some States as already circumventing the State registration laws by documenting their boats with the Coast Guard. Adoption of this exemption by the States would not be required and, in light of the apparent widespread opposition to the rule, it can be expected that the exemption would be effective in few States other than those for which the Coast Guard is the numbering authority. For that reason, and because of the potential confusion which would result, the Coast Guard has decided to withdraw that proposal.

CASUALTY AND ACCIDENT REPORTING

Four persons commented on the proposed changes to the accident reporting requirements of 33 CFR 173.55. Two of the commenters supported all of the proposed changes. The other two commenters found that the new criterion for a reportable injury, "unable to perform normal functions or usual activities for more than 24 hours", is as ambiguous as the phrase to be replaced. One commenter suggested, as an alternate criterion, "receives medical treatment," defined as "aid or attention by a physician or other person trained to practice medicine or administer treatment." In the Notice of Proposed Rulemaking, the Coast Guard proposed deleting the phrase "receives medical treatment" from the existing regulations because it was considered ambiguous and resulted in a lack of uniformity in reporting. However, since the commenters seemed to have as much difficulty with the proposed criterion, the Coast Guard has decided to adopt the commenter's suggestion to keep the phrase "receives medical treatment," but to modify the commenter's suggested definition to create a clearer criterion that will result in greater uniformity of reporting.

One commenter was concerned that under the proposed $200 criterion for property damage, accidents involving inexpensive boats would not be reported even if the boat was a total loss. The commenter suggested, therefore, that a criterion for accidents involving complete loss of the vessel be added. The Coast Guard has adopted that suggestion.

One commenter objected that the latitude left to the States by 33 CFR 174.101, in that a State may require accident reports resulting in property damage less that $200, demolishes the objective of uniformity. The Coast Guard does not concur and the comment was not adopted. States have had, since 1972, the latitude to require accident reports for accidents other than those the Coast Guard would require and there has been no serious public objections.

REVIEW OF REPORTS

Three commenters objected that the changes to 33 CFR 174.103 would require onsite investigations of all accidents. They argue that it would be difficult, if not impossible, to guarantee accuracy or completeness. It is not the intent of this section to require onsite investigations, although the Coast Guard encourages the States to do so. The change does not add a new requirement to determine cause. It merely clarifies how and where the determination should be furnished to the Coast Guard. As noted in the proposal, 70% of the states follow this procedure now. If during a review of a report the reviewing agency finds that the report does not state the cause of the accident or that the cause stated is inconsistent with information which the reviewing agency possesses, the reviewing agency is required to enter its opinion as to the cause. To clarify that there is no intent to require an investigation of the accident, the phrase "based on information available" is added and the term "apparent cause" is used.

One commenter suggested that State agencies should determine the cause of the fatality, if appropriate. This comment was not adopted because it may be interpreted as placing unintended burdens (requiring autopsies) upon the States.

This amendment has been reviewed under the Department of Transportation's "Policies and Procedures for Simplification, Analysis and Review of Regulations (43 FR 9582, March 8, 1978). A final evaluation has been prepared and is included in the public docket.

In consideration of the foregoing Title 33 of the Code of Federal Regulations is amended as set forth below:

1. By revising § 173.55(a) (2) and (3) and (b) (2) and (3) to read as follows:

§ 173.55 Report of casualty or accident.

(a) * * *

(2) A person is injured and requires medical treatment beyond first aid;

(3) Damage to the vessel and other property totals more than $200 or there is a complete loss of a vessel; or

* * * * *

(b) * * *

(2) Within 48 hours of the occurrence if a person is injured and requires medical treatment beyond first aid, or disappears from a vessel; and

(3) Within 10 days of the occurrence or death if an earlier report is not required by this paragraph.

* * * * *

2. By revising § 174.101(b) to read as follows:

§ 174.101 Applicability of state casualty reporting system.

* * * * *

(b) The State casualty reporting system may require vessel casualty or accident reports resulting in property damage of $200 or less.

3. By revising § 174.103 (c) and (d) to read as follows:

§ 174.103 Administration.

* * * * *

(c) Reviews each accident and casualty report to assure the accuracy and completeness of each report;

(d) Determines the cause of casualties and accidents reported based on information available and indicates the apparent cause on the casualty report or on an attached page;

* * * * *

(46 U.S.C. 1486; 49 CFR 1.46(n)(1).)

Dated: January 20, 1979.

J. B. HAYES,
Admiral, U.S. Coast Guard,
Commandant.

[FR Doc. 79-2673 Filed 1-24-79; 8:45 am]

federal register

THURSDAY, JANUARY 25, 1979
PART VII



DEPARTMENT OF TRANSPORTATION

Coast Guard

■

VESSELS OF 1,600 GROSS TONS OR MORE

Proposed Electronic Navigation Equipment

[4910-14-M]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 164]

[CGD 77-168]

VESSELS OF 1600 GROSS TONS OR MORE

Proposed Electronic Navigation Equipment

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice proposeds a more detailed standard for marine LORAN-C receivers, provides for a "phase in" period, and modifies the proposed warranty requirement. The more detailed standard was not available at the time of publication of the notice, November 14, 1977 (42 FR 59012). Although objectively similar, it is so clearly superior to the previously proposed standard that the Coast Guard considers its incorporation worthy of consideration.

DATE: Comments must be received by March 12, 1979.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/81) (CGD 77-168), U.S. Coast Guard, Washington, DC 20590. Comments will be available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Mr. Fred A. Schwer, Project Manager, Office of Marine Environment and Systems (G-WLE-4/73), Room 7315, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, DC 20590, (202) 426-4958.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Persons submitting comments should indicate their name and address, identify this notice (CGD 77-168) and the specific section of the proposal to which each comment applies, and give reasons for each comment. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No additional public hearing is planned but one may be held at a time and place to be set in a later notice in the FEDERAL REGISTER if such a meeting is requested in writing by an interested person raising a genuine issue and desiring to comment orally at a public hearing.

DRAFTING INFORMATION

The principal persons involved in drafting this document are: Mr. Fred Schwer, Office of Marine Environment and Systems, Project Manager, and Mr. Stanley Colby, Office of Chief Counsel, Project Attorney.

DISCUSSION OF COMMENTS

The Coast Guard published a notice of proposed rulemaking on this subject on November 14, 1977 (42 FR 59012). Thirty two letters of comment were received. Six commenters endorsed the proposal as written and two additionally advocated haste in its implementation. The Coast Guard agrees with the need for deliberate haste and is proceeding with the rulemaking as quickly as necessary information becomes available and the Administrative Procedure Act allows.

Nine commenters urged that the Coast Guard incorporate the "Minimum Performance Standards (MPS) [for] Marine LORAN-C Receiving Equipment", developed by the Radio Technical Commission for Marine Services (RTCM), an advisory group to the Federal Communications Commission, as the required standard for LORAN-C receivers. That document became available in January 1978. In reviewing the MPS, it was evident that the standard is a more detailed version of that which the Coast Guard proposed in the notice of proposed rulemaking. In response to the commenters and in recognition of the fact that use of the MPS will achieve the same objectives and that it is a technically superior document, the Coast Guard proposes to incorporate it as the LORAN-C standard. The purpose of this supplementary notice is publication of the more detailed standard.

This notice proposes one departure from the RTCM MPS. The existence of an interfacing capability, described in section 1.4(f) of the MPS under advisory information, would be made mandatory. Loran Position Transmitting equipment will be proposed as a requirement for Trans Alaskan Pipeline System tankers in the Prince William Sound VTS area by 1980. A similar requirement is contemplated for the Puget Sound, Houston, New Orleans and New York VTS Areas. Moreover, a general requirement for continuous position reporting by vessels calling at U.S. ports is being discussed as a means of tracking vessels in the U.S. Coastal Confluence Zone. In view of the probable need for the interfacing capability within the next few years, it is proposed that the requirement be imposed now. In that way, receivers would not require retrofit or suffer premature obsolescence.

Nine commenters suggested that the Coast Guard "grandfather" good existing units, even if they are not "to spec". This was considered, but the definition of "good" units is an elusive one. That approach would require the Coast Guard to undertake an evaluation of each existing receiver. This would be time consuming and expensive and neither personnel nor financial resources are available for such a program. Instead, the Coast Guard is proposing a "phase in" period, from June 1, 1979 to June 1, 1981, during which any Type I or II (fully- or semi-automatic acquisition) receiver will be acceptable. At the end of that period, only LORAN-C sets complying with the RTCM standard would be acceptable.

The Coast Guard proposes to stagger the effective dates for various vessels. Section 5 of the Port and Tanker Safety Act of 1978 (Pub. L. 95-474) requires tank vessels of 10,000 gross tons or more that carry oil or any hazardous material in bulk as cargo or in residue to be equipped with an electronic position fixing device by June 1, 1979. Therefore, those vessels would have to be equipped with a Type I or II LORAN-C or a specified alternative by that date. All other tank vessels of 1600 gross tons or more would have to have them by June 1, 1980, and all other vessels of 1600 gross tons or more by June 1, 1981.

Nine commenters asserted that the warranty requirement, as written, subjected manufacturers to an unacceptable degree of product liability. This was not the intent of the proposal. The Coast Guard, as explained above, is not able to undertake a type approval program for electronic navigation equipment at this time. Therefore, because it is necessary for vessels to be equipped with adequate devices and because purchasers and vessel inspection personnel must have a way to recognize complying units, the proposed warranty requirement is retained.

It is recognized that manufacturers may have no control over equipment installation and proper use, nor was that broad a warranty intended. Therefore, it is proposed that the warranty be limited to the set being in compliance as designed and manufactured or as subsequently modified by the manufacturer. Moreover, it is recognized that an individual warranty program may prove cumbersome, particularly for sets already installed or in distribution. Therefore, this supplementary notice proposes a type-attestation alternative. The manufacturer might elect to attest to the Coast Guard, in writing, that a particular make, model, and series or modification of receiver complies with the MPS. The Coast Guard would list the receivers as having been attested to for the convenience of purchasers and vessel inspectors. However, inclusion

on the list would not constitute an approval by the Coast Guard.

Warranty or attestation would not be required for any receiver until June 1, 1981.

Two commenters recommended that the Coast Guard publish procedures for approving alternative devices. The Coast Guard does not intend to "approve" any of these devices. A receiver proposed as an alternative under the provisions of § 164.41(b)(3) would be evaluated against the requirements of the National Plan for Navigation. Since the receivers so proposed could vary widely, no specific procedure can be stipulated at this time. Requests would be handled on a case by case basis, using whatever procedure is appropriate to the particular device.

Several persons have complained to the Coast Guard that they have been unable to obtain copies of the National Plan for Navigation. That document has been revised and is available from the National Technical Information Service (NTIS), Springfield, VA 22161. The Government Accession Number is AD-A-052269.

Eight commenters complained about the lack of signal characteristic and test standards. The Coast Guard plans to publish LORAN-C signal characteristics. The RTCM is developing LORAN-C test standards. The proposed two year phase in period would allow time for all needed information to become available.

This proposal has been reviewed under the Department of Transportation's "Policies and Procedures for Simplification, Analysis, and Review of Regulations" (43 FR 9582, March 8, 1978). A draft evaluation has been prepared and is included in the public docket.

In consideration of the foregoing, it is proposed to amend Part 164 of Chapter I of Title 33, Code of Federal Regulations as follows:

§ 164.30 [Amended]

1. By striking, in § 164.30, the section number "164.35" and inserting the section number "164.41" in place thereof.

2. By adding a new § 164.41 to read as follows:

§ 164.41 Equipment: Certain vessels.

(a) This section applies to vessels calling at ports in the continental U.S. or on the Gulf of Alaska, except—

(1) Vessels not engaged in commerce and owned or bareboat chartered and operated by the United States, by a state or its political subdivision, or by a foreign nation; and

(2) Vessels calling only at U.S. ports on the Great Lakes are not required to meet paragraph (b) of this section until 120 days after the day LORAN-C for that area is declared operational by the U.S. Coast Guard.

(b) Each vessel must have one of the following devices installed:

(1) A LORAN-C receiver meeting the requirements of paragraph (c) of this section.

(2) A continual update, satellite-based hybrid navigation receiver (i.e., satellite-bottom tracking, satellite-inertial, or satellite-Omega) meeting the standards contained in paragraph (d) of this section.

(3) A system that the Commandant finds meets the intent of the statements of availability, coverage, and accuracy for the U.S. Coastal Confluence Zone (CCZ) contained in the U.S. Department of Transportation National Plan for Navigation (Report No. DOT-TST-78-4 dated November 1977). A person desiring a finding by the Commandant under this subparagraph must submit a written request describing the receiver to: Commandant (G-W/73), U.S. Coast Guard, Washington, DC 20590. In addition to the description, the Commandant may request data and test results to establish whether or not the receiver meets the National Plan.

(c) Each LORAN-C receiver must meet the following:

(1) Be a Type I or II receiver as defined in Section 1.2(e) of Radio Technical Commission for Marine Services (RTCM) Paper 12-78/DO-100, entitled "Minimum Performance Standards (MPS) Marine LORAN-C Receiving Equipment."

NOTE.—This paper may be purchased from the Radio Technical Commission for Marine Services, P.O. Box 19087, Washington, DC 20036 [(202)—296-6610].

(2) Provide a separate digital data output as described in section 1.4(f) of the RTCM MPS. Resolution of the output data may not be more coarse than that displayed by the receiver. Data must be available whenever the receiver is tracking LORAN-C signals.

(3) After June 1, 1981, be accompanied by a manufacturer's warranty that, at time of manufacture or modification by the manufacturer, the receiver complied with the minimum performance standards contained in Section 1.4(f) and 2 of the Radio Technical Commission for Marine Services Paper 12-78/DO-100 as defined in Section 1 of that paper, unless the manufacturer attests to the Coast Guard, in writing, that a particular make, model, and series of receivers meets the minimum performance standards contained in Sections 1.4(f) and 2 of the RTCM Paper 12-78/DO-100, as defined in Section 1 of that paper.

NOTE.—A list of equipment which manufacturers have attested as being in compliance with this standard will be published periodically by the Coast Guard. The Coast Guard does not test or otherwise verify the performance of electronic navigation equipment, but publishes the listing solely as a matter of public convenience based on the representations of the manufacturer.

(d) Each hybrid satellite system must have—

(1) Automatic acquisition of satellite signals after initial operator settings have been entered;

(2) Position updates derived from satellite information obtained during each usable satellite pass; and

(3) A continual tracking complementary system that provides, in between satellite passes, position updates at intervals of one minute or less.

§ 164.53 [Amended]

3. By adding in § 164.53(b) the words "radio navigation receivers," after the word "radar," and before the word "gyrocompass,".

(Sec. 2, Pub. L. 95-474; R.S. 4417a, as amended by Sec. 5, Pub. L. 95-474 (46 U.S.C. 391a); 49 CFR 1.46(n)(4).)

Dated: January 16, 1979.

J. B. HAYES,
Admiral, U.S. Coast Guard,
Commandant.

[FR Doc. 79-2674 Filed 1-24-79; 8:45 am]

federal register

THURSDAY, JANUARY 25, 1979
PART VIII



DEPARTMENT OF TRANSPORTATION

Coast Guard

■

VESSEL INSPECTION

Certification of Inspection

[4910-14-M]

Title 46—Shipping

CHAPTER 1—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 77-014]

PART 2—VESSEL INSPECTIONS

Certificates of Inspection

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing amendments to the vessel inspection regulations that reflect changes in the types of Certificates of Inspection issued by the Officer in Charge, Marine Inspection to different classes of vessels upon completion of an inspection.

EFFECTIVE DATE: January 25, 1979.

FOR FURTHER INFORMATION CONTACT:

LTJG Michael P. Rolman (G-MVI-2/83), Room 8300, Department of Transportation, Nassif Bldg., 400 Seventh St., S.W., Washington, D.C. 20590, (202) 426-2190.

SUPPLEMENTARY INFORMATION: Since these amendments are matters relating to agency procedure or practice, they are exempt from notice of proposed rulemaking requirements in 5 USC 553(b)(3)(A) and since these amendments are not substantive, they may be made effective immediately under 5 USC 553(d).

DRAFTING INFORMATION

The principal persons involved in drafting this rule are: LTJG Michael P. Rolman, Project Manager, Office of Merchant Marine Safety, and Michael N. Mervin, Project Attorney, Office of the Chief Counsel.

DISCUSSION OF AMENDMENTS

In recent years the Coast Guard has expanded its role in the inspection of merchant vessels, both United States and foreign. As a result the Coast Guard issues new forms of Certificates of Inspection that were not previously issued. These are Barge Certificates of Inspection (CG-4678), Control Verification for Foreign Vessel (CG-4504), Letter of Compliance (CG-2832A), and Tank Vessel Examination Letter (CG-840S-1).

The Barge Certificate of Inspection issued to a United States vessel describes the vessel, route, required crew, required safety equipment, owner, operator and product allowed to be carried.

The Control Verification for Foreign Vessel describes the vessel, type of certificate required by the International Convention for the Safety of Life at Sea, 1960, as modified by the amendmends proposed by the Thirteenth Session of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization contained in Annexes I through IV of the Note Verbale of the Secretary General of the Organization dated 17 May 1966, No. A1/C/3.07 (NV.1), and country issued by. This certificate indicates the vessel has been examined by the Coast Guard and that the vessel meets the requirements of SOLAS 1960 as modified by the amendments proposed by the Thirteenth Session of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization contained in Annexes I through IV of the Note Verbale of the Secretary General of the Organization dated 17 May 1966, No. A1/C/3.07 (NV.1)

The Letter of Compliance indicates that the described foreign vessel has been examined by the Coast Guard for compliance with 33 CFR Parts 155, 156, 159, 164, 46 CFR Part 153, and SOLAS 60, and is considered suitable for carrying into or from United States ports the cargoes shown in the endoresment, subject to the restrictions of 46 CFR Part 153.

The Tank Vessel Examination Letter is issued to a foreign vessel, described therein, that has been examined for compliance with Tankship Cargo Venting and Handling Systems and Minimum Safety Standards (SOLAS 60, 46 CFR Part 35), Pollution Prevention Regulations and Transfer Procedures (33 CFR Parts 155, 156, 157, and 159) and Navigation Safety Regulations (33 CFR Part 164).

There are also certificates that were issued to foreign vessels that are no longer used due to either obsoleteness or replacement. These certificates are Certificate of Examination of a Foreign Passenger Vessel (CG-989) and Certificate for Foreign Vessel to Carry Persons in Addition to Crew (CG-3463).

PART 2—VESSEL INSPECTIONS

Subpart 2.01—Inspecting and Certificating of Vessels

Accordingly, Subpart 2.01 of Title 46, Code of Federal Regulations is amended as follows:

1. By revising § 2.01-5 to read:

§ 2.01-5 Certificate of Inspection.

(a) *Issuance of Certificates.* Upon completion of the inspection of a United States vessel, and on condition that the vessel and its equipment are approved by the inspector, a certificate of one or more of the following Coast Guard forms is issued by the Officer in Charge, Marine Inspection:

(1) CG-841—Certificate of Inspection.

(2) CG-854—Temporary Certificate of Inspection.

(3) CG-3753—Certificate of Inspection (for small passenger vessels).

(4) CG-4678—Barge Certificate of Inspection.

(b) *Description of Certificates.* The certificates of inspection issued to United States vessels describe the vessel, the route the vessel may travel, the minimum manning requirements, the safety equipment and appliances required to be on board, the total number of persons that may be carried, and the names of the owners and operators. The period of validity is stated on the certificate. The certificate may be renewed by applying for inspection under § 2.01-1.

(c) *Amending Certificates.* When because of a change in the character of the vessel or vessel's route, equipment, etc. the vessel does not comply with the requirements of the Certificate of Inspection previously issued, a certificate amending such certificate may be issued at the discretion of the Officer in Charge, Marine Inspection, to whom request is made on Coast Guard form CG-858, Certificate of Inspection Amendment.

2. By adding a new § 2.01-6 to read as follows:

§ 2.01-6 Certificate issued to foreign vessels.

(a) *Issuance of Certificates.* Upon completion of an examination of a foreign vessel, one or more of the following certificates is issued by the Officer in Charge, Marine Inspection:

(1) CG-4504—Control Verification for Foreign Vessel—issued to a foreign vessel that is registered in a country which is signatory to the International Convention for the Safety of Life at Sea, 1960, as modified by the amendments proposed by the Thirteenth Session of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization contained in Annexes I through IV of the Note Verbale of the Secretary General of the Organization dated 17 May 1966, No. A1/C/3.07 (NV. 1).

(2) CG-2832A—Letter of Compliance—issued to a foreign vessel that is suitable for carriage of hazardous cargoes in bulk as defined in 46 Code of Federal Regulations, Subchapter 0 and is in compliance with Tankship Cargo Venting and Handling Systems and Minimum Pollution Prevention Regulations and Transfer Procedures (33 CFR Parts 155, 156, 157 and 159), and Navigation Safety Inspection Regulations (33 CFR Part 164).

(3) CG-840S-1—Tank Vessel Examination Letter—issued to a foreign vessel that is suitable for carriage of cargoes as defined in 46 Code of Feder-

al Regulations, Subchapter D and is in compliance with Tankship Cargo Venting and Handling Systems and Minimum Safety Standards (SOLAS 60-46 CFR Part 35), Pollution Prevention Regulations and Transfer Procedures (33 CFR Parts 155, 156, 157 and 159), and Navigation Safety Regulations (33 CFR Part 164).

(4) Foreign vessels of countries which are nonsignatory to the International Convention for the Safety of Life at Sea, 1960, are issued a Temporary Certificate of Inspection (CG-854) and a Certificate of Inspection (CG-841) as described in § 2.01-5.

(b) *Description of Certificates.* (1) CG-4504—Control Verification for Foreign Vessels—describe the vessel, type of certificate required by the International Convention for the Safety of Life at Sea, 1960, as modified by the amendments proposed by the Thirteenth Session of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization contained in Annexes I through IV of the Note Verbale of the Secretary of the Organization dated 17 May 1966, No. A1/C/3.07 (NV. 1), country issued by, and its expiration date. The period of validity of a control verification for foreign vessel is stated on the certificate.

(2) CG-2832A—Letter of Compliance—describe the vessel and the period for which the letter is valid.

(3) CG-840S-1—Tank Vessel Examination Letter—describe the vessel and if there are any deficiencies as to applicable regulations at the time the vessel was examined. If there are deficiencies they are listed in an attachment to this letter (CG-840S-2). The Tank Vessel Examination Letter is valid for a period of 1 year from the date the examination is completed.

(4) Temporary Certificate of Inspection (CG-854) and Certificate of Inspection (CG-841) are amended as provided for in § 2.01-5(c).

(46 USC 416, 49 USC 1655(b); 49 CFR 1.46(b).)

Dated: January 16, 1979.

J. B. HAYES,
Admiral, U.S. Coast Guard,
Commandant.

[FR Doc. 79-2675 Filed 1-24-79; 8:45 am]

federal register

THURSDAY, JANUARY 25, 1979
PART IX



SMALL BUSINESS ADMINISTRATION

■

SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAM

Procurement and Technical Assistance; Proposed Rules

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 124]

SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAM

Procurement and Technical Assistance

AGENCY: Small Business Administration.

ACTION: Proposed rules.

SUMMARY: These proposed rules describe the type of assistance available, the requirements for obtaining assistance, and the methods of providing assistance to certain eligible small businesses under SBA's new Small Business and Capital Ownership Development Program as mandated by Pub. L. 95-507. In addition, they provide criteria for determining when the participation of a business in the program should be terminated or determined to be completed, and specify a procedure by which such a determination can be made.

DATES: Comments must be received on or before March 26, 1979.

ADDRESS: Comments, submitted in duplicate, are to be submitted to the Associate Administrator for Minority Small Business and Capital Ownership Development, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT:

Martin D. Teckler, Office of General Counsel, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416, 202-653-6797.

SUPPLEMENTARY INFORMATION: Pub. L. 95-507 requires the revision of Part 124 of Title 13 of the Code of Federal Regulations because that Public Law substantially amends parts of the Small Business Act which Part 124 implements. As a result of Pub. L. 95-507, it is necessary to replace the following presently effective sections: 124.8, 124.8-1 and 124.8-2. The following proposed rules are proposed as replacements for these sections.

These proposed rules are to provide for the implementation of the Pub. L. 95-507, which amends among other provisions, sections 8(a) and 7(j) of the Small Business Act, as amended, (hereinafter the "Act"). The purpose of Section 8(a) of the Act is to foster busines ownership by individuals who are both socially and economically disadvantaged, to promote the competitive viability of such firms by providing such available contract, financial, technical, and management assistance as may be necessary, and to clarify and expand the program for the procurement by the United States of articles, equipment, supplies, services, materials and construction work from small business concerns owned and managed by socially and economically disadvantaged individuals.

The Act sets forth a business development program whereby the Administration is authorized to provide to eligible business concerns procurement contracts, financial, management and technical assistance.

The Congress has found that the opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential in order to attain social equality and economic parity for such persons. The Congress found further that Black Americans, Hispanic Americans, Native Americans, and other minorities have suffered the effects of discriminatory practices and other invidious circumstances over which they have no control.

