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federal register

MONDAY, FEBRUARY 26, 1979

highlights

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA//FSQS		DOT/OHMO	USDA/FSQS
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

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A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

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Title 3—
The President

Proclamation 4640 of February 23, 1979

Temporary Quantitative Limitation on the Importation into the United States of Certain Clothespins

By the President of the United States

A Proclamation

1. Pursuant to section 201(d)(1) of the Trade Act of 1974 (the Trade Act) (19 U.S.C. 2251(d)(1)), the United States International Trade Commission (USITC) on December 12, 1978, reported to the President (USITC Report 201–36) the results of its investigation under section 201(b) of the Trade Act (19 U.S.C. 2251(b)). The USITC determined that clothespins provided for in items 790.05, 790.07, and 790.08 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing articles like or directly competitive with the imported articles. In order to remedy the serious injury to the domestic industry that it has found to exist, the USITC recommended the imposition of a 5-year quota on U.S. imports of wood and plastic spring-type clothespins with a dutiable value not over $2.10 per gross provided for under TSUS item 790.05.

2. On February 8, 1979, pursuant to section 202(b)(1) of the Trade Act (19 U.S.C. 2252(b)(1)), and after taking into account the considerations specified in section 202(c) of the Trade Act (19 U.S.C. 2252(c)), I determined to remedy the injury found to exist by the USITC through the proclamation of a 3-year quota on U.S. imports of wood and plastic spring-type clothespins with a dutiable value not over $1.70 per gross provided for under TSUS item 790.05. On February 8, 1979, in accordance with section 203(b)(1) of the Trade Act (19 U.S.C. 2253(b)(1)), I transmitted a report to the Congress setting forth my determination and intention to proclaim a quota and stating the reasons why my decision differed from the action recommended by the USITC.

3. Section 203(e)(1) of the Trade Act (19 U.S.C. 2253(e)(1)) requires that import relief be proclaimed and take effect within 15 days after the import relief determination date.

4. Pursuant to sections 203(a)(3) and 203(e)(1) of the Trade Act (19 U.S.C. 2253(a)(3) and 2253(e)(1)), I am providing import relief through the temporary imposition of a quota on U.S. imports of wood and plastic spring-type clothespins with a dutiable value not over $1.70 per gross provided for under TSUS item 790.05.

5. In accordance with section 203(d)(2) of the Trade Act (19 U.S.C. 2253(d)(2)), I have determined that the level of import relief hereinafter proclaimed pursuant to section 203(a)(3) of the Trade Act (19 U.S.C. 2253(a)(3)), permits the importation into the United States of a quantity or value of articles which is not less than the average annual quantity or value of such articles imported into the United States in the 73–78 period, which I have determined to be the most recent representative period for imports of such articles.

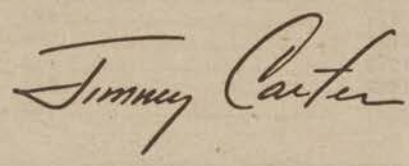
NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including sections 203 and 604 of the Trade Act (19 U.S.C. 2253 and 2483), and in accordance with Article XIX of the General Agreement on Tariffs and Trade (GATT) (61 Stat. (pt. 5) A58; 8 UST (pt. 2) 1786), do proclaim that—

(1) Part 1 of Schedule XX to the GATT is modified to conform with the actions taken in the Annex to this proclamation.

(2) Subpart A, part 2 of the Appendix to the TSUS is modified as set forth in the Annex to this proclamation.

(3) This proclamation shall be effective as to articles entered, or withdrawn from warehouse, for consumption on or after February 23, 1979, and before the close of February 22, 1982, unless the period of its effectiveness is earlier expressly modified or terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of February, in the year of our Lord nineteen hundred and seventy-nine, and of the Independence of the United States of America the two hundred-third.



ANNEX

Subpart A, part 2 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is modified—

(a) by adding the following new headnote:

"6. *Quantitative limitations on certain clothespins.*—The provisions of this headnote apply to items 925.11, 925.12 and 925.13 of this subpart.

(a) *Definitions.*—For the purposes of this headnote—

(i) The term *"restraint period"* refers to the 3-month periods provided for in the Quota Quantity column for items 925.11, 925.12 and 925.13;

(ii) The term *"quota year"* refers to a 12-month period beginning February 23 in one year and ending at the close of February 22 of the following year.

(b) *Carryover.*—Whenever the quota quantity specified for an item has not been entered during any restraint period, the shortfall may be entered in the same item during the following restraint period in any quota year and not be counted against the quota quantity therefor.

(c) *Shortfall.*—Whenever the Special Trade Representative determines that the full quota quantity for item 925.11, 925.12, or 925.13, respectively, will not be used during a quota year, the Special Trade Representative may modify the quota quantities for that item during the remainder of that quota year to reallocate the shortfall to the other items; such modifications to be effective on the date of their publication in the FEDERAL REGISTER."; and

(b) by inserting in numerical sequence the following new provisions:

"Item	Articles	Quota Quantity (in gross)			
		Entered during the restraint period --			
		February 23, through May 22	May 23, through August 22	August 23, through November 22	November 23, through February 22
	Whenever the respective aggregate quantity of clothespins specified below for items 925.11, 925.12 and 925.13, has been entered in any restraint period, no article in such item may be entered during the remainder of such restraint period, except as provided for in headnote 6: Clothespins, spring type, of wood or plastics, valued not over $1.70 per gross, provided for in item 790.05, entered on or after February 23, 1979, and before the close of February 22, 1982:				
925.11	Valued not over 80 cents per gross.....	125,000	125,000	125,000	125,000
925.12	Valued over 80 cents but not over $1.35 per gross.....	150,000	150,000	150,000	150,000
925.13	Valued over $1.35 but not over $1.70 per gross.....	225,000	225,000	225,000	225,000"

[FR Doc. 79-5834
Filed 2-23-79; 11:37 am]

Billing code 3195—01-M

Proclamation 4641 of February 23, 1979

Small Business Week, 1979

By the President of the United States of America

A Proclamation

Small business has been the economic backbone of American life since the earliest colonial days. Traders, craftsmen and merchants spurred the economy and played a vital role in the Nation's westward movement and growth. They helped create the multitude of opportunities which have become the hallmark of our free enterprise system—a system which has made American progress the envy of the world.

There are 13.9 million businesses in the United States today, and 13.4 million are small, including nearly three million farms. Together, they provide employment for over half the business labor force and account for more than 48 percent of the gross business product. They are an important source of the major innovations that create new markets and improve our quality of life. America's prestige in the world today could never have been achieved without this outstanding productivity by small business.

Meetings are currently being held in every State of the Union in preparation for the first White House Conference on Small Business which I have called for in January of 1980. This year, every small business man and woman and indeed, every American, should be giving serious thought to how we may best secure and expand the small business sector of our economy in the years ahead.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby proclaim the week beginning May 13, 1979, as Small Business Week, and I call on every American to join me in this very special tribute.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of February, in the year of our Lord nineteen hundred seventy-nine, and of the Independence of the United States of America the two hundred and third.

Jimmy Carter

[FR Doc. 79–5870
Filed 2–23–79; 1:55 pm]

Billing code 3195–01–M

rules and regulations

[3410-07-M]

Title 7—Agriculture

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

Redesignation—Revision

AGENCY: Farmers Home Administration, USDA.

ACTION: Final Rule.

SUMMARY: The Farmers Home Administration revises and redesignates its regulations regarding the liability of the spouse and the applicability of Federal law. This action is taken to further protect the Government's security interest by stating that a spouse signing an FmHA note is individually liable on the note and by stating that Federal rather than State law is applicable to FmHA actions. This action has been taken as a result of comments by other Federal Agencies and due to an internal study of Agency regulations.

EFFECTIVE DATE: February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth Latcholia, Deputy Administrator for Rural Development. Phone: 202-447-3213.

SUPPLEMENTARY INFORMATION: The Farmers Home Administration revises and redesignates Subpart D of Part 1800, Subchapter A, Chapter XVIII, Title 7 in the Code of Federal Regulations to a new Subpart C of Part 1900, Subchapter H and § 1962.49, paragraph (a)(4)(v) is transferred from Subpart A of Part 1962, Subchapter N, to the new Subpart C of Part 1900. This action is taken to further protect the Government's security interest and to remove any suggestion of sexual bias in FmHA Loanmaking by deleting references to "wife" that appeared in Subpart D of Part 1800. Paragraph 1962.49 (a)(4)(v) of Part 1962 Subpart A is now deleted because its provisions are included in the statement on the applicability of Federal law. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since the action specifically states a policy already recognized and accomplishes an editorial function and therefore publication for Proposed Rules is unnecessary.

This determination was made by Mr. Kenneth Latcholia, Deputy Administrator, Rural Development.

A copy of the Impact Statement prepared by FmHA is available from Mr. Joseph H. Linsley, Chief, Directives Management Branch, Room 6348, South Agriculture Building, Washington, D.C. 20250.

This regulation has not been determined significant under the USDA criteria implementing Executive Order 12044. Therefore, Chapter XVIII is amended as follows:

SUBCHAPTER A—GENERAL REGULATIONS

PART 1800—ADMINISTRATIVE PROVISIONS

Subpart D—Separate and Individual Liability of Wife

§§ 1800.41–1800.42 (Subpart D) [Deleted]

1. Subpart D of Part 1800, Subchapter A is hereby deleted from the CFR.

SUBCHAPTER H—GENERAL

PART 1900—GENERAL

2. As revised and redesignated from Subpart D of Part 1800, the new Subpart C of Part 1900 reads as follows:

Subpart C—Applicability of Federal Law and Individual Liability

Sec.

AUTHORITIES: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; Sec. 10 Pub. L. 93-357, 88 Stat. 392; 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.

Subpart C—Applicability of Federal Law and Individual Liability

§ 1900.101 General.

This subpart provides Agency policy concerning:

(a) The liability of the spouse when both parties execute a promissory note, assumption agreement, or other evidence of indebtedness, and

(b) The applicability of Federal rather than State Law in the conduct of Farmers Home Administration (FmHA) operations, and

(c) The liability of an auctioneer for conversion of personal property mortgaged to FmHA.

§ 1900.102 Applicable law.

Loans made by FmHA are authorized and executed pursuant to Federal programs adopted by Congress to achieve national purposes of the U.S. Government.

(a) Instruments evidencing or securing a loan payable to or held by the Farmers Home Administration, such as promissory notes, bonds, guaranty agreements, mortgages, deeds of trust, financing statements, security agreements, and other evidences of debt or security shall be construed and enforced in accordance with applicable Federal law.

(b) Instruments evidencing a guarantee, conditional commitment to guarantee, or a grant, such as contracts of guarantee, grant agreements or other evidences of an obligation to guarantee or make a grant, executed by the Farmers Home Administration, shall be construed and enforced in accordance with applicable Federal law.

(c) In order to implement and facilitate these Federal loan programs, the application of local procedures, especially for recordation and notification purposes, may be utilized to the fullest extent feasible and practicable. However, the use of local procedures shall not be deemed or construed to be any waiver by FmHA of Federal immunity from any local control, penalty, or liability, or to subject FmHA to any State required acts or actions subsequent to the delivery by FmHA officials of the instrument to the appropriate local or State official.

(d) Any person, corporation, or organization that applies for and receives any benefit or assistance from FmHA that offers any assurance or security

upon which FmHA relies for the granting of such benefit or assistance, shall not be entitled to claim or assert any local immunity, privilege, or exemption to defeat the obligation such party incurred in obtaining or assuring such Federal benefit or assistance.

(e) The liability of an auctioneer for conversion of personal property mortgaged to FmHA shall be determined and enforced in accordance with the applicable Federal law. "Auctioneer" for the purposes of this Subpart includes a commission merchant, market agency, factor or agent. In all cases in which there has been a disposition without authorization by FmHA of personal property mortgaged to that agency, any auctioneer involved in said disposition shall be liable to the Government for conversion—notwithstanding any State statute or decisional rule to the contrary.

§ 1900.103 Separate and individual liability of spouse.

In all cases in which one party to a marriage joins the other party in executing a promissory note, assumption agreement, or other evidence of indebtedness for loans made or insured by the United States of America, acting through the Farmers Home Administration, one purpose and effect of either party's signature will be to engage that party's separate and individual personal liability whether or not specifically so stated in the note or other instrument and notwithstanding any State statute or decisional rule to the contrary whether based on coverture or other grounds and irrespective of whether the loan is for the benefit of one party or for the benefit of property held or to be held by both parties as tenants in common, joint tenants, an estate by the entirety, community property, or otherwise, or is the separate property of either.

§§ 1900.54-1900.100 [Reserved]

SUBCHAPTER N—SECURITY SERVICING

PART 1962—PERSONAL PROPERTY

Subpart A—Servicing and Liquidation of Chattel Security

3. Paragraph 1962.49 (a)(4)(v) is hereby deleted from the CFR.

§ 1962.49 Civil and criminal cases.

* * * * *

(a) *Civil Action.* * * *
(4) * * *
(v) [Deleted]

(7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; Sec. 10 Pub. L. 93-357, 88 Stat 392; 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: February 13, 1979.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 79-5554 Filed 2-23-79; 8:45 am]

[4910-13-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 18734; Amdt. 39-3422]

PART 39—AIRWORTHINESS DIRECTIVES

Lithium Sulfur Dioxide Batteries

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires removal of Lithium Sulfur Dioxide (Li SO_2) batteries and Emergency Locator Transmitters (ELT's) powered by Li SO_2 batteries from U.S.-registered civil aircraft and allows temporary operation of aircraft without required emergency locator transmitters which are affected by this AD. The AD is prompted by reports of Li SO_2 batteries exploding and venting violently which could result in loss of the aircraft.

DATE: Effective February 26, 1979.

Compliance is required within the next 30 days after the effective date of this AD, unless already accomplished.

FOR FURTHER INFORMATION CONTACT:

Mr. Chris Christie, Technical Standards Branch, Engineering and Manufacturing Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; telephone (202) 426-8374.

SUPPLEMENTARY INFORMATION: Li SO_2 batteries have been used primarily in general aviation aircraft ELT's and to a limited degree in air carrier aircraft for a number of years. It is estimated that these batteries are installed on approximately one-third all U.S.-registered civil aircraft and that over 95 percent of the Li SO_2 battery usage in aircraft is in ELT's. The use of these batteries has been promoted because they have a longer life and can be used at lower operating temperatures than other batteries.

Despite these advantages, operational experience has demonstrated several problems with the batteries involving serious incidents in general aviation aircraft. To provide information to the public on this subject, the FAA has issued Advisory Circular AC No. 20-91 on April 11, 1975, which warned of the possible hazards associated with the use of Li SO_2 batteries. In addition, two Airworthiness Directives, numbers 74-20-10 (Amendment 39-1976, 39 FR 34513), as amended, and 74-24-07 (Amendment 39-2021, 39 FR 40939), as amended, have been issued relating to the use of certain Li SO_2 batteries. These AD's required design changes and periodic inspections of the battery condition.

Notwithstanding the design changes required by the AD's, problems caused by the malfunctioning of Li SO_2 batteries are still occurring. Recently, there have been an increasing number of reports of Li SO_2 battery incidents. In Canada there have been some incidents of United States-manufactured batteries venting violently.[1] Some of these incidents occurred during aircraft operations and prompted the Canadian Ministry of Transport (MOT) to require the removal of all lithium batteries from Canadian-registered aircraft.

Subsequent to the issuance of the Canadian requirement, there have been incidents in the United States of batteries venting violently, exploding, corroding, and burning. In addition, there is a problem of cells leaking slowly. The sulfur dioxide (SO_2) gas which escapes from the cells combines with moisture to form sulfurous acid which is highly corrosive and can cause failure of the equipment in which the batteries are located.

Since venting violently, leakage of gas, explosion, and corrosion are likely to exist or develop with Li SO_2 batteries currently in service, an airworthiness directive is being issued to require the removal of Li SO_2 batteries and ELT's powered by Li SO_2 batteries from all U.S.-registered civil aircraft. Since most Li SO_2 batteries that power ELT's are integrally built into the ELT units, removal of the ELT units is required for compliance with this AD.

Sections 91.52 (a) and (b) of the Federal Aviation Regulations requires that certain aircraft may not operate without an operating ELT attached. Section 91.52(f)(10) allows, subject to certain additional requirements, the operation of aircraft for not more than 90 days with the ELT temporarily removed for inspection, repair,

[1] "Venting violently" means the rapid uncontrolled discharge of either harmful gases or liquid, or both, from one or more cells accompanied by the generation of heat. This term was used in a National Aeronautics and Space Administration (NASA) Report on a workshop held at Goddard Space Flight Center, November 15-17, 1977 (NASA Conference Publication 2041).

modification, or replacement. For aircraft with ELT's affected by this AD, the time period during which an aircraft may be operated without a required ELT is being extended to 180 days. This extension is being granted under the authority of section 601(d)(3) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1421(d)(3)) because it is anticipated that within the 180-day period the FAA will have issued standards for Li SO_2 batteries and that battery manufacturers will have tested, obtained FAA approval, and produced a sufficient supply for aviation related demands. Prior to the end of the 180-day period, the FAA will issue a revised or superseding AD to provide for subsequent use of Li SO_2 batteries.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to the public interest and good cause exists for making this amendment effective in less than 30 days.

It is found, due to the emergency nature of this AD, that to follow the regulatory procedures prescribed by Executive Order 12044, as implemented by interim Department of Transportation (DOT) guidelines (43 FR 9582, March 8, 1978), would be impracticable. In accordance with the DOT guidelines for processing emergency regulations, a Regulatory Evaluation is being prepared and will be placed in the public regulatory docket for this action.

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 (FAR) (14 CFR 39.13) is amended by adding the following new airworthiness directive:

LITHIUM SULFUR DIOXIDE BATTERIES. Applies to all Lithium Sulfur Dioxide (Li SO_2) batteries installed in aircraft or equipment used in aircraft.

Li SO_2 batteries have been used in, but not necessarily limited to, the following Emergency Locator Transmitters (ELT's):

Communications Components Corporation
Model CIR 10 all serial numbers
Battery pack BP-60, BP-60A, and BP-60B
Model CIR 11-2 all serial numbers
Battery pack BP-60-11, BP-60-11A, and BP-11B
Cessna Aircraft Co.
Part number C-585511-0103
Part number C-559510-0202
Part number C-559510-0209
Dorne and Margolin
Model DMELT 6 serial number 1 and subsequent
Garrett Manufacturing Limited
Part Number 627810-1 Serial Number 108 through 24-94
Part Number 627810-2 Serial Number 101 through 113
Part Number 627810-3 Serial Number 101 through 255
Leigh Systems
Model Sharc 7
Pointer Incorporated
Model 2000
Model 2000 Series Mod A
Model 3000
Model 3000 Series Mod A
Model 3000-2
Lithium battery pack—P/N P2018, P2018 HSP, P2018 HSM, M2018, M2018 HSP, and M2018 HSM

In addition, Li SO_2 batteries have been used in other aircraft equipment including other ELT's emergency lighting, slide rafts, and flashlights.

Compliance is required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent fire, venting violently, explosion, corrosion, or leakage of gas associated with Li SO_2 batteries, accomplish the following:

(a) Remove all lithium sulfur dioxide (Li SO_2) batteries from U.S.-registered civil aircraft.

(b) Remove all ELT's powered by Li SO_2 batteries from U.S.-registered civil aircraft.

(c) Not withstanding FAR § 91.52(f)(10)(ii), an aircraft from which an ELT powered by Li SO_2 batteries has been removed to comply with this AD may operate for a period not to exceed 180 days without an ELT required by FAR §§ 91.52 (a) and (b).

(d) Upon removal of the ELT from the aircraft, comply with the recordkeeping and placarding requirements of FAR § 91.52(f)(10)(i).

This amendment becomes effective February 26, 1979.

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

Issued in Washington, D.C., on February 21, 1979.

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

[FR Doc. 79-5691 Filed 2-23-79; 8:45 am]

[3710-08-M]

Title 32—National Defense

CHAPTER V—DEPARTMENT OF THE ARMY

SUBCHAPTER F—PERSONNEL

[AR 930-2]

PART 574—UNITED STATES SOLDIERS' AND AIRMEN'S HOME

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: Part 574 of the CFR has been revised to update and clarify policies concerning the Home's benefits, eligibility, ineligibility, and admissions. In addition, it adds § 574.6—User fee assessment of members of the Home.

EFFECTIVE DATE: July 15, 1977.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Colonel G. R. Iverson, Director, Community Support, Office of The Adjutant General, Headquarters, Department of the Army, Washington, DC 20314 (202-693-0841).

Dated: February 14, 1979.

By authority of the Secretary of the Army:

G. R. IVERSON,
Lieutenant Colonel, GS Director,
Community Support TAGCEN.

In consideration of the above, 32 CFR Part 574 is revised as set forth below:

PART 574—UNITED STATES SOLDIERS' AND AIRMEN'S HOME

Sec.
574.1 Statutory authority.
574.2 Home benefits.
574.3 Persons eligible for admission to the Home.
574.4 Persons ineligible for admission to the Home.
574.5 Applications for admission.
574.6 User fee assessment of members of the Home.

AUTHORITY: R.S. 4815, as amended; 24 U.S.C. 41.

§ 574.1 Statutory authority.

The basic statutory authority for establishment of the United States Soldiers' and Airmen's Home is contained in the act of March 3, 1851 (9 Stat. 595), and the act of March 3, 1883 (22 Stat. 564).

§ 574.2 Home benefits.

The United States Soldiers' and Airmen's Home provides a home and other benefits authorized by law for its members. Some of the important Home benefits are as follows:

(a) Suitable living quarters.
(b) Subsistence.
(c) Medical, dental, and hospital care.
(d) Complete recreation program.
(e) Laundry and drycleaning service.

§ 574.3 Persons eligible for admission to the Home.

(a) The following persons are eligible for admission to the United States Soldiers' and Airmen's Home, except as indicated in § 574.4:

(1) First Category—Every soldier, airman, or warrant officer, male or female, of the Army or Air Force of the United States, who has—

(i) Had some service as an enlisted member of warrant officer in the Regular Army or Regular Air Force; and

(ii) Served honestly and faithfully for 20 years or more. In computing the necessary 20 years' time, all active service as an enlisted member or as a warrant officer in the Army or Air Force, whether in the regular or Reserve components, will be credited. Service in the Navy or the Marine Corps or service as a commissioned officer cannot be credited.

(2) Second Category—Every soldier, airman, or warrant officer, male or female, of the Army or Air Force of the United States, whether in the regular or Reserve components, who has—

(i) Had some service as an enlisted member or warrant officer in the Regular Army or Regular Air Force and

(ii) Become incapable of earning a livelihood because of the disease, an injury, or wounds incurred in the military service of the United States, in line of duty, and not as a result of his/her own misconduct.

(3) Third Category—Every soldier, airman, or warrant officer, male or female, of the Army or Air Force of the United States, whether in the Regular or Reserve components, who—

(i) Has served on active duty as an enlisted member or warrant officer in the Army or Air Force during any war;

(ii) Has had some service as an enlisted member or warrant officer in the Regular Army or Regular Air Force; and

(iii) Is by reason of wounds, sickness, old age or other disability, unable to earn a livelihood.

(b) A requirement in each category is the performance of some service in the Regular Army or Regular Air Force and the terminating of active service in an enlisted or warrant officer status. Any enlisted person or warrant officer who served as a volunteer in the Spanish American War or who served with an organization of the Regular Army during World War I will be considered as having had some service in the Regular Army.

(c) Admission to the United States Soldiers' and Airmen's Home is granted by authority of the Board of Commissioners. Individuals who are admitted to the Home will be officially designated as members. Whenever the Home's facilities become limited to the extent that it appears that all eligible applicants cannot be accomodated, a system of priorities authorized by the Board of Commissioners will be administered by the Governor of the Home. The objective of this system will be to grant admission to the most deserving individuals.

§ 574.4 Persons ineligible for admission to the Home.

Admission to the Home cannot be granted to any person who was convicted of a felony or other disgraceful or infamous crime of a civil nature after entering the service of the United States; or to any deserter, mutineer, or habitual drunkard unless there is sufficient proof of subsequent honorable service, good conduct, and reformation of character to satisfy the Board of Commissioners.

§ 574.5 Applications for admission.

Applications for admission to the United States Soldiers' and Airmen's Home and information concerning eligibility requirements may be obtained by writing directly to the Board of Commissioners, United States Soldiers' and Airmen's Home, Washington, DC 20317. The Board of Commissioners will issue letters authorizing admission to those individuals whose applications are approved.

§ 574.6 User fee assessment of members of the Home.

The Board of Commissioners of the United States Soldiers' and Airmen's Home will collect from members of the Home a fee which may be used solely for the operation of the Home. The amount of the fee will be determined by the Board of Commissioners on the basis of financial needs of the Home and the ability of the members to pay, but in no case may the fee collected in any month, in the case of any member, exceed an amount equal to 25 percent of the monthly—

(a) Military retired pay paid to such member;

(b) Civil Service annuity paid to such member where such annuity is based in part on years of military service;

(c) Disability compensation or pension paid to such member by the Veterans' Administration; or

(d) Military retired pay and disability compensation or pension where such member is receiving both retired pay and disability compensation or pension.

[FR Doc. 79-5529 Filed 2-21-79; 8:45 am]

[4910-14-M]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 77-241]

PART 3—COAST GUARD AREAS, DISTRICTS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

Clarification of Section Titles

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: This amendment changes the title of this part, the section headings, and the appropriate paragraphs by deleting the words "Captain of the Port Area" and inserting in their place the words "Captain of the Port Zone". These changes are prompted by the Coast Guard's attempt to have the Captain of the Port Zones coincide with their respective Marine Inspection Zones, wherever possible, and have the regulations reflect this "zone" concept.

EFFECTIVE DATE: These amendments are effective on February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Lieutenant (jg) George W. Molessa, Jr., (G-WLE-4/73), Room 7315, Department of Transportation, Nassif Building, Washington, DC 20590, (202) 426-4958.

SUPPLEMENTARY INFORMATION: Since this amendment is purely editorial and no substantive provision of the regulations, which concern agency organization, is being changed, it is unlikely that the public would have any substantive comment. Accordingly, delaying this rulemaking in order to provide for notice and comment is considered unnecessary. Since there is no substantive change the amendment may be made effective in less than 30 days after publication in the FEDERAL REGISTER.

(5 U.S.C. 553)

The Coast Guard has evaluated this final rule under the Department of Transportation Policies for Improving Government Regulations published on March 8, 1978 (43 FR 9582). Since this rule is an editorial change, no adverse economic or environmental impacts are anticipated.

DRAFTING INFORMATION

The principal persons involved in the drafting of this regulation are: Lieutenant (jg) George W. Molessa, Jr., Project Manager, Office of Marine Environment and Systems, and Lieutenant G. S. Karavitis, Project Attorney, Office of the Chief Counsel.

In consideration of the foregoing, Part 3 of Title 33 of the Code of Federal Regulations is amended as follows:

1. By deleting the words "CAPTAIN OF THE PORT AREAS" and inserting in their place the words "CAPTAIN OF THE PORT ZONES" in the title of Part 3.

2. By deleting the words "Captain of the Port Area" and inserting in their place the words "Captain of the Port

Zone" in each of the following section headings:

3.40-25
3.55-10
3.55-15
3.60-50
3.60-55
3.60-60
3.65-15

3. By adding the word "Zone" after the words "Captain of the Port" in each of the following section headings:

3.05-10
-15
-20
3.10-55
-60
-65
-70
-75
-80
-85
-90
-95
3.15-15
-25
-55
-57
-60
3.25-10
-15
-20
3.35-10
-15
-20
-25
-30
-35
3.40-15
-20
-30
-35
3.45-55
-60
-65
-70
-75
-80
-85
-95
-97
3.65-10
3.70-10
-15
3.85-10
-15
-20

4. By deleting the words "Captain of the Port Area" and inserting in their place the words "Captain of the Port Zone" in each of the following paragraphs:

3.05-10(b)
-15(b)
-20(b)
3.10-55(b)
-60(b)
-65(b)
-70(b)
-75(b)
-80(b)
-85(b)
-90(b)
-95(b)
3.15-15(b)
-25(b)
-55(b)
-57(b)
-60(b)
3.25-10(b)
-15(b)
-20(b)
3.35-10(b)
-15(b)
-20(b)
-25(b)
-30(b)
-35(b)
3.40-10(b)
-15(b)
-20(b)
25(b)
-30(b)
-35(b)
3.45-55(b)
-60(b)
-65(b)
-70(b)
-75(b)
-80(b)
-85(b)
-95(b)
-97(b)
3.55-10(b)
-15(b)
3.60-50(b)
-55(b)
-60(b)
3.65-10(b)
-15(b)
3.70-10(b)
-15(b)
3.85-10(b)
-15(b)
-20(b)

5. By revising the section heading of § 3.40-10 to read as follows:

§ 3.40-10 Mobile Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(80 Stat. 937; 49 U.S.C. 1655(b); 49 CFR 1.45, 1.46)

February 15, 1979.

J. B. HAYES
Admiral, U.S. Coast Guard
Commandant.

[FR Doc. 79-5644 Filed 2-23-79; 8:45 am]

[4910-14-M]

[CCGD3-79-1-R]

PART 127—SECURITY ZONES

Establishment of Security Zone in Hudson River, New York, N.Y.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Coast Guard's Security Zone Regulations establishes a portion of the waters of the Hudson River in New York, New York as a security zone. This security zone is established to safeguard the 30th Street Heliport and surrounding waters during the visit of the President of the United States to New York City. No vessel may enter or remain in a security zone without the permission of the Captain of the Port.

EFFECTIVE DATE: February 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Captain J. L. Fleishell, Captain of the Port, New York, Building 109, Governors Island, New York, New York 10004, (212) 668-7917.

SUPPLEMENTARY INFORMATION: This amendment is issued without publication of a notice of proposed rule making and this amendment is effective in less than 30 days from the date of publication because the short time between scheduling of the event and its occurrence made such procedures impracticable. Local public notice has been given.

Drafting Information: The principal persons involved in drafting this rule are: Lieutenant Junior Grade E. L. Ristaino, Project Manager, Captain of the Port, New York, New York; and Commander J. L. Walker, Project Attorney, Legal Office, Third Coast Guard District, New York, New York.

In consideration of the foregoing, Part 127 of Title 33 of the Code of Federal Regulations is amended by adding § 127.364 to read as follows:

§ 127.364 Hudson River, New York, N.Y.

The waters of the Hudson River, New York within 400 yards of the 30th Street Heliport are a security zone from 9:30 a.m., E.S.T., February 2, 1979, to 1:00 p.m., E.S.T., February 2, 1979.

(Sec. 1, 40 Stat. 220, as amended (50 U.S.C. 191); 63 Stat. 503 (14 U.S.C. 91); sec. 6(b)(1), 80 Stat. 937 (49 U.S.C. 1655)(b)(1); E.O. 10173, E.O. 10277, E.O. 10352, E.O. 11249; 3 CFR, 1949-1953 Comp. 356, 778, 873, 3 CFR, 1964-1965 Comp. 349 (33 CFR Part 6) (49 CFR 1.46(b))

Dated: February 9, 1979.

J. L. FLEISHELL,
Captain, U.S. Coast Guard,
Captain of the Port, New York.

[FR Doc. 79-5641 Filed 2-23-79; 8:45 am]

[4910-14-M]

[CGD 11-79-03]

PART 165—SAFETY ZONES

Establishment of Safety Zone Around LPG Vessel MONGE 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 MONGE during the period of its arrival, transit, mooring and cargo transfer of liquefied petroleum gas in the waters of Los Angeles Harbor. This zone has been instituted to provide an exceptional degree of safety and control for the duration of this operation from the estimated time of arrival on February 11, 1979 until approximately February 15, 1979.

EFFECTIVE DATE: This amendment becomes effective on February 11, 1979 and remains in effect until the vessel departs Los Angeles Harbor or until February 15, 1979, whichever is earlier.

FOR FURTHER INFORMATION CONTACT:

ENS J. T. Roosen, Port Operations Officer, Captain of the Port, Los Angeles-Long Beach, 165 N. Pico Ave., 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 165.2) 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 MONGE while it is anchored outside the middle breakwater or in Los Ange-

les 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 MONGE 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: ENS J. T. Roosen, 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 MONGE while it is anchored outside the middle breakwater in Los Angeles Harbor, or its 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 MONGE 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 MONGE while the vessel is moored at Berth 120 Los Angeles.

(92 Stat. 1475 (33 U.S.C. 1225); 49 CFR 1.46(n)(4))

Dated: February 8, 1979.

W. W. WHITE,
Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 79-5642 Filed 2-23-79; 8:45 am]

[1505-01-M]

Title 49—Transportation

CHAPTER I—RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, MATERIALS TRANSPORTATION BUREAU

[Docket No. HM-151A, Amdt. No. 172-50]

PART 172—HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

Label and Placard Colors

Correction

In FR Doc. 79-4694, appearing at page 9756, in the issue for Thursday, February 15, 1979, on page 9759 the following corrections should be made:

1. In Table 2, in the column "CIE data for source C", under the column "X", the third entry reading ".2219" should be changed to read ".2119";

2. In Table 3, under the column "Red", the last entry reading ".77" should be changed to read "7.7";

3. Directly beneath the signature, the file date reading "Filed 2-14-19" should be corrected to read "Filed 2-14-79".

proposed rules

[6750-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 792 3051]

FEDDERS CORP.

Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement would require Fedders Corporation, Edison, New Jersey 08817, to offer, without charge a replacement defrost cycle switch to all current owners of split system heat pumps manufactured by Fedders betweeen November, 1975 and June 1, 1978; to extend a full warranty on the sealed system of the heat pump until May 1, 1980 to those purchasers who elect installation of the new defrost switch; and to reimburse all past or current owners of the affected heat pumps for any repair to the sealed system of the unit for which the owner has paid. Fedders will mail notices to current and past owners of the affected heat pumps to let them know about the remedial program, and will advertise the program in national magazines if a sufficient number of owners cannot be reached by letters.

DATE: Comments must be received on or before April 24, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Robert S. Blacher, Attorney, Bureau of Consumer Protection/PE Division of Energy and Product Information, 7319-C Star Building, Washington, D.C. 20580, 202-724-1507.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted by the Commission, has been placed on the public record, for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

[File No. 792-3051]

FEDDERS CORPORATION AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

The Federal Trade Commission having initiated an investigation of certain acts and practices of Fedders Corporation, a corporation, and it now appearing that Fedders Corporation, a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Fedders Corporation, by its duly authorized officer and its attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Fedders Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Woodbridge Avenue, in the City of Edison, State of New Jersey.

2. Proposed respondent admits all the jurisdicational facts set forth in the draft of the complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

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

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

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of the complaint contemplated thereby and related material pursuant to Rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

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

6. By its final acceptance of this agreement, the Commission waives its right to commence a proceeding against the proposed respondent seeking restitution or other consumer redress under Section 19(a)(2) of the Federal Trade Commission Act, as amended, with respect to the same acts and practices alleged in the complaint regarding split system heat pumps as defined therein.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained

in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

I. *It is ordered,* That respondent Fedders Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, offering for sale, sale or distribution of split system heat pumps in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall forthwith:

1. Make available, without charge, to each distributor or dealer of respondent's split system heat pumps a sufficient quantity of time defrost system service kits, as described in respondent's Field Bulletin—Service dated June 5, 1978 (Publ. No. 23-65-0037N-001), to replace, as necessary pursuant to this Order, the air pressure defrost cycle switches on split system heat pumps sold or distributed by respondent, and offer reasonable reimbursement for labor costs to each distributor or dealer for installation of the time defrost system service kits;

2. Offer to each current owner of a split system heat pump the option to have installed, without charge for parts or labor, the time defrost system service kit described in paragraph one (1) of this Section, and install such time defrost system service kit without charge for parts or labor, within ninety (90) days after receiving notice from such current owner that the owner has elected installation of the time defrost system. Each such current owner shall be sent, within ten (10) days after the date this Order becomes final, pursuant to the procedures set forth in Section II of this Order, notice of the option provided by this paragraph and a pre-addressed, postage-paid card by which to elect installation of the time defrost system. The notice of the option provided by this paragraph shall be as set forth in Appendix (A) of this Order. The card by which to elect installation of the time defrost system shall be as set forth in Appendix (B) of this Order. Failure of any current owner or addressee to whom such notice has been mailed, and which has not either been returned as undeliverable or notice of non-delivery provided by the postal service, to return such card within sixty (60) days of the date of mailing shall be considered an election not to have the time defrost system service kit installed;

3. Extend to each current owner of a split system heat pump who, pursuant to paragraph two (2) of this Order, elects to have installed the time defrost system service kit, and to each current owner of a split system heat pump to whom notice of the option provided by paragraph two (2) of this Order has not been mailed or has been mailed pursuant to Sections II (A) or (B) and has either been returned as undeliverable or notice of non-delivery provided by the postal serive, a "full warranty" that meets the Federal minimum standards for warranty set forth in, and otherwise complies with, the Magnuson-Moss Warranty—Federal Trade Commission Improvements Act, 15 U.S.C. 2301 *et seq.,* and regulations promulgated thereunder. The warranty required by this paragraph shall cover any defect in material or workmanship of the hermetic system (including compressor) of the split system heat pump and shall be without charge for parts or labor. The warranty required by this paragraph shall be effective until May 1, 1980. Such warranty shall extend to any person to whom the split system heat pump is transferred during the duration of the warranty. Each current owner of a split system heat pump shall be sent, within ten (10) days after the date this Order becomes final, pursuant to the procedures set forth in Section II of this Order, a copy of the warranty required by this paragraph. The warranty shall be as set forth in Appendix (C) of this Order;

4. Provide to all owners of split system heat pumps reimbursement for all payments, incurred by such owners from date of installation of such split system heat pump until ninety (90) days after the date this Order becomes final, in connection with any repair to the hermetic system (including compressor) of such split system heat pump. Reimbursement shall be for all such payments, covering both parts and labor. Notice of the right to reimbursement shall be provided to all past or current owners of split system heat pumps and shall be mailed pursunt to the procedures set forth in Section II of this Order. The notice of the right to reimbursement shall be as set forth in Appendix (A) of this Order. Proof of entitlement to reimbursement shall be by affidavit, as set forth in Appendix (D) of this Order, accompanied by either (1) a cancelled check, or (2) an invoice, receipt, work order, purchase order, or similar document which gives evidence that the repair was made and paid for by the owner. The respondent shall pay, without further verification and without dispute, within forty-five (45) days after receipt, any claim for reimbursement where the proof of entitlement required by this paragraph has been provided. The respondent need not pay any claim for reimbursement under this paragraph if mailed later than sixty (60) days after such owner or addressee has been mailed notice of the right to reimbursement which has not been either returned as undeliverable or notice of non-delivery provided by the postal service.

II. A. *It is further ordered,* That respondent shall mail, within ten (10) days after the date this Order becomes final, to all owners of split system heat pumps who can be identified through respondent's dealer-distributor network, the following "consumer notice" package:

1. The letter as set forth in Appendix (A) of this Order providing notice of the right to have installed the time defrost system service kit, the extended full warranty on the hermetic system (including compressor), and the right to reimbursement for repair payments, as provided in paragraphs 2, 3, and 4 of Section I of this Order;

2. A pre-addressed, postage-paid card by which the current owner may elect installation of the time defrost system service kit pursuant to paragraph two (2) of Section I of this Order, as set forth in Appendix (B) of this Order;

3. A copy of the extended full warranty on the hermetic system (including compressor) pursuant to paragraph (3) of Section I of this Order, as set forth in Appendix (C) of this Order;

4. An affidavit for proof of entitlement to reimbursement for repair payments pursuant to paragraph four (4) of Section I of this Order, as set forth in Appendix (D) of this Order.

The "consumer notice" package shall be sent by third class, bulk rate, metered mail with the words "ADDRESS CORRECTION REQUESTED" and "RETURN POSTAGE GUARANTEED" printed in red ink on white background in 12-point boldface type in the upper left hand corner of the envelope. The return mailing address of the respondent shall also be printed in the upper left hand corner of the envelope. The envelope shall also prominently display in 12-point extra boldface type, printed in Cheltenham, Antique, Bodoni or Helvetica lettering, in red ink on white background, the words:

SPECIAL CONSUMER NOTICE

OUR RECORDS SHOW THAT YOU OWN (or used to own) A FEDDERS [CLIMATROL] HEAT PUMP. The defrost switch may need repair. Fedders [Climatrol] will fix it free, *and may pay you back for some past repairs. Details inside.*

B. *It is further ordered,* That respondent shall, for each "consumer notice" package mailed pursuant to subsection (A) above for which address correction has been provided by the postal service, mail, within ten (10) days after such correction has been received, by first class mail, the "consumer notice" package to:

1. The original address to which the "consumer notice" package had been mailed, with the name of the original addressee deleted, and substitute therefor "RESIDENT"; and

2. The corrected address provided by the postal service, with the name of the original addressee.

The envelope shall display, in the manner specified in subsection (A) above, the words:

SPECIAL CONSUMER NOTICE

OUR RECORDS SHOW THAT YOU OWN (or used to own) A FEDDERS [CLIMATROL] HEAT PUMP. The defrost switch may need repair. Fedders [Climatrol] will fix it free, *and may pay you back for some past repairs. Details inside.*

C. *It is further ordered,* That respondent shall, within thirty (30) days after the date this Order becomes final, file with the Commission a copy of the mailing list of owners of split system heat pumps to whom the "consumer notice" package has been mailed pursuant to subsection (A) above and has not been returned, and a copy of a receipt from the postal service showing the total number of pieces received for mailing.

D. *It is further ordered,* That respondent shall, within ninety (90) days after the date the Commission or its representative notifies respondent of the manner of selecting addresses to be inspected, conduct an on-site inspection at one (1) percent of the addresses to which the "consumer notice" package has been mailed pursuant to subsection (A) above and has not been returned in order to verify that such addressee is in possession of a split system heat pump. The addresses to be inspected shall be chosen at random in a manner selected by the Commission or its representative. Any mailing to an address selected for inspection which is returned during the inspection period shall be taken off the list of addresses to be inspected without necessity of substitution, and shall not be included in the calculations pursuant to Section III(A). The results of such inspections shall be filed with the Commission in the form of an affidavit, signed by an officer of the respondent, within ninety (90) days after the date of the Commission or its representative notifies respondent of the manner of selecting addresses to be inspected. The affidavit shall show the total number of inspections and the total number of addressees who are not in possession of a split system heat pump. The affidavit shall show the name from the mailing list and address for each site inspected. The affidavit shall also show the number of mailings returned as specified in Sections III(A)(2) and (3).

III. A. *It is further ordered,* That respondent shall, within twenty (20) days after the date the Commission or its representative notifies it of a failure to mail the "consumer notice" package to ninety (90) percent of the current owners of split system heat pumps, place for first available publication, in the national editions of the periodicals in Appendix (E) of this Order, in a size of not less than one-half (½) page, or two (2) full columns if half-page is unavailable, of the periodical in which the advertisements are inserted, both of the "recall advertisements" as set forth in Appendices (F) and (G) of this Order in the style, type, and format as depicted therein.

Provided, however, That the recall advertisements ordered pursuant to this Section shall not be required if respondent mails the "consumer notice" package pusuant to Section II(A) to ninety (90) percent of the current owners of split system heat pumps. The percentage of current owners to whom notice has been mailed shall be calculated on the basis of:

1. The number of mailings pursuant to Section II(A) as evidenced by the receipt from the postal service showing the total number of pieces received for mailing as required by Section II (C); *minus*

2. The number of mailings pursuant to Section II(A) that were returned as undeliverable with no address correction provided by the postal service and that were not mailed again to "Resident" as provided in Section II(B)(1); *minus*

3. The number of mailings returned as undeliverable that were mailed pursuant to Section II(B)(1); and *minus*

4. The number of addressees who are not in possession of a split-system heat pump based on projection from the sample of on-site inspections carried out pursuant to Section II(D) of this Order. Those not now in possession of a split system heat pump shall be presumed not to have possessed such a unit since November 1, 1975, unless the respondent can establish otherwise. It is hereby agreed that the margin of error for this sampling is five (5) percent.