The business development program of the Administration is designed to ameliorate the condition of socially and economically disadvantaged groups by providing the maximum practical opportunity for the development of businesses owned and managed by such persons. Such development can be materially advanced through the procurement by the United States of articles, equipment, supplies, services, and construction work from such businesses and the provision of management and technical assistance to develop managerial self-sufficiency. The Congress intends that the primary beneficiaries of this program shall be minorities and that the authorities granted the Administration in this program will be used for appropriate business development.

The Act requires that the Administration of the section 8(a) program—the principal procurement assistance vehicle—and the section 7(j) management assistance program shall be under the direction of the Associate Administrator for Minority Small Business and Capital Ownership Development. The interface of these programs should result in the delivery to the business owned by the socially and economically disadvantaged individual an increased opportunity to produce and sell goods and services efficiently and profitably.

These regulations provide for significant changes in regard to the following areas:

(a) Program eligibility—The Act allows program participation for a "socially and economically disadvantaged small business concern." This means a small business concern which is at least 51 percent owned by one or more socially disadvantaged individuals, and whose management and daily business operations are controlled by one or more of such individuals. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities, the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual.

This represents a significant change of eligibility criteria from the standard of social or economic disadvantage heretofore utilized by the Administration.

(b) Contracting—This section provides for the relationship between the Administration and other federal agencies in regard to the provision of procurement contracts for the 8(a) program.

(c) Termination—Detailed termination procedures and standards are provided which will govern the circumstances under which a business concern can be denied assistance under the program. Simultaneously, with the publication of the within regulations, final regulations governing substantive and procedural rights for 8(a) concerns in regard to termination and the dental of assistance under the program shall be published. Comments regarding these matters are welcome.

(d) Small Business and Capital Ownership Development Program—This section grants significant new authority for the Administration to aid 8(a) concerns in regard to procurement, financial, management and technical assistance matters.

(e) Advance Payments and Business Development Expense—These sections set forth the criteria and standards for the award and use of advance payments and business development expense.

(f) Surety Bond Waiver—This section provides for the criteria and conditions for the Administration to grant waivers to requirements for the use of surety bonds in appropriate circumstances.

This 22d day of January 1979.

A. VERNON WEAVER,
Administrator.

It is proposed to amend 13 CFR Part 124 by deleting the present §§ 124.8, 124.8-1, and 124.8-2 and adding the following new §§ 124.1-1—124.1-5, 124.2-1, 124.3-1 and 124.4-1 to read as follows:

Sec.
124.1-1 The Section 8(a) Program.
124.1-2 Contracting.
124.1-3 Advance payments.
124.1-4 Letter of credit.
124.1-5 Business development expense.
124.2-1 Consultant services program.
124.3-1 Small business and capital ownership development program.
124.4-1 Surety bond waivers.

§ 124.1-1 The Section 8(a) Program.

(a) *General.* These regulations implement Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) which authorizes SBA to enter into all types of contracts (including, but not limited to, supply, services, construction, research and development) with other Government departments and agencies and negotiate subcontracts for the performance thereof.

(b) *Purpose.* It is the objective of SBA to use such authority to assist small business concerns owned and controlled by socially and economically disadvantaged persons to achieve a competitive position in the market place.

(c) *Eligibility.* In order to be eligible to participate in the section 8(a) program, an individual or an applicant concern as the case may be must meet all of the pertinent eligibility criteria set forth hereafter in paragraphs (c)(1) through (5) of this section. All determinations pursuant to paragraphs (c)(1) through (5) of this section shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB&COD) whose decision shall be final; provided however, than an applicant may request reconsideration of such final decision based upon information discovered subsequent to such decision or upon information which was unavailable at the time of such final decision. The granting of such reconsideration shall be within the absolute discretion of the AA/MSB&COD.

(1) *Small Business Concern.* In order to be eligible to participate in the section 8(a) program, an applicant concern must qualify as a small business concern as defined for purposes of Government procurement in § 121.3-8 of the SBA Rules and Regulations; the size standard to be applied shall be based on the principal activity of the applicant concern.

(2) *Ownership and Control.* In order to be eligible to participate in the section 8(a) program, an applicant concern must be one:

(i) Which is at least 51 percent owned by an individual or individuals who are citizens of the United States, (specifically excluding resident aliens) and who are determined to be socially and economically disadvantaged.

(A) In case of an applicant concern which is a corporation, 51 percent of all classes of voting stock of such corporation must be owned by an individual(s) determined to be socially and economically disadvantaged.

(B) In the case of an applicant concern which is a partnership, 51 percent of the partnership interest must be owned by an individual or individuals determined to be socially and economically disadvantaged.

(ii) Whose management and daily business operations are controlled by an individual(s) determined to be socially and economically disadvantaged. Such individual(s) must be engaged full time in the daily management and operation of the business concern.

(3) *Social Disadvantage.* (i) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identification as members of certain groups, without regard to their individual qualities. Such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans and other minorities.

(ii) Social disadvantage of individuals within such groups shall be determined on a case-by-case basis. Membership alone in any group is not conclusive that an individual is socially disadvantaged.

(4) *Economic Disadvantage.* (i) Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit oportunities, as compared to others in the same line of business and competitive market area who are not socially disadvantaged.

(ii) In determining the degree of diminished credit and capital opportunities, consideration shall be given:

(A) With respect to both the disadvantaged individual and the applicant concern, to the following factors, including but not limited to:

(*1*) Personal and business assets;

(*2*) Personal and business net worth; and

(*3*) Personal and business income and profits.

(B) With respect to the applicant concern, the following factors, including but not limited to:

(*1*) Availability of financing;

(*2*) Bonding Capability;

(*3*) Availability of outside equity capital; and

(*4*) Available markets.

(5) *Potential for Success.* In order to be eligible to participate in the section 8(a) program, an applicant concern must be a concern:

(i) Which with contract, financial, technical and management support will be able to successfully perform contracts awarded under the section 8(a) program, and with such assistance shall have reasonable prospects for success in competing in the private sector.

(ii) In addition to meeting the criteria set forth in § 124.1-1(c)(5)(1) above, the AA/MSB&COD must determine that the financial, technical and management support necessary to enable the applicant concern to successfully complete the section 8(a) procurement contract shall be available to such concern from SBA or other identified and acceptable sources.

(d) *Program Completion.* (1) When a section 8(a) business concern has substantially achieved the objectives of the 8(a) program, including but not limited to, the achievement of the goals set forth in its business plan as approved an modified, and the attainment of demonstrated ability to compete in the market place without assistance from 8(a), its participation within the program shall be determined by SBA to be completed.

(2) In determining whether a concern has substantially achieved the goals of its business plan or has attained the ability to compete in the market place without 8(a) assistance, the following factors, among others, shall be considered by SBA. The factors cited above shall be determined with regard to the remedial purposes of the statute.

(i) Positive overall financial trends, including but not limited to:

(A) Profitability.

(B) Sales, including improved ratio of non-8(a) sales.

(C) Net Worth, financial ratios, working capital, capitalization, access to credit and capital.

(D) Ability to obtain bonding.

(ii) A comparison of the 8(a) business concern's business and financial profile with profiles of non-8(a) small businesses in the same area or similar business category.

(iii) Management capactity.

(3) Upon determination by the SBA that a section 8(a) business concern's particiaption within the program has been completed pursuant to § 124.1-1(d)(1), above, the section 8(a) business concern shall be afforded an opportunity for a hearing on the record in accordance with chapter 5 of Title 5 of the United States Code, at which hearing it may contest such determination. Such a hearing will be held pursuant to the SBA's Rules of Practice for Adjudicative Proceedings set forth at Part 101.10 et. seq. of SBA rules and regulations.

(4) Subsequent to the completion of such hearing, based upon the record established therein, and after consideration of the recommended decision of the examiner who has conducted the hearing, the AA/MSB&COD shall render a final decision regarding the completion of the section 8(a) business concern's participation in the pro-

gram. Prior to a final decision, the subject 8(a) business concern may have full rights of participation in the 8(a) program.

(e) *Program termination.* (1) Participation of a section 8(a) business concern in the program may be terminated by the SBA prior to the completion of the concern's business plan for good cause. Examples of good cause include, but are not limited to, the following:

(i) Failure of the 8(a) business concern to continue to meet the standards of eligibility set forth in these regulations.

(ii) Failure of the 8(a) business concern to maintain its status as a small business concern within the applicable regulations.

(iii) The failure of the section 8(a) business concern to exert reasonable efforts to attain commerical business.

(iv) Failure to maintain ownership and control by the person(s) who has been determined to be socially and economically disadvantaged.

(v) Inadequate management performance by the section 8(a) business concern; and

(vi) Repeated inadequate performance of awarded section 8(a) procurement contracts by the section 8(a) business concern.

(vii) The concern has ceased its business operations. This constitutes automatic and immediate grounds for terminating a concern's participation in the program.

(viii) Failure to submit updated business plans within a reasonable time after its due date without approval by SBA.

(ix) Withholding notice from, or failure to provide notice to SBA within 30 days of changes in ownership and mangement control.

(x) Noncompliance with substantial requirements of divestiture or management agreements as approved by the AA/MSB&COD.

(xi) Failure to comply with the reporting provisions required in management agreements. Compensating those providing management assistance in excess of that specified in the SBA approved management agreement. Having a management agreement either written or oral that has not been approved by the AA/MSB&COD. Willful violation of any of the requirements of the management agreement.

(xii) Failure or refusal to provide SBA with required quarterly and annual financial statements and reports within a reasonable time after the close of the quarter.

(xiii) Failure to achieve goals cited in the business plan, as modified, as a result of repeated refusal to accept or utilize SBA assistance.

(xiv) Failure to reasonably pursue commerical and competitive business in accordance with the business plan projection, or failure to otherwise make reasonable efforts to achieve competitive status.

(xv) Inability to make satisfactory progress, within a reasonable time, after receiving SBA's management and technical assistance, financial and technical assistance in achieving its business development objectives.

(xvi) Failure to request prior approval from SBA before subcontracting under an 8(a) contract.

(xvii) Failure to disclose to SBA the extent to which nondisadvantaged persons or firms will participate in the management of the 8(a) business concern.

(xviii) Failure to disclose to SBA fees paid or to be paid, costs incurred or committed to third parties, directly or indirectly, in the process of obtaining 8(a) contracts.

(xix) Willful failure to comply with applicable labor standards obligations.

(xx) Knowingly submitting false information to SBA.

(xxi) Whenever the concern is debarred by the Comptroller General, the Secretary of Labor or the Director of the Office of Federal Contract Compliance.

(xxii) Whenever the concern is debarred or suspended for cause by any contracting agency pursuant to FPR subpart 1-1.6 "Debarred Suspended and Ineligible Bidders" or DAR (ASPR) section I. Part 6, "Debarment, Ineligibility and Suspension".

(xxiii) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.

(xxiv) Conviction under the Organized Crime Control Act of 1970, or conviction of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a Government contractor.

(xxv) Conviction under the Federal Antitrust Statutes arising out of the submission of bids or proposals.

(xxvi) Violation of the subcontract provision against contingent fees and gratuities.

(2) Upon determination by the SBA that a section 8(a) business concern's participation in the program should be terminated for good cause, the section 8(a) business concern shall be afforded an opportunity for a hearing on the record in accordance with chapter 5 of Title 5 of the United States Code, at which hearing it may contest such determination. Such a hearing will be held pursuant to the SBA's Rules of Practice for Adjudicative Proceedings set forth at Part 101.10 et seq. of the SBA rules and regulations.

(3) Subsequent to the completion of such hearing, upon the record established therein, and after consideration of the recommended decision of the examiner who has conducted the hearing, the AA/MSB & COD shall render a final decision regarding the termination, for good cause, of the 8(a) business concern's participation in the program.

(4) After the effective date of a program termination as provided for herein, the 8(a) business concern is no longer eligible to receive 8(a) subcontracts and other 8(a) assistance. However, such concern is obligated to complete previously awarded 8(a) subcontracts.

§ 124.1-2 Contracting.

(a) *General policy.* (1) Whenever SBA determines that it is necessary or appropriate, it shall enter into contracts with the United States Government or any department, agency, or officer thereof having procurement powers obligating SBA to furnish articles, equipment, supplies, services or materials to the Government, or to perform construction work for the Government.

(2) In any case in which SBA certifies to any procurement officer that SBA is competent and responsible to perform any specific Government procurement contract to be let by such officer, such officer shall be authorized in his discretion to let such procurement contract to SBA upon such terms and conditions as may be agreed upon between SBA and the procurement officer.

(3) In any case in which SBA and such procurement officer fail to agree on a procurement and/or the terms and conditions of a specific procurement contract, such disagreement shall be submitted to the head of the department or agency for final determination.

(4) SBA shall arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to section 8(a) small business concerns to provide whatever goods, construction work, or services may be necessary to enable SBA to perform such contracts.

(b) *Procedures*—(1) *Submission of business plans.* Applicants must submit a business plan, including complete information regarding the concern's qualifications, which will demonstrate that section 8(a) assistance will foster its participation in the economy as a self-sustaining, profit-oriented small business.

(2) *Requirements.* Procuring agencies will offer prospective contracts to SBA for the 8(a). A procuring agency

shall submit to SBA an offer which contains the following information:

(i) Current and complete specifications and drawings as necessary;

(ii) A procuring agency estimate of the current fair market value of the contract documented with supporting calculations;

(iii) Identification of any incumbent small business contractor which is presently performing the same or similar contract requirements with all available information on that business' gross receipts and the volume of Federal contracts previously awarded to and performed by such contractor, when such information is readily available and does not unduly delay the offering of a contract.

(3) *Certification.* SBA's execution of a procurement contract with a procuring agency, will operate as a certification of SBA's competency and responsibility to perform the contract as required by section 8(a)(1) of the Small Business Act.

(4) *Failure to Agree on Terms and Conditions.* In the event that SBA and the procuring agency's contacting officer fail to agree upon the selection of the procurement or the terms and conditions of any prospective contract being negotiated between SBA and the procuring agency, SBA and the procuring agency shall submit information sufficient to facilitate a final decision to the head of the procuring agency, who shall have the responsibility to resolve any such disagreement.

(i) Before submission of any disagreement to the head of the procuring agency, the appropriate SBA Regional Director shall seek resolution of any such disagreement by the contracting officer's supervisor.

(ii) Failure of the appropriate Regional Director and the contracting office's supervisor to agree will cause the matter to be submitted to the AAMSB-COD, who on behalf of the Administrator of the SBA, shall present the disagreement to the head of the procuring agency for resolution.

(iii) Subsequent to the resolution of any disagreement over the terms and conditions of any proposed contract by the head of the procuring agency, SBA and the procuring agency may reach agreement upon the proposed contract, or SBA may decide that the contract is unsuited to performance by a section 8(a) business concern, and may then return the proposed contract to the procuring agency for other procurement action.

(c) *Negotiation by 8(a) Business Concern.* Whenever practicable, any section 8(a) business concern which has been selected by SBA to perform a section 8(a) subcontract shall participate in the negotiations of the terms and conditions of such contract.

(d) *Impact on Small Business.* The AAMSB-COD and the AA/PA shall make a determination for each section 8(a) subcontract before award that:

(1) No public solicitation has been made on the specific purchase in question; and

(2) No small business, having relied upon Federal purchasing of the item for a significant part of its business during the preceding year, will suffer hardship because of the removal of the procurement from competition.

§ 124.1-3 Advance Payments.

(a) *Definitions.* Advance payments are disbursements of money made by SBA to a section 8(a) business concern prior to the completion of perfromance of a specific section 8(a) subcontract for the purpose of assisting the said 8(a) business concern in meeting financial requirements pertinent to the performance of said subcontract. Advance payments must be liquidated from proceeds derived from the performance of the specific section 8(a) subcontract. However, this does not preclude repayment of such advance payments from other revenues of the business except from other advance payments. The proceeds derived from the performance of the specific 8(a) contract must be deposited in a bank account established exclusively for the purpose of administering the advance payments.

(b) *General Policy.* Advance payments shall not be made in any case in which the section 8(a) business concern has assigned its rights to receive any payment under the specific section 8(a) subcontract to any person or entity, unless such assignment shall be made to SBA or to a Federal agency in regard to the receipt by the 8(a) business concern of a progress payment for any specific 8(a) subcontract. In no event shall the total amount of advance payments for a Section 8(a) business concern exceed the amount of the 8(a) subcontract to which it relates; nor shall any such advance payment exceed the amount which is to be earned from the anticipated completion of performance of the remainder of the subject 8(a) subcontract. The SBA shall not charge interest on advance payments disbursed pursuant to these regulations.

(c) *Requirements.* (1) Advance payments may be approved for a Section 8(a) business concern when the following conditions are found by SBA to exist:

(i) A Section 8(a) business concern does not have adequate working capital to perform a specific Section 8(a) subcontract; and

(ii) Either adequate and timely financing is not available on reasonable terms to provide the necessary capital, or financing is available but the terms of such financing are not conducive to the effective performance of the Section 8(a) subcontract and/or the business development purposes of the Section 8(a) program.

(iii) The Section 8(a) business concern has established or agrees to establish and maintain financial records and controls which provide for complete accountability and required reporting of program funds. These records must be made available upon request for review by SBA and the General Accounting Office.

(d) *Procedure.* To be eligible to receive Advance Payments a Section 8(a) business concern must meet the conditions set forth in § 124.1-3(c) above and must comply with the following procedure.

(1) A Section 8(a) business concern desiring to receive an advance payment in connection with any Section 8(a) subcontract shall:

(i) Submit a written request for advance payment to the appropriate SBA regional director or his designee. Such request must include detailed documentation supporting the need for such funds and evidence that working capital financing cannot be found upon terms acceptable under § 124.1-3(c)(ii) above from financial institutions.

(ii) The Section 8(a) business concern msut select a commercial bank which is a member of the Federal Reserve System in which it must establish a Special Bank Account for the deposit of advance payment funds from SBA and for the deposit of payments earned pursuant to the performance of the subcontract(s). This special account shall be a demand deposit account.

(A) Disbursements from the account shall require the countersignature of such SBA employee as shall be designated by the appropriate regional director.

(B) Under no circumstances shall the requirement for an SBA employee countersignature be waived.

(C) SBA shall obtain a lien upon the Special Bank Account, any property contracted for, and supplies, material and other property acquired with the proceeds of such advance payment funds.

(2) Upon a review of all the circumstances and evidence, the Regional Director shall have the obligation to decide whether to approve or deny a request for advance payment. This right of approval by the Regional Director shall not be delegated to any other person or entity. The 8(a) business concern, the bank selected pursuant to § 124.1-3(d)(ii) above, and SBA shall execute an Advance Payment agreement which shall set forth the terms and conditions governing advance payments.

(e) *Use of Advance Payment Funds.* (1) Except for repayment to SBA in appropriate circustances, advance payment funds may be withdrawn from the special bank account by a Section 8(a) business concern exclusively for the purpose of purchasing materials and labor and paying for administrative and overhead expenses required to perform the specific Section 8(a) subcontract.

(2) Under no circumstances may advance payment funds be deposited in interest-bearing accounts.

(3) Advance payment funds shall be disbursed for deposit into the special account only in such amounts necessary to pay for the immediate needs of a Section 8(a) subcontract. Such disbursements shall be made as expeditiously as possible. Such immediate needs shall be documented by the small business concern and verified by SBA prior to disbursement.

(4) Payments to the 8(a) business concern for work performed or services rendered pursuant to the subject 8(a) contract shall be paid into the Special Bank Account.

(f) *Cancellation.* (1) SBA may determine that the advance payments be cancelled for any of the following reasons:

(i) The terms and conditions of the advance payment agreement have not been adhered to by a section 8(a) small business concern.

(ii) The subcontracting relationship between SBA and subcontractor is completed or terminated.

(2) In the event of cancellation, all previous advance payments shall become immediately due and payable to SBA.

§ 124.1-4 Letter of Credit.

(a) *General Policy.* The letter of credit method of payment will be utilized under certain circumstances to disburse advance payments to section 8(a) business concerns performing subcontracts under the section 8(a) program when SBA has made a decision approving the use of advance payments pursuant to the requirements and conditions provided for in these regulations.

(b) *Eligibility Requirements.* SBA may disburse advance payments through the letter of credit method of payment through the Federal Reserve Bank System to a section 8(a) business concern when all of the following conditions are found by SBA to exist:

(1) SBA determines that the section 8(a) business concern may be awarded more than one section 8(a) subcontract during a period of at least one year.

(2) The aggregate amount of letter of credit advance payment funds will exceed $120,000 annually.

(3) The section 8(a) business concern has submitted a schedule of its projected monthly advance requirements for 8(a) subcontract disbursements, SBA has reviewed it, and SBA has found it to be reasonable.

(4) The section 8(a) business concern has established or agrees to establish and maintain financial records and controls which will provide for complete accountability and required reporting of program funds. These records must be made available upon request for review and audit by SBA and the General Accounting Office.

(c) *Procedures.* The procedures for the utilization of the letter of credit method of payment shall be in accord with 41 CFR 1-30.408-1.

§ 124.1-5 Business Development Expense.

(a) *Definition.* Business Development Expense (BDE) funds are available for the purpose of assisting section 8(a) business concerns in connection with specific 8(a) subcontracts in their efforts to become competitive by overcoming deficiencies which would otherwise impede the firms from producing a service or product at a fair market price.

(b) *Purpose.* In the discretion of SBA, BDE funds may be used for the following purposes:

(1) To make up the difference between the current fair market price and the reasonable price required by the 8(a) contractor to provide the product or service in connection with a specific section 8(a) subcontract.

(2) For the purchase of capital equipment which has been determined by SBA to be essential to the section 8(a) business concern's performance of specific section 8(a) subcontracts and for which acquisition cannot be made by other financing means without adversely affecting the concern's financial condition.

(c) BDE may be used to defray other costs necessary to the performance of a specific 8(a) contract, including but not limited to:

(1) Facility and production engineering.

(2) Development, testing, and implementation of quality control procedures.

(3) Training costs to counteract low labor productivity due to the inexperience of the business concern or its labor force.

(4) Differential due to low order purchasing power and/or material usage in comparison to its competitors.

§ 124.2-1 Consultant Services Program.

(a) *General.* The Small Business Act, as amended, authorizes the SBA to provide assistance as set forth in section 7(j) of the Act. Section 7(j) of the Small Business Act, provides for financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or enterprises eligible for assistance under section 7(i), 7(j)(10), and 8(a) of the Small Business Act. Section 7(j)(10) of the Small Business Act establishes a Small Business and Capital Ownership Development program which shall provide additional assistance exclusively for small business concerns eligible to receive contracts pursuant to section 8(a) of the Small Business Act. The management of the Capital Ownership Development program is vested in the Associate Administrator for Minority Small Business and Capital Ownership Development who is responsible for the oversight of the program and activities set forth in this part of these regulations. The Associate Administrator for Minority Small Business and Capital Ownership Development is responsible for coordinating and formulating policies relating to Federal assistance to small business concerns eligible for assistance under section 7(i) and 8(a) of the Small Business Act.

(b) *Services.* (1) Section 7(j)(1-2) of the Small Business Act empowers the SBA to provide through public and private organizations the management and technical assistance enumerated below to those individuals or concerns who meet the eligibility criteria contained in sections 7(i) and 8(a) of the Small Business Act.

(2) The SBA shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small businesses eligible to participate in the section 8(a) program.

(3) This assistance may include any or all of the following:

(i) Planning and research, including feasibility studies and market research;

(ii) The identification and development of new business opportunities;

(iii) The furnishing of centeralized services with regard to public services and Federal Government programs including programs authorized under sections 7(i), 7(j)(10), and 8(a) of the Small Business Act;

(iv) The establishment and strengthing of business service agencies, including trade associations and cooperatives;

(v) The furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and dura-

tion to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

(4) Sections 7(j)(3) and 7(j)(9) of the Small Business Act authorize SBA to:

(i) Encourage the placement of subcontracts by businesses with small business concerns located in areas of high concentration of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small businesses eligible to receive contracts pursuant to section 8(a) of this Act. SBA may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under sections 7(i), 7(j), and 8(a) of the Small Business Act, and

(ii) Coordinate and cooperate with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such way as to further the purposes of sections 7(i), 7(j), and 8(a) of the Small Business Act.

(c) *Eligibility.* (1) Eligibility for the assistance enumerated under § 124.2-1(b) above shall include, but not limited to:

(i) Businesses which qualify as small within the meaning of size standards prescribed in Part 121 of 13 CFR and which are located in urban or rural areas with a high proportion of unemployed or low income individuals; and

(ii) Businesses eligible to receive contracts pursuant to section 8(a) of the Small Business Act.

(d) *Delivery of Services.* (1) The financial assistance authorized for project under § 124.2-1(b) above includes assistance advanced by grant, agreement, or contract.

(2) To the extent feasible, services under § 124.2-1(b) above shall be provided in a location which is easily accessible to the individuals and small business concerns served.

(e) *Coordination and Cooperation With Other Government Agencies.* (1) The Associate Administrator for Minority Small Business and Capital Ownership Development may utilize the resources of other agenies and departments whenever practicable which can directly or indirectly support or augment the purposes of sections 7(j) and 8(a) of the Small Business Act.

(2) The Associate Administrator for Minority Small Business and Capital Ownership Development shall enter into agreements with Federal agencies and departments to further effectuate sections 7(i), 7(j) and 8(a) of the Small Business Act.

(3) The Associate Administrator for Minority Small Business and Capital Ownership Development shall encourage the placement of deposits made by the Federal funds, in such a way as to further the purposes of sections 7(i), 7(j) and 8(a) of the Small Business Act.

§ 124.3-1 Small Business and Capital Ownership Development Program.

(a) *General.* The development assistance described below shall be provided exclusively to those small business concerns eligible to receive contracts pursuant to section 8(a) of the Small Business Act. Such small business concerns shall be participants in the Small Business Capital Ownership and Development program. This program shall:

(1) Assist small business concerns participating in the program to develop comprehensive business plans with specific business targets, objectives, and goals;

(2) Provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the program, including but not limited to (i) loan packaging, (ii) financial counseling, (iii) accounting and bookkeeping assistance, (iv) marketing assistance, and (v) management assistance;

(3) Assist small business concerns participating in the program to obtain equity and debt financing;

(4) Establish regular performance monitoring and reporting systems for small business concerns participating in the program to assure compliance with their business plans;

(5) Analyze and report the causes of success and failure of small business concerns participating in the program; and

(6) Provide assistance necessary to help small business concerns participating in the program to procure surety bonds. Such assistance shall include, but not be limited to, (i) the preparation of surety bond application forms; (ii) special management and technical assistance designed to meet the specific needs of small business concerns participating in the program and which have received or are applying to receive a surety bond, and (iii) preparation of all forms necessary to receive a surety bond guarantee from the SBA pursuant to Title IV, part B of the Small Business Investment Act of 1958.

§ 124.4-1 Surety Bond Waivers.

(a) *Policy.* Notwithstanding subsections (a) and (c) of the first section of the Miller Act (40 U.S.C. 270(a) and (c), 49 Stat. 793) no small business concern shall be required to provide any amount of any bond as a condition of receiving any subcontract under section 8(a) of the Small Business Act if such business concern is determined by SBA to be a start-up concern which, as defined below, has not been participating in any program conducted under the authority of section 8(a) of the Small Business Act for a period exceeding one year, and SBA determines that such amount of bond is inappropriate for the concern in performing the subcontract.

(b) *Definitions.* (1) Start-up concern means a section 8(a) small business concern which is:

(i) both eligible for participation in SBA's section 8(a) program and has had its business plan approved by SBA, and

(ii) which has not been participating in any program conducted under the authority of section 8(a) of the Small Business Act for a period exceeding one year, and

(iii) which has been in its line of work, as its principal business activity, for no more than 2 years. If a principal of the concern has been a principal of another such firm or firms in the same line of work, and the cumulative time span of his service in such capacity(s) is more than two years, the concern is not a start-up concern.

(2) Surety means a corporation with a Certificate of Authority from the Secretary of the Treasury under sections 6 to 13 of Title 6 of the United States Code, or as otherwise qualified under the Small Business Administration's Surety Bond Guarantee Regulations.

(c) *Eligibility.* To be eligible to receive a waiver of surety bond requirements by SBA, a business concern must:

(1) Be determined to be a start-up concern as defined in above; and

(2) Be under consideration by the AA/MSB-COD for award of a section 8(a) subcontract.

(d) *Procedures for Granting A Surety Bond Water.* SBA shall grant a surety bond waiver to an eligible start up concern with respect to the award of a section 8(a) subcontract after SBA has made the following determinations:

(1) SBA determines that the eligible start up concern is unable to obtain the requisite bond or bonds from a surety, and that no surety is willing to issue such bond or bonds subject to the surety bond guarantee provisions of Title IV of the Small Business Investment Act of 1958; and

(2) SBA determines that it can and shall assist, insofar as practicable, the eligible start up concern to develop within a reasonable period of time, such financial and other capability as may be needed to obtain such bonds as SBA may subsequently require for the successful completion of any such contract awarded to the eligible small business concern pursuant to section 8(a) of the Small Business Act; and

(3) SBA determines that it can and shall take such measures as it deems appropriate for the protection of persons furnishing materials and labor to the eligible small business construction concern to which a surety bond waiver is granted; and

(4) The start up concern agrees to remit to SBA a surety bond waiver fee in the amount of 2 percent of the 8(a) contract's face value within ninety (90) days of the time the contract is awarded.

[FR Doc. 79-2703 Filed 1-24-79; 8:45 am]

federal register

THURSDAY, JANUARY 25, 1979
PART X



COUNCIL ON WAGE AND PRICE STABILITY

■

CHANGES IN COUNCIL'S ORGANIZATION AND LOCATION OF OFFICES; CLARIFICATION OF PROCEDURES REGARDING CONFIDENTIAL INFORMATION; FINAL STANDARDS FOR FEDERAL, STATE, AND LOCAL ENTITIES; SUPPLEMENTAL QUESTIONS AND ANSWERS AND IMPLEMENTATION GUIDE

[3175-01-M]

Title 6—Economic Stabilization

CHAPTER VII—COUNCIL ON WAGE AND PRICE STABILITY

ORGANIZATION, LOCATION OF OFFICES AND CONFIDENTIAL INFORMATION

Correction and Clarification of Regulations

AGENCY: Council on Wage and Price Stability.

ACTION: Final rule.

SUMMARY: These amendments update Parts 701 through 704 of the regulations of the Council on Wage and Price Stability, in order to reflect changes in its organization and the location of its offices, and to clarify procedures relating to confidential information.

EFFECTIVE DATE: January 25, 1979.

FOR FURTHER INFORMATION CONTACT:

Roy Nierenberg, Assistant General Counsel, Council on Wage and Price Stability, Room 5020, 726 Jackson Place NW., Washington, D.C. 20506, 202-456-6210.

SUPPLEMENTARY INFORMATION: The Council's regulations were adopted in 1975, and do not, therefore, reflect recent changes in the Council's organization and location. The amendments incorporate these changes and also clarify existing procedures relating to the submission and treatment of confidential information. It should be noted that the Council on Wage and Price Stability Act, 12 U.S.C. 1904 note, provides strong protection for confidential data submitted to the Council, which protection is reflected in the regulations issued today. If data is confidential, it cannot be released by the Council pursuant to a Freedom of Information Act request or other legal process, and is protected from disclosure to other Federal agencies. Moreover, the regulations issued today contain a new procedure at § 704.4(c), which permits a person to submit information conditionally, subject to a determination by the Council that it can be treated as confidential. If the Council determines that the information cannot be so treated, it will be returned.

Since the amendments are procedural, they are effective immediately, without providing for an initial comment period or waiting the customary 30 days. The Council will, however, accept comments on the amendments, which may be submitted to the General Counsel at the address given above, and which should be received by February 16, 1979.

The provisions of Parts 701 through 704 are promulgated under the Council on Wage and Price Stability Act, Pub. L. 93-387, as amended (12 U.S.C. 1904 note).

In accordance with the foregoing, Parts 701 through 704 of Title 6 of the Code of Federal Regulations are amended to read as follows.

Issued in Washington, D.C., January 19, 1979.

BARRY BOSWORTH,
Director.

PART 701—ORGANIZATION

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701.1 Purpose.
701.2 Status.
701.3 Membership.
701.4 Staff.
701.5 Offices and hours.
701.6 Functions of the Council.
701.7 Standards of conduct.
701.8 Divisions.

AUTHORITY: Council on Wage and Price Stability Act, Pub. L. 93-387, as amended (12 U.S.C. 1904 note).

§ 701.1 Purpose.

This part is intended to provide a general description of the organization of the Council on Wage and Price Stability (the Council). More detailed information can be obtained from the Assistant Director for Public Information at the Council's offices.

§ 701.2 Status.

Pursuant to the Council on Wage and Price Stability Act of 1974, 12 U.S.C. 1904 note, as amended, the Council was established as an agency within the Executive Office of the President.

§ 701.3. Membership.

The Council consists of eight members and four adviser-members, all of whom are appointed by the President. The Chairman of the Council is designated by the President.

§ 701.4 Staff.

The staff of the Council is headed by a Director, appointed by the President with the advice and consent of the Senate.

§ 701.5 Offices and hours.

(a) The offices of the Council are at the New Executive Office Building, Room 4025, 726 Jackson Place, N.W., Washington, D.C. 20506.

(b) Business hours are from 9:00 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays. Where any provision of this chapter refers to a period of days, such period includes only business days, except where otherwise specified. Where any period lapses on a day other than a business day, such period shall be extended through the next following business day.

§ 701.6 Function of the Council.

(a) The principal function of the Council, pursuant to the Council on Wage and Price Stability Act, is to encourage restraint in wage, price and other activities that might have an inflationary effect upon the nation's economy. The Council serves this function by (1) monitoring wage, price and other activity within the private sector of the economy, (2) reviewing programs and policies of the various Federal departments and agencies to analyze their inflationary impact upon the economy, (3) working with representatives of labor and management in various sectors of the economy to encourage restraint in their wage, price and other activity, and (4) holding hearings and otherwise collecting data related to the economy. The Council does not, however, have the authority to impose mandatory economic controls with respect to wages, prices or similar transfers.

(b) In addition, by Executive Order No. 12092 (November 1, 1978), the President authorized the Council to develop standards implementing the voluntary program of wage and price restraint which the President initiated. These standards are set out in an Appendix to Part 705 of this chapter, with related procedures at Part 706.

§ 701.7 Standards of conduct.

The standards of conduct of the Council staff are those applicable to the Office of the President, 3 CFR Part 100.

§ 701.8 Divisions.

(a) *Office of the Chairman.* The Chairman of the Council establishes the basic policy direction to be pursued by the Council, and participates in the various advisory groups within the Office of the President.

(b) *Office of the Director.* This office consists of the Director, and a Deputy Director. It provides overall coordination of the Council's activities and directs the implementation of those activities and responsibilities assigned to the staff by the Council.

(c) *Office of Planning, Policy and Evaluation.* This office, which is headed by an Assistant Director, investigates and develops policy options to combat inflation in various sectors of the economy; provides broad policy coordination for the Council's program activities; develops and presents detailed strategies for dealing with specific sectoral problems; maintains liaison with the Executive Office of the President and other government agencies to facilitate implementation of anti-inflation policy measures, and un-

dertakes and coordinates program evaluations.

(d) *Office of Legislative/Congressional Affairs.* This office, which is headed by an Assistant Director, maintains relations with House and Senate Committees interested in the Council; processes congressional requests for information; develops and coordinates legislative proposals originated by the Council; and advises the Council on policy matters related to Congress.

(e) *Office of Administration and Management.* This office, which is headed by an Assistant Director, provides administrative support in the areas of budget preparation, personnel management, contracting, and administrative services. It also ensures a coordination of management and other policy issues among the program offices.

(f) *Office of Government Programs & Regulations.* This office, which is headed by an Assistant Director, develops and recommends policies for mitigating the potential inflationary effects of Federal activities. The office participates in regulatory proceedings, and comments on proposed regulations, in order to encourage Federal agencies to analyze the cost-effectiveness of their initiatives.

(g) *Office of Price Monitoring.* This office, which is headed by an Assistant Director, is responsible for the overall monitoring of price data and analysis of trends, and identifying particular sources of inflationary pressure; for determining whether or not specific companies are in compliance with the price standards set forth in Subparts 705A and 705C; and for undertaking studies and providing reports for the Congress with respect to inflation trends.

(h) *Office of Pay Monitoring.* This office, which is headed by an Assistant Director provides analytical support to senior government officials; identifies wage negotiations for special attention; responds to technical inquiries as to whether specific unions and/or firms are in compliance with the pay standard set forth in Subpart 705B; and analyzes overall trends in wages and compensation, in order to identify sources of particular inflationary pressures.

(i) *Office of Public Information.* This office, which is headed by an Assistant Director, carries out activities in the area of media relations and other public information services. It is also responsible for editing and distributing publications and reports of the Council.

(j) *Office of the General Counsel.* This office, headed by a General Counsel, provides broad legal support for the Chairman, the Director, and program offices in the implementation of the Council's programs. It reviews requests for information, coordinates the issuance of regulations and interpretive material, and advises on administration of the Pay and Price Standards in order to insure substantive consistency and procedural due process.

PART 702—PUBLIC ACCESS TO RECORDS

Subpart A—General

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702.2 Waiver.
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Subpart B—Confidential Records

702.4 Request for confidential treatment.
702.5 Confidential records.
702.6 Confidentiality determination.

Subpart C—Request for Disclosure of Records

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702.18 Prior approval or advanced deposit of fees.
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AUTHORITY: Council on Wage and Price Stability Act, Pub. L. 93-387, as amended (12 U.S.C. 1904 note).

Subpart A—General

§ 702.1 Purpose.

The Freedom of Information Act, 5 U.S.C. Section 552, which is applicable to the Council, requires the public disclosure of records held by the Council, with the exception of specific categories of confidential records described in that Act. This Part establishes the Council's procedures for providing public access to Council records and for determining the confidential treatment of specific records submitted to it. This Part authorizes the General Counsel, subject to review by the Director of the Council, to receive and act upon requests for the disclosure of records.

§ 702.2 Waiver.

Whenever a waiver of any of the procedures set forth in this Part would further the purposes of the Freedom of Information Act by causing the public disclosure of nonconfidential records within the time period required by that Act, the Director of General Counsel may, in the context of individual requests for records, waive any of the procedural requirements of this Part.

§ 702.3 Authority.

The provisions of this part are promulgated pursuant to the requirement in the Freedom of Information Act, 5 U.S.C. Section 552, and of 18 U.S.C. Section 1905, both of which statutory provisions are made expressly applicable to the Council by Section 4 of the Council on Wage and Price Stability Act, as amended.

Subpart B—Confidential Records

§ 702.4 Request for confidential treatment.

(a) Any person requesting the confidential treatment, pursuant to 5 U.S.C. Section 552(b) and to 18 U.S.C. Section 1905, of records submitted by that person to the Council shall make that request in writing to the Council. Such a written request shall accompany the records for which confidential treatment is requested and shall specifically identify the portions of the submitted records for which confidential treatment is requested.

(b) To the extent possible, records for which confidential treatment is requested shall be separately bound or otherwise segregated from any accompanying material submitted without a request for confidentiality.

§ 702.5 Confidential records.

The following kinds of records, exempt from the public availability requirements of 5 U.S.C. Section 552, may be provided confidential treatment by the Council, pursuant to a request made as set forth in § 702.1:

(a) Records specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

(b) Records related solely to the internal personnel rules and practices of the Council;

(c) Records specifically exempted from disclosure by statute, including information defined in section 4(f)(1) of the Council on Wage and Price Stability Act, as amended, and as further defined in § 704.4(a) of this chapter;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential. This exemption includes, without limitation, data about the amount of sources of income, profits, losses, costs or expenditures; inventory lists; customer lists; manufacturing processes and other trade secrets; in each case to the extent that such information is not in fact published or otherwise made available on a nonconfidential basis;

(e) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Council. The exemption includes, without limitation, minutes and other records of the deliberations of the Council members and staff, intra- and inter-agency reports, memorandums, letters, work papers, and staff papers, except to the extent that such documents have been publicly released by the Council. To the extent that their premature release would be contrary to the public interest, such documents to be made public are included within this exemption until their public release by the Council;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The exemption includes, without limitation, the personnel records of the Council, files containing reports, records or other material pertaining to individual cases in which disciplinary or other administrative action has been or may be taken, including records of proceedings pertaining to the conduct or performance of duties by Council personnel;

(g) Investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;

(h) Records contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(i) Geological and geophysical information and data, including maps, concerning wells.

§ 702.6 Confidentiality determination.

Where a request for the confidential treatment of records submitted to the Council has been made, the General Counsel may, within a reasonable time, make such determination, and notify the party making that request of whether those records are confidential.

Subpart C—Requests for Disclosure of Records

§ 702.7 Written requests.

(a) Any request for records held by the Council shall be made in writing and addressed to the General Counsel, at the Council's offices, Room 5020.

(b) Any request for records from the Council shall describe and identify, in reasonable detail, the particular documents or the type of records requested.

(c) Such a written request shall also estimate, pursuant to the fee schedule set forth in Subpart E, the maximum fee that the party making the request would be willing to pay for the search and duplication of the requested records, without further approval.

§ 702.8 Notice of request.

Whenever a request shall be made for the disclosure of records that the General Counsel has previously concluded, pursuant to § 702.6 to be confidential, notice shall be given to the party who has submitted those records that their disclosure has been requested.

§ 702.9 Initial decision.

(a) The General Counsel shall, within ten (10) days of the receipt of any written request for records, determine whether to grant or deny, in whole or in part, that request (based on any determinations respecting such records under § 702.6). In making such a determination, the General Counsel shall consider, among other alternatives, the possibility of separating confidential records, as defined in Subpart B, from other portions of any requested records, and disclosing the nonconfidential portions.

(b) In the event of an unusual circumstance, as defined in Paragraph (b) (1), (2), or (3) of this section, the General Counsel may extend, by no more than ten (10) working days, the time within which he must make an initial decision in response to a written request. The General Counsel shall immediately give written notice to the party making the request of any such extension of time, of the reasons for such an extension, and of the expected date of the initial decision. "Unusual circumstances," for this purpose, shall include:

(1) The need to search for and collect the requested records from establishments that are separate from the Council's office.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request for records or among two or more components of the Council having substantial subject-matter interest therein.

(c) For purposes of this Section, a written request for records shall be deemed "received" when it has arrived in the offices of the Council in a written form that complies with the requirements of § 702.7.

§ 702.10 Notice of initial decision.

The General Counsel shall, immediately upon making an initial decision about a request for records, give written notice of that decision to the person making the request. In the event that that initial decision is to grant a request in whole or part, the written notice shall include a statement of that decision, a brief description of the records to be made available, a statement of the times and place when such records can be available for inspection or, alternatively, of the procedure for duplication and delivery (by mail or other means) of the records to the requesting party, and an itemized statement of the total fees chargeable to the requesting person, pursuant to the fee schedule set forth in Subpart E, for the search for and duplication of the requested records. In the event, on the other hand, that the General Counsel's initial decision is to deny a request in whole or in part, the written notice of that decision shall include a brief statement of that decision and of the reasons therefor, an identification of the name and title of the person making that decision, and also a description of the procedures, pursuant to Subpart D, for an appeal from that decision.

§ 702.11 Preservation of requests and notices.

The General Counsel shall preserve all written requests for records and all written notices of his initial decisions in response thereto for at least one calendar year.

Subpart D—Appeals

§ 702.12 Written appeal.

(a) Any person who has made a written request for the disclosure of records, pursuant to Subpart C, may, within 30 days of receipt of a written notice of the General Counsel's initial decision or after the General Counsel's failure to take any timely action upon that request, request that the Director of the Council review that decision or nonaction. Any such request for review should be made in writing, shall be addressed to the Director, at the Council's offices.

(b) Any written request for review of an initial decision shall include a copy of the party's initial request to the General Counsel for the disclosure of records, a copy of the General Counsel's initial decision, and a brief statement of the legal, factual or other basis for the party's objection to that initial decision.

§ 702.13 Additional information.

Immediately upon receipt of a written appeal, the Director may request that additional information be submitted by the party appealing or by the General Counsel.

§ 702.14 Appellate decision.

(a) The Director shall, within twenty (20) days of the receipt of any written

appeal, determine whether to grant or deny that appeal.

(b) In the event of an unusual circumstance, as defined in § 702.9(b), the Director may extend, by no more than ten (10) days, the time within which he must make an appellate decision in response to a written appeal. The Director shall immediately give written notice to the party making the request of any such extension of time, of the reasons for such an extension, and of the expected date of the appellate decision.

§ 702.15 Notice of appellate decision.

The Director shall, immediately upon making an appellate decision, give written notice of that decision to the person making the request. This notice shall include a brief statement of the appellate decision and of the reasons therefor.

Subpart E—Access for Records; Fees

§ 702.16 Access.

(a) Except as set forth in paragraph (b) of this section or as otherwise determined by the Assistant Director for Administration and Management (hereinafter the "Assistant Director") or the Director, requested records or duplicate copies thereof, to be made available to any person shall be made available during regular business hours at the offices of the Council.

(b) Upon the Assistant Director's or the Director's approval, requested records or duplicate copies thereof can be made available by mail to the person making the request.

§ 702.17 Fees.

(a) Fees charged by the Council for the search for and duplication of any records requested shall comply with the following fee schedule:

(a) *Search for records.* $5 per hour when the search is conducted by a clerical employee. $8 per hour when the search is conducted by a professional employee. There is no charge for searches of less than one hour.

(2) *Duplication of records.* Records will be duplicated at a rate of $.25 per page for all copying of four pages or more. There is no charge for duplicating three or less pages.

(3) *Other.* When no specific fee has been established for a service, the Assistant Director is authorized to establish an appropriate fee based on "direct costs" as provided in the Freedom of Information Act and in accordance with Office of Management and Budget Circular No. A-25. Examples of services covered by this provision include searches involving computer time or special travel, transportation or communication costs.

(4) If records requested are stored elsewhere than at the offices of the Council, the special costs of returning those records to the Council's offices for review will be added to the search costs. Search costs are due and payable even if the record which was requested cannot be located after all reasonable efforts have been made or if it is determined that a requested record is confidential and should be withheld.

(b) The Assistant Director or Director may determine, in connection with specific requests for records, that the public interest is best served by the provision of the requested records at no cost or at a cost below the above schedule and, in those specific instances, may waive the above schedule, in whole or in part.

§ 702.18 Prior approval or advanced deposit of fees.

(a) Where the search, duplication or other fees anticipated to result from a request are substantially greater than the amount estimated in the written request, pursuant to § 702.7 above, or in the absence of such an estimate where the anticipated fees are greater than $25, the person requesting the records shall be immediately notified of the estimated fees and his approval for such fees requested. Such person shall also be offered the opportunity to reformulate his or her request in order to reduce the search, duplication and other fees but yet satisfy that person's needs for records.

(b) Where the estimated search, duplication and other fees would exceed $25, the Assistant Director may in addition request that the person requesting records make an advance deposit of the estimated fees.

(c) The dispatch of any such request for an estimated fee approval or advance deposit shall suspend, until a reply is received by the Council, the period, pursuant to 5 U.S.C. section 552 and to § 702.9, within which the Assistant Director must respond to a written request for records.

§ 702.19 Payment of fees.

(a) Fees actually charged a person for the search and duplication of records must be paid in full prior to issuance to him or her of those records. In the event that that person is in arrears for previous requests to the Council for records, records will not be provided for any subsequent requests until the arrears have been paid in full. (b) Payment of fees shall be made by a personal check, postal money order or bank draft drawn on a bank in the United States, made payable to the order of the Treasurer of the United States.

PART 703—RECORDS MAINTAINED ABOUT AN INDIVIDUAL

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AUTHORITY: Council on Wage and Price Stability Act, Pub. L. 93-387 as amended (12 U.S.C. 1904 note).

Subpart A—General

§ 703.1 Purpose.

This part contains the regulations of the Council implementing the Privacy Act of 1974, 5 U.S.C. 552a. The regulations apply to all records maintained by the Council that are contained in a system of records, as defined herein, and that contain information about an individual. The regulations in this part set forth procedures that (a) authorize an individual's access to records maintained about him (or her), (b) limit the access of other persons to those records, and (c) permit an individual to request the amendment or correction of records about him (or her).

§ 703.2 Definitions.

For purposes of this part:

(a) "Council" shall mean the Council on Wage and Price Stability;

(b) "Individual" shall mean a citizen of the United States or an alien law-

fully admitted for permanent residence;

(c) "Record" shall mean any item, collection or grouping of information about an individual that is maintained by the Council, including but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the individual's name, identifying number, symbol, or other identifying particulars assigned to the individual, such as a finger or voice print or photograph: *Provided,* That such record is maintained in a system of records as defined herein:

(d) "System of records" shall mean a group of any records under the control of the Council from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

§ 703.3 Fees.

The fee schedule set forth in § 702.17 of Part 702 of this chapter shall apply to the reproduction of documents for any request made pursuant to this part.

Subpart B—Annual Notice of Systems of Records Maintained by the Council

§ 703.4 Publication of notice.

The Council will publish in the FEDERAL REGISTER an annual notice describing the systems of records that the Council maintains. Those notices shall include (a) the system name, (b) the system location, (c) the categories of individuals covered by the system, (d) the categories of records in the system, (e) the Council's authority to maintain the system, (f) the routine uses of the system, (g) the Council's policies and practice for maintenance of the system, (h) the system manager, (i) the procedures for notification, access to and correction of records in the system, and (j) the sources of information for the system. Notices shall also be published, as required by the Privacy Act of 1974, of significant changes in or additions to the Council's systems of records.

Subpart C—An Individual's Access to Records Maintained About Him (or Her)

§ 703.5 Request for records.

Any individual may request that the Council provide access to review and/or obtain a copy of any record pertaining to which is contained in any system of records maintained by the Council. Such a request shall be made pursuant to the procedures set forth in §§ 703.6 and 703.7.

§ 703.6 Contents of request.

(a) Any request for access to records must (1) identify the individual making the request by him full name, birth date and current address and (2) reasonably describe the systems of records from which an individual's records are requested. Descriptions of the systems of records maintained by the Council will be available pursuant to § 703.4 in a volume, listing the systems of records maintained by the various agencies of the federal government, to be published by the Office of the Federal Register.

(b) Any request for access to records may also notify the Assistant Director for Administration and Management(hereinafter the "Assistant Director") of the individual's intent to be accompanied by another person of his choice, when reviewing records. Such a statement shall be deemed the individual's consent that records about him (or her) be disclosed in the presence of that other person.

§ 703.7 Procedure for request.