A sample calculation pursuant to this Section is set forth in Appendix (H) of this Order.

B. *It is further ordered,* That respondent shall mail the "consumer notice" package as set forth in Section II(A) to any owner of split system heat pumps who responds within three (3) months of the last publication of any advertisement required by this Section.

IV. For purposes of this Order:

1. "Split system heat pumps" shall mean a central residential heating/cooling air conditioner having a condenser section installed out-of-doors which includes an air pressure defrost cycle switch and a matching evaporator section installed in-doors manufactured by Fedders Corporation between November 1, 1975, and June 1, 1978, under the brand names "FEDDERS MODEL CKH" or "CLIMATROL".

2. "Current owners" shall include all persons who own or are in possession of split system heat pumps as of the date this Order becomes final (but not including dealers or distributors), and shall not be limited to original purchasers.

"Owners" and "past owners" shall also not be limited to original purchasers, and shall also not include dealers or distributors.

3. "Hermetric system" or "sealed system" shall mean the compressor, condenser, evaporator, reversing valve and interconnecting tubing.

V. A. *It is further ordered,* That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

B. *It is further ordered,* That respondent shall maintain all records that relate to any compliance obligations arising out of this Order for a period of not less than three (3) years and shall make such records available to the Commission or its representative upon request.

C. *It is further ordered,* That the respondent herein shall within two hundred (200) days after service upon them of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

APPENDIX (A): [CONSUMER NOTICE]

SPECIAL CONSUMER NOTICE

DEAR FEDDERS [CLIMATROL] HEAT PUMP OWNER: Our records show that you own, or used to own, a Fedders [Climatrol] Heat Pump. On some of these units, the defrost switch may need repair. Some of these units have been freezing up due to extremely cold and damp weather.

ONLY SPLIT SYSTEM HEAT PUMPS HAVE THE PROBLEM

Take a look at your unit. If it's part indoors and part outdoors, it's a split system.

FEDDERS [CLIMATROL] WILL FIX YOUR HEAT PUMP. FREE.

We have a new defrost switch which we think will fix the problem. We will install it without charge. All you have to do is return the enclosed card marked "YES" and we will contact you to install the switch.

A NEW WARRANTY, TOO.

If you have the switch replaced, you'll get an extended *full* warranty that protects the sealed system of your heat pump until May 1, 1980. The warranty covers parts and labor. It is in addition to the warranty you received when you purchased your heat pump. A copy of the warranty is enclosed. If you do not elect to install this switch, your original warranty will continue to apply.

WHAT YOU MUST DO

You *must* return the enclosed card to have the defrost cycle switch replaced. If you do not return the card, you will not get this warranty.

PAID FOR REPAIRS? FEDDERS [CLIMATROL] PAYS YOU BACK.

If you have already paid for repairs to the sealed system, we will pay you back. *Even if you no longer own the unit or the home in which it is installed,* we will still pay you back.

This includes repairs to the sealed system only. Included are the compressor, condenser, evaporator, reversing valve and interconnecting tubing.

You must fill out the enclosed affidavit. Attach proof that you paid for repairs. A cancelled check will do. Even better proof is some kind of receipt that shows repairs were made and you paid for them. The affidavit has full instructions. You must have the affidavit notarized. Most banks have a notary public who will do this for about 50 cents.

ACT NOW. You must return the enclosed card within sixty (60) days. And, if you have paid for repairs, you must return the enclosed affidavit within sixty (60) days for us to pay you back. The sixty (60) days starts to run from the date we *mailed* you this letter. So don't delay.

If you have any questions, you can call us during business hours at (201) 494-8802.

Sincerely,

CONSUMER AFFAIRS DEPARTMENT, FEDDERS CORP. [CLIMATROL SALES CO.], EDISON, N.J. 08817.

APPENDIX (B): [Card by which to elect installation of the defrost system service kit]

PLEASE TYPE OR PRINT CLEARLY

Name ———————————

Address ———————————

(Street)

———————————

(City) (State) (Zip Code)

Telephone ( )———————

MARK ONE:

( ) *Yes.* I want the *free* switch replacement and the extended full warranty on the sealed system.

( ) No. I do not want the switch replacement. I understand that I will not get the extended warranty.

If you have already had the switch replaced, please mark *Yes* and put a mark here, too. ( ) If you have already had the switch replaced, the switch will not be replaced again but you do get the extended warranty. If you are not sure whether the switch was replaced, call your local Fedders [Climatrol] dealer or repair company.

APPENDIX (C): [Extended Full Warranty]

EXTENDED FULL WARRANTY ON "SEALED SYSTEM" UNTIL MAY 1, 1980

WHAT IS COVERED

This warranty is for "split system" heat pumps. It covers the sealed system of the heat pump. This includes the compressor, condenser, evaporator, reversing valve and interconnecting tubing.

WHAT WE PROMISE

Fedders will repair or replace any part of the sealed system that is defective. You will not be charged for parts, labor, or anything else. If we are unable to fix the sealed system of your heat pump after a reasonable number of attempts, you have a right to a full refund or a free replacement of the heat pump.

WHAT IS NOT COVERED

This warranty does not include consequential or incidental damages *except* damage to any part of the heat pump that results from any defect covered by this warranty. *Some states do not allow the exclusion or limitation of consequential or incidental damages, so the above limitation or exclusion may not apply to you.*

HOW LONG THIS WARRANTY LASTS

Until May 1, 1980. Implied warranties on the sealed system of your heat pump will run for as long as is provided by state law starting from the date your original written warranty became effective.

WHO IS COVERED

You and anyone to whom you sell your heat pump before May 1, 1980.

WHAT YOU MUST DO

You *must* return the enclosed card to have the defrost cycle switch replaced. This replacement is free. If you do not return the card, you will not get this warranty. This warranty starts the day you mail the enclosed card.

For service under this warranty, contact your local Fedders [Climatrol] Authorized Service Company. Your dealer can give you the name and address of the one nearest you. Or call (800) 882-6500 for this information. This call is free, and is available 24 hours a day, 7 days a week.

If the Fedders [Climatrol] Authorized Service Company has not solved the problem, please contact us by mail or call during business hours.

CONSUMER AFFAIRS DEPARTMENT, FEDDERS CORP. [CLIMATROL SERVICE CO.], EDISON, N.J. 08817, TELEPHONE (201) 494-8802.

THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

APPENDIX (D): [Affidavit for proof of entitlement of reimbursement for repair payments pursuant to paragraph four (4) of Section I]

AFFIDAVIT

Name ———————————

Address ———————————

(Street)

———————————

(City) (State) (Zip Code)

Telephone ( )———————

1. I own (or owned) a *Fedders* [Climatrol] heat pump. It is a split system heat pump. Part of the heat pump is outdoors. And part of it is indoors.

2. The model number of my heat pump is————. The serial number of my heat pump is————.

NOTE.—Both of these numbers can be found on a metal plate on the cabinet of the part of your unit that is outdoors.

3. I swear (or affirm) that I have paid for *repairs* to the *sealed system* of my heat pump. This includes repair or replacement of the compressor, condenser, evaporator, reversing valve and interconnecting tubing. This includes only repairs or replacement of such parts. NOT included is routine maintenance.

4. ATTACH A COPY OF THE CANCELLED CHECK *OR* RECEIPT SHOWING THAT YOU PAID FOR REPAIRS. ATTACH A COPY OF ANYTHING YOU HAVE THAT SHOWS WHAT REPAIRS WERE MADE AND THAT *YOU* PAID FOR THE REPAIRS.

We will only pay you back if you attach a cancelled check *or* receipt.

If you have lost your receipt, try to get a copy from the person or company that made the repair.

FOR FASTEST REPAYMENT, ATTACH A CANCELLED CHECK *AND* A RECEIPT.

5. I have not signed a release or received any payment or reimbusement or made any other settlement with Fedders [Climatrol], any of its companies or representatives, any insurance company or anyone else in connection with the claim for reimbursement now made.

All of the above information is true and correct to the best of my knowledge.

Dated:————.

————,

Signature.

Subscribed and sworn to before me this——day of————, 1978.

————,

(Notary Public)

APPENDIX (E): [List of periodicals in which both "recall advertisements" as required by Section III of this Order shall be inserted for publication.]

1. Better Homes & Gardens.
2. Newsweek.
3. Parade Magazine.
4. Sports Illustrated.
5. T.V. Guide.

[6750-01-C]

APPENDIX (F): [FEDDERS RECALL ADVERTISEMENT]

Special Consumer Notice

Fedders Free Heat Pump Fix-up

The problem. Some of our split system heat pumps may be failing from the effects of extremely cold and damp weather.

Only split system heat pumps have the problem. Look at your unit. If it's part indoors and part outdoors, it's a split system.

Fedders will fix it. Free. We have a new switch to fix the problem. No charge. Call us.

A new warranty, too. Call us to have the switch replaced. If you do, you'll get an extended full warranty that protects the sealed system of your heat pump until May 1, 1980. The warranty covers parts and labor.

Paid for repairs? Fedders will pay you back. If you have already paid for repairs resulting from this problem, Fedders will pay you back. Even if you no longer own the unit or the home in which it is installed, you may still qualify. Call us.

Call for details. Fedders wants to do things right. Call us. Toll Free. 800-000-0000

FEDDERS
Consumer Affairs Department
Edison, NJ 08817

APPENDIX (G): [CLIMATROL RECALL ADVERTISEMENT]

Special Consumer Notice

Climatrol Free Heat Pump Fix-up

The problem. Some of our split system heat pumps may be failing from the effects of extremely cold and damp weather.

Only split system heat pumps have the problem. Look at your unit. If it's part indoors and part outdoors, it's a split system.

Climatrol will fix it. Free. We have a new switch to fix the problem. No charge. Call us.

A new warranty, too. Call us to have the switch replaced. If you do, you'll get an extended full warranty that protects the sealed system of your heat pump until May 1, 1980. The warranty covers parts and labor.

Paid for repairs? Climatrol will pay you back. If you have already paid for repairs resulting from this problem, Climatrol will pay you back. Even if you no longer own the unit or the home in which it is installed, you may still qualify. Call us.

Call for details. Climatrol wants to do things right. Call us. Toll Free.
800-000-0000

Climatrol®
Consumer Affairs Department
Edison, NJ 08817

APPENDIX (H): [Sample calculation, pursuant to Section III(A), of percentage of current owners to whom notice has been mailed]

EXAMPLE

A. Total number of split system heat pumps sold to owners as of the date this Order becomes final = 35,000

B. Number of mailings pursuant to Section II(A) = 34,250

C. Number undeliverable after both mailings (See Sections III(A)(2) and III(A)(3) = 1,000

D. Number of addresses inspected pursuant to Section II(D) = 332

E. Number of addresses inspected which do not have split system heat pump = 33

Formula: $\frac{B - C}{A} \times 100 = X\%$

$\frac{E}{D} \times 100 = Y\%$

X% - Y% + 5% [margin of error] = percentage of current owners

$\frac{34,250 - 1,000}{35,000} \times 100 = 95\%$

$\frac{33}{332} \times 100 = 9.9\%$

95% - 9.9% + 5% [margin of error] = 90.1%

Percentage of current owners to whom notice has been mailed = 90.1%

[6750-01-M]

FEDDERS CORP.

[File No. 792 3051]

ANALYSIS OF PROPOSED ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Fedders Corporation, Edison, New Jersey under Section 5 of the FTC Act.

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

I. *Introduction.* This matter concerns split system heat pumps manufactured by Fedders Corporation between the dates of November 1975 and June 1, 1978. The heat pumps were sold under the *Fedders* and *Climatrol* brand names. A "split system" heat pump is a unit where part of the system is installed outdoors, and part of the unit is installed inside the home.

The Commission has received a number of complaints from owners of Fedders split system heat pumps. Owners have reported an unusally high incidence of compressor failures. The heat pumps were sold with a one year limited parts and labor warranty on the entire unit, and a five year limited warranty on the compressor covering parts only. The compressors have been failing during the first year of ownership and thereafter. In their letters, owners said that labor charges in connection with compressor replacements after the first year have sometimes been as high as $200-$400.

The cause of the high incidence of compressor failures has been traced to a switch that regulates the defrost cycle of the heat pumps. Any heat pump will build up ice in the compressor section. The unit must automatically defrost this ice or the compressor will eventually become damaged. The affected Fedders heat pumps were equipped with an air pressure defrost cycle switch which triggered the onset of the defrost cycle. The complaint alleges that the air pressure switch allowed excessive ice to form, resulting in damage to the sealed system of the heat pumps. The compressor is the major part of the sealed system. A new defrost control switch which operates on a timing principle is available and will be installed by Fedders to prevent future sealed system damage.

II. *The Proposed Complaint.* The proposed Section 5 complaint contains the following charges of unfair or deceptive acts or practices:

1. Paragraph Six charges that Fedders, by offering its split system heat pumps for sale, represented, directly or by implication, that its heat pumps did not have any latent defect which would substantially affect their reliability, durability or performance. Paragraph Seven charges that, in fact, a significant number of the heat pumps sold did suffer failure of the sealed system. Therefore, the representations referred to in Paragraph Six were unfair or deceptive.

2. Paragraph Five charges that Fedders knew of the defective defrost cycle switch on or before February 23, 1978. Paragraph Eight charges that Fedders, after becoming aware of the defect, continued to sell its heat pumps without disclosing the defect to potential purchasers. The complaint alleges that potential purchasers would likely have been affected in their decision whether to by a Fedders split system heat pump if they had been told of the defect. The defect, therefore, was a material fact, and the failure to disclose this fact is charged to be unfair or deceptive.

Paragraph Eight also charges that failure to notify *current owners* of the heat pumps with the defective switch resulted in substantial economic harm to these owners. It is alleged that current owners, without being told of the defective switch, could not prevent damage to their heat pumps and could not avoid paying for unnecessary repairs that did not fix the problem. Failure to disclose the facts about the defrost switch to current owners is alleged to be unfair or deceptive.

III. *The Proposed Consent Order.* Under the proposed order, Fedders Corporation will do the following to remedy the problem with its split system heat pumps:

1. The company will offer the replacement defrost cycle timing switch to all current owners of the affected heat pumps. The new switch will be installed without charge for parts or labor for any owner who returns a pre-addressed, postage-paid card electing installation of the new switch.

2. Any current owner who decides to have the new switch installed will be extended a *full* warranty on the sealed system of the heat pump until May 1, 1980. A copy of the warranty is attached to the Order.

3. Fedders will pay back any past or current owner who paid for repairs to the sealed system of their heat pump. The owner must fill out an affidavit saying that repairs to the sealed system were paid for by the owner, and must attach either a cancelled check or a receipt showing that the repairs were made and paid for. The company has agreed not to dispute any claims for reimbursement where the affidavit plus a cancelled check *or* receipt are mailed to Fedders by the owner.

The company will mail a letter to every past or current owner it can locate telling the owner what Fedders has agreed to do and what the owner must do. The letter the company will send is attached to the proposed order, and the order sets forth procedures for mailing the letters so that as many owners as possible will receive notice of the program by letter.

However, if 90% of the current owners of *Fedders* or *Climatrol* split system heat pumps cannot be located by letter, the company will run advertisements in five national magazines as an additional way of letting owners know about the new switch, the extended warranty, and the reimbursement program. The order sets forth a procedure for checking how many letters have been correctly mailed and for calculating the percentage of owners to whom Fedders has mailed notice. If necessary, the company will run two advertisements in each magazine: one for *Fedders* and one for *Climatrol*. The advertisements that will be used, if necessary, are attached to the order, and the magazines are also identified.

The order also contains definitions, and standard notification of corporate change, recordkeeping, and compliance report requirements.

IV. *The Proposed Consent Agreement.* The agreement is standard except for Paragraph 6. In this paragraph, the Commission would waive its right to seek further relief under Section 19 of the FTC Act with regard to the same acts and practices alleged in the complaint regarding split system heat pumps as defined in the complaint. Section 19 gives the Commission authority to seek consumer redress in Federal court. The right to seek consumer redress is waived by the Commission in this case because all relief obtainable under Section 19 has been obtained in this consent agreement.

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

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-5626 Filed 2-23-79; 8:45 am]

[6750-01-M]

[16 CFR Part 453]

FUNERAL INDUSTRY PRACTICES

Oral Presentation Announcement

AGENCY: Federal Trade Commission.

ACTION: Announcement of the convening of an oral presentation before the Federal Trade Commissioners. Placement on the rulemaking record of the following documents: A staff summary of post-record comments; the final views of the Director of the Bureau of Consumer Protection; a memorandum from the Bureau of Economics; and two staff memoranda.

SUMMARY: The Federal Trade Commission has decided to hold an oral presentation before the Commissioners in the trade regulation rule proceeding concerning Funeral Industry Practices (40 FR 39901, Aug. 29, 1975) and has invited fourteen parties to participate. The Commission has placed on the rulemaking record a staff summary of the comments filed by the public on the final reports of the staff and the presiding officer. The Commission has placed on the rulemaking record the final views of the Director of the Bureau of Consumer Protection. In addition, the Commission has placed on the rulemaking record a memorandum from the Bureau of Economics and two staff memoranda. One memorandum is from some of the present rulemaking staff and they recommend revising the rule proposed in the final staff report (released on June 21, 1978, 43 FR 26588). The other memorandum is written by some of the staff who wrote the final staff report, and it supports the rule recommended in the report.

DATES: Oral presentation scheduled for Tuesday, February 27, 2:00 p.m., and Wednesday, February 28, 9:30 a.m.

ADDRESS: Oral presentation will be held in Room 432 of the Federal Trade Commission Building, Sixth and Pennsylvania Avenue, NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Michael Rodemeyer, Federal Trade Commission, Room 259, address above, 202-523-3652.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission has decided to convene an oral presentation before the Commission in the rulemaking proceeding concerning Funeral Industry Practices. Pursuant to § 1.13(i) of the Commission's rules of practice, the Commission has invited the following to participate in the oral presentation:

1. U.S. Small Business Administration.
2. Congressman Marty Russo.
3. New York State Consumer Protection Board.
4. National Funeral Directors Association.
5. National Selected Morticians.
6. Americans for Democratic Action/National Council of Senior Citizens.
7. National Funeral Directors and Morticians Association.
8. California Citizens Action Group.
9. New York Public Interest Research Group.
10. International Order of the Golden Rule.
11. Cremation Association of North America.
12. Pre-Arrangement Interment Association of America.
13. American Association of Retired Persons/National Retired Teachers Association.
14. Continental Association of Funeral and Memorial Societies.

Oral presentations must be restricted to evidence already in the rulemaking record in this proceeding. It is anticipated that participants will be permitted no more than 30 minutes to address comments to the Commission and to respond to questions.

However, the Commission reserves the right to limit or expand the amount of time allotted for comment as it deems necessary. Staff will also be present to respond to specific questions posed by the Commissioners.

The Commission believes that the above listed groups, persons, and organizations, who have participated in the prior stages of this proceeding, adequately represent the interests affected by the proposed rule and would be likely to assist the Commission in its consideration of the proposed rule. Other parties' requests to participate have been denied.

The oral presentation before the Commission will be held on Tuesday, February 27, 1979, and Wednesday, February 28, 1979, in Room 432, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, D.C., 20580. The meeting will be open to the public in accordance with Commission Rule § 4.15(b).

By direction of the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-5639 Filed 2-23-79; 8:45 am]

[4910-14-M]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 117]

[CGD 78-167]

DRAWBRIDGE OPERATION REGULATIONS

Atlantic Intracoastal Waterway, Atlantic Beach, N.C.

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the North Carolina Department of Transportation the Coast Guard is considering amending the regulations for the Atlantic Beach bridge, mile 206.7, Atlantic Intracoastal Waterway by extending the period when bridge openings are restricted. This change is being considered because of a significant increase in vehicular traffic during the period under consideration. This action should improve the flow of vehicular traffic while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before March 26, 1979.

ADDRESS: Comments should be submitted to and are available for examination at the office of the Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23705.

FOR FURTHER INFORMATION CONTACT:

Frank L. Teuton, Jr. Chief, Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-0942).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rule making by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Fifth Coast Guard District, will forward any comments received with his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, Washington, D.C., who will evaluate all communications received and recommend a course of final action to the Commandant on this proposal. The proposed regulations may be changed in the light of comments received.

DRAFTING INFORMATION: The principal persons involved in drafting this proposal are: Frank L. Teuton, Jr., Project Manager, Office of Marine Environment and Systems, and Mary Ann McCabe, Project Attorney, Office of Chief Counsel.

DISCUSSION OF THE PROPOSED REGULATIONS

As a result of a significant increase in vehicular traffic on weekends and holidays from March 15 through April 30, the North Carolina Department of Transportation has requested the Coast Guard to amend the regulations governing the Atlantic Beach bridge to allow restricted bridge openings during this period on Saturdays, Sundays, and holidays. Present regulations restrict bridge openings on these days beginning on May 1 each year. It is the purpose of this document to solicit comments from interested or affected parties.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended by revising paragraph (a)(1) of § 117.355 to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.355 Bogue Sound (Atlantic Intracoastal), N.C., North Carolina State Highway Commission Bridge at Atlantic Beach.

(a) * * *

(1) From March 15 through June 14, on Saturdays, Sundays, and Federal holidays, from 1 p.m., to 7 p.m., the draw need open only on the hour for the passage of any accumulated vessels.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5)).

Dated: February 14, 1979.

J. B. HAYES,
Admiral, U.S. Coast Guard Commandant.

[FR Doc. 79-5643 Filed 2-23-79; 8:45 am]

[4910-59-M]

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 71-3a; Notice 5; Docket No. 70-07; Notice 6]

FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Fields of Direct View, Rearview Mirror Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Proposed rules, extension of period for public comment.