Any individual's request for access to records pertaining to him shall be made in writing or in person to the Assistant Director at the Council's offices, Room 5235. Any individual making such a request in person shall provide acceptable identification (for example, a driver's license, employee identification card or medicare card) to verify his identity and shall complete and sign any reasonable form that the Assistant Director might provide as a record of the request. Any individual making such a request in writing shall mail or otherwise submit to the Assistant Director a written request that is accompanied by a statement verifying the identification of the requestor.

§ 703.8 Initial decision.

(a) Within 10 working days of the receipt of a request pursuant to § 703.4, the Assistant Director shall make an Initial Decision whether the requested records exist and whether they will be made available to the person requesting them. That initial decision shall immediately be communicated, in writing or other appropriate form, to the person who has made the request.

(b) Where the initial decision is to provide access to the requested records, the above writing or other appropriate communication shall (1) briefly describe the records to be made available, (2) state whether any records maintained, in the system of records in question, about the individual making the request are not being made available, (3) state that the requested records will be available during business hours at the Council's offices or alternatively state the procedure for delivery of copies of the records by mail to the individual making the request, and (4) state whether any further verification of the identity of the requesting individual is necessary.

(c) Where the initial decision is not to provide access to requested records, the Assistant Director shall by writing or other appropriate communication explain the reason for that decision. The Assistant Director shall only refuse to provide an individual access to records about himself (or herself) where (1) there is inadequate verification that the requesting individual is in fact the person about whom records are maintained, (2) in fact no such records are maintained, or (3) the requested records have been compiled in reasonable anticipation of civil or criminal action or proceedings.

Subpart D—Access of Others to Records About an Individual

§ 703.09 Limitations on disclosure.

Requests for records about an individual made by persons other than that individual shall also be directed to the Assistant Director. Such records shall only be made available to persons other than that individual in the following circumstances:

(a) To any person with the prior written consent of the individual about whom the records are maintained;

(b) To officers, employees or contractors of the Council who need the records in the performance of their duties for the Council;

(c) For a routine use compatible with the purpose for which it was collected;

(d) To any person to whom disclosure is required by the Freedom of Information Act, 5 U.S.C. 552;

(e) To the Bureau of the Census for uses pursuant to Title 13, of the United States Code;

(f) In a form not individually identifiable, to a recipient who has provided the Council with adequate assurance that the record will be used solely as a statistical research or reporting record; or

(g) To the National Archives of the United States or other appropriate entity as a record which has historical or other value warranting its preservation;

(h) In response to a written request from the head of that federal agency, to an agency for a civil or criminal law enforcement activity that is authorized by law;

(i) To a person showing compelling circumstances, affecting the health or safety of the individual about whom records are maintained, that require the disclosure of such records: *Provided,* That notification of such a dis-

closure is immediately mailed to the last known address of the individual;

(j) To either House of Congress or to any committee thereof with appropriate jurisdiction;

(k) To the Comptroller General in the performance of the official duties of the General Accounting Office; or

(l) Pursuant to the order of a court of competent jurisdiction.

Subpart E—Accounting of the Disclosure of Records About an Individual

§ 703.10 Maintenance of an Accounting.

The Assistant Director of the Council shall maintain a record ("Accounting") of every instance in which records about an individual are made available, pursuant to this part, to any person other than (a) an officer, employee or contractor of the Council in the performance of his duties or (b) any person pursuant to the Freedom of Information Act, 5 U.S.C. 552.

§ 703.11 Contents of an Accounting.

The above Accounting shall contain the following information:

(a) A brief description of records disclosed;

(b) The date, nature and, where known, the purpose of the disclosure; and

(c) The name and address of the person or agency to whom the disclosure is made.

§ 703.12 Access to accounting.

Any individual may request and shall be provided access, pursuant to the procedures set forth in Subpart C of this part, to any Accounting pertaining to records maintained about that individual.

Subpart F—Amendment or Correction of Records About an Individual

§ 703.13 Request for amendment or correction.

After inspection of any records about an individual, that individual may request, in person or by mail, that the Assistant Director correct or otherwise amend the records maintained about him (or her). Such request shall specify the particular portions of the record to be amended or corrected, the desired amendment or correction, and the reasons therefor.

§ 703.14 Initial decision.

Within 10 working days of receipt of such a request, the Assistant Director shall give the requesting individual notice, by mail or other appropriate means, of his decision regarding the request. That notice shall include:

(a) A statement whether the request has been granted or denied, in whole or in part;

(b) A quotation or description of any amendment or correction made to any records; and

(c) Where a request is denied in whole or in part, an explanation of the reason for that denial, of the requesting individual's right to appeal the decision to the Council's Director pursuant to Subpart G of this part, and of the individual's right, pursuant to § 703.15, to file a written statement to accompany the records in question, setting forth the individual's reasons why those records should have been amended or corrected.

§ 703.15 Written statement of disagreement.

Any individual whose request for the correction or amendment of a record about him (or her) has been denied, in whole or part, may file a Written Statement of Disagreement, setting forth the reasons why the record should have been amended or corrected as requested. That Written Statement shall be made a part of the record and shall accompany that record in any use of disclosure of the record.

§ 703.16 Amendment or correction of previously disclosed records.

Whenever a record is amended or corrected pursuant to § 703.13 or a Written Statement filed pursuant to § 703.15, the Assistant Director shall give notice of that correction, amendment or Written Statement to all persons to whom the records or copies thereof have been disclosed, as recorded in the Accounting kept pursuant to Subpart E of this part.

Subpart G—Appeals

§ 703.17 General.

Any individual whose request for access to records or request for the amendment or correction of records has been denied, in whole or in part, by the Assistant Director may appeal that Initial Decision to the Director of the Council. Such an appeal shall be made in accordance with the procedures of this subpart.

§ 703.18 Appeal.

An individual whose request has been denied in whole or in part by an Initial Decision of the Assistant Director may appeal that decision by filing an appeal, in writing or in person, with the Director, at the Council's offices. That appeal shall describe (a) the request initially made by the individual for access to or the amendment or correction of records, (b) the Assistant Director Initial Decision thereupon and (c) the reasons why that Initial Decision should be Modified by the Director.

§ 703.19 Director's decision.

Within 30 working days of the receipt of any appeal, the Director shall make a decision, and give notice thereof to the appealing individual, whether to modify the Assistant Director Initial Decision in any way. The Director shall also notify the appealing individual of (a) his right to judicial review of the Director's decision pursuant to 5 U.S.C. 552a(g)(1)(A), and (b) of his right, after the denial of any request to amend or correct records, to file a written statement to accompany those records, explaining the individual's reasons why, in his view, the records should have been amended or corrected.

PART 704—INVESTIGATIONS

Subpart A—General

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704.25 Authorization to request data from other agencies.
704.26 Procedure for requests by the council.
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704.28 Confidentiality of data obtained from other agencies.
704.29 Compliance with Privacy Act.

AUTHORITY: Council on Wage and Price Stability Act, Pub. L. 93-387, as amended Pub. L. 94-78 (12 U.S.C. 1904, note).

Subpart A—General

§ 704.1 Purpose.

This part establishes the Council's procedures (a) for issuing subpoenas for testimony and documentary evidence, (b) for requiring the submission of periodic reports, (c) for receiving information submitted voluntarily in response to a Council request, and (d) for determining the confidentiality of information submitted to the Council, pursuant to the Council on Wage and Price Stability Act, as amended, 12 U.S.C. Section 1904 note, and procedures for filing objections and requests related thereto. This Part also establishes the Council's procedures for requesting data or information from other agencies pertaining to the economy or any sector of the economy.

§ 704.2 Investigational policy.

From time to time, the Council shall conduct investigations related to its responsibilities under the Council on Wage and Price Stability Act, as amended, to monitor inflationary activities and potentially inflationary activities in the public and private sectors of the economy. In these investigations, the Council will encourage parties voluntarily to provide data requested by the Council. Where the public interest requires, however, the Council may, in any matter under investigation, invoke any or all of the compulsory processes authorized by the Council on Wage and Price Stability Act.

§ 704.3 Notification of purpose.

Subpoenas and orders requiring periodic reports issued subject to this Part shall notify the respondent of the purpose and scope of the Council's investigation.

§ 704.4 Confidentially of information.

(a) Product line or other such category information relating to an individual firm or person obtained by subpoena, or obtained by order requiring periodic reports, shall be considered as confidential and exempt from public disclosure under section 552(b)(4) of Title 5 of the United States Code, the Freedom of Information Act, and shall not be disclosed by the Council.

(b) A firm or person submitting information pursuant to a subpoena or an order requiring periodic reports which he believes to be protected under paragraph (a) shall designate such information as confidential. In the absence of such designation, the General Council shall determine whether the information is confidential pursuant to Section (f)(1) of the Council on Wage and Price Stability Act.

(c) Notwithstanding the provisions of § 702.4, any person or firm considering whether to provide information for which protection under paragraph (a) may be available, but who is uncertain as to its actual availability, may furnish such information to the Council on a conditional basis, pending a decision of the General Counsel as to whether paragraph (a) applies. It should be accompanied by a statement explaining the basis of the confidentiality of the data. All such information shall be submitted directly to the General Counsel, at the offices of the Council, Room 5020, and shall be labeled "CONDITIONAL SUBMISSION/EYES ONLY GENERAL COUNSEL". If the General Counsel determines that paragraph (a) does apply, he shall so advise the person or firm making the submission and authorize the Counsel to treat the information as having been submitted to it on a confidential basis. If the General Counsel determines that paragraph (a) does not apply, he shall neither allow any other person to examine it or reproduce it for his own retention, and shall promptly return it to the person or firm which furnished it. In the latter case, the General Counsel shall record the type of information submitted, and the dates on which it was furnished and returned.

(d) A firm or person voluntarily submitting information to the Council who believes that, although not within the provision of § 704.4(a), such information warrants treatment as confidential information under the Freedom of Information Act should specifically identify the records for which confidential treatment is requested, stating the basis for the request pursuant to Part 702. Information submitted voluntarily to the Council (other than information submitted in accordance with paragraph (c)) and determined to be confidential under the criteria and procedures in Part 702 shall be considered as confidential and exempt from public disclosure under section 552(b)(4) of Title 5 of the United States Code, the Freedom of Information Act, and shall not be disclosed by the Council.

(e) Whenever the Council receives a request under the Freedom of Information Act, Section 552 of Title 5 of the United States Code or other provision of law for the disclosure of confidential information submitted voluntarily, or information obtained by subpoena or by order requiring periodic reports, notice shall be given to the party who has submitted that information.

(f) Nothing stated herein shall prohibit the Council from publishing data submitted voluntarily or obtained by subpoena or by order requiring periodic reports, when aggregated in a manner that does not separately disclose any data obtained from an individual firm or person.

§ 704.5 Immunity of certain information from legal process.

Periodic reports obtained by the Council pursuant to an order and determined to be in compliance with that order, and information submitted voluntarily pursuant to a request and determined to be in accordance with that request, and copies thereof which are retained by the reporting firm or person, shall be immune from legal process as provided by the Council on Wage and Price Stability Act.

§ 704.6 Noncompliance.

In cases of failure to comply with any subpoena, order requiring periodic reports, or part thereof, the Chairman or Director of the Council or a duly authorized representative may request the Attorney General to initiate any appropriate enforcement proceeding in a United States District Court.

Subpart B—Subpoenas

§ 704.7 Authority to issue subpoenas.

(a) The Chairman or the Director of the Council or in the absence of both of the above a duly authorized representative may sign subpoenas issued by the Council for the attendance and testimony of witnesses and the production of relevant books, papers and other documents, relating to wages, costs, productivity, prices, sales, profits, imports and exports and other aspects of business operations, all by product line or by such other category as the Council may prescribe for any purpose related to the Council on Wage and Price Stability Act.

(b) Subpoenas may be issued to any entity whose gross annual revenues are in excess of $5,000,000. For purposes of this Subsection, "entity whose annual gross revenues are in excess of $5,000,000" shall include without limitation (1) any association, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship, charitable, educational or eleemosynary institutions, or any other entity however organized, including subsidiary or affiliated units thereof, whose consolidated gross receipts from whatever source derived during the most recently completed fiscal year are in excess of $5,000,000, and (2) any labor union, including all local or other unit thereof, whose consolidated gross receipts for the most recently completed fiscal year from membership dues, return on investments or other sources are in excess of $5,000,000.

§ 704.8 Service of subpoenas.

Service of subpoenas may be effected as follows:

(a) By registered or certified mail. A copy of the subpoena shall be addressed to the entity to be served at its principal office or place of business, registered or certified, and mailed. A return receipt shall be requested; or

(b) By delivery. A copy thereof may be (1) delivered to an individual authorized, to accept service for the entity to be served, or (2) left at the principal office or place of business of the entity to be served.

§ 704.9 Proof of service of subpoenas.

When service is by registered or certified mail, it is complete upon receipt. A return receipt constitutes proof of service by mail. When service is by delivery, it is complete upon delivery to an individual authorized to accept service or upon being left at the principal office or place of business of the entity to be served. The verified return or certificate of the person serving the document by delivery shall be proof of the service of the document.

§ 704.10 Satisfactory compliance and extension of time.

(a) Subpoenas are returnable within twenty (20) days or such other period the Chairman, Director, or a duly authorized representative, determines to be warranted under the circumstances of a particular case. If a return date of other than twenty (20) days is chosen, the reasons therefor shall be explained in the subpoena or accompanying letter.

(b) The Director or his authorized representative are each authorized to negotiate and approve the terms of satisfactory compliance with the subpoena and, for good cause shown, may extend the time prescribed for compliance with the subpoena.

§ 704.11 Procedure for objections and requests.

Any objections or requests related to a subpoena shall be filed in triplicate with the Director at the Council's offices, within ten (10) days after service of the subpoena, or, if the return date is less than ten (10) days after service of the subpoena, at any time prior to the subpoena's return date. A timely filing under this section shall stay the requirement of a return on the portion of the subpoena challenged if the Director has not ruled by the return date.

§ 704.12 Contents of objections and requests.

(a) Any filing that objects to a subpoena shall identify those portions of the subpoena which are challenged and also those portions not challenged. With regard to the portions challenged, the filing shall indicate the relief requested and the reasons why the relief should be granted.

(b) Any filing that objects to a subpoena on the ground that the subpoenaed entity is not an entity whose annual gross revenues are in excess of $5,000,000, as defined by § 704.7(b), shall submit documentary proof of its annual sales, dues, or other appropriate data from whatever source derived during its most recently completed fiscal year.

§ 704.13 Director's decision.

Within twenty (20) working days of the receipt of any objections or requests filed pursuant to § 704.11, the Director shall make a decision and shall transmit the decision and the reasons therefor to the objecting party. The Director's decision is a "final agency action" within the meaning of 5 U.S.C., section 704. The Director shall specify a new return date, if appropriate.

§ 704.14 Investigational hearings.

(a) Investigational hearings for the purpose of hearing the testimony of subpoenaed witnesses and receiving subpoenaed documents and other data relative to any subject under investigation, shall be presided over by the Council, one or more of its members, or the Director, or a duly designated representative. The presiding officer at such a hearing is authorized to administer oaths to witnesses.

(b) Witnesses subpoenaed shall be paid the same fees and mileage as are paid to witnesses in the Courts of the United States.

§ 704.15 Rights of witnesses in investigational hearings.

(a) Any person who testifies or appears in an investigational hearing shall be entitled, on payment of lawfully prescribed costs, to procure a copy of his own testimony as transcribed stenographically or electronically.

(b) Any person who appears in person in an investigational hearing may be represented by counsel. Counsel shall be permitted to make objections on the record that could not reasonably been raised pursuant to § 704.12, above, and to state briefly the basis for such objections.

(c) The Director may review any objections made at investigational hearings. If he finds that the objections are without merit and that the witness has failed to comply fully with the subpoena, he shall notify the party of his finding. If within five (5) working days the party has not fully complied, the Director may request the assistance of the Attorney General pursuant to § 704.6.

Subpart C—Periodic Reports

§ 704.16 Authority to require periodic reports.

(a) The Chairman, the Director, or in the absence of both of the above a duly authorized representative, may sign orders issued by the Council to require periodic reports derived from information maintained in the ordinary course of business relating to wages, costs, productivity, prices, sales, profits, imports, and exports, and other aspects of business operations, all by product line or by such other category the Council may prescibe for any purpose related to the Council on Wage and Price Stability Act.

(b) A single report from a single entity, separate single reports from two or more entities, and multiple reports from one or more entities are all authorized under this Part.

(c) Orders requiring periodic reports shall be in compliance with the Federal Reports Act, 44 U.S.C. Section 3501 *et seq.*

(d) Orders requiring periodic reports shall state the date(s) when the periodic reports shall be submitted.

§ 704.17 Definition of periodic reports.

For the purpose of this Part, "periodic report" shall mean a report derived from information maintained in the ordinary course of business relating to wages, costs, productivity, prices, sales, profits, imports and exports, and other aspects of business operations, by product line or such other category as the Council may prescribe, which report is sought by the Council and for the Council relating to any matter under investigation by the Council.

§ 704.18 Service of orders requiring periodic reports.

Service of orders requiring periodic reports may be effected as follows:

(a) *By registered or certified mail.* A copy of the order shall be addressed to the entity to be served at its principal office or place of business, registered or certified, and mailed. A return receipt shall be requested; or

(b) *By delivery.* A copy thereof may be (1) delivered to an individual authorized to accept service for the entity to be served, or (2) left at the principal office or place of business of the entity to be served.

§ 704.19 Proof of service of orders requiring periodic reports.

When service is by registered or certified mail, it is complete upon receipt. A return receipt constitutes proof of service by mail. When service is by delivery, it is complete upon delivery to an individual authorized to accept service or upon being left at the principal office or place of business of the

entity to be served. The verified return or certificate of the person serving the document by delivery shall be proof of the service of the document.

§ 704.20 Statement accompanying periodic report.

All responses to an order requiring periodic reports shall be signed by a representative authorized to file the document, indicating that he (or she) has examined the statements contained in the submittal or response, and that all such statements are true and correct to the best of his (or her) knowledge, information, and belief.

§ 704.21 Procedure for objections and requests.

Any objections or requests related to an order requiring periodic reports shall be filed in triplicate with the Director at the Council's offices, within ten (10) days after service of the order requiring periodic reports. A timely filing under this section shall stay the requirement of a return on the portion of the order challenged if the Director has not ruled by the return date.

§ 704.22 Contents of objections and requests.

(a) Any filing that objects to an order requiring periodic reports shall identify those portions which are challenged and also those portions not challenged. With regard to the portions challenged, the filing shall indicate the relief requested and the reasons why the relief should be granted.

(b) Any filing that objects to an order requiring periodic reports on the ground that the order requires information in categories not maintained in the ordinary course of business shall identify any alternative categories or types of information maintained in the ordinary course of business which bear on the Council's inquiry or shall demonstrate that such an identification would be unreasonably burdensome.

§ 704.23 Satisfactory compliance and extensions of time.

(a) The Director or his authorized representative may negotiate and approve the terms of satisfactory compliance with the order requiring periodic reports. For good cause shown, they may extend the time prescribed for compliance.

(b) The Director may determine that any portion or all of a periodic report which contains substantially less or substantially more information that was ordered is not in compliance with that order.

§ 704.24 Director's decision.

Within twenty (20) working days of the receipt of any objections or requests filed pursuant to § 704.19, the Director shall make a decision and shall transmit the decision and the reasons therefore to the objecting party. The Director's decision is a "final agency action" within the meaning of 5 U.S.C. Section 704. The Director shall specify a new return date, if appropriate.

Subpart D—Data From Other Agencies

§ 704.25 Authorization to request data from other agencies.

The Chairman of the Council has authorized the Director to exercise all of the authority vested in him by section 4(a) of the Act and to delegate any or all of these authorities (39 FR 44068). The Director, the Assistant Directors for Price Monitoring, Pay Monitoring, Government Programs and Regulations, and Planning, Policy and Evaluation, and their representatives are each authorized to request data and information pertaining to the economy or any sector of the economy from any department or agency of the United States and any state or local agency or department, which collects, generates, or otherwise prepares or maintains data or information.

§ 704.26 Procedure for requests by the Council.

(a) Any Council request for data from another governmental department or agency shall be addressed to the head of the agency or to any other appropriate official of the agency.

(b) The time and manner of an agency's response to a Council request for data shall be determined by consultation with the appropriate official from that agency.

§ 704.27 Responses by agencies.

When supplying data and information to the Council, the Federal, state or local agency shall (i) indicate whether the data and information are confidential, and (ii) specify all the applicable rules of practice and procedure governing the disclosure of the material supplied.

§ 704.28 Confidentiality of data obtained from other agencies.

(a) Upon request for disclosure for information obtained from a Federal, state or local agency, the Council will be guided by section 552 of Title 5, United States Code, and all the applicable rules of practice and procedure of the agency or department from which the information was obtained.

(b) If the agency or department from which the information was obtained has no rules of practice and procedure governing disclosure, the Council shall apply its own rules set forth at 6 CFR, Part 702.

§ 704.29 Compliance with Privacy Act.

Submissions made by any agency in response to a Council request shall be made in compliance with the Privacy Act, 5 U.S.C. Section 552a.

[FR Doc. 79-2533 Filed 1-24-79; 8:45 am]

[3175-01-M]

PART 705—NONINFLATIONARY PAY AND PRICE BEHAVIOR

Modified Price Standard for Federal, State, and Local Entities

AGENCY: Council on Wage and Price Stability.

ACTION: Final Standard for Federal, State, and Local Entities.

SUMMARY: The Council's voluntary standard for noninflationary price behavior contains modified standards applicable to segments of the economy that would have special difficulties in complying with the general price standard. The Council has determined that, in some instances, Federal, State and local entities would have such difficulties and, accordingly, has adopted a modified price standard applicable to these entities.

EFFECTIVE DATE: January 25, 1979.

FOR FURTHER INFORMATION CONTACT:

Sandra Sherman, Office of General Counsel, Council on Wage and Price Stability, 726 Jackson Place, NW., Washington, D.C. 20506, (202) 456-6210.

SUPPLEMENTARY INFORMATION: On the basis of discussions with Federal, State, and local entities and other groups, the Council has determined that, while the pay standard is applicable to all types of government entities, the price standard can be appropriately applied only to those government entities that resemble private enterprises (the U.S. Post Office, port authorities, etc.). That is, it would be inappropriate to apply the price standard to a government entity that is funded primarily by general tax revenues rather than by revenue from the sale of goods and services. Moreover, since the revenues of government entities are usually from nonbusiness sources (e.g., taxes), they do not maintain the type of data or records which would permit them to make the calculations necessary to determine compliance with the price standard. Accordingly, the Council is adopting a modified price standard for those entities.

Under this modified price standard, Federal, State, and local enterprises (i.e., limited-purpose entities affiliated with the government and doing business with the public, such as munici-

pal utilities, water authorities, and public hospitals) that can be treated as separate compliance units ("companies" under 705D) *and* whose operating revenues equal at least 50% of their total expenses, are expected to comply with the price standard under 705A. Federal, State, and local enterprises and other entities that are not in the foregoing category are exempt from the price standard.

It should be noted that if a government entity is subject to the price standard, it may, of course, comply with the profit-margin limitation if, for either of the reasons set forth in 705A-6(a)(1), it is unable to comply with the price deceleration standard. In meeting the profit-margin limitation, an entity may use the operating-margin limitation that is applicable to nonprofit organizations. The operating margin is operating surplus divided by operating funds, where the operating surplus is defined as operating funds less total costs and expenses including wages.

Under this approach, those entities of government that are separate for accounting purposes and are otherwise operated substantially like businesses, can be expected to have the records appropriate to businesses and, therefore, to have the capability of complying with the price standard. Those government enterprises that cannot be disaggregated from the nonbusiness operations of government in accordance with 705D, or that cannot cover at least half of their current expenses with operating revenue, as well as all other government entities, are less likely to have the necessary records, and are therefore exempt from compliance with the price standard. However, all Federal, State, and local governments and government entities are expected to comply with the pay standard.

While this Standard is final, the Council will consider comments on it. Comments should be sent to the above address by February 16, 1979.

(Council on Wage and Price Stability Act, Pub. L. 93-387, as amended (12 U.S.C. 1904 note); E.O. 12092.)

In consideration of the foregoing, section 705C-4 is added to the appendix to Part 705 of Chapter VII, Title 6 of the Code of Federal Regulations, to read as follows.

Issued in Washington, D.C. January 19, 1979.

BARRY BOSWORTH,
Director, Council on Wage and Price Stability.

A new 705C-4 is added to the appendix to Part 705 to read as follows:

705C—MODIFIED PRICE STANDARD FOR SELECTED INDUSTRIES

* * * * *

705C-4 *Federal, State, and Local Government Enterprises and Other Entities*

(a)(1) Government enterprises are expected to comply with the price standard.

(2) For purposes of this standard, a "government enterprise" is an entity such as a port, transit, or water authority, public hospital, or municipal utility,

(i) that may, in accordance with the definition of "company" in 705D, be disaggregated from Federal, State, or local government entities and treated as a separate unit for purposes of compliance with the price standard, and,

(ii) whose operating revenue equals at least fifty percent (50%) of current expenses, including interest on debt but not including depreciation. (Operating revenue includes subsidy payments from other government entities intended to effectuate a specific policy objective, but does not include transfers from a government's general revenues.)

(b) Federal, State, and local entities that are not government enterprises in accordance with paragraph (a) are exempt from the price standard but are expected to comply with the pay standard.