SUMMARY: This notice responds to twelve petitions for extension of the period for written comments on notices of proposed rulemaking concerning rearview mirror systems and fields of direct view. The comment closing date is changed from March 6, 1979, to April 17, 1979, for comments on the proposed passenger car requirements and from March 6, 1979, to May 29, 1979, for comments on the proposed requirements for all other vehicles.

DATES: Comments on the proposed passenger car requirements must be received on or before April 17, 1979, and comments on the proposed requirements for all other vehicles must be received on or before May 29, 1979.

ADDRESS: Comments should be submitted to: Docket Section, Room 5108, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Charles Kaehn, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-1351).

SUPPLEMENTARY INFORMATION: On November 6, 1978, the NHTSA issued a notice proposing to amend Federal Motor Vehicle Safety Standard No. 111 (49 CFR 571.111) and a notice proposing a new standard to establish performance requirements for the direct field of view in vehicles (43 FR 51657 and 43 FR 51677, respectively). A comment period of 120 days, until March 6, 1979, was specified for the two proposals. The agency has recently received twelve petitions seeking extensions of the comment period of 90 days for passenger cars and from 90 to 180 days for vehicles other than passenger cars. The petitioners (American Motors Corp., Blue Bird Body Co., Mack Trucks, Inc., Motor Vehicle Manufacturers Assoc., Porsche, School Bus Manufacturers Institute, Sheller-Globe Corp., Thomas Built Buses, Inc., Truck Safety Equipment Institute, United Kingdom Department of Transportation, United Nations Economic Commission for Europe's Group of Experts on the Construction of Vehicles and Wayne Corp.) stated that they need additional time to perform tests to evaluate the proposed performance requirements and develop comments. The agency has determined that a reasonable extension of the comment period is justified. Accordingly, the petitions are partially granted and the closing date for comments on the proposed requirements for passenger cars is extended until April 17, 1979, and the closing date for comments on the proposed performance requirements for vehicles other than passenger cars is extended until May 29, 1979. A longer comment period is set for vehicles other than passenger cars since manufacturers indicated that more time was needed for testing and analysis of those vehicles than for passenger cars. The agency requests that to the extent possible parties submit comments by the original closing date of March 6, 1979, on those portions of the proposals that do not require extensive testing to formulate comment, such as the procedures for measuring convex mirrors in the rearview mirror proposal and the procedures for measuring light transmittance in the direct field of view proposal.

Comments received by the new comment closing dates will be considered in developing the final rules on rearview mirror systems and direct fields of view. To the extent possible and consistent with the agency's schedule for issuing a final rule by late 1979, late comments will also be considered.

(Sec. 103, 112, and 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on February 21, 1979.

MICHAEL M. FINKELSTEIN,
Associate Administrator for Rulemaking.

[FR Doc. 79-5746 Filed 2-22-79; 3:05 pm]

[4910-62-M]

Office of the Secretary

[49 CFR Chapters I, II, III, IV, V and VI]

[OST Docket No. 58]

DELAY IN PUBLICATION OF DEPARTMENT REGULATIONS AGENDA AND REVIEW LIST

AGENCY: Department of Transportation.

ACTION: Notice of Delay in Publication of Department Regulations Agenda and Review List.

SUMMARY: The Department of Transportation semi-annually publishes in the FEDERAL REGISTER a Regulations Agenda and Review List containing a complete listing of all its pending and proposed regulatory actions. On October 2, 1978, it was announced in the FEDERAL REGISTER that the Department's next Regulations Agenda and Review List would be published on February 26, 1979. However, on February 18 and 19, Washington, D.C. was subjected to a severe snow storm, which forced the closing of Federal government offices and resulted in delays in government printing operations. Because of this, publication of the Department's Regulations Agenda and Review List will be delayed until the next scheduled day for publication of documents of the Office of the Secretary of Transportation, which is Thursday, March 1, 1979. Those who desire to have a copy of the Regulations Agenda and Review List mailed directly to them should contact Neil Eisner at the address or telephone number listed below.

FOR FURTHER INFORMATION CONTACT:

Neil Eisner, Assistant General Counsel, Office of Regulation and Enforcement, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 426-4723.

JOHN G. WOFFORD,
Acting General Counsel.

[FR Doc. 79-5822 Filed 2-23-79; 10:25 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-05-M]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

1979 WHEAT PROGRAM

Proposed Determination to Implement a Special Wheat Acreage Grazing and Hay Program

AGENCY: Agricultural Stabilization and Conservation Service.

ACTION: Proposed Determination.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1979 crop of wheat:

To implement for the 1979 crop of wheat, a special wheat acreage grazing and hay program. Such a program would be the same as for the 1978 crop of wheat except the payment rate would be equal to the 1979 wheat deficiency payment rate with no minimum payment, and no advance payments would be made.

This determination is made in accordance with provisions in section 109 of the Agricultural Act of 1949, as amended. This notice invites written comments on the proposed determination.

DATES: Comments must be received on or before March 8, 1979.

ADDRESSES: Acting Director, Production Adjustment Division, ASCS-USDA, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Bruce R. Weber (ASCS), (202) 447-7987.

SUPPLEMENTARY INFORMATION: The following determination with respect to the special wheat acreage grazing and hay program (hereinafter referred to as the "special program") is made pursuant to section 109 of the Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977 (Pub. L. 95-113).

Under the "special program", producers would be permitted to designate a portion of the acreage on the farm intended to be planted to wheat, feed grains (corn, barley and sorghum), and upland cotton for harvest, not in excess of 40 percent of the total aforementioned acreage or 50 acres, whichever is greater. Designated acreage must be planted to wheat and used by the producer for grazing purposes or hay rather than for commercial grain production. Producers must also comply with set-aside and Normal Crop Acreage (NCA) requirements on their farm (farms) in order to be eligible for the special program. Producers who elect to participate in the "special program" would receive a payment equal to the 1979 wheat deficiency payment rate (to be determined in December 1979) multiplied by the farm program payment yield times the number of acres designated in the "special program".

The "special program" was implemented for the 1978 crop of wheat. Nearly 1.2 million acres of wheat were designated under the program with payments totaling nearly $15 million. The payment rate under the 1978 program was equal to the higher of 50 cents per bushel or the 1978 wheat deficiency payment rate (52 cents, determined as of November 30, 1978). An advance payment equal to one-half of the minimum payment rate was made to producers at signup.

Prior to implementation of the proposed rule change, consideration will be given to any data, views, and recommendations that may be received relating to the above proposal.

Comments will be made available for public inspection at the Office of the Acting Director during regular business hours (8:15 a.m. to 4:45 p.m.).

The signup period for the 1979 wheat program began February 15 and ends April 30. In order to allow farmers sufficient time to base their program participation decisions on the proposed rule change, it is hereby found and determined that compliance with Executive Order 12044 and 5 U.S.C. 533 is impracticable and contrary to the public interest. Accordingly, comments must be received by March 8, 1979 in order to be assured of consideration.

NOTE.—This regulation has been determined not significant under USDA criteria implementing Executive Order 12044. The impact analysis statement will be available from Bruce R. Weber (ASCS), (202) 447-7987.

Signed at Washington, D.C. on February 22, 1979.

RAY FITZGERALD,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-5823 Filed 2-23-79; 10:25 am]

[6820-32-M]

ARMS CONTROL AND DISARMAMENT AGENCY

GENERAL ADVISORY COMMITTEE

Meeting

Notice is hereby given in accordance with Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I, (the Act) and paragraph 8b of Office of Management and Budget Circular No. A-63 (Revised March 27, 1974) (the OMB Circular), that a meeting of the General Advisory Committee (GAC) is scheduled to be held on March 8, 1979, from 9 a.m. to 6 p.m. and on March 9, 1979 from 9 a.m. to 6 p.m. at 2201 C Street, NW., Washington, D.C. in Room 7516.

The purpose of the meeting is for the GAC to receive briefings and hold discussions concerning arms control and related issues which will involve national security matters classified in accordance with Executive Order 12065, dated June 28, 1978.

The meeting will be closed to the public in accordance with the determination of February 6, 1978, made by the Director of the U.S. Arms Control and Disarmament Agency pursuant to Section 10(d) of the Act and paragraph 8d(2) of the OMB Circular that the meeting will be concerned with matters of the type described in 5 U.S.C. 552(b)(1). This determination was made pursuant to a delegation of authority from the Office of Management and Budget dated June 25, 1973, issued under the authority of Executive Order 11769 dated February 21, 1974.

Dated: February 21, 1979.

SIDNEY D. ANDERSON,
Advisory Committee Management Officer.

[FR Doc. 79-5640 Filed 2-23-79; 8:45 am]

[3510-24-M]

DEPARTMENT OF COMMERCE

Economic Development Administration

AEGIS TEXTILES, INC., ET AL.

Notice of Petitions by Seven Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from seven firms: (1) Aegis Textiles, Inc., 1 Passaic Street, Wood Ridge, New Jersey 07075, a producer of printed fabric (accepted February 5, 1979); (2) May Knitting Company, Inc., 131 West 33rd Street, New York, New York 10001, a producer of children's sweaters (accepted February 6, 1979); (3) Suntogs, Inc., 13930 N.W. 60th Avenue, Miami Lakes, Florida 33014, a producer of children's swim wear, shorts, shirts, pants, skirts and jumpers (accepted February 8, 1979); (4) Buckeye Sugars, Inc., 256 Williamstown Road, Ottawa, Ohio 45875, a refiner of sugar (accepted February 9, 1979); (5) Greene Manufacturing Corporation, 40 Washington Street, West Orange, New Jersey 07052, a producer of rubber gloves (accepted February 9, 1979); (6) Crystal Systems, Inc., 115 Industrial Parkway, P.O. Box 225, Chardon, Ohio 44024, a producer of quartz crystals (accepted February 13, 1979); and (7) Alco Metal Stamping Corp., 300 Butler Street, Brooklyn, New York 11217, a producer of handbag frames and ornaments (accepted February 13, 1979).

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

JACK W. OSBURN, Jr.,
Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc. 79-5623 Filed 2-23-79; 8:45 am]

[3510-24-M]

PROPOSED INLAND ENERGY IMPACT ASSISTANCE ACT OF 1979

Intent To Prepare Legislative Environmental Impact Statement

Notice is hereby given that, pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Economic Development Administration (EDA) of the U.S. Department of Commerce will prepare an environmental impact statement on proposed legislation entitled Inland Energy Impact Assistance Act of 1979.

The proposed legislation will provide finincial and technical assistance to States and Indian tribes. Such assistance will be used to help local communities anticipate, plan for, and finance public works construction and other activities needed to mitigate adverse impacts resulting from increased energy resource development. Under certain circumstances assistance will be provided directly to local communities to meet special emergency needs associated with energy resource development.

Comments and questions regarding the preparation of the environmental impact statement should be addressed to Mr. George Muller, Deputy Regional Director, Economic Development Administration, Suite 505, Title Building, 909 17th Street, Denver, Colorado 80202, telephone: (303) 837-4714.

Dated: February 14, 1979.

ROBERT T. HALL,
Assistant Secretary for Economic Development.

[FR Doc. 79-5621 Filed 2-23-79; 8:45 am]

[3510-25-M]

Industry and Trade Administration

WASHINGTON UNIVERSITY, ET AL.

Notice of Consolidated Decision on Applications for Duty Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number: 79-00068. Applicant: Washington University, Lindell and Skinker Blvds., St. Louis, Missouri 63130. Article: Electron Microscope, Model JEM 100S with Haskris Water Chiller. Manufacturer: JEOL Ltd., Japan. Intended Use of Article: The article is intended to be used to study the inner ear tissues and auditory areas of the central nervous system from various experimental animals (chinchilla, guinea pig, gerbil, cat, and monkey). The phenomena to be studied concern injury of these structures by exposure to different noxious agents such as noise, drugs or partial or total lack of oxygen. Studies will be conducted to elucidate the mechanisms of action of noise, drugs and circulatory dysfunction upon the inner ear and auditory portions of the central nervous system. Application received by Commissioner of Customs: December 14, 1978.

Docket Number: 79-00080. Applicant: University of Wisconsin-Madison, Laboratory of Molecular Biology, 1525 Linden Drive, Madison, Wisconsin 53706. Article: JEM 100S Electron Microscope and Accessories. Manufacturer: JEOL Ltd., Japan. Intended Use of Article: The article is intended to be used for the following research objectives:

(1) Electron Microscope Studies on the Structure and Replication of R plasmid DNA—which includes (a) physical mapping studies of R plasmid DNA and the isolation of R plasmid mutants which affect important plasmid genes and functional sites; (b) the regulation of R plasmid replication; (c) the structure of R plasmid DNA in both the non-replicating and replicating states and the location of R plasmid origins of replication; (d) the mechanism of segregation of plasmid DNA at cellular division and the localization and internal organization of plasmid DNA within bacterial cells.

(2) Ultrastructures of the Excitable membranes and the Cilia or Normal and Mutants *Paramecium*,—to understand the structural and mechanistic basis of behavior.

(3) Electron Microscope Studies on the Assembly and Function of Cytoplasmic Microtubules—to study the molecular mechanisms governing the assembly and function of microtubules.

(4) Structure and Mechanism of Assembly of the 30S Ribosome—research concerned with the development of

new techniques designed to elucidate the structure, function and mechanism of assembly of the 30S ribosome from *E. coli*.

(5) Organization and Replication of Yeast Ribosomal DNA—a research program designed to (a) gain a more detailed understanding of the fine structure of the repeating units in *Saccharomyces cerevisise* ribosomal DNA, (b) examine the transcriptional controls affecting their expression, (c) determine the arrangement of the multiple repeating units in yeast chromosomes and characterize the DNA adjacent to them, and finally (d) study the replication of chromosomes containing the ribosomal DNA.

(6) Motility, Membranes, and Mechanotransduction—to (1) investigate the mechanism of a unique type of cell motility in a protozoan, (2) study the macromolecular structure of fluid membranes in this cell, and (3) determine the properties of a non-nervous, epithelial conducting pathway that coordinates comb plates in ctenophores.

Article Ordered: October 18, 1978.

Docket Number: 79-00084. Applicant: University of Arizona, Dept. of Cellular and Develop. Biology, Tucson, Arizona 85721. Article: Electron Microscope, Model JEM 100CX/SEGZ with eucentric goniometer stage and accessories. Manufacturer: JEOL Ltd., Japan. Intended Use of Article: The article is intended to be used for the investigation of ultrastructural correlates of experimentally and developmentally induced alterations of physiological and genetic functions in cells, tissues and viruses. Experiments will be conducted to explore the possibilities of virus gene delivery systems; to explicate some features of differentiation using the pigment cell as a model system; to map viral DNA and RNA; to determine the mechanism of hormonal control of the pituitary; to determine the structural organization of membrane receptor in hormonal nonresponsive mutant cells; to develop some understanding of the origin of primitive multicellularity using bacteria as a model system. In addition, the article will be used to train students and faculty in the use and maintenance of electron microscopes and in the interpretation of electron microscope data in the courses Cell and Dev. Biology 312, 299 and 399. Article Ordered: September 19, 1978.

Docket Number: 79-00088. Applicant: Carnegie-Mellon University—Dept. of Metallurgy and Materials Science, Schenley Park, Pittsburgh, PA 15213. Article: JEM 100 CX Temscan Electron Microscope, and accessories. Manufacturer: JEOL Ltd., Japan. Intended Use of Article: The article is intended to be used for conducting varied research projects which will include the following investigations:

1. Microstructural Methods for Controlling Fatigue Crack Growth in *B*-Ti Alloys.
2. The Effect of Composition and Microstructure on the Low Cycle Fatigue Life of *a* and near-*a* Ti Alloys.
3. Analysis of Local Stresses and Strains in Ti-Welds.
4. Relationships Between Structure and Toughness in Ultra-High Strength Aluminum alloys.
5. Direct Observation of Interfacial Microstructure.
6. Ordering in Ni-Based Binary Systems.
7. The Role of Hydrogen in the Stress Corrosion Cracking of High Strength Aluminium Alloys.
8. Mechanisms of Hydrogen Cracking in Structural Materials.
9. An Investigation on the use of Metallurgical Variable and Surface Properties to Control Hydrogen Embrittlement of Steel.
10. Relationships Between Gain Boundary Structure and Migration Kinetics by Means of TEM.
11. Studies of Interfacial Reactions in Dissimilar Metallic Thin Films.
12. Cell Biology Studies.

In addition, the article will be used in the course 27-763 Electron Optical Methods of Materials Characterization to teach standard techniques in Tem, Stem and Sem to a level of competence that the student may use these techniques in his research projects. Article Ordered: July 20, 1978.

Docket Number: 79-00097. Applicant: Chemical Insustry Institute of Toxicology, P.O. Box 12137, Research Triangle Park, North Carolina 27709. Article: Electron Microscope, Model EM 400 and accessories. Manufacturer: Philips Electronics Instruments NVD, The Netherlands. Intended Use of Article: The article is intended to be used for studies of tissues from experimental animals used in toxicology research. Liver will be the major tissue examined; although kindey, lung and nervous tissue will also be frequently examined. Crystallized enzyme preparations and DNA molecules from research animals will also be examined. The article will be used to identify and study changes in the earliest identifiable cancer cells. Article Ordered: November 14, 1978.

Docket Number: 79-00103. Applicant: USAF Medical Center/SGLE, Wilford Hall, Lackland AFB, TX 78236. Article: Electron Microscope, Model EM 10A and accessories. Manufacturer: Carl Zeiss, West Germany. Intended Use of Article: The article is intended to be used for the investigation of human and animal tissues as well as bacteria and virus in order to determine a diagnosis or rule out a condition in an attempt to properly treat patients. Article Ordered: August 31, 1978.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign article for such purposes as these articles are intended to be used, was being manufactured in the United States at the time the articles were ordered. Reasons: Each foreign article to which the foregoing applications relate is a conventional transmission electron microscope (CTEM). The description of the intended research and/or educational use of each article establishes the fact that a comparable CTEM is pertinent to the purposes for which each is intended to be used. We know of no CTEM which was being manufactured in the United States either at the time of order of each article described above or at the time of receipt of application by the U.S. Customs Service.

The Department of Commerce knows of no other instrument or appratus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which was being manufactured in the United States either at the time of order or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 79-5624 Filed 2-23-79; 8:45 am]

[3510-22-M]

National Oceanic and Atomospheric Administration

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The New England 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) Preliminary Council review of draft fishery management plans (FMPs) and management strategies for sea scallops and silver hake; (2) 1979 programmatic budget; (3) approval of revised staff personnel policies; and (4) other business.

DATES: The meeting will convene on Wednesday, March 14, 1979, at approximately 10 a.m. and adjourn on Thursday, March 15, 1979, at approximately 5 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at the Holiday Inn, Junction of Routes 1 and 128 Peabody, Massachusetts.

FOR FURTHER INFORMATION CONTACT:

Spencer Apollonio, Executive Director, New England Fishery Management Council, Peabody Office Building, One Newbury Street, Peabody, Massachusetts 01960, Telephone: (617) 535-5450.

SUPPLEMENTARY INFORMATION: For information on seating arrangements, changes to the agenda, and/or written comments, contact the Executive Director.

Dated: FEBRUARY 22, 1979.

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

[FR Doc. 79-5664 Filed 2-23-79; 8:45 am]

[3510-22-M]

WESTERN PACIFIC REGIONAL FISHERY MANAGEMENT COUNCIL

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Western Pacific Regional Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will hold its 16th regular meeting, to consider the final draft of a fishery management plan for the Spiny Lobser fishery and to discuss the status of fishery management planning for the billfish, bottomfish and seamount groundfish fisheries, and other Council business.

DATES: The meeting will convene on Wednesday, March 14, 1979, at 9 a.m. and adjourn at approximately 4:30 p.m. The meeting will reconvene on Thursday, March 15, 1979, at 10 a.m. and adjourn at approximately 1 p.m. on Friday, March 16, 1979. The meeting is open to the public.

ADDRESS: The meeting of March 14, 1979, will take place in the Conference Room of the Grand Hotel, Saipan, Northern Mariana Islands. The meeting of March 15 and 16, 1979, will take place in the Plumeria Room of the Guam Reef Hotel, Agana, Guam.

FOR FURTHER INFORMATION CONTACT:

Ms. Kitty Simonds, Executive Secretary, Western Pacific Fishery Management Council, Room 1608, 1164 Bishop Street, Honolulu, Hawaii 96813, Telephone: (808) 523-1368.

Dated: February 22, 1979.

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

[FR Doc. 79-5663 Filed 2-23-79; 8:45 am]

[3510-22-M]

WESTERN PACIFIC REGIONAL FISHERY MANAGEMENT COUNCIL'S SCIENTIFIC AND STATISTICAL COMMITTEE

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Western Pacific Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), has established a Scientific and Statistical Committee which will hold its 12th regular meeting, to consider the final draft of a fishery management plan for the Spiny Lobster Fishery and to discuss the status of fishery management planning for the Billfish, Bottomfish, and Seamount Groundfish Fisheries.

DATES: The meeting will convene on Thursday, March 8, 1979, at 9 a.m. and adjourn on Friday, March 9, 1979, at approximately 4:30 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place in the Pakalana Room of the Ala Moana Americana Hotel, Honolulu, Hawaii.

FOR FURTHER INFORMATION CONTACT:

Ms. Kitty Simonds, Executive Secretary, Western Pacific Fishery Management Council, Room 1608, 1164 Bishop Street, Honolulu, Hawaii 96813, telephone: 808-523-1368.

Dated: February 21, 1979.

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

[FR Doc. 79-5665 Filed 2-23-79; 8:45 am]

[3510-60-M]

National Telecommunications and Information Administration

U.S. INMARSAT PREPARATORY COMMITTEE WORKING GROUP

Meetings

Notice is hereby given that the U.S. INMARSAT Preparatory Committee Working Group meeting scheduled for March 13, 1979, has been cancelled. The next meetings will be held at 9:30 a.m., in Room 712A, National Telecommunications and Information Administration, 1800 G Street, N.W., Washington, D.C. on April 10 and April 24, 1979.