* * * * *

[FR Doc. 79-2534 Filed 1-24-79; 8:45 am]

[3175-01-M]

PART 706—SPECIAL PROCEDURAL RULES

Compliance With the Pay Standard by Federal, State, and Local Enterprises and Other Entities

AGENCY: Council on Wage and Price Stability.

ACTION: Final rule.

SUMMARY: In order to minimize the reporting burdens on Federal, State and local entities, the Council is adopting modified procedural rules for compliance with the pay standard by these entities.

EFFECTIVE DATE: January 25, 1979.

FOR FURTHER INFORMATION, CONTACT:

Sandra Sherman, Office of General Counsel, Council on Wage and Price Stability, 726 Jackson Place, N.W., Washington, D.C. 20506, (202) 456-6210.

SUPPLEMENTARY INFORMATION: On the basis of discussions with Federal, State, and local officials, and other groups, the Council has determined that, while the pay standard is applicable to all government entities, the price standard should be applicable only to "government enterprises" (defined in Section 705C-4, released today). Accordingly, the Council is adopting a modified reporting procedure for these entities, codified at 6 CFR 706.25.

Under this procedure, if a Federal, State, or local entity is not defined as a government enterprise, it is exempted from the general reporting provisions in Subpart B of Part 706. However, if it has 5,000 or more employees, it is requested to provide the Council by February 15, 1979, with an assurance of compliance with the pay standard or with its method of pay computation under 705B-4.

This procedure reflects the fact that under 705C-4, government entities that are not "enterprises," as defined therein, are exempted from the price standard, and also acknowledges that in the area of pay, it may be much easier for a government to certify compliance than to provide a more elaborate notification of the identification of employee groups and methods of pay-rate calculations.

Since this rule is procedural only, it is effective immediately, without the customary thirty days' notice. However, the Council will accept comments, which should be sent to the above address by February 23, 1979.

(Council on Wage and Price Stability Act, Pub. L. 93-387, as amended (12 U.S.C. 1904 note); E.O. 12092.)

In consideration of the foregoing, Part 706 of Chapter VII, Title 6 of the Code of Federal Regulations, is amended by adding a new § 706.25 to Subpart B—Reports and Notifications to read as follows.

Issued in Washington, D.C., January 19, 1979.

BARRY BOSWORTH,
Director, Council on Wage and Price Stability.

Part 706 is amended by adding a new § 706.25 to Subpart B—Reports and Notifications as follows:

Subpart B—Reports and Notifications

* * * * *

§ 706.25 Compliance with the Pay Standard by Federal, State, and Local Enterprises and Other Entities

(a) When complying with the pay standard, Federal, State, and local enterprises and other government entities that are not government enterprises as defined in 705C-4, and which have 5,000 or more employees, should either:

(1) Notify the Council by February 15, 1979, of the method of computation under 705B-4 to be used for determining pay rate changes during the program year; or

(2) Furnish the Council by February 15, 1979, with a letter of assurance

from the head of government, stating that the enterprises and/or entities intend to comply with the pay standard during the program year.

(b) No other provision of this Subpart applies to any enterprise or entity covered by paragraph (a) of this section.

[FR Doc. 79-2537 Filed 1-24-79; 8:45 am]

[3175-01-M]

PART 705—NONINFLATIONARY PAY AND PRICE BEHAVIOR

Amendment to Pay Standard

AGENCY: Council on Wage and Price Stability.

ACTION: Amendment to Pay Standard.

SUMMARY: On December 28, 1978, the Council on Wage and Price Stability published in the FEDERAL REGISTER at 43 FR 60772 voluntary standards for compliance with the President's anti-inflation program. It thereafter came to the Council's attention that the intent of the pay standard (705B Pay Standards) could be circumvented by cost-of-living adjustment clauses that were contingent upon a rise in the Consumer Price Index above a certain point. To prevent this from being permissible under the pay standard, the Council ruled on January 10, 1979, that cost-of-living adjustments that make payments only after the Consumer Price Index has been increased by some minimum amount violate the pay standard. Because of the emergency nature of this ruling, the amendment to the pay standard was effective the date the decision was made public, January 10, 1979.

EFFECTIVE DATE: January 10, 1979.

FOR FURTHER INFORMATION CONTACT:

Sean Sullivan, Office of Pay Monitoring, Council on Wage and Price Stability, 726 Jackson Place, NW., Room 5002, Washington, D.C. 20506 (202) 456-6480.

(Council on Wage and Price Stability Act, Pub. L. 93-387, as amended (12 U.S.C. 1904 note); E.O. 12092)

In consideration of the foregoing, section 705B-3(c) of the appendix to Part 705 of Chapter VII, Title 6 of the Code of Federal Regulations, is amended as follows.

Issued in Washington, D.C., January 19, 1979.

BARRY P. BOSWORTH,
Director, Council on Wage and Price Stability.

Accordingly, Section 705B-3(c) of the appendix to Part 705 is amended by adding subparagraphs (1) and (2) as follows:

705B—PAY STANDARDS

* * * * *

(c) * * *

(1) This assumption cannot be used if—

(i) A new cost-of-living provision is established that makes payments only after the Consumer Price Index has increased by some minimum amount;

(ii) an existing cost-of-living provision is modified to begin making payments only after the Consumer Price Index has increased by some minimum amount;

(iii) The Consumer Price Index minimum amount in an existing cost-of-living provision of the type described in (i) is increased; or

(iv) the duration of the contract is one year or less. (2) Cost-of-living adjustment provisions that are not permitted to be evaluated using the 6-percent inflation assumption should be evaluated using the actual rate of inflation. Contracts with such clauses should be in compliance with the pay standard at the end of each year of the contract.

[FR Doc. 79-2535 Filed 1-24-79; 8:45 am]

[3175-01-M]

PART 705—NONINFLATIONARY PAY AND PRICE BEHAVIOR

PART 706—SPECIAL PROCEDURAL RULES

Supplemental Questions and Answers and Implementation Guide

AGENCY: Council on Wage and Price Stability.

ACTION: Issuance of Supplemental Questions and Answers (Q's and A's) and Implementation Guide.

SUMMARY: In order to facilitate compliance with the Council's voluntary standards on noninflationary pay and price behavior (6 CFR 705), and the accompanying Special Procedural Rules (6 CFR 706), the Council is issuing supplemental Q's and A's and an Implementation Guide.

EFFECTIVE DATE: January 25, 1979.

FOR FURTHER INFORMATION, CONTACT:

Pay: Sean Sullivan (202/456-6480); Price: Jack Triplett (202/456-7000); Procedure: Roy A. Nierenberg (202/456-6286), of the Council on Wage and Price Stability, 726 Jackson Place, NW., Washington, D.C. 20506.

SUPPLEMENTARY INFORMATION: The Q's and A's issued today supplement those published at 43 FR 60772 (December 28, 1978), and are arranged in categories under Pay, Price, and Procedure. The information provided supersedes any which may have been furnished by Council staff at an earlier date. The Implementation Guide contains methodologies of calculation applicable to the standards and is intended to facilitate compliances with technical features of the standards.

(Council on Wage and Price Stability Act, Pub. L. 93-387, as amended (12 U.S.C. 1904 note); E.O. 12092.

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

BARRY BOSWORTH,

Director, Council on Wage and Price Stability.

PAY AND PRICE STANDARDS

IMPLEMENTATION GUIDE

JANUARY 22, 1979

COUNCIL ON WAGE AND PRICE STABILITY

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PART TWO

QUESTIONS AND ANSWERS .....

INTRODUCTION

The President's anti-inflation program requests that individual firms establish procedures to measure and evaluate their pay and price actions under the voluntary standards. This document is designed

(1) to explain and clarify the concepts used in the voluntary pay and price standards issued on December 13, 1978 (published in the Federal Register on December 28, at 43 FR 60772), and

(2) to illustrate methods individual firms can use to determine compliance with the standards.

Although some firms will be asked to submit information to the Council, the standards are intended to be largely self-administered. The standards provide a general outline for pay and price behavior to reduce inflation. Individual firms are asked to use the concepts presented in the standards to develop and apply measures of their pay and price performance.

The Council is aware that no single set of procedures can cover every eventuality. This guide provides examples that apply to most circumstances. Some firms, however, will need to extend these procedures to meet their own situation. In doing so, they should ensure that their procedures are consistent with the intent of the program and that they are consistently applied.

I. PRICE STANDARDS

The price standard applies to all goods and services (products) sold in the United States and its territories and possessions. To meet the objectives of the price standard, firms will need to make decisions about:

(a) how their firm's activities will be organized for compliance purposes;

(b) how they will compute a measure of their price actions; and

(c) how they will measure profits and profit margins.

Each of these issues is addressed in the following sections. In addition, examples have been included to illustrate the special procedures used in the food processing industry and retail/wholesale trade.

A. ORGANIZATION FOR COMPLIANCE PURPOSES

In most situations, companies will measure their performance under the pay and price standards on an aggregate basis. Since the price-deceleration standard is applicable to average price changes over all of a company's product lines, large price increases for some products can be offset by smaller price increases for others. Firms that have operations in a wide variety of different industries, however, may decide to separate their activities. This section contains a description of an illustrative corporation and a discussion of how it might be organized for purposes of compliance with the price standards.

The A-to-Z Corporation is a parent company consolidated for Form 10K reporting to the Securities and Exchange Commission. The parent company consists of two consolidated divisions (a manufacturing division and a consolidated miscellaneous division), a group of other consolidated subsidiaries, and a group of unconsolidated subsidiaries. This corporation's fiscal year ends June 30. The corporation's business will remain essentially unchanged over 1978-79.

The organizational structure that the company chooses will be affected by special situations acknowledged in the standards. These special situations include: exclusion of products from average-price calculations under Section 705A-3 of the standards; the insufficient-product-coverage considerations under 705A-5; application of the profit-margin limitation under 705A-6(a); and special industry standards, under 705C.

1. Parent, Manufacturing Division ($600 million sales)

This division sells manufactured products, and is complying with the price deceleration standard as a single separate "company" in accordance with the criteria provided by the definition of "company" in 705D. It has the following product lines:

Product Line	Revenues (million)
A	$150
B	90
C (metal scrap)	60
D	270
E (introduced 12/77)	30
Total	$600

Metal scrap is excluded from the calculation of average price changes (705A-3(b)). Thus, adjusted net revenues, as defined in 705A-5, are $540 million ($600-$60). In addition, the new product, E, is excluded from the computation of the average price change under 705A-3(g) for the 1976-77 period, but not for the program year.

2. Miscellaneous Division ($300 million sales)

This division consists of a group of consolidated companies that do not fit into the manufacturing division; it is complying with the standards as a single separate company. Its sales include the following:

Product Line	Revenues (millions)
F (copper)	$ 25
G (custom-made products)	100
H	175
Total	$300

The company can demonstrate that its pricing of copper follows the New York Metal Exchange spot copper price. Thus, these revenues are excluded under 705A-3(c) and adjusted net revenues equal $275 million ($300-$25). The revenues from custom-made products, $100 million, exceed one-third of adjusted net revenue, so this division, following 705A-5(b), will comply with the profit-margin-limitation exception in 705A-6(a). For purposes of this exception all of the Miscellaneous Division's business will be included in the profit-margin calculations for the program year.

3. Other Consolidated Subsidiaries

Each of these subsidiaries will comply as a single separate "company".

Company III — Retail Trade

The company will comply with the retail trade standards under 705C-2(c).

Company IV — Food Processing

The company will comply with the food processing standards under 705C-2(d).

Company V — 80% collected scrap

20% manufacturing

As scrap prices are excluded under 705A-3(b) and scrap revenues exceed 75 percent of total revenues, under 705A-5(a), company V is exempted from the price standard and the profit-margin limitation.

4. Unconsolidated Subsidiaries

Unconsolidated subsidiaries must comply with the standards as separate companies.

Company VI — Only exports manufactured products

All products are excluded under 705A-3(d). The company is exempted under 705A-5(a) from the general price-deceleration standard and the profit-margin limitation.

Company VII — Hospitals

The standards will be administered by the Department of Health, Education, and Welfare as part of the Hospital Cost Containment Program.

Company VIII — Water Utility

Maximum allowable rates are regulated by State Utility commissions. However, actual rate increases should comply with the general price - deceleration standard.

B. PRICE DECELERATION STANDARD

To establish compliance with the price deceleration standard, two rates of price increase should be computed for the "company" (as defined in 705D). The first summarizes the average rate of price increase over the 1976-77 period. The second summarizes the rate of price increase over the program year. These two rates of change are compared to determine compliance with the price deceleration standard.

A company-wide average price change is calculated as a weighted average of the individual product-line price changes. A product-line is any aggregation of products or services established by a company that reflects the company's customary pricing unit. It may consist of a single product or service, or a group of related products or services.

In establishing the product-line grouping within a company, the price changes computed for each product-line must reasonably reflect the changes in the prices of the products contained within the category. All characteristics which influence price should be reviewed including class of buyer and other factors influencing the terms of sale. Price is defined as the net realized revenues per unit at time of delivery. In establishing product-lines for the calculation of price indexes for their company units, firms should try to minimize the impact of changes in the mix of products sold.

In some situations, it may not be feasible to disaggregate a product group to the point where changes in the mix of products are eliminated. A firm may choose to select a sample of representative products within the group and use the average price change for this sample as an index of price change for the entire group.

The basic data for the illustrative computations are provided in Table 1. The revenues and prices of product-line C (metal scrap) are excluded from covered revenues and all computations. Similarly, price and revenue data from product E are used only during the program year.

TABLE 1

BASIC PRICE DATA FOR EXAMPLE COMPANY

Quarter ending	Revenues	Units Sold	Unit Price
	Product A		
12-31-75	$47,250,135	3,500,010	$ 13.50
12-31-77	54,382,500	3,625,500	15.00
9-30-78	60,800,000	3,800,000	16.00
9-30-79	65,625,000	3,750,000	17.50
	Product B		
12-31-75	$15,600,000	5,200,000	$ 3.00
12-31-77	21,750,750	5,800,200	3.75
9-30-78	26,137,500	6,150,000	4.25
9-30-79	27,450,000	6,100,000	4.50
	Product C (metal scrap)		
12-31-75	$ 5,950,000	170,000	$ 35.00
12-31-77	18,200,000	260,000	70.00
9-30-78	18,750,000	250,000	75.00
9-30-79	10,000,000	200,000	50.00
	Product D		
12-31-75	$45,000,000	1,800,000	$ 25.00
12-31-77	57,000,000	1,900,000	30.00
9-30-78	62,400,000	1,950,000	32.00
9-30-79	70,125,000	2,125,000	33.00
	Product E (Introducted Dec. 4, 1977)		
12-31-75	$ -	-	$ -
12-31-77	496,850	5,230	95.00
9-30-78	15,500,100	147,620	105.00
9-30-79	23,057,500	200,500	115.00

	Total Revenues	Covered Products Revenues
12-31-75	$113,800,135	$107,850,135
12-31-77	151,830,100	133,133,250
9-30-78	183,587,600	164,837,600
9-30-79	196,257,500	186,257,500

1. Base-Period Rate of Price Change

The company should first compute the base-period rate of price change according to the formula of 705D:

Base Period Rate of Price Change (BPRC)

$$BPRC = \left[\sqrt{\sum_i S_i \times \frac{P_i(77)}{P_i(75)}} - 1.0\right] \times 100$$

where

S_i = the share of covered revenues represented by the ith product

$P_i(77)$ = the unit price of the ith product in the 4th quarter of 1977

$P_i(75)$ = the unit price of the ith product in the 4th quarter of 1975

In this example there are three products (A, B, and D) that are used in the base rate of price change calculation:

Product	S_i	$P_i(77) \div P_i(75)$	$S_i \times [P_i(77) \div P_i(75)]$
A	$\left(\frac{47,250,135}{107,850,135}\right)$	$\times \left(\frac{15.00}{13.50}\right)$ =	0.4868
B	$\left(\frac{15,600,000}{107,850,135}\right)$	$\times \left(\frac{3.75}{3.00}\right)$ =	0.1808
D	$\left(\frac{45,000,000}{107,850,135}\right)$	$\times \left(\frac{30.00}{25.00}\right)$ =	0.5007
	Total		1.1683

$BPRC = \left(\sqrt{1.1683} - 1.0\right) \times 100 = \boxed{8.09\%}$

Thus, the base-period rate of price change is 8.09 percent. During the program year, the company would have an allowable price increase equal to the base-period rate of price increase minus the deceleration percentage of 0.5 percentage points (705A-2(c)). Thus, this illustrative company has an allowable program year price increase of 8.09 percent minus 0.5 percentage points or 7.59 percent. (Some companies may have a larger deceleration percentage due to a passthrough of pay deceleration. This is discussed in a later section).

2. Program-Year Rate of Price Change

During the program year the company will need to monitor its price increases to ensure compliance with its deceleration standard (7.59 percent). Program-year price changes are computed according to the following formula:

Program-Year Rate of Price Change (PRPC)

$$PRPC = \left(\sum_i S_i \frac{P_i(79)}{P_i(78)} - 1.0\right) \times 100$$

here

S_i = the share of covered revenues represented by the ith product

$P_i(78)$ = the unit price of the ith product in the third quarter of 1978

$P_i(79)$ = the unit price of the ith product in the third quarter of 1979

In this period there are four products, A, B, D, and E, which are included in the price change calculation:

Product	S_i	$P_i(79) \div P_i(78)$	$S_i(P_i(79) \div P_i(78))$
A	$\left(\frac{60,800,000}{164,837,600}\right)$	$\times \left(\frac{17.5}{16.00}\right)$ =	0.4034
B	$\left(\frac{26,137,500}{164,837,600}\right)$	$\times \left(\frac{4.50}{4.25}\right)$ =	0.1679
D	$\left(\frac{62,400,000}{164,837,600}\right)$	$\times \left(\frac{33.00}{32.00}\right)$ =	0.3904
E	$\left(\frac{15,500,100}{164,837,600}\right)$	$\times \left(\frac{115.00}{105.00}\right)$ =	0.1030
	Total	=	1.0647

$PRPC = (1.0647 - 1.0) \times 100 = \boxed{6.47\%}$

As indicated, the company's program-year rate of price change is 6.47%. It complies with the price-deceleration standard since its program-year rate of price change is less than its allowable rate of 7.59%, which was derived in the preceding section.

However, a company must also determine if its company-wide pay-rate change has decelerated between the 1976-77 period and the program year. If so, the additional amount of deceleration, as computed in the following section, must be incorporated in the company's price-deceleration standard.

3. Passthrough of Pay Deceleration

The above example applies to a company that has not experienced pay deceleration; additional price deceleration is expected for companies whose payroll costs decelerate by more than 0.5 percentage points. The concept of pay used to compute the company pay rate includes the costs of all private fringe benefits, FICA wages, and employment taxes. The pay rate is the simple average pay rate for all employees of the company (including the union, management, and other groups, as well as workers with wage rates below $4.00 per hour).

TABLE 2

BASIC PAY DATA

Quarter Ending	Employee Hours	Pay Rate	Employment Costs (Rate x Hours)	Total Company Revenues
12-31-75	2,250,000	$12.50	$ 28,125,000	$ 113,800,135
12-31-77	2,200,000	14.75	32,450,000	151,830,100
9-30-78	2,350,000	15.25	35,837,500	183,587,600
9-30-79	2,255,000	16.40	36,982,000	196,257,500

Pay rate changes are measured by the following formulas:

$$\left(\begin{array}{c}\text{Base Period Rate}\\ \text{of Pay Change}\end{array}\right) = \left(\sqrt{\frac{\text{Pay Rate (77)}}{\text{Pay Rate (75)}}} - 1.0\right) \times 100$$

$$\left(\begin{array}{c}\text{Program Year Rate}\\ \text{of Pay Change}\end{array}\right) = \left(\frac{\text{Pay Rate (79)}}{\text{Pay Rate (78)}} - 1.0\right) \times 100$$

In this example, the base-period rate of change of the company pay rate is

$$\left(\sqrt{\frac{14.75}{12.50}} - 1.0\right) \times 100 = 8.63\%.$$

The program-year rate of change of the company pay rate is

$$\left(\frac{16.40}{15.25} - 1.0\right) \times 100 = 7.54\%.$$

If the program-year rate of pay change is more than 0.5% below the base rate, a pay deceleration passthrough adjustment to the price-deceleration standard is required. This is computed in accordance with 705A-2(c) in the following way:

$$\left(\begin{array}{c}\text{Deceleration}\\ \text{Percentage}\end{array}\right) = .5\% + \left[\left(\begin{array}{c}\text{Deceleration}\\ \text{of Company}\\ \text{Pay Rate}\end{array}\right) - .5\%\right] \times \left(\begin{array}{c}\text{Company}\\ \text{Pay Share}\end{array}\right)$$

where

$$\left(\begin{array}{c}\text{Deceleration}\\ \text{of Company}\\ \text{Pay Rate}\end{array}\right) = \left(\begin{array}{c}\text{Base Period}\\ \text{Rate of}\\ \text{Pay Change}\end{array}\right) - \left(\begin{array}{c}\text{Program Year}\\ \text{Rate of}\\ \text{Pay Change}\end{array}\right)$$

and

$$\left(\begin{array}{c}\text{Company}\\ \text{Pay Share}\end{array}\right) = \frac{\text{Employment Costs in Base Quarter}}{\text{Total Revenue in Base Quarter}}$$

In the above example

$$\left(\begin{array}{c}\text{Deceleration}\\ \text{of Company}\\ \text{Pay Rate}\end{array}\right) = 8.63\% - 7.54\% = 1.09\%$$

$$\left(\begin{array}{c}\text{Company}\\ \text{Pay Share}\end{array}\right) = \frac{35,837,500}{183,587,600} = .1952$$

$$\left(\begin{array}{c}\text{Deceleration}\\ \text{Percentage}\end{array}\right) = 0.5\% + [(1.09\%) - 0.5\%] \times .1952 = \boxed{0.61\%}$$

The computation of pay deceleration provides an adjusted measure of the required price deceleration. In this situation the company has an allowable program-year rate of price change of

$$\begin{pmatrix}\text{Allowable Program-Year Rate of Price Change}\end{pmatrix} = \begin{pmatrix}\text{Base Rate of Price Change}\end{pmatrix} - \begin{pmatrix}\text{Deceleration Percentage}\end{pmatrix}.$$

$$= 8.09\% - 0.61\% = \boxed{7.48\%}$$

Since its actual rate of price change was 6.47 percent, it is in compliance with the price-deceleration standard.

Early in the program year, many firms will not be able to determine the actual amount of pay deceleration that will occur.

Thus, the computations will, of necessity, involve a projection that periodically can be adjusted as the year progresses. As long as a reasonable method of projection is used, no company would be out of compliance with the price-deceleration standard as a result of reasonable differences between the projected and actual amounts of pay deceleration.

4. Six-Month Standard for Price Increases

During the first six months of the program year, the company average price increase should not exceed 50 percent of the allowable program-year price increase.

In this example the allowable program-year price increase is 7.48 percent.

Therefore, the allowable price increase in the first six months is

$$\frac{7.48}{2} = \boxed{3.74\%}$$

A firm may exceed this amount if: (1) it can show on the basis of historical practices that the proportion of price increases that occur during this six-month period is normally greater than 50 percent of the annual allowable increase; and (2) that its projected profits over the program year would not exceed the profit-margin limitation.

C. ILLUSTRATION OF PROFIT-MARGIN LIMITATION (705A-6 (a))

The profit-margin limitation is an exception to the standards for companies that cannot achieve price deceleration or are unable to compute an index of price changes. It is a two-part limitation. First, the program-year profit margin should not exceed the weighted average of the highest two annual profit margins during the three fiscal years ending prior to October 2, 1978. Second, total profits during the program year should not exceed profits of the base year, adjusted for any increase in volume and an allowable 6.5-percent increase for general inflation.

For the purpose of this exception, calculations should be based on total domestic operations. The prices of goods and services excluded from company average-price-change calculations under Section 705A-3 should not be excluded in the calculation of the profit margin.

TABLE 3

ILLUSTRATIVE DATA FOR CALCULATION OF PROFIT-MARGIN LIMITATION
(millions of dollars)

	1976	1977	1978
Revenues (year ending 6-30)			
Sales	$446.5	$501.5	$588.0
Rent	2.2	4.1	5.0
Interest	1.0	1.2	1.6
Dividends	0.5	0.8	0.9
Miscellaneous other income	2.7	4.2	4.5
	$452.9	$511.8	$600.0
Less Expenses			
Cost of sales	$363.0	$411.2	$485.0
Selling, general and administrative expenses	40.9	45.8	52.3
Interest	4.6	6.1	9.2
Amortization of debt discount and expense	0.7	0.6	0.7
Misc. other expense	1.0	1.4	2.4
Income or loss before taxes	$ 42.7	$ 46.7	$ 50.4

An illustrative set of revenue and expense data is shown in Table 3. The company's profit as defined by the Council (see 705A-6(2)(i)) can be derived in this example as follows:

PROFIT-MARGIN COMPUTATION	Fiscal Years 1976	1977	1978
	(millions of dollars)		
Sales	$446.5	$501.5	$588.0
+ Rent	2.2	4.1	5.0
= Net revenues	$448.7	$505.6	$593.0
Income or loss before tax	$ 42.7	$ 46.7	$ 50.4
- Interest received	1.0	1.2	1.6
- Dividends received	0.5	0.8	0.9
- Miscellaneous other income	2.7	4.2	4.5
+ Interest expense	4.6	6.1	9.2
+ Amortization of debt discount and expense	0.7	0.6	0.7
+ Miscellaneous other expense	1.0	1.4	2.4
= Profit	$44.8	$48.6	$55.7
$\left(\text{Profit Margin}\right) = \left(\frac{\text{Profit}}{\text{Net Revenues}}\right)$	9.98%	9.61%	9.39%

The two best years for the profit margin in this example are 1976 and 1977. To calculate the allowable program-year profit margin (see 705A-6(a)(1)), the two years are averaged together

	1976	1977	Total
Net Revenues	$448.7	$505.6	$954.3
Profit	44.8	48.6	93.4

$$\left(\text{Allowable Profit Margin}\right) = \frac{93.4}{954.3} \text{ or } \boxed{9.79\%}$$

The second condition of the profit-margin limitation is that total profits should not increase by more than 6.5 percent plus the percentage growth in physical volume.