The principal agenda items will be development of a work program and national positions relating to the operational, economic and organizational aspects of the INMARSAT system which will be addressed in the fifth meeting of the INMARSAT Preparatory Committee in May 1979.

The meetings will be open to the public; any member of the public will be permitted to file a written statement with the Working Group before or after the meetings.

The names of the members of the Working Group, copies of the agendas, summaries of the meetings and other information pertaining to these meetings may be obtained from Melvin Barmat, National Telecommunications and Information Administration, Washington, D.C. 20504 (Tel: 202-395-3782).

CLOYD DODSON,
Director, Office of Administration.

[FR Doc. 79-5692 Filed 2-22-79; 3:38 pm]

[3510-11-M]

United States Travel Service

TRAVEL ADVISORY BOARD

Meeting

On January 15, 1979, notice given in the FEDERAL REGISTER (44 FR, Page 3068), that the Travel Advisory Board would meet on February 27, 1979. Notice is hereby given that the Travel Advisory Board meeting will begin at 9:00 a.m., in Conference Room A & B of the Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C., instead of the originally scheduled meeting room 4833.

Established in July, 1968, the Travel Advisory Board consists of senior representatives of 15 U.S. travel industry segments who are appointed by the Secretary of Commerce.

Members advise the Secretary of Commerce and Assistant Secretary of Commerce for Tourism on policies and programs designed to accomplish the purposes of the International Travel Act of 1961, as amended, and the Act of July 19, 1940, as amended.

Agenda items are as follows:

1. International Symposium—George Washington University
2. International Relations—China, Russia, Puerto Rico, Mexico
3. World Tourism Organization (WTO)
4. Expo '82

5. 1979 Pow Wow/California Travel Mart/Florida Huddle
6. Travelers Cheques Program
7. DRV-ABTA Annual Meetings
8. International Market Studies
9. USTS 1980 Budget Status
10. Miscellaneous

A limited number of seats will be available to observers from the public and the press. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is allowable, the presentation of oral statements will be allowed.

Sue Barbour, Travel Advisory Board Liaison Officer, of the United States Travel Service, Room 1856, U.S. Department of Commerce, Washington, D.C. 20230, (telephone (202) 377-4752) will respond to public requests for information about the meeting.

FABIAN CHAVEZ, Jr.
Assistant Secretary for Tourism.

[FR Doc 79-5628 Filed 2-23-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

VOLUNTARY AGREEMENT AND PLAN OF ACTION TO IMPLEMENT THE INTERNATIONAL ENERGY PROGRAM

Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (Pub. L. 94-163), notice is hereby provided of the following meeting:

A meeting of the Industry Working Party (IWP) to the International Energy Agency (IEA) will be held on March 7 and 8, 1979, at the offices of Standard Oil Company of California, 575 Market Street, San Francisco, California, beginning at 9:30 a.m. on March 7. The agenda is as follows:

1. Status of Standing Group on the Oil Market (SOM) and IWP activities and arrangements for future meetings.
2. Report on the IWP meeting with SOM on October 12, 1978.
3. Discussion on questions concerned with the inclusion of North Sea crude in the crude oil price reporting system.
4. Discussion of draft publication of IEA crude oil import price data.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting will not be open to the public.

Issued in Washington, D.C., February 15, 1979.

ROBERT C. GOODWIN, Jr.,
Assistant General Counsel, International Trade and Emergency Preparedness.

[FR Doc. 79-5674 Filed 2-22-79; 12:07 pm]

[6450-01-M]

Office of Hearings and Appeals

ISSUANCE OF DECISIONS AND ORDERS

Week of December 11 Through December 15, 1978

Notice is hereby given that during the week of December 11 through December 15, 1978, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Hearings and Appeals and the basis for the dismissal.

APPEALS

Belcher Oil Company, Miami, Florida; DFA-0249, Freedom of Information

Belcher Oil Company appealed from a partial denial by the Director of Freedom of Information and Privacy Act Activities of a request for documents submitted by the firm under the Freedom of Information Act [the Act]. In its initial request, Belcher sought access to all records concerning communications between DOE personnel and representatives of Florida Power and Light subsequent to February 1, 1978. The Director withheld all or part of five of the requested documents on the grounds that they were exempt from mandatory disclosure under Exemptions 4, 5, and 7 of the Act. In considering the Belcher Appeal, the DOE determined that most of one of the withheld documents was already public and that release of the remainder of its contents would not cause substantial harm to the competitive position of the firm which had submitted the information. The DOE also found that one document withheld under Exemption 5 contained factual material that had been improperly withheld as an intra-agency memorandum. The DOE also determined that a document withheld under Exemption 7 should be released, since disclosure would not interfere with enforcement proceedings against Belcher. Finally, the DOE determined that a document withheld under Exemption 5 was insufficiently described. The DOE therefore remanded the matter to the Director with instructions to describe the document more fully.

Christmann & Welborn, Lubbock, Texas; DRA-0101, Crude Oil

Christmann & Welborn (C&W) appealed a Remedial Order issued to it by DOE Region VI on December 22, 1977. The Remedial Order found that C&W had improperly treated a unitized property as a new property during the period March 1974 through August 1976. The Remedial Order concluded that C&W had consequently charged prices for crude oil in excess of the ceiling prices established under 10 CFR 212.73. C&W was therefore ordered to refund $3,367,990.72, plus interest, to Shell Oil Company, the purchaser of the crude oil. In considering C&W's Appeal, the DOE observed that FEA Ruling 1975-15 requires producers to calculate the BPCL for a unitized property by totalling the 1972 monthly production from all the leases that comprise the unit. Contrary to an argument advanced by C&W, the DOE concluded that Ruling 1975-15 is valid. The DOE also concluded that C&W had not demonstrated that it had justifiably relied on advice which it had allegedly received from government officials. Furthermore, the DOE determined that C&W, as operator of the property, could be held liable for the full amount of the overcharges. C&W also claimed that the Remedial Order was erroneous in directing the firm to recalculate its BPCL for periods subsequent to the audit period and to make restitution for any overcharges which occurred. The DOE determined that this provision of the Remedial Order was appropriate because of the continuing nature of the violation. Accordingly, the C&W Appeal was denied.

Eastern Oil Company, Tampa, Florida; DFA-0232, Freedom of Information

Eastern Oil Company filed an Appeal from a partial denial by the Director of the Division of Freedom of Information and Privacy Act Activities (the Director) of a Request for Information submitted under the Freedom of Information Act. In its Request, Eastern sought the disclosure of documents relating to various DOE decisions involving a customer of Eastern. The Director declined to release six of the requested documents on the basis that they were exempt from mandatory disclosure under Sections 552(b)(2) and (b)(5) of the Act. In considering the Eastern Appeal, the DOE concluded that the Director had correctly withheld two documents under Section 552(b)(5) but that two other documents contained factual material that should be disclosed. The DOE also concluded that the two remaining documents were properly withheld under Section 552(b)(2) because they related solely to the internal personnel rules and practices of the agency. The Eastern Appeal was therefore granted in part and denied in part.

Lyon County Co-Operative Oil Company, St. Paul, Minnesota; FRA-1426, Petroleum Products

Lyon County Co-operative Oil Company appealed a Remedial Order which FEA Region V issued to it on July 25, 1977. In the Remedial Order, Region V determined that Lyon had sold various petroleum products at prices in excess of those permitted under 6 CFR 150.359 and 10 CFR 212.93. Lyon was therefore directed to refund the overcharges to its customers. In its Appeal, Lyon contended that its yearly patronage dividends to its members constituted a form of voluntary restitution which should reduce the cited overcharges. In considering this contention, the DOE found that even though Lyon had overcharged both members and non-members, it had made refunds only to its members. The DOE observed that this fact indicated that Lyon did not intend to make the refunds for the sole purpose of providing restitution to the customers who were overcharged. Lyon also challenged the finding in the Remedial Order that it had violated Cost of Living Council and FEA recordkeeping requirements. In rejecting this contention, the DOE found that Lyon had provided no evidence that it had attempted to distinguish or classify its May 15, 1973 classes of purchaser or that it had computed its costs other than on an annual basis. Accordingly, the Appeal was denied.

Phillips Petroleum Company, Bartlesville, Oklahoma; DFA-0251, Freedom of Information

Phillips Petroleum Company filed an Appeal from an Order issued to the firm by the Director of Freedom of Information and Privacy Act Activities (the Director). That Order was issued pursuant to a Decision and Order which required the Director to conduct a further search of DOE files for documents responsive to an earlier Request for Information filed by Phillips concerning the transfer pricing program. *Phillips Petroleum Company*, 2 DOE Par. 80,143 (1978). In the most recent Order, the Director identified 28 additional documents within the scope of Phillips' request, 22 of which he withheld under 5 U.S.C. 552(b)(5) (Exemption 5), and three of which he was unable to locate. In its Appeal, Phillips contended that the Director erroneously withheld documents under Exemption 5. The DOE rejected that contention on the basis that it had affirmed the withholding of each of the documents in question in prior Decisions. The DOE also rejected Phillips contention that the response of the Director with respect to the three documents he was unable to locate was insufficient, noting that the inability to locate a document is a proper ground for denial of a Request for Information under the provisions of 10 CFR 202.5(b)(1)(ii). Finally, due to discrepancies in his identification and treatment of transfer pricing documents the DOE ordered the Director to review and/or release a number of additional documents.

Pyramid Corporation, Inc., Wichita, Kansas; DRA-0032, Crude Oil

Pyramid Corporation, Inc. appealed a Remedial Order that was issued to the firm by DOE Region VII on October 26, 1977. In the Remedial Order, Region VII found that during the period September 1, 1973 through December 31, 1974, Pyramid had sold crude oil produced from two properties at prices which exceeded the ceiling price levels specified in 6 CFR 150.354 and 10 CFR 212.73. The Remedial Order therefore directed Pyramid to refund overcharges of $90,990.64, plus interest, to the purchaser of the crude oil. In its Appeal, Pyramid challenged the Remedial Order's finding that one of the properties did not qualify as a stripper well property on the basis of 1973 production because there were significant disruptions in production in that year. However, the DOE determined that Pyramid had failed to show that the lease's downtime during 1973 did not exceed either its own historical downtime or the historical downtime of other nearby properties. The DOE also found no merit to Pyramid's contention with respect to the second property that since one well produced crude oil from two separate reservoirs, average daily production should be calculated on the basis of two wells. In this connection, the DOE held that Ruling 1975-12 had been correctly applied to Pyramid's operations. The DOE also determined that it was not improper for Region VII to issue the Remedial Order to Pyramid alone, noting that the requirement that refunds be made through prospective price reductions would generally result in each owner contributing its proportionate share of the overcharges. Nevertheless, the DOE remanded the Remedial Order on the basis that it did not contain sufficient findings to support the conclusion that Pyramid had not subsequently recouped the crude oil production lost during the downtime in 1973.

Paul M. Terada, Palo Alto, California; FRA-1464, Motor Gasoline

Paul M. Terada filed an Appeal of a Remedial Order that FEA Region IX issued to him and Harry D. Hall on July 19, 1977. In the Remedial Order, the FEA found that Terada and Hall had sold motor gasoline at the Page Mill Mobil service station at prices that exceeded the maximum allowable prices, and it therefore ordered Terada and Hall to refund the resulting overcharges to their customers. On appeal, Terada did not deny that the overcharges cited in the Remedial Order had occurred, but instead contended that he was not liable for the overcharges because he was not a "retailer" under 10 CFR 212.31. The DOE found, however, that Terada was the purchaser of the motor gasoline and was also the lessee of the Page Mill station. The DOE further found that, as station manager, Terada played an active role in the day-to-day operation of the Page Mill station. Based on these considerations, the DOE concluded that Terada was a "retailer" within the meaning of the price regulations. The Terada Appeal was accordingly denied.

B. W. Whittington, Portland, Texas; DRA-0008, Crude Oil

B. W. Whittington filed an Appeal of a Remedial Order that FEA Region VI issued to the firm on September 22, 1977. In the Remedial Order, the Regional Office found that Whittington had incorrectly classified the White Point Development Company Lease and the State Tract 180 Lease as stripper well properties. The Regional Office also found that during three months in 1974, Whittington had improperly sold certain quantities of crude oil produced from the Four Way Ranch Lease as new and released oil. In considering the Appeal, the DOE rejected Whittington's contention that Region VI had improperly excluded 31 days in calculating the average daily production for the White Point Development Company Lease. With regard to the State Tract 180 Lease, the DOE cited Ruling 1975-15 in rejecting Whittington's claim that by the terms of its lease agreement a new property came into existence upon cessation of production from the Lease. The DOE did agree, however, that Whittington would experience a hardship if forced to repay the overcharges in the time allotted in the Remedial Order and it therefore granted Whittington an additional 18 months to refund a portion of the overcharges.

Young Coal Company, Waterloo, Iowa; DRA-0031, Fuel Oil

Young Coal Company filed an Appeal from a Remedial Order issued to it by DOE Region VII on November 10, 1977. In the Remedial Order, Region VII found that Young had sold Nos. 1, 2, and 5 fuel oil at prices in excess of maximum permissible levels. In its Appeal, Young contended that Region VII had improperly calculated the firm's weighted average cost of product in inventory on May 15, 1973. In considering the Appeal, the DOE found that Young had failed to demonstrate that the Region's computation was erroneous. The DOE further found that the Remedial Order had properly included in the firm's inventory certain quantities of fuel oil which Young had not physically brought into inventory. However, on the basis of a recent policy statement by the Office of Enforcement that 10 CFR 212.92 does not require all audits to be conducted on a firm-wide inventory basis, the DOE remanded the Remedial Order for further consideration of the inventory cost calculation.

REQUESTS FOR EXCEPTION

Craft Petroleum Company, Inc., Wilkinson County, Mississippi; DEE-1886, Crude Oil

Craft Petroleum Company, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which if granted, would permit the firm to sell the crude oil produced from the Craft-Rosenblatt Lease, located in Wilkinson County, Mississippi, at prices in excess of the applicable ceiling prices. In considering the exception request, the DOE found that Craft's operating expenses had increased to the point that the firm no longer had an economic incentive to continue production of crude oil from the Lease. On the basis of the criteria applied in previous Decisions, the DOE determined that Craft should be permitted to sell at upper tier ceiling prices 69.86 percent of the crude oil produced from the Lease for the benefit of the working interest owners during the period November 14, 1978 through April 30, 1979.

Earlsboro Oil & Gas Company, Oklahoma City, Oklahoma; DEE-1375, Crude Oil

Earlsboro Oil & Gas Co. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit the firm to sell the crude oil that it produces from the Schroeder-Post No. 1 well, located in Kingfisher County, Oklahoma, at upper tier ceiling prices. Earlsboro contended that exception relief would provide it with an economic incentive to make repairs necessary to the resumption of production at the well. In considering the request, the DOE determined that based on the firm's cost and revenue projections, Earlsboro would realize an internal rate of return of approximately 35 percent on the proposed investment even without any exception relief. The DOE therefore determined that Earlsboro had a sufficient economic incentive to repair the well. Accordingly, the Application for Exception was denied.

Estates of Inez and Loyce Phillips, Austin, Texas; DEE-0319, Natural Gas Liquids

The Estates of Inez and Loyce Phillips (Phillips) filed an Application for Exception from the provisions of 10 CFR 212.165, which, if granted, would permit Phillips to retroactively charge prices for natural gas liquids in excess of the maximum allowable prices. In considering the exception request, the DOE found that Phillips would have incurred significant losses in fiscal years 1975-1977 if it had conformed to the pricing regulations. The DOE also found that compelling circumstances existed which accounted for Phillips' delay in filing its Application for Exception. The DOE therefore determined that Phillips should be allowed to charge prices which would enable it to recover $91,593.32 in operating losses sustained from 1975 to 1977.

Gulf Oil Corporation, Houston, Texas; DXE-1973, Crude Oil

Gulf Oil Corporation filed an Application for Exception from the provisions of 10

CFR, Part 212, Subpart D, which, if granted, would result in an extension of exception relief previously approved and would permit Gulf to continue to sell a portion of the crude oil produced from the Sydney A. Smith Lease, located in Liberty County, Texas, at upper tier ceiling prices. *Gulf Oil Corp.*, 2 DOE Par. 81,003 (1978). In considering the exception request, the DOE determined that Gulf continued to incur increased expenses in connection with the operation of the Smith Lease and that, in the absence of exception relief, the firm would lack an economic incentive to continue to produce crude oil from the property. On the basis of the operating data which Gulf submitted for the most recently completed six-month period, the DOE permitted Gulf to sell 20.6 percent of the crude oil produced for the benefit of the working interest owners at upper tier ceiling prices for the next six months.

Halter Gas Company, Oran, Missouri; DEE-1966, Propane

Halter Gas Company filed an Application for Exception from the provisions of 10 CFR, Part 21, which, if granted, would result in the reassignment of Halter to a new base period supplier of propane. In its Application, Halter stated that its base period relationship with Atlantic Richfield Company (Arco) should be terminated because Arco had indicated that it intended to move its distribution facilities 125 miles from the Halter plant. In reviewing the request, the DOE noted that Halter had merely speculated that the Arco facilities would be relocated. Therefore, the Application for Exception was denied.

San Joaquin Refining Company, Bakersfield, California; DXE-1049, Crude Oil

San Joaquin Refining Company filed an Application for Exception from the provisions of 10 CFR 211.67 (the Entitlements Program), which, if granted, would relieve the firm of its obligation to purchase entitlements during the period June through November 1978. In a Proposed Decision and Order, the DOE determined that the San Joaquin request should be denied. That determination was based on the conclusion that certain data indicated San Joaquin could increase its prices to reflect the costs of purchasing entitlements. In considering San Joaquin's Statement of Objections, the DOE determined that the price comparisons contained in the Proposed Decision had failed to take into account the terms under which the firm sold its products and differences in quality among the products sold by competing firms. After considering these factors, the DOE concluded that San Joaquin had satisfied the criteria for exception relief. Accordingly, San Joaquin was granted exception relief in the amount of $2,779,789.

Standard Oil Company (Indiana), Chicago, Illinois; DEE-0842, DEE-0849, DEE-0894, DEE-0895, DEE-0982, Crude Oil

Standard Oil Company (Indiana) (Amoco) filed five Applications for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit it to sell at market prices the crude oil produced from five leases. In considering the exception requests, the DOE found that Amoco had an economic incentive to continue crude oil production at two of the leases, and it therefore denied exception relief for those properties. With respect to the other three properties, the DOE found that as a result of increases in the firm's operating costs, Amoco no longer had an economic incentive to continue the production of crude oil and that exception relief should therefore be approved.

Allen K. Trobaugh, Midland, Tex.; DXE-1860, Crude Oil

Allen K. Trobaugh filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would result in an extension of the exception relief previously granted and would permit the firm to continue to sell a portion of the crude oil produced from the Bailey #1 well, located in Hockley County, Texas, at upper tier ceiling prices. In considering the request, the DOE found that the property would have generated substantial operating profits for the working interest owners during the six-month period March through August 1978 even in the absence of exception relief. Therefore, the DOE concluded that it appeared that Trobaugh had an economic incentive to produce crude oil under applicable DOE regulations. Accordingly, the exception application was denied.

REQUEST FOR MODIFICATION AND/OR RESCISSION

Taunton Municipal Lighting Plant; Quincy Oil, Inc., Taunton, Mass., Quincy, Mass.; DEH-0031, DMR-0036,, Fuel Oil

Taunton Municipal Lighting Plant filed a Motion for Evidentiary Hearing in connection with its Statement of Objections to a Proposed Decision and Order in which the DOE tentatively determined that an Application for Exception filed by Quincy Oil, Inc. should be granted in part. In its Motion, Taunton requested that it be permitted to present the testimony of two accountants regarding Quincy's historical profit margin, its profit margin during the period covered by the exception request, and the financial impact on Quincy of the application of the pricing regulations to its sales of No. 6 fuel oil. These issues related to the tentative finding in the Proposed Decision that the profitability of Quincy had been impaired as a result of the application of the regulatory program to its fuel oil sales. In considering the Motion, the DOE determined that since Taunton had obtained access to the financial data that served as the basis for certain findings contained in the Proposed Decision and Order through a protective order approved by the DOE, the firm should be given the opportunity to present testimony regarding the factual conclusions to be drawn from that information. The Motion for Evidentiary Hearing was therefore granted.

The DOE also considered an Application for Modification filed by Quincy requesting that the DOE modify the terms of an Interlocutory Order which granted in part an earlier Motion for Evidentiary Hearing filed by Quincy. The DOE determined that the Quincy request should be denied because the prior Order was not reviewable under the applicable regulations and because the request related to the legal conclusions to be drawn from testimony that the firm wished to present rather than to the admissibility of that testimony.

INTERLOCUTORY ORDER

Phillips Petroleum Co., Bartlesville, Okla.; DEZ-0001, Crude Oil

This Order considered certain issues involving an Application for Exception filed by Phillips Petroleum Company with respect to certain of its crude oil producing properties. In analyzing cases in which a producer proposes to make a capital investment at a crude oil property, the DOE has previously found that a 15 percent pre-tax rate of return was a sufficient incentive to induce the working interest owners to undertake the project. Exception relief was granted to producers to increase domestic crude oil production on the basis of a 15 percent rate of return. However, after considering a number of written comments and the evidence presented at a public hearing, the DOE found considerable merit to the position that a 15 percent rate of return does not provide a sufficient incentive to producers to undertake capital investments. The DOE tentatively concluded that a 23 percent rate of return would be more appropriate in the Phillips case and in future cases. Since the proposed adoption of a higher rate of return rendered a *de novo* review of the pending Phillips exception application appropriate, the DOE issued an Interlocutory Order which provided Phillips with an additional period of time to submit supplemental data or evidence regarding its pending application.

REQUESTS FOR STAY

Northland Oil & Refining Co., Tuls,a Okla., DES-0129, Crude Oil

Northland Oil and Refining Company requested that its obligation under the provisions of 10 CFR 211.67 (the Entitlements Program) be stayed for the month of December 1978 pending a determination on the merits of an Application for Exception which the firm had filed. In considering the Northland request, the DOE found that the firm had made a *prima facie* showing that it did not possess the financial resources to purchase entitlements for December 1978. The DOE therefore granted Northland's request for stay.

Shell Oil Co., Houston, Tex., DES-2014, Motor Gasoline

Shell Oil Company filed an Application for Stay of the provisions of 10 CFR 211.10, pending a determination on an Application for Exception which it had filed. In its stay request, Shell requested that it be permitted to allocate its limited supplies of motor gasoline on the basis of customer's purchases of motor gasoline during the corresponding month of either 1977 or 1972, whichever was greater. In considering Shell's request, the DOE found that relief was necessary in order to prevent an immediate serious hardship and gross inequity to Shell's customers and to prevent an unfair distribution of burdens between the class of dealers supplied directly by Shell and those supplied by Shell jobbers. The DOE concluded that stay relief would help to fairly distribute the burdens associated with Shell's supply shortage and to prevent the serious distortions which would result if Shell allocated its motor gasoline solely on the basis of the 1972 base period. Accordingly, the DOE granted Shell's request for stay.

MOTION FOR EVIDENTIARY HEARING

U.S. Transport, Inc., Conyers, Ga., DEH-0035, Motor Gasoline; Diesel Fuel

U.S. Transport, Inc., appealed six orders in which the FEA assigned the firm new base period volumes of motor gasoline and diesel fuel that were significantly lower than the previously assigned volumes. The new assignments were based on determinations that the three retail sales outlets involved were convenience store operations rather than truck stops. In the course of considering the Appeals, the DOE determined that insufficient evidence existed regarding the proper characterization of the outlets. Accordingly, on its own motion, the DOE determined that an evidentiary hearing should be convened to develop a factual record with respect to the issue of whether the outlets are truck stops or convenience store operations.

SUPPLEMENTAL ORDERS

CRUDE OIL

Edgington Oil Company, Inc.; Long Beach, California; DEX-0124
Kern County Refinery, Inc.; Bakersfield, California; DEX-0125
Lunday-Thagard Oil Company; South Gate, California; DEX-0126
Mohawk Petroleum Corporation; Los Angeles, California; DEX-0127
Navajo Refining Company; Artesia, New Mexico; DEX-0128
Southland Oil Co./VGS Corporation; Memphis, Tennessee; DEX-0129
Warrior Asphalt Company of Alabama; Tuscaloosa, Alabama; DEX-0130
Young Refining Corporation; Douglasville, Georgia; DEX-131

The DOE issued a Decision and Order staying the obligation of each of the above firms to purchase entitlements to the extent specified in Proposed Decisions and Orders issued to the firms on December 4 and 6, 1978. In granting the stay, the DOE stated that the Proposed Decisions and Orders would not be finalized for at least 10 days, and that during the interim period, Entitlements Notices might be issued which would not take into consideration the relief contemplated in the Proposed Orders. Therefore, based upon the precedent established in similar cases, the DOE determined that the entitlement purchase obligations of the firms should be stayed to the extent specified in the Proposed Orders until the conclusion of the pending exception proceedings.

San Joaquin Refining Company Newport Beach, California, DEX-0132 Crude Oil;

The DOE issued a Decision and Order to the San Joaquin Refining Company which stayed the firm's obligation to purchase entitlements to the extent specified in a Proposed Decision and Order which was issued to the firm on December 14, 1978. In granting the stay, the DOE noted that since the Proposed Decision would not be finalized for at least 10 days, Entitlements Notices might be issued wiich would not take into consideration the exception relief proposed for San Joaquin. Accordingly, the DOE determined that during the period December 1, 1978 through June 30, 1979, San Joaquin's entitlement purchase obligations should be stayed to the extent specified in the Proposed Decision, pending the issuance of a final Decision and Order in the proceeding.

DISMISSALS

The following submissions were dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

Amati's Service Station, Monongahela, Pennsylvania, DEE-1455
Del's Oil Co., Belton, Missouri, DEE-1961
Gasoline Merchants, Inc., Waltham, Massachusetts, DEE-2003
Germina Oil Co., Corpus Christi, Texas, DEE-1873

The following submission was dismissed for failure to correct deficiencies in the firm's filing as required by the DOE Procedural Regulations:

Unionville Tire & Supply Co., Baltimore, Maryand, DEE-1971

The following submission was dismissed on the grounds that alternative regulatory procedures existed under which relief might be obtained:

Robert E. Montgomery, (Hogan & Hartson), Washington, D.C., DFA-0268

The following submission was dismissed on the grounds that recent regulatory changes have eliminated the need for the exception relief requested:

Texaco, Inc., Houston, Texas, DXE-2049 thru DXE-2067

The following submission was dismissed pending further action on the Remedial Order by the DOE Office of Enforcement:

C. H. Sprague & Son Co., Washington, D.C., DRA-0111

The following submissions were dismissed following a determination made by the DOE that the relief requested was no longer necessary:

Botts Oil & Gas Developments, Mattoon, Illinois, DRO-0016
Les R. Hanson Oil Co., Inc., St. Paul, Minnesota, DRO-0010

Copies of the full text of these Decisions and Orders are 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. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

FEBRUARY 16, 1979.

[FR Doc. 79-5671 Filed 2-23-79; 8:45 am]

[6450-01-M]

ISSUANCE OF DECISIONS AND ORDERS

Week of December 18 Through December 22, 1978

Notice is hereby given that during the week of December 18 through December 22, 1978, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals and the basis for the dismissal.

APPEALS

Marathon Oil Company, Findlay, Ohio; DFA-0254, Freedom of Information

Marathon Oil Company filed an Appeal from determinations issued by the Director of the DOE Division of Freedom of Information and Privacy Act Activities (the Director) in response to four separate Requests for Information which were filed by the firm pursuant to the Freedom of Information Act, 5 U.S.C. 522 (the FOIA). In the determinations, the Director withheld material from a number of requested documents under exemptions (b)(4), (5), (6), 7(A), and 7(E) of the FOIA. He also determined that portions of the firm's requests did not reasonably describe the documents sought as is required under 10 CFR 202.3. In considering the Appeal, the DOE found that the withholding of certain material pursuant to Exemption 6 (covers personnel and medical files) was inconsistent with DOE precedent but that the material nonetheless continued to be exempt pursuant to Exemption 4. The DOE also determined that portions of certain documents were improperly withheld pursuant to Exemption 4, and accordingly, it remanded those documents to the Director for further review. Marathon also challenged the propriety of the Director's determination that portions of its requests had failed to reasonably describe the documents sought and that its requests should be reformulated. In considering the firm's contention, the DOE found that under the standards set forth in *Andrews, Kurth, Campbell and Jones*, 2 DOE Par. —— (September 28, 1978), Marathon failed to demonstrate that the Director's determination constituted an abuse of administrative discretion. Finally, the DOE determined that the material contained in the remaining documents had been properly withheld and that its release would not be in the public interest.

REQUESTS FOR EXCEPTION

Cities Service Company, Tulsa, Oklahoma; DEE-0353, Crude Oil

Cities Service Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit the firm to charge market prices for a portion of the crude oil which it will produce from the Corff "A" Lease and process at its Lake Charles refinery. In considering the Application, the DOE determined that the firm would have no economic incentive to install new well equipment and resume extraction operations in the ab-

sence of exception relief. The DOE found that under these circumstances, the nation would be deprived of a substantial quantity of otherwise recoverable crude oil. In accordance with precedents established in previous Decisions, the DOE determined that exception relief should be approved which would enable Cities to attain a 15 percent rate of return on the capital investment, therey providing the firm with an economic incentive to undertake the investment project. The DOE also determined that this level of relief should be calculated on the basis of the applicable stripper price rather than on the basis of the additional entitlement benefits which would accrue to Cities in its capacity as the refiner of the Corff crude to be redesignated as "stripper" crude oil. Accordingly, the DOE concluded that Cities should be permitted to sell at market prices, 76.45 percent of the crude oil to be produced from the Corff Lease during the first four years subsequent to the completion of the investment project and 100 percent of the crude oil production in the following two years.

Eastern Shore Gas Company, Philadelphia, Pennsylvania; DRC-0009, Propane

Eastern Shore Gas Company (Eastern) filed an Application for Exception from the provisions of 10 CFR 212.93 in which the firm requested that it be permitted to charge higher prices on its sales of propane. In considering the firm's request, the DOE noted that Eastern was a gas utility which sold propane through pipelines extending to its customers' premises, and that consequently its prices on May 15, 1973 had been regulated by the Maryland Public Service Commission. The DOE also noted that in contrast, nearly all other propane retailers were not subject to public utility regulations since they sold bottled gas, and thus were not restricted from raising their prices in response to increased operating costs. Eastern presented evidence which indicated that although it had been granted a rate increase in 1971, by May 1973 its operating costs had risen substantially in relation to its selling prices causing a decline in profitability. Consequently, the DOE found that the particular circumstances existing on May 15, 1973 were not representative of Eastern's usual historical situation and made the use of that date anomalous for measurement purposes. In addition, the DOE found that the requirement that Eastern measure its nonproduct costs from the abnormally high May 15, 1973 levels for purposes of determining its maximum permissible prices under DOE regulations distorted the use of that date as a pricing reference point. Based on the evidence presented by Eastern, the DOE also determined that this distortion affected the firm in a significant manner. On the basis of these considerations, the DOE concluded that the firm demonstrated that it is experiencing a gross inequity under the standards set forth in *Tenneco Oil Co.*, 2 FEA Par. 83,108 (1975). Accordingly, in order to permit Eastern to attain a level of profitability which more closely approximates its historical results, the DOE determined that Eastern should be granted exception relief permitting it to measure its non-product cost increases from the average level which it experienced during the 1971-72 period.

Ginther Gas Processing, Casper, Wyoming; Fee-4371, Natural Gas, Liquid Products

Ginther Gas Processing filed an Application for Exception from the provisions of 10 CFR 212.165. The request, if granted, would permit Ginther to increase the selling prices for the natural gas liquid products which it processes at the Springen plant to reflect non-product cost increases in excess of the passthrough permitted under the provisions of Section 212.165. On January 23, 1978 the Department of Energy issued a Proposed Decision and Order to Ginther which determined that Ginther's Application for Exception be granted in part. In that Proposed Decision the DOE calculated Ginther's current nonproduct costs by dividing total nonproduct cost increases incurred at the plant during the third fiscal quarter of 1977 by the total product which the firm processed at the plant for its own account and the account of another firm. On March 8, 1978, Ginther filed a Statement of Objections to the Proposed Decision and Order in which it contended that the DOE's failure to allocate specific non-product cost items which are only associated with the processing of product for its own account resulted in the firm's receipt of an inadequate level of exception relief. In considering the firm's Statement of Objections, the DOE determined that one of the cost items cited by Ginther is incurred only to process the products produced for the firm's account and therefore should have been attributed to Ginther's product alone. As a result of this allocation of non-product costs, the DOE determined the level of price relief specified in the final Decision and Order should be increased to $.02505 per gallon from the $.02156 per gallon level specified in the Proposed Order.

Golden Eagle Refining Company, Inc., Los Angeles, California; DEE-0513, Crude Oil

The Golden Eagle Refining Co., Inc. filed an Application for Exception from the provisions of Section 211.67(a)(4) of the Entitlements Program. As adopted on December 8, 1977, the provisions of that section reduced the entitlement purchase obligation associated with the purchase of certain lower tier California crude oils. The December 8 amendments also reduced the entitlement benefits received by California refiners that processed imported and Alaskan North Slope (ANS) Crude oils. On June 15, 1978, the DOE modified Section 211.67(a)(4) and eliminated the reduction in entitlement benefits incurred by California refiners that processed imported and ANS crude oils. In considering the Golden Eagle exception request, the DOE observed that the firm processes exclusively imported crude oil. As a result, Golden Eagle was directly and adversely affected by the provisions of Section 211.67(a)(4) which were in effect during the five-month period from January through May 1978. The DOE observed that the financial data submitted by Golden Eagle indicated that it incurred a severe financial hardship as a result of Section 211.67(a)(4) during the January-May period. The DOE also noted that Golden Eagle had no economic alternative to the continued use of imported crude oil, despite the penalty associated with the December 8 amendments. Accordingly, the DOE granted exception relief that permitted Golden Eagle to sell additional entitlements equal in value to the loss of entitlement revenues it experienced during the January-May period as a result of the provisions of Section 211.67(a)(4).

Pierremont Petroleum Corp., Shreveport, Louisiana; DEE-1429, Crude Oil

Pierremont Petroleum Corp. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit the firm to sell crude oil produced from the C. G. Henderson 17-8 #1 Well (the Henderson Well), located on the east Barber Creek Field in Scott County, Mississippi, at upper tier ceiling prices. On September 20, 1978, the DOE issued a Proposed Decision and Order to Pierremont in which it determined that the firm should be permitted to sell 44.79 percent of the crude oil produced from the Henderson Well for the benefit of the working interest owners at upper tier ceiling prices. Pierrremont filed a Statement of Objections in which it alleged that as a result of major projected cost increases for the salt water disposal system at the well, the amount of proposed exception relief was insufficient to provide it with an economic incentive to continue production. In considering the Statement of Objections, the DOE determined that the projected salt water disposal cost increases were of a short-term nature, were speculative, and, in any event, would be given due consideration in calculating the level of exception relief to be granted when the firm applies for an extension of relief. The DOE therefore concluded that Pierrement had not made a convincing showing that the amount of proposed exception relief was insufficient to provide it with an economic incentive to continue operations at the Henderson Well. Accordingly, the Proposed Decision and Order was issued in final form.

Pennzoil Producing Company, Houston, Texas; DEE-0085, Crude Oil

Pennzoil Producing Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which if granted, would permit the firm to sell the crude oil produced from the McGraw Sand Unit in Yazoo County, Mississippi at upper tier ceiling prices. In considering the exception application, the DOE determined that the costs of producing crude oil from the McGraw Sand Unit had increased significantly since 1973 and that Pennzoil's costs of production exceeded the prices that the firm was permitted to charge for the crude oil. Consequently, the DOE concluded that Pennzoil did not have an economic incentive to continue to operate the McGraw Sand Unit. The DOE also found that the recoverable crude oil in the reservoir underlying the McGraw Sand Unit would not be produced in the absence of exception relief. The DOE therefore concluded that the application of the lower tier ceiling price resulted in a gross inequity to Pennzoil. Based on operating data which the firm submitted for its most recently completed fiscal period, the DOE granted exception relief which permitted the firm to sell at upper tier ceiling prices 84.12 percent of the crude oil produced and sold for the benefit of the working interest owners from the McGraw Sand Unit.

R. W. Tyson Producing Company, Inc., Jackson, Mississippi; DXE-1370, DXE-1371, DXE-1372, DXE-1373, Crude Oil

The R. W. Tyson Producing Company, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would result in the extension of exception relief previously grant-

ed for three properties (the Vickers No. 3 well, the Federal Land Bank No. 1 well, and McCann No. 1 well), would grant initial exception relief for a fourth property (the Carter No. 1 well), and would permit Tyson to sell crude oil produced from the four properties, located in the Ovett Field in Jones County, Mississippi, at prices in excess of the ceiling price levels. *R. W. Tyson Producing Company, Inc.*, 2 DOE Par. 81,024 (1978). In considering the exception request, the DOE found that Tyson was continuing to incur an operating cost per barrel which exceeded the ceiling price at the three wells. The DOE also found that the Carter well had generated significant operating losses during the most recent six months. The DOE therefore determined that in the absence of exception relief, the firm would have no economic incentive to continue its production activities at the four properties. The DOE also determined that if Tyson abandoned its operations at the four leases, a substantial quantity of domestic crude oil would not be recovered. The DOE also concluded that Tyson had shown good cause for its failure to file for the extension of exception relief in a timely manner. Consequently, on the basis of the operating data which the firm submitted and on the basis of the criteria applied in previous Decisions, the DOE concluded that Tyson should be permitted to sell 100 percent of the crude oil produced from the four leases for its benefit at market price levels.

Wayne Operating Service, Waynesboro, Mississippi; DEE-1358, Crude Oil

Wayne Operating Service filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the working interest owners to sell the crude oil produced from the T. F. Hodge well #1 located in Wayne County, Mississippi at upper tier ceiling prices. In evaluating the exception application, the DOE found that the operating costs incurred by Wayne had increased to the point where the firm no longer had an economic incentive to continue to produce crude oil from the Hodge well. The DOE also determined that if Wayne abandoned its operations at the well, a substantial quantity of domestic crude oil would not be recovered. Therefore, the DOE determined that Wayne should be permitted to sell at upper tier ceiling prices 98.35 percent of the crude oil produced from the Hodge well for the benefit of the working interest owners.

Herbell Oil Exploration Company, Corona, California; DEE-0497, Crude Oil

The Herbell Oil Exploration Company (Herbell) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Herbell to sell the crude oil which it produces from the Recreation Park Well No. 2 at prices which exceed the lower tier ceiling price levels specified in 10 CFR 212.73. On October 13, 1978, a Proposed Decision and Order was issued to Herbell in which the DOE tentatively concluded that exception relief was appropriate in order to enable Herbell to receive a 15 percent rate of return on its capital investment. On November 17, 1978, Alamitos Land Company (Alamitos) and the City of Long Beach (Long Beach) filed a joint Statement of Objections to the Proposed Decision in which they indicated that Herbell, Long Beach, and Alamitos share an 80 percent working interest in the well, not 32 percent as indicated in the Proposed Decision and Order. Long Beach and Alamitos therefore contended that the DOE should recalculate the relief granted on the basis of an 80 percent working interest share. In considering the Statement of Objections, the DOE found that the conclusions reached in the Proposed Decision and Order were based upon inaccurate information regarding the working interest shares in the #2 Well. The DOE therefore recalculated the projected net operating cash flow of the investment and concluded that Herbell has a sufficient economic incentive to make the investment in the absence of exception relief. Accordingly, the DOE determined that Herbell's exception request should be denied.

REMEDIAL ORDERS

Marcum Oil Company, Savannah, Missouri; DRO-0214, Motor Gasoline

Marcum Oil Company filed a Notice of Objection to a Proposed Remedial Order which the Director of Enforcement of DOE Region VII issued to the firm on August 24, 1978. In that Proposed Remedial Order, the DOE Region VII Office found that during the period January 1, 1974 through April 30, 1974, Marcum charged prices for motor gasoline and diesel fuel which exceeded the maximum allowable price the firm was permitted to charge under the provisions of 10 CFR Part 212. The Proposed Remedial Order therefore directed Marcum to refund $56,654.94 in overcharges plus interest. The Notice of Objection which Marcum filed failed to satisfy the requirements of the DOE Procedural Regulations set forth in 10 CFR, Part 205. Although the Office of Hearings and Appeals notified Marcum on several occasions that its Notice of Objection was deficient and that the time for filing its Statement of Objections had expired, Marcum failed to submit the required documents. Consequently, the DOE issued the Proposed Remedial Order as a final Remedial Order of the Department of Energy.

Monterrey Producing Company, San Antonio, Texas; DRO-0080, Crude Oil

Monterrey Producing Company objected to a Proposed Remedial Order which DOE Region VI issued to the firm on June 13, 1978. In the Proposed Remedial order, Region VI found that Monterrey had not used the correct posted prices to determine the upper tier ceiling prices for crude oil produced from five of the firm's properties and that the firm sold crude oil from these properties at prices in excess of ceiling prices. The Monterrey properties are located in a field where no crude oil prices were posted in September 1975. In its Statement of Objections, Monterrey contended that the upper tier ceiling price rule set forth in 10 CFR 212.74 allowed it to select the highest posted price for crude oil of similar kind and quality produced anywhere in the general vicinity of its properties. The firm also contended that Section 212.74 allowed it to reject posted prices in a nearby field which did not actually produce crude oil similar to that produced on the firm's properties. In considering Monterrey's objection, the DOE found that the words "nearest field" in Section 212.74 were plainly intended to direct producers to a single, specific crude oil field in each instance where selection of a posted price is necessary. The DOE further determined that no actual transaction involving crude oil of a certain grade must occur in a field in order for a posted price for that grade of crude oil to establish the applicable upper tier ceiling price under Section 212.74. On the basis of these findings, the DOE rejected Monterrey's objections and issued the June 13, 1978 Proposed Remedial Order as a final Remedial Order.

PETITION FOR SPECIAL REDRESS

Anadarko Production Company, Houston, Texas; DSG-0038, DES-0121, Crude Oil

Anadarko Production Company filed a Petition for Special Redress which, if granted, would have resulted in the issuance of an order quashing a subpoena that an Area Manager in DOE Region VII issued to the firm on April 5, 1978. Anadarko also requested a stay of the provisions of the subpoena pending a final determination on its Petition. The DOE noted that Section 205.8(h)(4) of the DOE Regulations sets forth criteria governing the review by the Office of Hearings and Appeals of a Petition in which a firm seeks to quash a subpoena. That Section provides that a preliminary review of the Petition will be made in order to determine whether a reasonable probability exists that the petitioner will be able to satisfy the criteria for relief. If the Office of Hearings and Appeals determines that a Petition might satisfy those criteria, the Petition will be considered on its merits. On the other hand, if the determination is made that the Petition fails to meet this threshold standard, the Petition will be dismissed. 41 Fed. Reg. 55322 (December 20, 1976). The DOE reviewed the contentions which Anadarko advanced in its Petition and concluded that Anadarko had failed to demonstrate that an immediate review was warranted to correct substantial errors of law, to prevent substantial injury to legal rights, or to cure a gross abuse of administrative discretion. The Anadarko Petition was therefore dismissed and its Application for Stay was denied.