For illustration, assume that, in the four quarters ending prior to October 2, 1978 (the base year), net sales were $610 million and profits were $53 million. Also assume that the

physical volume of sales is 3 percent greater in the program year than in the base year. (Note that, in this example, the base year does not correspond to the company's fiscal year, so profit and net revenues can not be taken directly from Table 3.)

Base-year profit is the larger of

1) actual profit during the base year, or
2) an adjusted base-year profit, obtained by multiplying the allowable profit margin times base-year revenues.

In the above example, the adjusted base-year profit is

$$\left(\text{Adjusted Base-Year Profit}\right) = \left(\text{Allowable Profit Margin}\right) \times \left(\text{Base-Year Revenues}\right)$$

$$= .0979 \times \$610 \text{ million}$$

$$= \$59.7 \text{ million}$$

Since $59.7 million exceeds actual base-year profit, $53 million, the $59.7 million figure is used as base-year profit in this example.

Given base-year profit, the allowable profit level during the program year is

$$\left(\text{Allowable Program-Year Profit}\right) = \left(\text{Base-Year Profit}\right) \times (1.065) \times \left[1.0 + \text{Percentage Volume Increase}\right]$$

$$= \$59.7 \text{ million} \times 1.065 \times 1.03$$

$$= \$65.5 \text{ million}$$

If, for any of the reasons specified in 705A-4 and 705A-6, this firm cannot achieve the price-deceleration standard,

(a) its profit margin should not be above 9.79 percent, and

(b) program-year profit should not exceed $65.5 million.

D. ILLUSTRATION OF GROSS-MARGIN STANDARD

Modified standards are available for two industries for which the general price-deceleration standard may be inappropriate: food processing and the wholesale/retail sector

1. Food Manufacturing and Food Processing (705C-2(d))

The use of the gross margin standard can be illustrated with data for a hypothetical food processing company with only domestic operations. It had $1.6 million in sales during the base quarter ending September 30, 1978.

a. Gross-Margin Computations for Quarter Ending September 30, 1978

The base-quarter gross margin should be computed as follows:

Sales (adjusted for discounts, returns, coupons, etc.)	$1,600,000
Less: food ingredients used in manufacturing	800,000
Gross margin	$ 800,000

- o Sales may come from either inventory of finished goods or goods manufactured during that quarter.
- o Food ingredients include those used in the manufacturing or processing of the foods sold during the same quarter, not those going into inventory of finished goods. Food ingredients are defined as agricultural or fishery commodities that undergo further refining, processing or manufacturing prior to being sold for ultimate consumption.
- o Gross margin includes the cost of containers, ingredients other than food commodities used in manufacturing, transportation, storage, rent, supplies, labor, company overhead, interest, income and other taxes, net profits on sales, and all other costs except for food ingredients.

The gross margin can be computed for any reasonable grouping of products or product lines in order to remove the influence of shifts in the mix of sales. In such cases, the company-wide gross margin would be a weighted average of the individual product-line margins. Export sales as well as the related food ingredient costs and gross margins should be excluded from all calculations where possible. Costs and profits may be prorated in line with export sales of similar lines of business.

b. Alternative Computation of Base Margin

The volatility of raw material prices can result in a situation in which the margin in a single quarter is not representative of the firm's normal margin.

Under Section 705C-2(d)(2), an alternative method of determining a base-quarter gross margin is provided. For the company cited in the above example, if the average percentage gross margin for the four quarters ending September 30, 1978, were 49 percent, the base-quarter margin could be determined by taking 49 percent of base quarter sales of $1,600,000 or $784,000. Thus, the firm would have the option of using this $784,000 as the base-quarter margin for program purposes rather than the $800,000 base-quarter margin actually realized. (In this example, it would choose not to do so.)

The four-quarter average of percentage gross margins for a company is computed by adding the gross margins for each of the four quarters, adding the net sales for each of the four quarters, and dividing the latter sum into the former.

c. Implementing the Gross-Margin Standard during the Program Year

Dollar gross margins are allowed to rise during the program year by as much as 6.5 percent plus the percentage increase in physical volume. The use of the gross-margin standard does pose a problem for firms that adopt it because the margins themselves are not decision variables of the firm. Companies will need to make projections of the volume of sales and some cost elements. Thus, actual results may lead to an increase in excess of the allowable margin growth even though primary actions were taken with good-faith expectations of compliance with the standards.

If, however, a firm adopts a regular procedure for monitoring its performance and undertakes appropriate adjustments as the year progresses, it would be judged to be in compliance, and any year-end gross-margin increase in excess of the 6.5 percent

standard would be rolled over into the subsequent year. A firm should compute allowable gross margin levels for each quarter, and they should be used in appraising results and making necessary adjustments in sales prices as appropriate.

d. Calculation of Physical Volume Changes

Physical volume changes often will not need to be computed at all. Such calculations are needed only when gross margin increases exceed a 6.5 percent annual rate of increase and the excess is the result of increases in physical volume.

Volume calculations may be done in a variety of different ways. Two acceptable procedures include (1) an adjustment of revenue changes for changes in average prices, and (2) a price-weighted index of units sold. A company may use a method of volume measurement that is most consistent with its own accounting system.

2. Retail and Wholesale Trade (705C-2(c))

Retailers and wholesalers may comply with the program by limiting the growth in their percentage gross margins. Calculations for retail and wholesale companies applying the percentage-gross-margin standard are illustrated by the following data.

a. Computation of Base-Year Percentage Gross Margin

Gross margins are defined as

$$\left(\begin{matrix}\text{Gross}\\\text{Margin}\end{matrix}\right) = \left(\text{Sales}\right) - \left(\begin{matrix}\text{Cost of}\\\text{Goods Sold}\end{matrix}\right).$$

The cost of goods sold is obtained by adjusting the cost of goods purchased for inventory changes. The following example illustrates the gross-margin and percentage-gross-margin calculations for the four quarters ending September 30, 1978

COMPUTATION OF PERCENTAGE GROSS MARGIN (Base Year)

Sales (adjusted for discounts returns, coupons, etc.)		150,000,000
Beginning inventory	5,000,000	
+Cost of goods purchased	119,500,000	
-Ending inventory	6,000,000	
Cost of goods sold		118,500,000
Gross margin on sales		31,500,000
Percentage gross margin on sales		21.0%

b. Margin Trend Calculations

- A company may maintain the same percentage gross margin in the program year as during the base year. For example, if sales for the above company increased to $180,000,000 in the year ending September 30, 1979, the gross margin could increase to $37,800,000 and the firm would remain in compliance with the standards:
  $180,000,000 × .21 = $37,800,000.

- Some distributors have experienced an historical upward trend in their percentage margins. This can be expected to occur whenever the costs of goods purchased for resale are rising less rapidly than the cost items (such as labor, rent, and fuel) that are part of the gross margin. Thus, an alternative margin standard, based on margin trend, is provided

The annual rate of increase in the gross margin is computed as

$$\left(\text{Margin Trend}\right) = \sqrt{\frac{\text{Percentage gross margin in base year}}{\text{Percentage gross margin for four quarters ending prior to October 2, 1976}}} - 1.0$$

If the percentage gross margin for this illustrative firm was 20.0% in the 1976 period,

$$\left(\text{Margin Trend}\right) = \sqrt{\frac{21.0}{20.0}} - 1.0 = \sqrt{1.05} - 1.0 = .0247$$

or

2.47%

The allowable program year percentage gross margin is obtained by applying the margin trend to the base-period percentage gross margin:

$$\begin{pmatrix}\text{Allowable Program}\\ \text{Year Percentage}\\ \text{Gross Margin}\end{pmatrix} = \begin{pmatrix}\text{base-year}\\ \%\text{ gross margin}\end{pmatrix} \times \begin{pmatrix}1.0 + \text{margin}\\ \text{trend}\end{pmatrix}$$

$$= 21.0\% \times 1.0247$$

$$= 21.52\%.$$

If a firm makes use of the gross-margin trend, the increase in the gross margin should be implemented on a gradual basis that reflects past seasonal patterns.

c. Compliance Plan

The percentage gross margin is not a direct decision variable. It reflects policies and practices with respect to the initial percentage markup over invoice costs, subsequent markdowns of prices, and loss or shrinkage experience on sales. Thus, most distributors will need to adopt a compliance plan that translates the objective of meeting the gross-margin standard into explicit policies for markups and markdowns. It may also be necessary to establish reasonable categories of sales that control for shifts in the mix of sales among items with sharply different margins.

Some firms will choose to project some components of the gross margin other than markups (specifically, markdowns and loss rates). They may then adopt a specific policy for markups that would yield a gross margin consistent with the gross-margin standard if the projections for other elements of the gross margin are realized.

Alternatively, a firm may apply the computational procedure for deriving the allowable percentage gross margin directly to its markups. In this case it should be prepared to demonstrate that it has not altered its policies toward markdowns during the program year or during the period used to compute the trend in the markup.

If a company's percentage gross margin exceeds the allowable gross margin during the program year, it may show, for purposes of compliance, that the discrepancy is the result of unforeseen changes in those elements of the gross margins that are not

directly controllable. For example, it may achieve the target objective for its initial markups only to find that other items such as loss experience were different than anticipated. In such cases, the firm will not be viewed as being out of compliance during the program year; but plans for the second year should be designed to compensate for discrepancies during the first program year.

As in the case of food manufacturers, distributors are expected to implement any increase in the margin on a gradual basis during the year, and to make periodic adjustments as the year progresses so that they can reasonably expect to be in compliance for the program year as a whole.

II. PAY STANDARD

In order to comply with the pay standard, companies must calculate rates of change of pay rates for various employee groups. Different methods of computing these changes are required for (1) collective bargaining agreements, which are evaluated prospectively at the time they are signed, and (2) nonunion pay-rate increases, which are calculated retrospectively. The two different methods are discussed respectively in the following two sections. Examples have been included to illustrate the specific issues.

In section A, on collective bargaining agreements, a method of computing the base-period pay rate and the pay rate at the end of each year of the contract period is outlined. Firms will need to compute the annual compound rate of pay-rate change over the life of the contract and the percentage changes for individual years in order to determine whether the agreement complies with the standard.

Changes in nonunion pay rates can be computed using three different methods: a simple change in the average pay rate; a method that adjusts for shifts in the composition of the work-force; and a computation that measures pay-rate changes for a fixed population of continuing workers, adjusting for legitimate promotions. Each of these methods is illustrated. Also included is an example of the method of determining whether commission pay increases are consistent with the pay standard.

A. APPLICATION OF THE PAY STANDARD TO COLLECTIVE BARGAINING AGREEMENTS

Collective bargaining agreements are costed out prospectively. At the time the agreement is signed, it is necessary to calculate (or estimate) the average pay rate

- o at the end of the old contract period,
- o at the end of each year of the new contract, and
- o at the end of the period covered by the new contract.

The contract complies with the pay standard if

- o the percentage increase in the pay rate is no more than 8 percent during each complete year of the new contract, and
- o the (compound) average annual rate of increase over the life of the new contract is no greater than 7 percent.

The rate of increase of the pay rate includes

- o fixed wage increases,
- o cost-of-living adjustments (COLA) evaluated at an assumed 6-percent rate of increase in the Consumer Price Index (CPI) over the term of the agreement,
- o roll-up on existing wage-related benefits,
- o the first 7 percent of the increased cost of maintaining existing health-care benefits, and
- o the cost of all improvements in existing benefit plans and additions of new benefits.

In order to evaluate the terms of a new contract, it is necessary to translate wage and benefit costs to average hourly rates. The pay standard applies to the percentage changes in these hourly rates. The hourly rates are computed

on the basis of pay per hour worked. The pay rate is computed as

(1) (pay rate) = (straight-time wage rate) + (benefit costs per hour worked).

Over any one-year interval during the contract life, the percentage increase in the pay rate is calculated as

$$(2)\quad \left[\left(\frac{\text{pay rate at the end of year } t}{\text{pay rate at the end of year } t\text{-}1}\right) - 1.0\right] \times 100.$$

The compound average annual rate of change of the pay rate over the contract life is computed as

$$(3)\quad \left[\left(\frac{\text{pay rate at end of contract}}{\text{pay rate at end of prior contract}}\right)^{\frac{1}{T}} - 1.0\right] \times 100$$

where T is the length of the contract in years. In practice, the annual rate need not be computed -- compound interest tables can be used. Table 1 lists the percentage increases over the lives of contracts ranging from 12 to 40 months that are consistent with the 7-percent standard.

The following brief sections describe how a company might compute each of the key elements needed to compute pay rates in formula (1). These elements are

- o average straight-time wage rate,
- o hours worked and hours of leave,
- o cost of paid-leave benefits per hour worked, and
- o other benefit costs per hour worked.

TABLE 1

Total Percentage Pay-Rate Increases
Allowable Under Pay Standard by Length of Contract

Months of Contract	Allowable Percentage Increase	Months of Contract	Allowable Percentage Increase
12	7.00	27	16.44
13	7.60	28	17.10
14	8.21	29	17.76
15	8.83	30	18.43
16	9.44	31	19.10
17	10.06	32	19.77
18	10.68	33	20.45
19	11.31	34	21.13
20	11.94	35	21.82
21	12.57	36	22.50
22	13.21	37	23.20
23	13.85	38	23.89
24	14.49	39	24.59
25	15.14	40	25.30
26	15.79	48	31.08

Average Straight-Time Hourly Wage Rate

In many collective bargaining agreements there will be more than one job classification and, as a result, more than one straight-time wage rate. In order to combine these into one average straight-time wage rate, a weighted average should be constructed using the number of straight-time hours worked in each job classification as weights. In computing the base wage rate -- that in existence at the termination of the expiring contract -- the average number of hours worked in each classification over some recently completed period (e.g., a year or a quarter) would be appropriate. These same weights should be applied in the prospective determination of average straight-time wage rates over the life of the new contract.

In most cases, the number of employees in each job classification may be used as weights rather than hours worked. This method is appropriate if straight-time hours worked per employee are similar across job classifications. The following illustrative example uses employee weights.

Table 2

(1) Job Classification	(2) Number of Employees	(3) Straight-Time Hourly Rate at End of Expiring Contract	(4) (2) × (3)
A	10	$5.50	$55.00
B	30	$6.50	$195.00
C	20	$6.75	$135.00
D	40	$7.15	$286.00
Total	100		$671.00

Average Straight-Time Hourly Wage Rate

$$\frac{\$671.00}{100} = \$6.71$$

Hours Worked and Leave Hours

The pay rates used in the standard should reflect pay per straight-time hour worked. In order to translate pay for leave time and other benefit payments into an hourly rate, it is first necessary to make an estimate of the number of hours worked and the amount of paid leave time. An example of how this might be done follows:

Table 3

Straight-time hours paid (40 hours per week × 52 weeks)	= 2080
less 8 holidays × 8 hours:	-64
less 20 vacation days × 8 hours:	-160
less 3 days sick leave (on average) × 8 hours:	-24
less an average of 1 day of other leave (e.g., jury duty, funeral leave, and administrative leave) × 8 hours:	-8
Average straight-time hours worked:	1824

In this example, the average number of straight-time hours worked is 1824 hours per year and the average number of paid-leave hours is 256 hours per year. Thus, an employee receives approximately one hour of paid leave for each 17 hours worked (1824/256 = 7.125). In what follows, the terms "hours worked" and "straight-time hours worked" are used interchangeably.

Hourly Cost of Paid-Leave Benefits

Holiday, vacation, and other paid leave constitute one important type of fringe-benefit: pay for time not worked. In order to compute the cost of leave time per hour worked, it is necessary to multiply the average straight-time wage rate by the (annual) number of hours of paid leave and divide by the (annual) number of straight-time hours worked. For example, using the figures developed above,

$$\left(\begin{matrix}\text{Hourly Cost of}\\ \text{Paid Leave}\end{matrix}\right) = \left(\begin{matrix}\text{Straight-Time}\\ \text{Wage Rate}\end{matrix}\right) \times \left(\frac{\text{Hours of Leave}}{\text{Hours Worked}}\right)$$

$$= (\$6.71) \times \left(\frac{256}{1824}\right)$$

$$= \$.942 \text{ per hour worked.}$$

In this case, the cost of paid leave at the end of the expiring contract is 94.2 cents per hour worked. Over the life of the new contract, the hourly cost of paid leave will increase (due to roll-up) as the straight-time wage rate increases. Further, if additional vacation days or holidays are granted under the new contract, hours of leave will increase and hours worked will decrease correspondingly. Both of these changes increase the hourly cost of paid leave. Conversely, reductions in hours of leave decrease the hourly cost of paid leave for a given wage rate.

Hourly Cost of Other Benefits

A collective bargaining agreement could provide a wide variety of additional benefits other than paid leave. For example, these benefits might include

- o Private Pensions,
- o Health Insurance,
- c Life Insurance,
- o Other Welfare Benefits,
- o Educational Benefits,
- o Legal Assistance Benefits,
- o Supplemental Unemployment Insurance, and
- o Uniform Allowances.

In most cases, the cost per hour worked for these benefits can be calculated by first converting the average employer cost per employee to an annual cost and then converting to an hourly rate. In the following examples, a monthly employer cost and an hourly contribution rate are translated into an employer cost per hour worked.

Example A . Employer contributions for a benefit package are $50 per month for each employee. This monthly cost is multiplied by 12 months to obtain an annual cost of $600 per year. When divided by average hours worked (1824 hours per year), the cost of the benefit per hour worked is 32.9 cents per hour worked. That is,

$$\begin{pmatrix}\text{Benefit cost per hour worked}\end{pmatrix} = \begin{pmatrix}\text{50 dollars per month}\end{pmatrix} \times \begin{pmatrix}\text{12 months per year}\end{pmatrix} \div \begin{pmatrix}\text{1824 hours worked per year}\end{pmatrix}$$

$$= 32.9 \text{ cents per hour worked.}$$

Example B. Employer contributions for a benefit package are 20 cents per hour paid. Since hours paid include paid leave, this value must be translated into an employer cost per hour worked. Given a 40-hour straight-time work week (2080 hours per year), the annual straight-time cost is $416 per year ($.20 × 2080). Division by average hours worked (1824 hours per year) yields the cost of the benefit per hour worked:

$$\begin{pmatrix}\text{Benefit cost per hour worked}\end{pmatrix} = \begin{pmatrix}\text{20 cents per hour}\end{pmatrix} \times \begin{pmatrix}\text{2080 hours per year}\end{pmatrix} \div \begin{pmatrix}\text{1824 hours worked per year}\end{pmatrix}$$

$$= 22.8 \text{ cents per hour worked.}$$

The remainder of this section costs out two illustrative, hypothetical contracts.

Example 1

A new contract takes effect on March 1, 1979. Relevant data concerning pay rates at the expiration of the old contract are as follows:

- The average straight-time wage rate under the expiring contract -- the base wage rate -- is $6.71 per hour (see Table 2)
- The average number of paid-leave hours is 256 per year and the average number of straight-time hours worked is 1824 per year (see Table 3).

- Other fringe-benefit costs at the end of the expiring contract are
  - -- employer contributions to a flat-rate pension fund (the benefit is stated in terms of dollars per month times years of service) of $50 per month per employee, or 32.9 cents per hour worked (See Example A);
  - -- employer contributions for health insurance of $35 per month per employee, or 23 cents per hour worked;
  - -- employer contributions to life insurance equal to one percent of employee straight-time hourly wages, providing a survivor benefit equal to two times annual wages;
  - -- supplemental unemployment benefits, which cost the employer $300 per year per employee or 16.4 cents per hour worked; and
  - -- a uniform allowance, averaging $200 per year per employee or 11.0 cents per hour worked.

The new contract provides for

- fixed wage-rate increases of 7 percent on March 1, 1979 -- the first day of the new contract -- and 6 percent on March 1, 1980 -- the first day of the second year of the new contract;
- maintenance of existing paid-leave provisions, life insurance benefits, supplemental unemployment benefits (employer contributions remain at 16.4 cents per hour worked), and uniform allowance (employer cost remains at 11.0 cents per hour worked);
- maintenance of existing health benefits, with employer-paid premiums estimated to increase to $39 per month per employee in the first year and to $43 in the second;
- an increase of pension benefit rates, requiring an increase in employer contributions to $55 per month per employee, or 36.2 cents per hour worked, effective at the beginning of the new contract; and
- addition of a dental-care plan, estimated to cost $16 per month per employee in the first year, or 10.5 cents per hour worked, and $17 per month per employee in the second year, or 11.2 cents per hour worked.

The contract is costed out below in four steps:

(1) calculation of the base pay rate,

(2) calculation of the first-year pay rate,

(3) calculation of the second-year pay rate, and

(4) calculation of percentage changes in the pay rate (and comparisons to the allowable percentage increases).

Step 1

Calculation of Base Pay Rate

Average wage rate	$6.71
Benefits	
Paid leave ($6.71) × (256/1824)	.942
Pension fund	.329
Health insurance	.230
Life insurance (.01 × $6.71)	.067
Supplemental unemployment benefits	.164
Uniform allowance	.110
Total (base pay rate)	$8.552/hour

Step 2

Calculation of First-Year Pay Rate

Average wage rate (1.07 × $6.71)	$7.18
Benefits	
Paid leave ($7.18) × (256/1824)	1.008
Pension fund	.362
Health insurance (1.07 × $.230)	.246
Life insurance (.01 × $7.18)	.072
Supplemental unemployment benefits	.164
Uniform allowance	.110
Dental care	.105
Total (pay rate)	$9.247/hour

The health-insurance contribution per hour worked is calculated by increasing the base contribution of 23.0 cents per hour worked by 7 percent since the estimated first-year increase in the health premium is 11.4 percent, and only the first 7 percent of the increase is counted in calculating the new pay rate (see the Pay Standard, section 705B-6).

Step 3

Calculation of Second-Year Pay Rate

Average wage rate (1.06 × $7.18)	$7.61
Benefits	
Paid leave ($7.61) × (256/1824)	1.068
Pension fund	.362
Health insurance (1.07 × $.246)	.263
Life insurance (.01 × $7.61)	.076
Supplemental unemployment benefits	.164
Uniform allowance	.110
Dental care	.112
Total (pay rate)	$9.765/hour

Step 4

Calculation of Percentage Change in Pay Rate

	Pay Rate	Percentage Change	Allowable Percentage Change	
Base	$8.552	—	—	Does not
First Year	$9.247	8.13%	8.00%	comply
Second Year	$9.765	5.60%	8.00%	Complies
Life of contract	—	14.18%	14.49%	Complies
(Annual Average)	—	(6.86%)	(7.00%)	Complies

As the first-year increase exceeds 8 percent, the contract does not comply with the pay standard, even though the average annual rate of increase over the life of the contract is less than 7 percent. Since the second-year increase is only 5.6 percent, the contract can be brought into compliance by an appropriate reallocation of some of the increase from the first to the second year. For example, deferral of the establishment of the dental-care plan until the second year would lower the first-year pay rate by 10.5 cents per hour. This alteration in the contract results in the following percentage changes:

Calculation of Percentage Changes in Pay Rate
(Assumes Dental Plan Introduced in Second Year)

	Pay Rate	Percentage Change	Allowable Percentage Change	
Base	$8.552	—	—	
First Year	$9.142	6.90%	8.00%	Complies
Second Year	$9.765	6.81%	8.00%	Complies
Life of Contract	—	14.18%	14.49%	Complies
(Annual Average)	—	(6.86%)	(7.00%)	Complies

Note: The above calculations make no distinction between wage-related increases (roll-up) and non-wage-related increases in fringe benefit costs; each benefit cost per hour is calculated directly in an appropriate manner. Often it is useful to separate wage-related benefits -- benefits for which employer costs are proportional to wage rates -- since the cost of providing these benefits will roll-up directly with the wage-rate increase. These benefit costs can be derived using a roll-up factor. In the example, only paid leave and life insurance are wage related. The percentage roll-up factor is calculated as follows:

Wage-Related Benefits	
Cost of paid leave per hour worked	$.942
Life-insurance cost per hour worked	.067
Total	$1.009

$$\left(\text{Roll-up factor}\right) = \frac{\text{Wage-related benefits}}{\text{Base wage rate}} = \frac{\$1.009}{\$6.71} = 15.0\%$$

This roll-up factor can be used to calculate benefit cost increases for the wage-related benefits. The increases summarized in step 4 above can be calculated alternatively as follows (assuming that the dental care plan is introduced in the first year).