REQUESTS FOR STAY

Energy Cooperative, Inc., East Chicago, Indiana; DES-0242, Crude Oil

Energy Cooperative, Inc. (ECI) filed an Application for Stay of that portion of Section 211.67(i)(4) which creates a 21 cent per barrel advantage for domestic crude oil under the Entitlements Program. ECI requested the Stay pending a final determination on the merits of an Appeal and an Application for Exception which the firm had filed. In its Application for Stay, ECI stated that it would experience a serious adverse impact if its request for stay were denied. ECI also contended that it had a substantial likelihood of success on the merits of its Appeal and Application for Exception. In considering ECI's Application for Stay, the DOE noted that ECI had participated in the Entitlements Program for more than two years before challenging the validity of Section 211.67(i)(4). Moreover, it appeared that any adverse impact which the firm might experience during the period that it submissions were pending could be redressed at a later date. The DOE therefore concluded that ECI would not experience an irreparable injury in the absence of a Stay. Accordingly, the Application for Stay was denied.

Southland Oil Company, Jackson, Mississippi; DES-1672, Motor Gasoline

The Southland Oil Company (Southland), a subsidiary of the VGS Corporation, filed an Application for Stay of the provisions of 10 CFR 212.83 pending a determination on the merits of an Application for Exception which it filed. If its request were approved, Southland's sales of motor gasoline would be exempted from price controls. In considering the Southland Application, the DOE noted that it could not reach a determination on the merits of Southland's Application for Exception until the DOE received data reflecting the difference between Southland's gasoline prices and those of its competitors. Southland had failed to establish the existence of a substantial likelihood of success on the merits of its exception request. The DOE also determined that Southland would not suffer irreparable injury in the absence of a stay since the firm is currently receiving exception relief from the Entitlements Program which enables it to achieve its historical profit margin. The DOE further rejected the firm's argument that it will be forced to violate the regulations in the absence of a stay. On the basis of these considerations, the Southland Application for Stay was denied.

Town Pump, Inc., and Affiliates, Butte, Montana; DES-2046, DST-2046, Motor Gasoline

Town Pump, Inc. and Affiliates (Town Pump) filed an Application for Stay and an Application for Temporary Stay from the provisions of 10 CFR, Part 211, pending a determination on the merits of an Application for Exception which it filed. If its request were approved, new base period suppliers would be assigned to Town Pump and directed to furnish the firm with an increased base period allocation of motor gasoline. In considering the Town Pump Application, the DOE observed that although Town Pump was experiencing supply problems, the difficulties which the firm was encountering were not unique and had been exacerbated by its own recent actions. Accordingly, the DOE concluded that it would be grossly inequitable to require other retailers to bear the burden of Town Pump's discretionary business decisions. In addition, the DOE noted that the Approval of stay relief would, in effect, provide the firm with an interim exception from the provisions of the DOE allocation regulations. The DOE concluded that such relief is inappropriate on the basis of the factual record established in the stay proceeding. The DOE also concluded that interim exception relief could not be approved until the other parties which might be adversely affected by such relief have an opportunity to present their views on this matter. On the basis of these considerations the Town Pump Applications for Stay and Temporary Stay were denied.

Mid-Michigan Truck Service, Inc., Kalamazoo, Michigan; DES-0130, Motor Gasoline

Mid-Michigan Truck Service, Inc. filed an Application for Stay of the provisions of 10 CFR 211.25 (the supplier substitution rule). If the request were approved, the Gulf Oil Corporation would be required to continue furnishing Mid-Michigan with its base period use of motor gasoline directly, rather than through the Bestrom Oil Company, Gulf's designated substitute supplier. In considering Mid-Michigan's request for the stay, the DOE concluded that in view of the prior exception relief granted to Mid-Michigan, it is likely that the firm will prevail on the merits of its pending Application for Exception from Section 211.25. In addition, the DOE concluded that the financial burdern to Mid-Michigan of returning to the situation which existed prior to the approval of the previous exception relief would be greater than any burden which Gulf would incur if the stay were granted in order to maintain the *status quo ante*. Accordingly, the Mid-Michigan request for stay was granted.

DISMISSALS

The following submissions were dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

Natrogas, Inc., Minneapolis, Minnesota; DEE-1887

Pyrofax Gas Corporation, Houston, Texas; DEE-0448

The following submissions were dismissed following a determination made by the DOE that the relief requested was no longer needed:

Duval County Ranch Company, Corpus Christi, Texas; DRO-0102

Suburban Propane Gas Corporation, Morristown, New Jersey; DEE-0412

Universal, Inc., Austin, Texas; DEE-1056

The following submissions were dismissed on the grounds that the requests are now moot:

Eastern Shore Gas Company, Philadelphia, Pennsylvania; DES-0086

San Joaquin Refining Company, Newport Beach, California; DES-0127

The following submission was dismissed following a determination made by the DOE that relief was unnecessary:

Superior Oil Company, Houston, Texas; DEE-2028

Copies of the full text of these Decisions and Orders are 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. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

FEBRUARY 16, 1979.

[FR Doc. 79-5672 Filed 2-23-79; 8:45 am]

[6450-01-M]

ISSUANCE OF DECISIONS AND ORDERS

Week of November 20 through November 24, 1978

Notice is hereby given that during the week of November 20 through November 24, 1978, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Hearings and Appeals and the basis for the dismissal.

APPEALS

American Petrofina, Inc., Dallas, Texas, DPI-0020, Crude Oil and Unfinished Oils

American Petrofina, Inc., filed an Appeal of a denial of a license for fee-exempt authority under 10 CFR 213.11 by the Office of Oil Imports. On appeal, Fina sought a license to import certain crude and unfinished oils on a fee-exempt basis for the 1978-79 allocation period. Fina stated that the Office of Oil Imports misplaced the firm's application for a fee-exempt license thereby precluding the firm from receiving a fee-free allocation. In the course of the proceeding the Office of Oil Imports indicated that an administrative error had occurred which precluded the issuance of fee-free licenses to Fina. The DOE concluded that Fina's Appeal should be granted and that pursuant to 10 CFR 213.11 the firm should be permitted to import a specified quantity of crude and unfinished oils on a fee-exempt basis for the 1978-79 allocation period.

Guttman Oil Company, Belle Vernon, Pennsylvania, DRA-0011, No. 2 Fuel Oil

The Guttman Oil Company filed an Appeal of a Remedial Order which had been issued to the firm by the Director of the Region III Compliance Division. In that Remedial Order, the Regional Compliance Director found that Guttman had incorrectly determined its classes of purchaser for No. 2 fuel oil and had also miscalculated its May 15, 1973 weighted average cost of No. 2 fuel oil in inventory. In addition, the Regional Compliance Director found that Guttman had not sufficiently justified any portion of the non-product cost increases it had included in its sales prices for No. 2 fuel oil. On the basis of these findings the Regional Compliance Director concluded that Guttman had overcharged certain purchasers of No. 2 fuel oil.

In its Appeal, Guttman argued that the DOE had failed to account for certain barge loads of No. 2 fuel oil that were in transit on May 15, 1973 in calculating the firm's May 15, 1973 weighted average cost of that product in inventory. In addition, Guttman claimed that on the basis of events occurring after May 15, 1973, its classes of purchaser determinations were correct. Furthermore, Guttman maintained that firms of its size do not have to justify the amount of non-product cost increases included in their selling prices. After considering these arguments, the DOE found that the Regional Compliance Director had accounted for the specific barge loads of No. 2 fuel oil that were in transit on May 15, 1973 in calculating the firm's cost of No. 2 fuel oil in inventory on that date. The DOE also determined that since the regulations require a reseller to adopt the classes of purchaser which existed on May 15, 1973, events which took place subsequent to that date are irrelevant and therefore do not establish that the Regional Compliance Director erred in deter-

mining Guttman's classes of purchaser in the Remedial Order. Finally, the DOE concluded that the regulations require each firm, regardless of its size, to provide sufficient documentary justification for the amount of non-product costs increases that are included in the sales prices for covered products. Based on the data presented by Guttman, the DOE affirmed the Regional Compliance Director's determination that Guttman had failed to sufficiently justify any portion of the non-product cost increases which it had included in its sales price for No. 2 fuel oil. Having rejected all of Guttman's arguments upon Appeal, the DOE affirmed the Remedial Order.

KENR, Houston, Texas, DFA-0221, Freedom of information

KENR appealed from a partial denial issued by the Director of the DOE Division of Freedom of Information and Privacy Act Activities (the Director) of a Request for Information which the firm had submitted under the Freedom of Information Act (the Act). In its Appeal, KENR requested that the DOE order the release of portions of 403 documents which the Director had withheld in whole or in part from disclosure on the grounds that they were exempt from mandatory disclosure under the provisions of 5 U.S.C. 552(b)(2), (b)(4), (b)(5), and (b)(7). KENR also requested that the DOE order the Director to search for additional documents described in the firm's Request but not identified by the Director. In considering the Appeal, the DOE found that the documents withheld by the Director consisted of materials related to the DOE's investigative and enforcement efforts concerning Tauber Oil Company (Tauber), an independent petroleum reseller located in Houston, Texas. With the exception of one document, the DOE determined that the documents withheld by the Director under Exemption 5 were the kind of deliberative, nonfactual, pre decisional memoranda protected from disclosure by that exemption. However, the DOE also found that several documents withheld under exemption 5 contained segregable factual, nonexempt material which should be released. The DOE also concluded that the Director properly withheld from disclosure documents containing information pertaining to specific transactions of Tauber although the transactions occurred several years ago. However, the DOE determined that the Director should release the DOE's tentative calculations of Tauber's aggregate overcharges, as well as all material contained in the documents withheld under Exemption 4 which, although exempt from mandatory disclosure, had already been released by the DOE. The DOE additionally concluded that a document which contains audit instructions for DOE personnel engaged in determining whether a firm violated the price regulations was properly withheld under Exemption 2 of the Act as a document related solely to agency practices. The DOE also determined that the Director properly withheld portions of documents which contained the name of a complainant against Tauber under Exemption 7(D) of the Act. However, it ordered the Director to release portions of a document withheld under Exemption 7(E) of the Act because its release would not reveal advanced or unique investigatory techniques of auditing. The DOE further determined that it would not be in the public interest to release any portions of documents withheld from KENR. Finally, the DOE ordered the Director to make an additional search for a document described in the firm's Appeal. Accordingly, the KENR Appeal was granted in part.

REQUESTS FOR EXCEPTION

Allison Propane Gas, Inc., Allison, Iowa, DEE-0082, propane

Allison Propane Gas, Inc. filed an Application for Exception from the provisions of 10 CFR 211.9, which, if granted, would result in the termination of the firm's base period supplier/purchaser relationship with Gas Supply, Inc. and the assignment of a new base period supplier of propane for Allison. In considering Allison's request, the DOE determined that Allison is currently purchaing 100 percent of its propane requirements from other dealers at competitive prices. The DOE also found that Allision will apparently by able to continue to receive propane from those dealers in the foreseeable future. The DOE therefore concluded that Allison is not currently experiencing a serious hardship or gross inequity as a result of the requirement that it maintain the base period supplier/purchaser relationship with Gas Supply Inc. Accordingly, the Allison exception request was denied.

Belco Petroleum Corp., Unitah County, Utah; DEE-1426 Crude Oil

The Belco Petroleum Corporation filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D which, if granted, would permit the firm to sell crude oil produced from the White River Unit Green River Participating Area "B," Secondary Water Flood Unit (the Unit), located in Unitah County, Utah at upper tier ceiling prices. In considering the exception request, the DOE determined that the cost of producing crude oil from the Unit has increased significantly since 1973 and that Belco's current production costs substantially exceed the lower tier ceiling price which the firm is permitted to charge for the crude oil produced from the Unit. Consequently, the DOE found that Belco does not have an economic incentive to continue to operate the Unit and that if Belco ceased operating the Unit a significant quantity of otherwise recoverable domestic crude oil would not be produced. On the basis of a number of previous precedents involving similar factual situations, the DOE granted exception relief to Belco which permits the firm to sell for a six month period a portion of the crude oil produced from the Unit for the benefit of the working interest owners at upper tier ceiling prices.

City of Long Beach, Calif., Long Beach, Calif.; DXE-1870 Crude Oil

The City of Long Beach (Long Beach) 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 the exception relief previously granted to Long Beach and would permit the city to continue to sell a portion of the crude oil produced from the Fault Block 3 unit, Wilmington Oil Field at upper tier ceiling prices. *The City of Long Beach, Calif.*, 1 DOE Par. 81,105 (1978). In considering the exception application, the DOE found that Long Beach continued to incur increased operating expenses on the Fault Block 3 property and that in the absence of exception relief, the working interest owners would lack an economic incentive to continue to produce crude oil from the property. In view of this determination and on the basis of the operating data which Long Beach had submitted for the most recently completed fiscal period, the DOE concluded that exception relief should be continued to permit Long Beach to sell 59.38 percent of the crude oil produced from the Fault Block 3 property for the benefit of the working interest owners at upper tier ceiling prices.

Gulf Oil Corp., Houston, Tex.; DEE-1941, crude oil

The Gulf Oil Corporation filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit the firm to sell the crude oil produced from the Mattie White, et al "C" Lease (the Mattie White lease) located in Chambers County, Texas, at upper tier ceiling prices. In considering the exception request, the DOE found that Gulf's operating costs had increased to the point where the firm no longer had an economic incentive to continue the production of crude oil from the Mattie White lease. The DOE also determined that if Gulf abandoned its operations at the Mattie White lease, a substantial quantity of domestic crude oil would not be recovered. On the basis of the criteria applied in previous Decisions, the DOE determined that Gulf should be granted partial exception relief.

McCulloch Gas Processing Corp., Belle Fourche, S.DAK.; DEE-0931, natural gas liquids and products

McCulloch Gas Processing Corporation filed an Application for Exception which, of granted, would permit it to reflect in its selling prices for natural gas liquids and products at all its gas processing plants the depreciation charges at its Belle Fourche plant. Both prospective and retroactive relief were requested. Depreciation has as a rule been excluded from the non-product costs considered in granting exception relief to natural gas processors from the maximum passthrough level established in 10 CFR 212.165 on the basis that depreciation is a non-cash expense rather than an actual operating cost. *Superior Oil Co.*, 2 FEA Par. 83,271 (1975). Although the Belle Fourche plant had been closed since february 1978, the DOE found that McCulloch would still have an incentive to continue operating the plant without exception relief which included depreciation charges. McCulloch stated that its depreciation charges were actual cash outlays for amortization of loans incurred to purchase the plant rather than a non-cash expense. The DOE held that amortization is a fixed cost that continues regardless whether the plant is in operation and that by continuing to operate Belle Fourche, McCulloch would have recovered at least a portion of its fixed costs and thus had a clear incentive to continue without the requested exception relief. McCulloch also failed to meet the requirements for retroactive exception relief. Accordingly, McCulloch's Application for Exception was denied.

Milltown Skelgas Inc., Milltown, Wis.; DEF-0958 propane

Milltown Skelgas, Inc. filed an Application for Exception from the provisions of 10 CFR 212.93, which, if granted, would permit the firm to increase its propane prices for one class of purchaser to levels above the maximum selling prices permitted under the

DOE pricing regulations. In its Application Milltown also requested this relief retroactively. In considering its Application, the DOE found that the markups included in Milltown's May 15, 1973 prices to the class of purchaser at issue were unrepresentative of the firm's historical levels. The DOE found that the anamolous May 15 price levels had significantly affected Milltown's operations. However, the DOE concluded that Milltown would not suffer an irreparable injury in the absence of retroactive exception relief. Accordingly a Proposed Decision and Order was issued in which the DOE tentatively determined that Milltown should be permitted to prospectively increase its selling prices for propane to one class of purchaser.

On September 9, 1978, Milltown filed a Statement of Objections to the portion of the Proposed Decision and Order in which the DOE tentatively rejected the claim that the amount of prospective exception relief calculated would be eroded by increased non-product costs which Milltown alleged it was unable to pass through. Milltown also claimed that the salary of its president should have been treated as an operating expense. In considering Milltown's objections the DOE concluded that the firm had failed to substantiate its claim that it was unable to pass through all of its non-product costs. In addition the DOE concluded that Milltown had not shown that any valid reasons existed for the DOE to depart from the practice of excluding the salary of an owner-operator for the limited purpose of determining a firm's eligibility for exception relief. The DOE also rejected the firm's contention that DOE had violated due process by failing to publish its regulations, rulings and interpretations in the Federal Register. The DOE therefore issued the Proposed Decision and Order in final form.

Burl C. Smith, Portage, Ohio; DEE-1832, DMR-0031 petroleum

Burl C. Smith filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart F which, if granted, would relieve Smith of his obligation to make refunds specified in a Remedial Order issued by the DOE Region V Office on February 25, 1977. The Remedial Order found that Smith sold certain quantities of motor gasoline and middle distillates at prices which exceeded the maximum permissible price levels computed pursuant to 6 CFR 150.359 and 10 CFR 212.93. In view of the agency's January 29, 1977 denial of a similar exception request, the DOE elected to treat the exception application as an Application for Modification or Rescission of the January 29 Decision. Smith also filed an Application for Rescission of a December 6, 1977 Decision and Order denying Smith's appeal from the February 25, 1977 Remedial Order.

In considering Smith's request for rescission of the January 29 Exception Decision, the DOE found that Smith had failed to show that his financial condition had changed significantly since the issuance of the January 29 Decision. The DOE further noted that even if Smith were required to pay the entire amount of the overcharges in one year, he would not suffer such a severe hardship so as to preclude the firm from continuing its essential operations. The DOE concluded, therefore, that modification or rescission of the January 29, 1976 decision was not warranted.

In considering Smith's request for rescission of the December 6, 1977 Decision denying his appeal of the Remedial Order, the DOE rejected Smith's claim that he had satisfied the rescission criterion which requires discovery of relevant laws, rulings, orders, or decisions which, if known to the agency at the time of the Decision, would have affected the outcome of the Decision. The DOE also rejected Smith's contention that the District Court's recent decision in *Standard Oil Co.* v. *DOE*, 4453 F. Supp. 203 (N.D. Ohio 1978) was applicable to the present proceeding. Accordingly, Smith's Application for Rescission was denied.

Texaco Inc., Denver, Colo.; DEE-1306, crude oil

Texaco, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit the firm to sell a portion of the crude oil produced from the Northern Pacific "G" Lease located in Dawson County, Montana, at upper tier ceiling prices. In considering the exception request, the DOE found that the cost of producing crude oil from the "G" Lease had increased since 1973 to a level where those costs now exceed the revenues that the firm may realize from the sale of the crude oil at lower tier ceiling prices. The DOE concluded that under these circumstances Texaco had not apparent economic incentive to continue producing crude oil from the "G" Lease. The DOE also found that it was highly unlikely that the crude oil from the reservoir underlying the lease would be recovered by any other firm in the absence of exception relief. Accordingly, the DOE concluded that the application of the lower tier price rule under these circumstances resulted in gross inequity to Texaco. On the basis of the operating data submitted by the firm, Texaco was granted exception relief which permits the firm to sell at upper tier ceiling prices 98.82 percent of the crude oil produced from the "G" Lease for the benefit of the working interest ownership.

Tri-City Gas, Inc., Adrian, Minn.; DRC-0014, propane

Tri-City filed an Application for Exception from the provisions of 10 CFR 212.93 which, if granted, would permit the firm to increase the prices it charges for propane above maximum permissible price levels. Tri-City also requested retroactive exception relief which would permit it to retain any revenues which it might have received as a result of overcharging its customers. On January 13, 1978, DOE Region V issued a Proposed Decision and Order in which it determined that Tri-City's request for prospective exception relief should be granted and the request for retroactive relief denied. On March 15, 1978, Tri-City filed a Statement of Objections to the Proposed Decision and Order in which it challenged the proposed denial of retroactive relief. In considering the Statement of Objections, the DOE determined that Tri-City had failed to show that compelling reasons existed which justified the approval of retroactive relief or that the firm would experience a severe and irreparable injury in the absence of such relief. Accordingly, the Proposed Decision and Order was issued in final form.

REMEDIAL ORDER

Phillips Petroleum Co., Bartlesville, Okla.; DRO-0034, motor gasoline

Phillips Petroleum Company filed a Statement of Objections to a Proposed Remedial Order which was issued to the firm by the Office of Special Counsel on April 7, 1978. In the Proposed Remedial Order, the Special Counsel found that Phillips had discontinued its practice of remitting two cents to JOFCO, Inc. for each gallon of motor gasoline purchased. The Special Counsel concluded that Phillips' failure to maintain them was a violation of the pricing regulations. The Special Counsel proposed that Phillips be required to resume the discount to JOFCO and to make adequate restitution to the firm for the revenues that had been withheld. In its Statement of Objections, Phillips argued that the payments to JOFCO were part of a lease-financing transaction rather than a discount for motor gasoline and that the discontinuance of the payments was therefore not a violation of the DOE regulations. In considering the Statement of Objections, the DOE rejected Phillips' contention that the payments were a means of amortizing a service station construction loan to JOFCO. In this respect, the DOE observed that payments from a creditor to a debtor could not amortize a loan and that the payments by Phillips had only a tenuous relationship to the loan. The DOE also found no merit to Phillips argument that it had obtained a valuable property right as a result of the payments. Accordingly, the Phillips Objection was denied and the Proposed Remedial Order was issued as a final Remedial Order of the DOE.

REQUESTS FOR STAY

Continental Oil Company, Houston, Texas, DES-1979, motor gasoline

Continental Oil Company filed an Application for Stay of the provisions of 10 CFR 211.9 in which it requested that the firm be relieved of its obligation to supply gasoline to certain refiner customers served by its Denver, Colorado and Billings, Montana refineries. The stay was requested pending a determination of an Application for Exception which Continental filed on October 23, 1978. In considering the stay request, the DOE found that the firm's non-refiner customers in PAD IV were more severely affected by Continental's supply shortage than its refiner customers. Accordingly, the DOE concluded that Continental's Application for Stay should be granted.