Percentage Increases in Pay Rates

	(1) Wage Increase	(2) Roll-up .15×(1)	(3) Increase in other benefits costs	(4) Increase in pay rate (1)+(2)+(3)	(5) Pay Rate	(6) Percent Change
Base	—	—	—	—	$8.552	—
First Year	$.47	$.070	$.154	$.694	$9.246	8.12%
Second Year	$.43	$.065	$.024	$.519	$9.765	5.61%

Column (1) is the average wage rate increase derived from Steps 1, 2, and 3 above. Column (2) applies the roll-up factor to the wage rate increase in column (1). Column (3) is obtained by summing the increases in the non-wage-related components of fringe benefits (employer contributions to the pension fund, health insurance, supplemental unemployment benefits, and the uniform allowance), which are developed from the information in Steps 1, 2, and 3 presented above. Column (4) sums the pay rate changes in columns (1), (2), and (3). In column (5), the pay rate increases in column (4) are successively added to the base pay rate. Finally, column (6) presents the annual percentage changes. The trivial differences between the above percentage changes and those calculated in step 4 above are due to rounding differences.

Example 2

A three-year contract becomes effective on February 1, 1979. Relevant information concerning pay rates at the expiration of the old contract is as follows:

- The average straight-time wage rate under the expiring contract -- the base wage rate -- is $9.00 per hour.
- The average number of hours of leave with pay is 280 per year and the average number of straight-time hours worked is 1800 per year. Hence, leave-pay cost is $1.40 per hour worked ($9.00 × 280 ÷ 1800).
- The only remaining benefit, for purposes of this example, is a flat-rate pension fund. Employer contribution rates to this fund are $90 per month per employee, or 60 cents per hour worked ($90 × 12 ÷ 1800).
- The base pay rate is $11.00 per hour worked ($9.00 + $1.40 + $.60).

The new contract provides for

- fixed wage increases of 60 cents per hour at the beginning of the first year (i.e., on February 1, 1979) and 50 cents per hour at the beginnings of the second and third years (i.e., on February 1 of 1980 and 1981);
- COLAs at the beginnings of the second and third years based on increases in the Consumer Price Index (CPI) according to the following formula:
  - -- at the start of the second year (on February 1, 1980), a wage increase of 1.5 cents per hour for each full-point rise of the CPI in excess of two points between November 1978 and November 1979; and

  - -- at the start of the third year (on February 1, 1981), a wage increase of 1.5 cents per hour for each full-point rise of the CPI in excess of two points between November 1979 and November 1980;
- an increase in the pension-benefit rate, estimated to cost an additional $22.50 per month per employee in the first year of the contract, or 1¼ cents per hour worked ($22.50 × 12 ÷ 1800).

In order to evaluate the pay-rate increases prospectively under this contract, it is necessary to evaluate the two COLAs assuming a 6-percent average annual rate of increase in the CPI over the life of the contract. The value of the CPI for November of 1978 is 201.8. At a 6-percent annual rate of increase, it will rise to 213.9 in November of 1979, and to 226.7 in November of 1980. Based on this assumption, the COLAs would be as follows:

COLA ADJUSTMENTS

DATE	CPI	INCREASE IN CPI	COLA*
November 1978 (actual)	201.8	—	—
November 1979 (assumed)	213.9	12.1	15¢=(1.5 × [12-2])
November 1980 (assumed)	226.7	12.8	15¢=(1.5 × [12-2])

*Note: In computing the COLA adjustment, the 12.1-point and 12.8-point increases in the CPI are adjusted down to the nearest complete full-point rise -- 12 points in each case.

Combining the fixed wage increases and the COLAs and adding these increases to the base wage rate of $9.00 per hour we can calculate the wage rates in effect at the end of each year of the contract, as shown below.

WAGE-RATE SUMMARY

	FIXED WAGE INCREASE	COLA	TOTAL WAGE INCREASE	WAGE RATE
Base	—	—	—	$ 9.00
First year	$.60	$.00	$ .60	9.60
Second year	.50	.15	.65	10.25
Third year	.50	.15	.65	10.90

Since the only wage-related benefit is paid leave, a roll-up factor is easily determined as follows:

WAGE-RELATED BENEFITS

Cost of paid leave per hour worked: $1.40

Total: $1.40

$$\left(\text{Roll-up Factor}\right) = \frac{\text{Wage-Related Benefits}}{\text{Base Wage Rate}} = \frac{\$1.40}{\$9.00} = 15.6\%$$

Combining the information regarding the base pay rate, the wage-rate increases, the increased cost of paid leave due to roll-up, and the specified cost of the pension-benefit improvements, we can summarize the pay-rate increases dictated by this contract as follows:

CONTRACT SUMMARY

	(1) Wage Increase	(2) Roll-up .156x(1)	(3) Pension-Cost Increase	(4) Pay-Rate Increase (1)+(2)+(3)	(5) Pay Rate	(6) Percentage Change
Base	—	—	—	—	$11.00	—
First year	$ .60	$ .09	$ .15	$ .84	11.84	7.64%
Second year	.65	.10	.00	.75	12.59	6.33%
Third year	.65	.10	.00	.75	13.34	5.96%

$$\left(\text{Percentage Increase Over Life of Contract}\right) = \left(\frac{\$13.34}{\$11.00} - 1.0\right) \times 100 = 21.27\%$$

This contract complies since the percentage increase in each year is less than 8 percent and the percentage increase over the life of the contract (21.27%) is less than the 22.50% increase allowed for a 36-month agreement (see Table 1). The compound average rate of increase over the life of the contract is (using formula (3)).

$$\left[\left(\frac{13.34}{11.00}\right)^{1/3} - 1\right] \times 100 = 6.64\%$$

B. APPLICATION OF THE PAY STANDARD TO NONUNION PAY RATES

Nonunion pay increases may be calculated by three alternative methods. Section 705B-4(a) provides for a simple comparison of the average pay rate in the last quarter of the program year with the average pay rate in the base quarter. This method is the least complex and includes the effect of all pay-rate changes, including those due to promotions and shifts in the work-force composition. Section 705B-4(e) permits an adjustment to control for the effects of shifts in the composition of the work force among distinct employee groups with different average pay rates. Section 705B-4(b) allows measurement of the pay-rate change for the fixed population of workers employed throughout the program year. This method excludes the effect of promotions as well as turnover of the work force. In order to compare these alternative methods, examples are given below.

METHOD 1 - Computation of Average Pay-Rate Change (705B-4(a))

The employee unit includes 100 workers with the following pay rates in the base quarter:

Classification	Number of Workers	Average Pay Rate*
A	25	$ 10/hr.
B	25	$ 8/hr.
C	50	$ 6/hr.

* The average pay rate in each job classification includes the costs of private fringe benefits per hour. See Section A for treatment of benefit costs and the conversion of these costs to costs per hour worked.

All employees work 500 straight-time hours in the quarter. The base pay for this unit is calculated as

A: 500 hrs. × $10/hr. × 25 workers = $125,000

B: 500 hrs. × $ 8/hr. × 25 workers = $100,000

C: 500 hrs. × $ 6/hr. × 50 workers = $150,000

Total base pay = $375,000

Total hours = 500 hours × 100 workers = 50,000 hours

The base quarter pay rate = $375,000 ÷ 50,000 hours

= $7.50/hour

All job classifications in this example receive a 7-percent pay-rate increase over the program year and employment expands by 5 employees in category B, and by 5 in category C. The unit now has the following pay rates in the final quarter of the program year:

Classification	Number of Workers	Average Pay Rate
A	25	$10.70
B	30	$ 8.56
C	55	$ 6.42

The average pay rate in the final quarter is calculated as

A: 500 hrs. × $10.70/hr. × 25 workers = $133,750

B: 500 hrs. × $ 8.56/hr. × 30 workers = $128,400

C: 500 hrs. × $ 6.42/hr. × 55 workers = $176,550

Total pay = $438,700

Total hours = 500 hours × 110 workers = 55,000 hours

The final-quarter pay rate = $438,700 ÷ 55,000 hours

= $7.98/hour

Using the method of Section 705B-4(a), the percentage change in the average pay rate is computed as

$$\left(\text{Pay-rate change}\right) = \left(\frac{\text{Final quarter pay rate}}{\text{Base quarter pay rate}} - 1.0\right) \times 100$$

$$= \left(\frac{\$7.98}{\$7.50} - 1.0\right) \times 100$$

$$= \boxed{6.40\%}$$

This employee unit complies with the 7-percent pay standard. The actual pay-rate change (6.40%) is below the 7-percent increase given to each job classification due to the effect of the shift in the work-force composition.

METHOD 2 - Adjustment for changes in Work-Force Composition (705B-4(e))

In the previous example, the shift in the composition of the work force reduced the measured increase in the average pay rate. For some employee groups, however, such shifts may exaggerate the average pay-rate increase.

This is illustrated by the following situation, which begins with the same base-period pay rates and work-force composition as in the preceding example. However, in this case the number of workers in the A classification increases by 5 employees and the number in the C classification decreases by 10 employees during the program year. As in the preceding example, a 7-percent pay-rate increase is given to each classification. The job mix and pay rates in the final quarter are:

Classification	Number of Workers	Average Pay Rate
A	30	$10.70
B	25	$ 8.56
C	40	$ 6.42

Under these conditions, the average pay rate in the final quarter is computed as:

A: 500 hrs. × $10.70/hr. × 30 workers = $160,500

B: 500 hrs. × $ 8.56/hr. × 25 workers = $107,000

C: 500 hrs. × $ 6.42/hr. × 40 workers = $128,400

Total pay = $395,900

Total hours = 500 hours × 95 workers = 47,500 hours

The final-quarter pay rate = $395,900 ÷ 47,500 hours

= $\boxed{\$8.33/\text{hour}}$

The average pay rate increases from $7.50 per hour to $8.33 per hour -- an increase of 11.1%. If Method 1 were used, this employee unit would exceed the 7-percent standard, even though no job classification was given a pay-rate increase of more than 7 percent. The excess is due to the shift in the composition of the work force.

Section 705B-4(e) of the standards permits the calculation of a weighted-average pay-rate change that excludes the effect of such compositional shifts. Using this method, it is assumed that the composition of the work force remains the same as in the base quarter. This is done by

(1) computing the share or fraction of total base quarter pay accounted for by each employee subgroup;

(2) computing the percentage change in the average pay rate for each employee subgroup; and

(3) computing a weighted average pay-rate change using the payroll shares as weights.

For the example developed above, these computations are

$$\begin{pmatrix}\text{Weighted-Average}\\ \text{Pay-rate Change}\end{pmatrix} = \left\{\begin{matrix}\text{Sum of}\\ \text{Product}\end{matrix}\left[\begin{pmatrix}\text{Payroll}\\ \text{Share}\end{pmatrix} \times \begin{pmatrix}\text{Percentage Pay-}\\ \text{rate Change}\end{pmatrix}\right]\right\}$$

Classification	(1) Base Quarter Payroll* /	(2) Base Payroll Share	Percent Pay-rate Change	Weighted Change (1) × (2)
A	$125,000	.333	7.0%	2.33%
B	$100,000	.267	7.0%	1.87%
C	$150,000	.400	7.0%	2.80%
Total	$375,000	1.000		7.00%

* Note: The base-quarter payroll values are those used in calculating the base-quarter pay rate in the Method 1 section.

In this example, then, the weighted average pay-rate change is 7 percent and the employee unit complies with the pay standard.

METHOD 3 - Computations Using Continuing Employees (705B-4(b))

The method in Section 705B-4(b) of the standards allows companies to measure pay-rate changes of individual workers after excluding the effects of legitimate job promotions. The computation is based on the average of pay-rate increases for those employees who remain with the firm throughout the program year.

As illustrated in the following table, this example involves an employee unit with 5 workers in the base quarter. Each of these workers falls into an individual job category and the corresponding job rates are indicated in column (1). During the program year, each job rate is increased by 7 percent. Column (2) presents the job rates that would apply to each individual in the final quarter of the program year if their job had remained unchanged. Column (3) presents the job changes occurring during the program year. Column (4) indicates the final-quarter pay rates after the effects of turnover, promotion, and hiring activity. Column (5) isolates the cents-per-hour increases due to promotions.

PAY-RATE DATA FOR INDIVIDUAL EMPLOYEES

Worker	(1) Initial Job Rate	(2) Terminal Job Rate ((1) × 1.07)	(3) Job Action	(4) Final Pay-Rate	(5) Promotional Increase
1	$10.50	$11.24	Unchanged	$11.24	-
2	9.75	10.43	Leaves	-	-
3	9.50	10.17	Promoted	10.43	$0.26
4	9.25	9.90	Promoted	10.17	0.27
5	9.00	9.63	Unchanged	9.63	-
6	-	-	New Hire	10.17	-

The final-pay-rate data in column (4) reflect the effects of increases in job rates and the promotions and turnovers described in column (3). The job changes by individuals in this example are as follows:

- Individual 1 retains the original job.
- Individual 2 leaves the employee unit.
- Individual 3 is promoted to the job vacated by individual 2.
- Individual 4 is promoted to the job vacated by individual 3.
- Individual 5 retains the original job.
- Individual 6 is a new hire brought in for the same job to which individual 4 has been promoted.

The shift in work requirements during the program year has resulted in elimination of one job category -- the one originally occupied by individual 4 -- and requires having two workers in another category -- the category to which individual 4 was promoted and which the new hire, individual 6, entered.

Using the method of Section 705B-4(b), the average pay-rate change is computed solely on the basis of those individual workers who are employed throughout the program year -- workers 1,3,4, and 5. The portion of pay-rate increases entirely due to the job changes and corresponding promotions for individuals 3 and 4 are excluded. As seen in the preceding table, these promotional increases sum to 53 cents per hour. The appropriate computations are summarized below:

Average Pay Rate for Continuing Employees

Worker	Initial Pay Rate	Final Pay Rate	Percent Change in Pay Rate
1	$10.50	$11.24	7.0%
3	9.50	10.43	9.8
4	9.25	10.17	9.9
5	9.00	9.63	7.0
Total	$38.25	$41.47	8.4%
Less promotions	0.00	0.53	
Adjusted Pay	$38.25	$40.94	7.0%

Although the average pay rate for continuing employees has risen by 8.4%, the average pay rate, after excluding the effect of promotions, has increased only 7 percent.

Firms that use this method should exclude promotion increases only when there is a legitimate change in job responsibilities and should be able to demonstrate that the cost of promotions during the program year is consistent with prior years.

Sales Commission

The computation of increases in sales compensation raises special problems because of its dependence on sales volume. Salespeople receive increased compensation for three reasons: (1) an increase in commission rates; (2) an increase in the prices of goods sold; and (3) an increase in the volume of goods sold. The first two types of increases should be chargeable against the 7-percent standard, but the third should not.

A method of computing such compensation increases under the pay standard is shown in the following illustration.

Illustration of Commission Pay Increases

	Commission Rate	Units Sold	Price	Sales Revenues	Commission
Base Quarter	10.0%	1000	$100	$100,000	$10,000
Final Quarter	10.1%	1100	105	115,500	11,666

$$\left(\begin{array}{c}\text{Actual Percentage}\\ \text{Increase in Commission Pay}\end{array}\right) = \left(\frac{\$11,666}{\$10,000} - 1.0\right) \times 100 = 16.7\%$$

$$\left(\begin{array}{c}\text{Chargeable Income}\\ \text{in Final Quarter}\end{array}\right) = \left(\begin{array}{c}\text{Final-Quarter}\\ \text{Commission Rate}\end{array}\right) \times \left(\begin{array}{c}\text{Base-}\\ \text{Period}\\ \text{Units}\\ \text{Sold}\end{array}\right) \times \left(\begin{array}{c}\text{Final-}\\ \text{Period}\\ \text{Price}\end{array}\right)$$

$$.101 \times 1000 \times \$105$$

$$= \$10,605$$

$$\left(\begin{array}{c}\text{Chargeable Percentage}\\ \text{Increase in Sales}\\ \text{Commission}\end{array}\right) = \left(\frac{\text{Chargeable Income in Final Quarter}}{\text{Base-Quarter Commission}} - 1.0\right) \times 100$$

$$= \left(\frac{\$10,605}{\$10,000} - 1.0\right) \times 100 = \boxed{6.05\%}$$

Although total commission pay increased by 16.7%, after adjusting for volume, the chargeable increase of 6.05% is safely within the 7-percent limitation.

QUESTIONS AND ANSWERS

The following questions and answers are an extension of those previously published by the Council in *Wage and Price Standards* on December 13, 1978 (published in the FEDERAL REGISTER on December 28, at 43 FR 60772). The numbering of the questions is sequential with that document.

I. THE PRICE STANDARDS

A. Coverage

Q24. How is the price standard applied to an agricultural cooperative?

A. Agriculutural cooperatives that provide only a marketing function for their farmer members are exempt from the price, margin, and profit standards.

If an agricultural cooperative is a food processor, it should be treated the same as any other food processor. Application of the price standard itself should be the same as for other companies. But, it should use the market price of inputs in lieu of payments to farmers in calculating its gross margin if it chooses the gross margin alternative to the price standard, or if it ends up using the profit-margin limitation.

Q25. A company does more than 75 percent of its program-year business (delivery of goods) under contracts that were signed prior to October 2, 1978 and that specify a fixed price. Is the company excluded from the application of both the price-deceleration standard and the profit-margin standard under section 705A-5(a)?

A. No, it is not. Section 705A-3(e) refers to deliveries during the *program year* whereas section 705A-5(a) refers to adjusted revenue in the *base year.* The company should comply with the price-deceleration standard with respect to deliveries not excluded under section 705A-3(e) (i.e., deliveries under contracts signed during the program year and non-contractual sales).

Q26. May companies that *purchase* products that are excluded under 705A-3 exclude the costs of those products in their own price calculations?

A. No. Companies may only exclude from their own price calculations those products, excluded under 705A-3, that they *produce.*

Q27. Is an agricultural product price that is excluded from company price calculations under 705A-3 also excluded if some processing of the product takes place before the first sale?

A. No.

Q28. May a company exclude a processed product from its price calculations if the processed product's price is closely related to the price of a raw material that is, in turn, excluded as being determined by an organized open exchange market?

A. No, unless the processed product itself is traded on an open exchange market. A connection of a preprocessed material to an open exchange market does not justify the exclusion of the processed product (e.g., fluid milk, cheese, and meat are not excluded). A few processed products themselves have an organized open exchange market. A company may exclude the sales of these processed products from the company's price or gross-margin calculations. As a first approximation, the only processors that qualify for this exclusion are manufacturers or processors of butter, oilseeds, oil and protein meals.

Finally no product that is brand-name identified can qualify for this exemption.

Q29. What freight rates and passenger fares does a U.S. air carrier exclude as exports in making its average-price calculations?

A. It excludes all international fares and rates except those for flights between the U.S. and Canada and between the U.S. And Mexico. International fares are excluded because an individual carrier has no practical way to distinguish exports from domestic sales in its international activities. Therefore, airlines treat all international sales (other than those between the U.S. and Canada and between the U.S. and Mexico) as if they were sales to foreign residents and foreign business firms. Also, these prices are set in an international market and must have the approval of foreign governments with which we have bilateral agreements.

Q30. In making average-price calculations, what freight rates and passenger fares should U.S.-operated ocean carriers engaged in international transport exclude?

A. they should exclude all rates on international movements of goods and people. These rates are excluded because of the difficulty involved in distinguishing between sales to foreign residents and companies and sales to U.S. residents and companies. Also, international ocean-liner freight rates are set in conferences which include carriers of foreign countries.

Q31. Do engineering services performed in the United States (design, drafting, studies, calculations) for a foreign client for use in a foreign country qualify as "exports of services" under 705A-3(d)?

A. Yes.

Q32. Does the term "contract" as used in Section 705A-3(e) include purchase orders of routine or normal recurring purchased items?

A. No.

Q33. How does a firm comply with the price standard if it commenced operations in the first quarter of 1978?

A. It cannot technically comply with the price standard since none of the required information is available. Such companies are, however, expected to comply with the pay standard and they are asked to adhere to the "spirit" of the program in their price decisions.

Q34. If a company sells a product to the Department of Defense (DOD) based on DOD generated and directed specifications, the specifications are subject to modification. May a company treat this item as a custom product?

A. If the company can net out the costs associated with the changes, it should treat the product as a standard item. If, however, this approach is not feasible, the company may treat the item as a custom product.

C. Computation of the Price Standard

Q8. In the calculation of base-period and program-year rates of price change, must the prices of all of a company's products be included in the calculation?

A. If it would be extremely difficult to include the prices of a certain set of products, accounting for a small portion of the total sales of the company, these prices may be excluded from the calculations. However, the included products should be representative of the company's product line. Moreover, in keeping with the spirit of the program, companies should make every effort to apply the standards to the pricing decisions for all products.

Q9. A company can choose either the third quarter of 1978 or the company's last complete fiscal quarter prior to October 2 as its base quarter. Must the choice of the base quarter be identical for price and pay calculations?

A. The base quarter should be identical for the two calculations unless there is a compelling reason, in terms of accounting convenience, for the choice of different periods.

Q10. How should a company value a cost-plus-fixed-fee contract for purposes of complying with the price-deceleration standard?

A. The price for such a contract is defined as the cost plus the fixed fee. However, if the seller is acting only as a purchasing agency with a fixed dollar fee, the transaction could be defined to include only the fee since the seller is filling a role similar to a wholesaler or retailer.

D. Profit Margin Limitation

Q7. If a diversified company treats each of its divisions as a separate "company" in accordance with the requirements of section 705D, is an individual division free to use the profit margin limitation or will *all* divisions have to use the same standard.

A. The different "companies" do not have to use the same standard.

Q8. In the calculation of its profit margin, can a company exclude the profits earned on sales excluded under 705A-3?

A. No.

Q9. How does the profit-margin limitation apply to government enterprises?

A. Government entities that are covered by the price standard can use the operating-margin limitation that is applicable to nonprofit organizations. The operating margin is operating surplus divided by operating funds, and the operating surplus is defined as operating funds less total costs and expenses including wages.

Q10. In section 705A-6 there are two reasons for the application of the profit-margin limitation exception, one being "uncontrollable price increases in goods and services it buys." How do you define such uncontrollable cost increases?

A. The wording of section 705A-6 is intended to convey the notion that companies are asked to make a good-faith effort to comply with the price deceleration standard, and to revert to the profit-margin limitation exception only if such compliance would cause a significant deterioration of the company's profit position. The effort to comply with the price-deceleration standard entails a good-faith effort to hold down costs. Hence, the reference to "uncontrollable" cost increases. However, the extent to which cost increases are uncontrollable will depend upon individual circumstances. The following nonexhaustive list includes items which if they rise in price, might be included as "uncontrollable" increases:

- Government-mandated cost increases (such as payroll taxes)
- Increased labor costs dictated by collective bargaining agreements or annual pay plans in effect prior to October 24, 1978,
- Utility-rate increases, and
- Raw materials purchased from outside the U.S.

It should be emphasized that the mere existence of an uncontrollable cost increase, no matter how trivial, does not constitute justification for the use of the profit-margin limitation exception. Companies applying for such an exception under section 705A-6(a) are asked to explain the reason for their inability to comply with price deceleration, documenting their cost increases.

II. THE PAY STANDARD

B. Employee Coverage

Q8. In determining its organizational structure for purposes of determining compliance with the standards, must the same structure be used for pay and price purposes?

A. Normally companies are expected to use the same organizational structure for pay and price purposes. However, if a company's normal accounting practices would result in different structures for pay reporting than for price reporting, and it would impose substantial administrative costs to report the same units for pay and price purposes, the company may follow its normal accounting practices.

Q9. May different pay computation methods for different employee units within one company be used?

A. Yes. But once a method is chosen for a particular unit, it should not be changed later in the program year to another method.

C. Pay and Pay Rates

Q5. If a company is required to make retrospective payments to an employee or employees as the result of legal action, are these payments chargeable under the standard?

A. No.

Q6. Is rollup included in the calculation to a pay increase?

A. Yes. The additional cost of existing benefits which results from a wage increase is to be included as part of the pay increase chargeable to the 7-percent standard.

Q7. Are TRAESOPS (Tax Reduction Act Employee Stock Ownership Plans) considered in measuring compliance with the standards?

A. No. TRAESOPS are excluded, since they are not an employer cost but rather result from money available under the investment tax credit.

D. Collective Bargaining Units

Q5. Can a company that has a large number of small collective bargaining units combine these units for purposes of compliance?

A. Units of less than 100 employees can be combined for administrative purposes or in response to requests for information. But such units are expect to comply with the standards on an individual basis.

Q6. If a new collective bargaining unit is formed, what limit is placed on pay increases in the program year?

A. The total increase for such workers should not exceed 7 percent in the program year, including pay-rate increases granted prior to formation of the new unit. Of course, a contract signed by the new unit during the program year should be consistent with the Pay Standard, as applied to collective bargaining agreements.

Q7. What is the base pay rate for a new collective bargaining agreement?

A. The average pay-rate in effect at the expiration of the prior agreement.

Q8. Can a union contract signed prior to October 25, 1978, be reopened to grant an additional pay increase during the program year?

A. Yes, if the total pay increase for the program year does not exceed 7 percent and the new contract is consistent with the pay standard as applied to new collective bargaining agreements.

Q9. Are longevity increases chargeable for collective bargaining units?

A. Yes, to the extent that they can be distinguished from qualification increases and if they add to average wage rates over the duration of the contract.

Q10. Are step-rate or progression increases included as pay rate increases?

A. Movement through a structured pay schedule from entry levels to established job-rate levels is treated the same as a qualification increase. These increases are not included in determining compliance. Increases beyond the job-rate level are treated as longevity increases and are charged against the 7-percent standard to the extent that they add to average wage rate increases over the life of the contract.

Q11. In an industry bargaining situation in which a number of companies sign a common agreement with a union and the companies have different average base pay rates, will compliance be measured for each company?

A. The Council will continue its past practice of evaluating such agreements on an industry basis, using an average base pay rate for all the companies. Individual companies that sign the pattern agreement will be deemed in compliance.

Q12. Under the pay standard, a contract that includes a provision for a future wage reopening will be assumed to be terminating on that date. Does this apply to a wage reopener that has a specific limitation?

A. The Council will permit a wage reopener that specifically provides that, upon reopening, any wage-rate or benefit increases must be in compliance with the standards. A contract that includes such a provision would not be assumed to be terminating on the reopening date. The following would thus be permissible: A two-year agreement providing for an 8-percent pay-rate increase in the first year, with a wage reopener in the second year subject to a limitation of 6-percent for the second-year increase.

E. Nonunion Standard

Q12. When excluding legitimate promotion increases under method 705B-4(b), what amount should be included as pay-rate increases?

A. The company should count any increases that the employee would have received in the absence of the promotion. This method is intended for promotions from one job paying a

fixed rate to another fixed-rate job. Firms with salary ranges that combine merit increases with promotions are expected to use 705B-4(a). However, if there is a basis for separating the merit and promotional increases, 705B-4(b) may be used.

Q13. When using the fixed-population method for determining compliance, must the company recompute the base-quarter compensation rate to exclude those employees no longer with the company?

A. Yes.

Q14. How is a benefit improvement communicated to the employees before October 2, but implemented after that date, to be treated?

A. The cost of the new benefit may be excluded from all pay-rate calculations.

Q15. What is a formal annual pay plan as covered by Section 705B-4(c) of the pay standard?

A. This section covers annual merit plans and general pay increases which would have been interrupted by application of the 7-percent pay standard. For example, this provision applies to pay increases given to employees on their anniversary dates under the continuation of a plan which was in operation on October 1, 1978. The intent is to allow such plans to run as usual through the end of the plan year. In the next planning year of the company the pay increases under such plans should be in compliance with the pay standard.

Q16. May a company increase its pay to salaried employees to compensate for an increase in hours worked per day or days worked per week?

A. Such increases pose a special problem because salaried employees typically are not paid by the hour, but by the month or year. If a company wishes to give pay increases for additional hours worked for salaried employees, the burden rests with the company to show that there is an actual increase in hours worked.

Q17. Does the provision for calculating chargeable increases under cost-of-living formulas apply to nonunion employees also?

A. Yes, if such employees are covered by a formal cost-of-living formula. But, as with formal collective bargaining contracts, it should be part of a pay plan that extends beyond a year in duration.

F. Variable Compensation

Q6. How will annual incentive bonuses be treated in future years?

A. Annual incentive bonuses are expected to be consistent with the 7-percent pay standard. For nondiscretionary plans, companies should make a reasonable estimate of their profits for the coming year, and calculate the amount of aggregate incentive bonuses that would be paid at that level of profits. The projected increase in these bonuses (prorated) together with fixed compensation increases should not be more than 7 percent greater in the last quarter of the program year than in the base quarter. If bonuses are larger than estimated due to higher profits, the excess over the 7-percent standard will be considered an exception *if* the company can demonstrate that its estimate of profits was not unreasonably low.

G. Future-Value Compensation

Q5. Under Section 705B-5(e) companies are expected to place a value on new future-value plans "consistent with generally accepted accounting practices." There really is no accounting value with respect to new stock option plans. Does this mean that companies may place a zero value on such plans?

A. No. Companies are expected to place *some* reasonable value on such plans and include this value as pay during the program year.

I. Pensions

Q7. Are increased pension benefits for retirees chargeable as pay increases?

A. Since retirees are not employees under the standard, pension costs for retirees would normally be excluded from all pay calculations for the employee unit—both in the base period and in the program year. However, if it is a company's normal practice to treat retiree pension benefits as part of an employee unit's base compensation package, improvements in such benefits should be charged as a pay increase for the unit.

Q8. Can reductions in pension costs due to changes in actuarial assumptions or funding methods be used as a credit toward other pay-rate increases?

A. No.

K. Tandem Pay-Rate Exception

Q2. Is the tandem exception applicable to individual elements of pay?

A. Yes, provided that the criteria set forth in the standards covering tandem relationships are met.

III. SPECIAL SECTORS

A. Food Manufacturers, Retailing and Wholesaling

Q6. If a food-processing company, a retailer, or a wholesaler chooses to comply with the price-deceleration standard and later finds that it is unable to do so because of uncontrollable cost increases, can it turn directly to the profit-margin limitation or must it first attempt to comply with the appropriate margin standard?

A. The company may choose either to comply with the gross margin standard or to apply the profit-margin limitation exception in accordance with § 706.31.

Q7. In the computation of a gross margin by a wholesaler, do service fees have to be included?

A. Yes. All service fees, stop or order charges, delivery fees, cash discounts earned, adjustments to "sell price," etc., should be added to sales in computing the gross margin. The gross margin, calculated by subtracting from net sales the cost of goods purchased for resale, includes all costs associated with these various types of service fees.

Q8. How do inventory changes affect the computation of gross margins?

A. Net sales, less cost of goods sold (for retail and wholesale trade) or less food ingredients in the goods sold (for food manufacturers), are adjusted for inventory changes of finished goods in the computation of gross dollar margins.

Any method of calculation of inventory valuation is acceptable as long as generally accepted accounting procedures are consistently applied for a given company. No changes in inventory policy (e.g., changing from FIFO to LIFO) should be made with the intention of influencing the level of computed gross dollar margins. A company should recalculate its inventory valuation if it changes its accounting procedures.

Q9. Because of changes in the mix of product sales, an improvement in loss experience ("shrinkage"), or changes in the rates of movement of merchandise at initial markups vs. marked-down prices, a retailer might fail to satisfy the percentage-margin standard for reasons beyond its control. Will the company be judged to be out of compliance?

A. No. As long as a company makes a good-faith effort to comply with the standard, an inadvertent overshooting of the margin target will not result in a determination of noncompliance. A good-faith effort requires that retailers adopt a markup (and mark-down) policy that can be expected to generate percentage margins that comply with the standard. If there is no change in policy regarding mark-downs, shrinkage, etc., the retailer can simply project past experience regarding these factors. However, a change in policy or practice regarding any of these factors should be reflected in the mark-up policy. Finally, if a company overshoots the margin target, it will be expected to adjust its markup policy in the next year to compensate for the excessive margin during the first program year.

Q10. How can a retail company comply with the margin standard if its interest costs of carrying accounts receivable are going up at a rapid rate?

A. In many cases, the finance division of the retailer can be treated as a separate company in accordance with the criteria set forth in the definition of "company" in section 705D. In those cases in which these criteria are not met, and in which the inclusion of interest costs on accounts receivable imposes an undue hardship on the retailer, the Council will provide a procedure for an exception to the conditions required for the disaggregation of a company. In order for a company to be eligible for this exception, there must exist a reasonable basis in the available accounting records to be able to make this separation, and a reasonable allocation of all applicable overhead costs must be made. The new company would be expected to meet the standards for financial companies.

Q11. If a company whose activities include both manufacturing and retailing qualifies for the use of the percentage-margin standard under section 705C-2(a), can the retail-trade segment be treated separately under the percentage-margin standard or must these activities be combined under the price-deceleration standard?

A. The firm is allowed to do either. However, if the aggregation of these activities would force a company to the profit-margin exception due to the inability to calculate price changes for its retail activities, the Council would prefer disaggregation and separate compliance with the price-deceleration and percentage-gross-margin standards.

Q12. How does a food-manufacturing company that applies the gross-margin standard to its food operations treat its nonfood products?

A. It should apply the price-deceleration standard to its nonfood sales.

B. Professional Fees

Q4. What is the program year for application of the professional-fee standard?

A. The program year is the last calendar or fiscal quarter prior to October 2, 1978, through the same quarter in 1979.

Q5. Can professionals in applying the professional-fee standard use the revenue-weighted average fee on October 2 instead of the average fee during the last complete fiscal quarter prior to October 2?

A. Yes, if it is easier to compute and there has not been a major fee increase during the last complete fiscal quarter prior to October 2.

Q6. Are hospital-based physicians and other health professionals covered under the pay standard of the professional-fee standard?

A. Physicians that are paid on a salary basis are included in one of the employee units identified by the hospital for the purpose of compliance with the pay standard. Physicians that are paid on a fee-for-service or proportion-of-department-revenue basis should comply with the professional-fee standard. If professional earnings are based on some combination of salary and fee-for-service or proportion-of-department-revenue, the hospital and the physicians should comply with the respective standards for the relevant portions of professional earnings.

Q7. Are fees charged for services of hospital-based physicians covered under the professional fee standard?

A. Yes. Services provided on a fee-for-service basis by radiologists, pathologists, emergency-room physicians, and other hospital-based physicians are covered under the professional-fee standard. If billing is done for their services through the hospital, the hospital and the physician are both responsible for compliance with the professional-fee standard. If billing is not on a fee-for-service basis (i.e., charges are included in the hospital-room charge), the professional-fee standard does not apply.

IV. PROCEDURES

A. General Provisions

[Reserved]

B. Reports and Notifications

Q1. Are companies with at least $250 million in sales or revenues, which intend to treat their entire organization as one unit (i.e., "company") for purposes of compliance, still requested to notify the Council of their organizational structure under § 706.21(a)?

A. Yes. Even if a company does not separate into smaller "companies" for purposes of compliance, it is still requested to notify the Council of its decision, as well as to submit data on the major lines of business.

Q2. Once a company notifies the Council of its organizational structure and method of pay calculation, may it change such structure or method merely by advising the Council of the change?

A. No. Once a company establishes its reporting structure and price and pay data a company is committed to that structure and data for the program year. If a company believes that failure to change will result in an undue hardship or gross inequity, it may, if it qualifies, seek permission to change by requesting an exception.

Q3. What should a company do if it is required to report its base-period rate of price change under § 706.22(d), but it is subject to the Profit Margin Limitation because it has insufficient product coverage?

A. It should supply the information in § 706.22(d)(i) demonstrating that it is subject to the Profit Margin Limitation. The other requirements in § 706.22(d) could be omitted. The company would not have to apply for an exception in order to use the Profit Margin Limitation if it is automatically subject to that limitation because of insufficient product coverage.

Q4. Do the reporting requirements apply to private universities and other nonprofit institutions?

A. Yes, since the Standards apply to such institutions, the reporting requirements would also apply. The same principles of calculation applicable to profit-making entities would apply to nonprofit institutions, subject to certain adjustments. For example, if the Profit Margin Limitation were used, the nonprofit institution would utilize a limitation on its operating surplus, i.e., on its operating funds less total costs and expenses including wages. (See Question I.D. 6, of the Q's and A's issued on December 13, 1978.)

Q5. With respect to §706.22, does the $500 million apply only to domestic sales?

A. No. It applies to the data stated in the Form 10-K as submitted to the SEC which may include foreign sales as well.

Q6. § 706.22(b) asks consolidated companies having, or companies belonging to consolidated companies having, $500 million in sales or revenues to submit to the Council a copy of Form 10-K reports submitted to the Securities and Exchange Commission. Does this mean that firms that do not file 10-K reports with the SEC need not comply with the remainder of § 706.22.

A. No. If a firm has not prepared a Form 10-K report, it is not asked to generate one. However, it is asked to submit other information.

Q7. Should firms that have filed Form 10-K reports with the SEC file the same forms with the Council?

A. Form 10-K's on file at the SEC can be obtained by the Council, and companies need not furnish the Council with duplicate copies if this would be burdensome. However, if such copies are readily available, their submission would reduce the Council's administrative work and would be greatly appreciated.

Q8. What type of data are contemplated by § 706.22(d)(2), in the phrase "not included in the calculation of the base-period rate of price change?"

A. It is expected that some companies will find that it is not feasible to calculate an average price change covering 100 percent of their revenues (even after deducting revenues covered by 705A-3(a)-(d) and (f)-(i). Typically, this may be caused by the lack of historical records on prices, revenues, and/or physical volumes for some products. Accordingly, § 706.22(d)(2) asks companies to advise

the Council of data of this sort. The revenues covered by 705A-3(e) would not be included, however, since that category is only defined for the program year.

Q9. Should companies filing reports under Subpart B of Part 706 file in triplicate?

A. No. One copy is sufficient.

Q10. What is a company's "most recently completed fiscal year" for purposes of Subpart B?

A. This refers to the most recently completed fiscal year prior to the start of the program year.

Q11. § 706.24 requests information from "companies with 5,000 or more employees." Can this be interpreted to refer only to disaggregated compliance units ("companies" under 705D) with 5,000 or more employees?

A. No. The request is directed at "companies" with 5,000 or more employees, *and* companies that belong to consolidated companies with 5,000 or more employees.

Q12. Does failure to comply with a request for reports under Subpart B result in a company's being put on the list of noncomplying companies?

A. No. A company can be placed on this list only if it fails to comply with the substantive Price or Pay Standards. However, if a company fails to make the requested reports, this may prompt further investigation of its operations by the Council.

Q13. If a company does not maintain records for its major lines of business at the four-digit level of the Standard Industrial Classification System, must it generate this information for purposes of a report under § 706.21(b)?

A. No. A company should supply information at a comparable level of detail, but need not follow the SIC system exactly.

Q14. § 706.22 applies to companies that "belong to" consolidated companies with $500 million or more in sales. Does this mean that companies which are owned by, but *not* consolidated with, companies with the requisite sales, are subject to § 706.22?

A. Yes.

Q15. Should companies submit data regarding base-period rates of price change under § 706.22(d) if they are subject only to the profit-margin limitation?

A. No. If a company *knows* by February 15, 1979, that it is subject to the profit margin limitation, either because it has insufficient product coverage or because it has been granted an exception, it need not supply data under § 706.22(d)(1) or (3).

Q16. Does § 706.24 require that companies submit detailed reports on their methods of meeting the pay standard by February 15, 1979?

A. No. Companies are asked only to outline how they plan to identify their reporting units, and to identify briefly what method(s) of pay calculation that they plan to use.

C. Exceptions

Q1. Should a company seek a determination under § 706.31(a)(10) if it had or is part of a consolidated company which had net sales or revenues in excess of $500 million in its last fiscal year and intends to apply an exception to the pay standard?

A. Yes. § 706.31 applies to exceptions to the pay standard as well as the price standard.

Q2. Does § 706.31(a)(2) apply to any employee unit, regardless of size?

A. No. A company need not seek a determination from the Council under § 706.31(a)(2) if an exception to the pay standard would affect an employee unit of less than 100 employees.

D. Special Investigations

[Reserved]

E. Determination of Noncompliance

Q1. Is it a defense to a Notice of Probable Noncompliance, that a company was exempted from both the price deceleration *and* profit margin standard because its adjusted revenues are less than 25 percent of total company revenue?

A. Yes. While this defense is not listed in § 706.52, it can be raised.

F. Removal from List of Noncomplying Companies

[Reserved]

G. Request for Reconsideration

[Reserved]

[FR Doc. 79-2538 Filed 1-24-79; 8:45 am]

federal register

THURSDAY, JANUARY 25, 1979
PART XI



DEPARTMENT OF TRANSPORTATION

Coast Guard

■

MARINE SAFETY INVESTIGATIONS

Notice of Proposed Rulemaking

[4910-14-M]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 168]

[CGD 77-018]

MARINE SAFETY INVESTIGATIONS

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The proposed rule requires reports of specified waterfront incidents, accidents, and acts and establishes procedures for investigating them. Until now there have been no regulations implementing the investigatory authority created by the Ports and Waterways Safety Act of 1972. These regulations should assist in determining causes of these events and preventing their recurrence.

DATES: Comments must be received on or before: March 12, 1979.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/81), (CGD 77-018), U.S. Coast Guard, Washington, D.C. 20590. Comments will be available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FUTHER INFORMATION CONTACT:

Lieutenant Commander Edward H. Bonekemper, III, Port Safety Branch, Port Safety and Law Enforcement Division, Office of Marine Environment and Systems, U.S. Coast Guard, Room 7319, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-1927).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each comment should include the name and address of the person submitting the comment, reference the docket number (CGD 77-018), identify the specific section of the proposal to which each comment applies, and include sufficient detail to indicate the basis on which each comment is made. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the FEDERAL REGISTER if requested in writing by an interested person raising a genuine issue and desiring to comment orally at a public hearing.

DRAFTING INFORMATION

The principal persons involved in drafting this proposal are: Lieutenant Commander Edward H. Bonekemper, III, Project Manager, Office of Marine Environment and Systems, and Stanley M. Colby, Project Attorney, Office of the Chief Counsel.

DISCUSSION OF THE PROPOSED REGULATIONS

This proposed amendment would implement the investigatory powers established in Section 8 of the Ports and Waterways Safety Act (33 U.S.C. 1227). That statute authorizes the investigation of any incident, accident, or act involving the loss or destruction of, or damage to, any structure on, in, or next to the navigable waters of the United States or on a shore area next to those waters or which affects or may affect the safety or environmental quality of the ports, harbors, or navigable waters of the United States. It also provides for the issuance of subpenas and the payment of witness fees related to these investigations.

These proposed regulations define those incidents, accidents, and acts which must be reported to the Coast Guard and explain who is authorized to initiate an investigation. The powers of an investigating officer are set forth. Also detailed are proposed investigative proceedings, rights of parties in interest, testimony by deposition, and reports of investigation.

Comments are solicited on all the contents of this notice. Of particular value would be comments on the notification requirements, including the related definitions of "shore area," "structure," and "unusual condition."

Specific attention is called to the investigation procedures proposed in §§ 168.12 through 168.36. Commenters may wish to compare these provisions with existing 46 CFR Part 4. Should separate procedures be published in 33 CFR for these facility-related investigations? Or, should a simple cross-reference to 46 CFR Part 4 be used to make those vessel-related investigation procedures applicable to facility-related investigations?

This proposed regulation has been evaluated under the Department of Transportation Policies for Improving Government Regulations published on March 8, 1978 (43 FR 9582). The draft evaluation is available for public review at the above address.

In consideration of the foregoing, it is proposed to amend Chapter I to title 33, Code of Federal Regulations as follows:

By amending Subchapter P by adding a new Part 168 to read as follows:

PART 168—MARINE SAFETY NOTIFICATIONS AND INVESTIGATIONS

Sec.

168.01 Purpose.
168.02 Definitions.
168.03 Notification of incident, accident, or act.
168.09 Contents of notification.
168.12 Initiation of investigation.
168.15 Investigating officer: designation.
168.20 Investigating officer: authority.
168.22 Informal investigation.
168.23 Witnesses and documents.
168.25 Investigative proceedings: attendance by public.
168.27 Investigative proceedings: notice and procedures.
168.30 Investigative proceedings: parties in interest and witnesses.
168.33 Testimony by deposition.
168.36 Report of investigation.

AUTHORITY: 92 Stat. 1476 (Ports and Waterways Safety Act, as amended, 33 USC 1227); 49 CFR 1.46(n)(4).

§ 168.01 Purpose.

The purpose of the regulations under this part is to prescribe procedures for notification and investigation of accidents involving vessels, bridges or other structures on or in the navigable waters of the United States, or certain land structures or shore areas immediately adjacent to those waters in order to determine the cause and circumstances of such accidents. Determining the cause of accidents will aid in preventing their recurrence and will help protect the navigable waters and the resources therein from environmental harm.

§ 168.02 Definitions.

As used in this part:

(a) "Party in interest" means a responsible person and a person that the investigating officer finds to have direct interest in an investigation being conducted under this part.

(b) "Shore area" means a parcel of land any part of which is next to or within 100 yards of the navigable waters of the United States, excluding any part which is more than 1,000 yards from the navigable waters of the United States.

(c) "Structure" means a dock, wharf, pier, marine terminal, refinery, bridge, commercial pipeline, or bulk liquid or bulk liquefied gas facility on, in, or next to navigable waters of the United States or on a shore area.

(d) Unusual condition" means any of the following:

(1) Fire.

(2) Explosion.

(3) A breakaway of a vessel from moorings.

(4) Damage to or rupture of a pipeline, tank, or bulk liquid transfer manifold or loading arm.

(5) The release or discharge of a substance or material that affects or could adversely affect property or the

environmental quality of the port, harbor, or navigable waters of the United States.

(e) "Responsible person" means the owner or operator of a structure or person in charge of or at a structure.

§ 168.03 Notification of incident, accident, or act.

Unless there is notification made under 46 CFR 4.05-1 or under Part 153 of this chapter, the responsible person shall immediately notify, by telephone, radio communication, or a similar means of rapid communication, the Captain of the Port of the occurrence of each incident, accident, or act that involves-

(a) Actual physical damage of more than $5,000 to the structure, cargo, and any property on the structure; or

(b) An unusual condition involving or affecting the structure.

§ 168.09 Contents of notification.

The notification to the Captain of the Port under § 168.03 must include the following information:

(a) Structure identification and location.

(b) Description of the incident, accident, or act being reported.

(c) Cargo involed in the incident, accident, or act.

(d) Measures taken or planned to be taken by the responsible person to mitigate the effects of the incident, accident, or act.

(e) The responsible person's name and title.

§ 168.12 Initiation of investigation.

The Commandant, District Commander, or Captain of the Port may initiate an investigation of an incident, accident, or act reportable under § 168.03.

§ 168.15 Investigating officer: designation.

The Commandant, District Commander, or Captain of the Port may designate an investigating officer to conduct the investigation of any incident, accident, or act under this part to determine in each case—

(a) The cause;

(b) If there is evidence that any failure of material or safety equipment was a contributing factor; and

(c) If there is evidence that any violation of federal law or regulation occurred.

§ 168.20 Investigating officer: authority.

The investigating officer may—

(a) Determine who is a party in interest to the incident, accident, or act;

(b) Issue subpenas for the attendance of witnesses and the production of documents and other evidence;

(c) Conduct investigation proceedings; and

(d) Take testimony by deposition.

§ 168.22 Informal investigation.

The investigating officer may conduct an informal investigation. This informal investigation may constitute the entire investigation or it may lead to investigative proceedings.

§ 168.23 Witnesses and documents.

(a) Witness fees are payable in accordance with 46 CFR Subpart 4.11.

(b) In case of refusal to obey a subpena issued to any person, the District Commander may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance.

§ 168.25 Investigative proceedings: attendence by the public.

(a) The public may attend investigative proceedings conducted by the investigating officer, except those concerned with evidence of a classified nature affecting national security.

(b) No person may interfere with the form and manner of conducting the investigative proceedings.

§ 168.27 Investigative proceedings: Notice and procedures.

(a) The investigating officer gives reasonable notice of the time and place of the investigative proceedings to each party in interest.

(b) The investigating officer opens the investigative proceedings by announcing the statutory authority for the proceedings and by advising parties in interest of their rights.

(c) Investigative proceedings are administrative and adherence to the formal rules of evidence is not mandatory.

§ 168.30 Investigative proceedings: parties in interest and witnesses.

(a) Parties in interest in an investigative proceeding may—

(1) Be represented by counsel;

(2) Examine and cross-examine any witnesses; and

(3) Have witnesses and present evidence in their own behalf.

(b) Each witness in an investigative proceeding who is not a party in interest may have a counsel's advice, but counsel may not—

(1) Examine or cross-examine parties in interest or other witnesses; or

(2) Be a participant in the investigative proceeding.

§ 168.33 Testimony by deposition.

(a) A party in interest requesting the investigating officer to take a deposition must apply in writing and supply the following information:

(1) The reasons why the deposition is needed in the investigative proceedings.

(2) The name and address of each witness from whom a deposition is requested.

(3) The matters concerning the investigation upon which the party in interest expects the witness to testify.

(4) The proposed time and place for the taking of the deposition.

(b) If the investigating officer grants the request for a deposition, the investigating officer gives an order to each party in interest that contains the following:

(1) The name of the witness whose deposition is required.

(2) The time period during which interrogatories may be submitted.

(3) The time and place of the taking of the deposition.

(4) The name of the person taking the deposition.

(c) Within the time under paragraph (b)(2) of this section, the party in interest desiring the deposition must submit a list of interrogatories for the person who is to testify.

(d) After the party in interest submits interrogatories under paragraph (c) of this section, any other party in interest or the investigating officer may submit a list of cross-interrogatories.

(e) Each deposition must be taken before a person who is authorized to administer oaths by the laws of the United States.

(f) As soon as practicable after the receipt of a deposition, the investigating officer rules on the admissibility of the deposition or any part of the deposition.

§ 168.36 Report of investigation.

At the conclusion of the informal investigation or investigative proceedings, the investigating officer submits a report that contains—

(a) The facts as determined by the investigating officer;

(b) The investigating officer's conclusions; and

(c) The investigating officer's recommendations.

(92 Stat. 1476 (Ports and Waterways Safety Act, as amended 33 USC 1227); 49 CFR 1.46(n)(4).)

Dated: January 17, 1979.

J. B. HAYES,
Admiral, U.S. Coast Guard,
Commandant.

[FR Doc. 79-2676 Filed 1-24-79; 8:45 am]

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