Howell Corporation, Houston, Texas, DES-0119, crude oil

The Howell Corporation filed an Application for Stay in connection with a forthcoming Application for Modification or Rescission of a Decision and Order which the DOE issued to the Monsanto Company on August 21, 1978. That Decision and Order had granted Monsanto exception relief from the ceiling price limitations of 10 CFR 212.74, which enabled that firm to pay a premium price for domestic lease condensate. In its request for stay, Howell alleged that it had received no notice of the *Monsanto* proceeding until it was contacted by one of its suppliers of condensate on September 27, 1978, at which time the suppliers threatened to terminate its supplies to Howell unless Howell could match Monsanto's price. Howell claimed that it was prohibited by DOE price regulations from paying that price, and it therefore requested a Stay of the *Monsanto* Decision pending a determination of its Application for Modi-

fication. In considering the request, the DOE found that Howell was placed on notice of the *Monsanto* proceeding by the publication of two Federal Register Notices, which stated that Monsanto had filed an Application for Exception and that the DOE had issued a Proposed Decision and Order to Monsanto. Since Howell had neglected to participate in the proceeding at that time, the DOE found that it would be unfair to withhold Monsanto's exception relief in a summary stay proceeding. The DOE also found that Howell had failed to substantiate either its claim that it would be unable to replace the condensate which its supplier would presumably sell to Monsanto, or its claim that a loss of ten percent of its condensate supplies would cause it to incur irreparable financial hardship. The Howell Application for Stay was therefore denied.

Piedmont Natural Gas Company, Spartanburg, South Carolina, DES-0122, DST-0122, propane

Piedmont Natural Gas Company filed an Application for Stay and an Application for Temporary Stay, which, if granted, would permit Piedmont to use propane for the purpose of stabilizing the BTU value of natural gas distributed in South Carolina. The stays were sought pending the final determination of a petition for similar relief which Piedmont had filed with the DOE Economic Regulatory Administration (ERA). In considering the stay requests, the DOE observed that the ERA must appraise the environmental effects of Piedmont's stabilization system prior to rendering a final decision on the firm's petition. The DOE further noted that the ERA will require an additional six to fifteen months to complete this environmental review. In addition, the DOE found that there was no basis at that time for concluding that the possible environmental repercussions which could result from the use of Piedmont's propane system would be more severe than the operating and safety problems which certain of Piedmont's customers were experiencing with their appliances, burners, and manufacturing equipment. On the basis of these considerations, the stay applications were granted.

Pyrofax Gas Corporation, Houston, Texas, DES-0113, propane

Pyrofax Gas Corporation filed an Application for Stay of a subpoena issued to the firm on May 12, 1978 by DOE Region VI, pending a final determination on its Petition for Special Redress. The request for stay, if granted, would prevent enforcement of the subpoena as to certain documents for which Pyrofax had claimed the attorney-client privilege and the attorney's work-product privilege. The Pyrofax Petition for Special Redress, if granted, would result in an order quashing the subpoena. In considering the stay request, the DOE found that the Reviewing Official had not properly responded to the Pyrofax's assertion of the attorney-client privilege. The DOE also found that the Reviewing Official had failed to take into account material facts in holding that the subpoenaed documents did not fall within the attorney's work-product privilege. The DOE found as a result of these actions, the Reviewing Official had not properly analyzed the possible injury to Pyrofax's legal rights that might result from enforcement of the subpoena. On the basis of these considerations, the DOE concluded that Pyrofax had demonstrated a reasonable likelihood that substantial injury to the legal rights of Pyrofax could occur in the absence of a stay. Accordingly, the DOE stayed the subpoena as to the documents for which the privilege was claimed was warranted pending review of the subpoena in the context of the Pyrofax Petition for Special Redress.

REQUEST FOR TEMPORARY STAY

Shell Oil Company, Houston, Texas, DST-2014, motor gasoline

Shell Oil Company filed an Application for Temporary Stay of the provisions of 10 CFR 211.10 which, if granted, would permit the firm to allocate motor gasoline on the basis of a customer's actual purchases of motor gasoline during the corresponding month of 1977, or the 1972 base period, whichever is greater. The relief was requested pending a determination of an Application for Stay and an Application for Exception which Shell also filed on November 16, 1978. In considering the temporary stay request, the DOE found that the combined effect of certain marketing changes in the industry since 1972 and the general operation of the DOE price and allocation regulations would cause the class of dealers supplied directly by Shell to bear a significantly greater burden than the class of dealers supplied by Shell jobbers in the event of a supply shortage. Accordingly, the DOE concluded that Shell's Application for Temporary Stay should be granted in order to prevent such an unfair distribution of burdens.

INTERIM ORDER

Champlin Petroleum Company, Fort Worth, Texas, DEN-1309, crude oil

The Champlin Petroleum Company (Champlin) requested that it be permitted to implement immediately the relief specified in an exception Decision which was issued to the firm in proposed form on September 29, 1978. In the Proposed Decision, the DOE tentatively concluded that exception relief should be granted to Champlin which would permit the firm to sell at upper tier ceiling prices 81.12 percent of the crude oil produced for the benefit of the working interest from the State 18 lease located in Lea County, New Mexico. Subsequent to the issuance of the Proposed Decision, the DOE received a Notice of Objection from the State of New Mexico, the royalty interest owner. In considering Champlin's request for iterim relief, the DOE determined that the resolution of the issues raised by the State of New Mexico in it Notice of Objection will in no way affect the exception relief granted Champlin in the Proposed Decision. Therefore, the DOE approved the Champlin request by permitting the firm to implement the exception relief granted in the Proposed Decision pending a final resolution of the exception proceeding.

MOTION FOR EVIDENTIARY HEARING

Point Landing Fuel Corp. and Point Landing, Inc., New Orleans, Louisiana, DRH-0059, diesel fuel

Point Landing Fuel Corporation and Point Landing, Inc. filed a Motion for Evidentiary Hearing in connection with its Statement of Objections to a Proposed Decision and Order which was issued to the firm by DOE Region VI on March 31, 1978. In considering the Motion, the DOE found that the firm did not provide the supporting data required by the DOE procedural regulations. Accordingly, the DOE concluded that no basis existed in the present record for granting the Motion and the firm's request was therefore denied.

DECISION AND RECOMMENATION

No. 2 (Home), heating oil, Washington, D.C., DEX-0123, No. 2, heating oil

During August 1978, the Office of Hearings and Appeals conducted an evidentiary hearing with regard to certain issues involving the distribution and sale of No. 2 heating oil. On the basis of the fatual record established at the hearing, the Office of Hearings and Appeals made findings regarding the behavior of firms operating in the heating oil industry and issued its recommendtions as to the need for further regulatory action relating to the allocation and pricing of No. 2 heating oil.

Prior to convening the hearing, the Office of Hearings and Appeals conducted an extensive preliminary proceeding in order to establish the procedural framework to be used at the hearing. This format was intended to provide the participants with an opportunity to present evidence in support of their positions and challenge the validity of opposing viewpoints. In addition, six organization were selected to participate in the evidentiary hearing. They were the Energy Policy Task Force of the Consumer Federation of America, the Atlantic Richfield Company, the American Petroleum Institute, the Antitrust Division of the Department of Justice, the Office of Fuels Regulation of the Department of Energy, and the National Oil Jobbers Council. Midway through the preliminary proceeding, however, the American Petroleum Institute and the Atlantic Richfield Company withdrew their participation.

The Report which the Office issued was extensive and detailed. The most significant of its findings pertained to the refining level of the heating oil industry. The Office of Hearings and Appeals found that subsequent to the deregulation of No. 2 heating oil, prices of that product at the refining level increased at a greater rate than the cost increases which refiners experienced over the same time period, and that in the absence of price controls, this situation is likely to persist in the future. In particular, the Office of Hearings and Appeals found that during the period beginning July 1, 1976 and extending through the 1978-79 heating season, refiners will have realized revenues of $331 million in excess of what they would have received had price controls remained in effect. In addition, based on the record in the proceeding, the Office of Hearings and Appeals found that significant doubt existed as to whether competition among refiners was adequate to protect ultimate consumers from inequitable increases in the price of heating oil.

On the basis of these findings, the Office of Hearings and Appeals recommended that the Economic Regulatory Administration of the Department of Energy conduct additional studies to determine the extent of competition among oil refiners. In the event that these studies indicate that workable competition among refiners does not exit and if heating oil prices at the refiners level continue recommended that the ERA undertake a formal rulemaking proceeding to determine the nature and extent of a price control program that should be reimposed.

However, prior to the completion of these studies, the DOE should establish procedures giving refiners the opportunity to demonstrate that workable competition does exist. The Office of Hearings and Appeals further proposed that the ERA institute rulemaking proceedings on price controls should the aggregate prices that refiners charge for No. 2 heating oil exceed the President's wage and price guidelines.

In addition, the Office of Hearings and Appeals proposed the implementation of a program to monitor heating oil prices to residental users, the prices charged by refiners in sales of heating oil to non-ultimate consumers, the gross margins realized by refiners, and the product and purchased product costs incurred by refiners. Finally, the Office of Hearings and Appeals advocated steps to assist low-income users in securing adequate supplies of heating oil at reasonable prices.

DISMISSAL

The following submission was dismissed on the grounds that alternative regulatory procedures existed under which relief might be obtained.

Trends Publishing, Inc., Washington, D.C., DFA-0244.

Copies of the full text of these Decisions and Orders are 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. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

MELVIN GOLDSTEIN,
Director,
Office of Hearings and Appeals.

FEBRUARY 16, 1979.

[FR Doc. 79-5668 Filed 2-23-79; 8:45 am]

[6450-01-M]

ISSUANCE OF DECISIONS AND ORDERS

Week of November 27 Through December 1, 1978

Notice is hereby given that during the week of November 27 through December 1, 1978, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Hearings and Appeals and the basis for the dismissal.

APPEALS

Ashland Oil, Inc., Ashland, Kentucky; DFA-0243, Freedom of Information.

Ashland Oil, Inc. (Ashland) appealed from a denial in part of a request for information which Ashland had filed under the Freedom of Information (FOI) Act. In its request, Ashland sought information relating to DOE "class of purchaser" regulations. Although the FOI Director determined that Ashland's request did not reasonably describe the records, he nevertheless located ten documents repsonsive to the request. The Director released five of these documents after deleting portions containing confidential commercial information, which is exempt under Exemption 4 of the Act, but withheld the five remaining documents in their entirety on the ground that they were intra-agency memoranda exempt from disclosure under Exemption 5 of the Act. Appealing only the Director's determination to withhold the five intra-agency memoranda, Ashland maintained that the Director's response adequately described neither the withheld memoranda nor the reasons for withholding them under Exemption 5. Ashland also contended that the factual material or statements of law and policy in the memoranda should have been segregated and released. In considering these contentions, the DOE noted that the Director's description of the memoranda and the justification provided for withholding them were sufficient to enable Ashland to formulate an Appeal of the denial of its request. The DOE thus concluded that the description and justification were adequate under applicable regulations and case law. The DOE then found based on a *de novo* review, that the memoranda contained no segregable factual materials or statements of law or policy. In so finding the DOE specifically noted that, contrary to Ashland's contention, memoranda from a superior to a lower-level official do not necessarily contain statements of agency law or policy. Accordingly, the Appeal was denied.

Gulf Oil Corporation, Houston, Texas; DFA-0248, Freedom of Information.

Gulf Oil Corporation filed an Appeal from an Order issued to the firm by the Director of the Division of Freedom of Information and Privacy Act Activities on September 26, 1978. In that Order the Director refused to release certain documents requested by Gulf on the grounds that they were intra-agency memoranda exempt under 5 U.S.C. 552(b)(5) of the FOI Act. In *Advanced Sales Corp.*, 2 DOE Par. —— (November 17, 1978), the DOE considered the issue whether these identical documents should be withheld. In that decision the DOE determined that with the exception of four documents, the material was correctly withheld under Exemption 5 of the Act. Since Gulf presented no new arguments that challenge the basis for the decision in *Advanced Sales*, the DOE therefore determined that the four documents released to Advanced Sales should also be released in their entirety to Gulf, and the remaining documents withheld under Exemption b(5).

Vinson & Elkins, Washington, D.C.; DFA-0238, Freedom of Information.

Vinson & Elkins appealed from a denial by the DOE Information Access Officer of part of a request for information that it had filed under the Freedom of Information Act. In its request, the firm sought access to all documents in the possession of the DOE related to the establishment of crude oil transfer prices in interaffiliate transactions under Section 212.84 of the Mandatory petroleum Price Regulations. In his Order the Information Access Officer released 11 documents to Vinson & Elkins, but withheld all or part of 17 others on the grounds that they were exempt from mandatory disclosure under Sections 552(b)(4) and 552(b)(5) of the FOI Act. In its Appeal the firm contended that the Information Access Officer had failed to provide a sufficient basis for withholding certain documents. In rejecting that contention the DOE found that the Order identified the specific exemption under which the material was withheld, and contained a brief explanation of how the particular exemption applied. The Information Access Officer also withheld one document in its entirety but failed to describe its contents in the denial Order. Accordingly, the DOE held that in general the Information Access Officer must briefly describe the subject matter of the document withheld under the FOI Act. The DOE also determined that Vinson & Elkins had satisfactorily demonstrated that additional DOE records responsive to the information request also existed and that the Information Access Officer had failed to identify them. The matter was therefore remanded to the Information Access Officer with directions to furnish a brief description of the subject matter of one document and to conduct a further search for responsive records.

REQUESTS FOR EXCEPTION

Chevron USA, Inc., San Francisco, California; DEA-0019, DEA-0022, crude oil

Chevron USA, Inc. filed an Appeal of a Notice which the FEA issued under the Buy/Sell Program. Chevron contested that portion of the Notice which entitled Plateau, Inc. to purchase 397,953 barrels of crude oil under the Buy/Sell Program during the period October 1977 through March 1978. Chevron also filed an Appeal of a telegraphic Order which the FEA issued to Chevron directing Chevron to sell 397,953 barrels of crude oil to Plateau in accordance with the Notice. In considering Chevron's two Appeals, the DOE found that Chevron made no argument that the Notice and Order were erroneous in fact or in law. Instead, Chevron contended that the Notice and Order would cause Chevron to experience a serious hardship and gross inequity. The DOE noted that these contentions were more properly considered in the context of an exception proceeding, and that Chevron had addressed these issues in two applications for exception which the firm had also filed. Since the DOE had already considered Chevron's contentions in a Proposed Decision and Order and concluded that exception relief should be granted in part, the FEA determined that the Chevron Appeals should be dismissed.

Equipment, Inc., Lafayette, Louisiana; FEE-4849, crude oil

Equipment, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit Equipment to sell the crude oil produced from the Hayes #1 and Hayes A-1 wells located in the Grand Coulee Field in Acadia Parish, Louisiana, at exempt prices. In addition, the firm would be permitted to retain any revenues that it had obtained as a result of overcharging the purchasers of crude oil from the two properties. Upon initially considering the exception application, The DOE issued a Proposed Decision and Order which rejected Equipment's request on the grounds that much of the data submitted by the firm for

the Hayes wells was unreliable and did not establish an adequate factual foundation upon which exception relief could be granted. In a Statement of Objections to the Proposed Decision and Order, Equipment submitted additional information however, which it indicated was accurate and would provide an adequate basis for granting exception relief. In considering this data, the DOE found that Equipment's operating costs had increased to a point where the firm no longer had an economic incentive to continue the production of crude oil from the Hayes wells. The DOE also determined that if Equipment abandoned its operations at the Hayes wells, a substantial quantity of domestic crude oil would not be recovered. On the basis of criteria applied in previous Decisions, the DOE determined that Equipment should be granted prospective exception relief. In its Application, Equipment also requested retroactive exception relief. In rejecting that request the DOE found that although the firm would have been granted prospective exception relief had it filed and Application for Exception on an earlier date, it failed to show that it would experience a severe and irreparable injury at the present time in the absence of retroactive relief. Accordingly, the DOE denied Equipment's request for retroactive exception relief.

Finnegans of Virginia, Inc., Washington, D.C.; DRC-0001, motor gasoline

Finnegans of Virginia, Inc. filed a Statement of Objections to a Proposed Decision and Order issued to it by FEA Region III (now DOE Region III) on September 27, 1977. In the Proposed Decision, the Regional Office determined that the firm's request for an increase in motor gasoline allocation at one of its retail sites should be denied. In its Statement of Objections and in testimony which it presented at an evidentiary hearing, the firm alleged that the Regional Office erred in finding that the firm did not demonstrate that the market area is experiencing a significant increase in demand for an allocated product which is presently not being met by local supply. Finnegans argued that the increased allocation was necessary in order to assure sufficient supplies for the expanded capacity of the retail outlet. In rejection the firm's contentions, the DOE noted that similar arguments had been raised and rejected in previous determinations. *See Western Stores Division of the Continental Oil Co.*, 2 DOE Par. 81,007 (1978) and cases cited therin. Since the firm failed to raise any new arguments which would cause the DOE to depart from the principles established in those cases, the firm's exception request was denied.

Gulf Oil Corporation, Tulsa, Oklahoma; DXE-1859, crude oil

Gulf Oil Corporation 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 to Gulf and would permit it to continue to sell certain quantities of the crude oil produced from the Kiefer Unit of the Glenn Field, located in Creek County, Oklahoma, at upper tier prices. In considerting the exception request, the DOE found that the operating costs per barrel at the Kiefer Unit continued to exceed the applicable lower tier ceiling price and that continued exception relief was therefore necessary to provide Gulf with an adequate economic incentive to maintain production operations. In accordance with the methodology established in previous Decisions, the DOE permitted Gulf to sell 42.91 percent of the crude oil produced for the working interests from the Kiefer Unit at upper tier prices for a six-month period.

Maguire Oil Company, Dallas, Texas; DXE-1791, crude oil

The Maguire Oil Company filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D. The request, if granted, would result in an extension of exception relief previously granted to Maguire and would permit the firm to sell all of the crude oil which it produces from the Chandler Lease at market prices in excess of the levels permitted under the DOE regulations. See *Maguire Oil Co.*, 2 DOE Par. 81,037 (1978). In considering the exception request, the DOE found that the Chandler Lease continued to incur increased operating costs and that, in the absence of an extension of exception relief, the working interests would lack an incentive to produce crude oil from the property. In view of this situation and on the basis of the operating data presented for the well for the previous six months, the DOE concluded that the working interest owners should be permitted to sell 100 percent of the crude oil produced from the well at market prices in order to recover the increased operating costs of the well.

Texaco, Inc., New Orleans, Louisiana; DXE-1871, crude oil

Texaco, Inc. filed an Application for exception from the provisions of 10 CFR, Part 212, Subpart D. The request, if granted, would result in an extension of exception relief previously granted to Texaco and would permit the firm to continue to sell a portion of the crude oil produced from the BF Reno RA Sand Unit (the BF Unit) at upper tier ceiling prices. *See Texaco, Inc.*, 2 DOE Par. 81,129 (1978). In considering the exception application, the DOE found that the BF Unit continued to incur increased operating costs and that, in the absence of an extension of exception relief, the working interests would lack an incentive to produce crude oil from the property. In view of this situation and on the basis of the operating data presented for the well for the previous six months, the DOE concluded that the working interest owners should be permitted to sell 28.41 percent of the crude oil produced from the well at upper tier ceiling prices in order to recover the increased operating costs of the well.

Union Oil Company of California, Los Angeles, California; DXE-0413, crude oil

On September 29, 1978 the Union Oil Company of California (Union) filed a Statement of Objections to a Proposed Decision and Order which was issued to it on August 25, 1978. In the Proposed Decision, the DOE tentatively determined that the firm should be granted an extension of exception relief previously approved which would permit the working interest owners of the State and Coast Guard leases to sell a protion of the crude oil produced for their benefit at upper tier ceiling prices. Because Union is the refiner as well as the producer of the crude oil produced from the State and Coast Guard leases, the DOE determined in the Proposed Decision that the level of relief afforded Union should be based on the entitlements benefits that would accrue to the firm as a result of exception relief. In its Statement of Objections Union contested this methodology and claimed that the method of calculating relief should be the same for refiner-producers and non-refiner-producers. After considering the firm's contentions, the DOE agreed with Union's assertion and recalculated relief using the methodology established in previous Decisions. Accordingly, the DOE permitted Union to sell 55.95 percent and 83.08 percent of the crude oil produced from the State and Coast Guard leases respectively at upper tier ceiling prices for a six month period.

DISMISSALS

The following submissions were dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

DiCarlo Service Station, Schenectady, New York; DEE-1940

Puerto Rico Olefins Company, Washington, D.C.; DEE-1303

The following submissions were dismissed on the grounds that recent regulatory changes have eliminated the need for the exception relief requested:

Belridge Oil Company, Los Angeles, California; DXE-2025

Sanford P. Fagadau, Dallas, Texas; DXE-2026, DXE-2034

Copies of the full text of these Decisions and Orders are available in the public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

FEBRUARY 16, 1979.

[FR Doc. 79-5669 Filed 2-23-79; 8:45 am]

[6450-01-M]

ISSUANCE OF DECISIONS AND ORDERS

Week of December 4 through December 8, 1978

Notice is hereby given that during the week of December 4 through December 8, 1978, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Hearings and Appeals and the basis for the dismissal.

APPEAL

Getty Oil Co., New York, N.Y.; DEA-0172, natural gas liquids

The Getty Oil Company filed an Appeal from a Decision and Order which the Assistant Administrator for Fuels Regulation of the Economic Regulatory Administration (ERA) issued to the firm on February 24, 1978. In that Order, the ERA granted Getty's request to use a separate allocation fraction in determining the volumes of propane, butane and natural gasoline which it is required to distribute to its customers in California. However, the ERA denied Getty's request to use separate allocation fractions in determining the quantities of those products which it supplies to customers in its Eastern and Central regions. In considering the Getty Appeal, the DOE determined that the firm had failed to demonstrate that it lacked sufficient facilities to enable it to equitably distribute its allocable supply of natural gas liquids between its Eastern and Central regions. The DOE also found that Getty had failed to demonstrate that it would be unduly burdensome for the firm to establish interregional exchange agreements that could reliably supplement other means of distributing available natural gas liquid supplies between the two regions. The DOE therefore concluded that Getty had not shown that the February 24 Order was arbitrary, capricious or erroneous in fact or law. Accordingly, the Getty Appeal was denied.

REQUESTS FOR EXCEPTION

Green Pipe and Supply Co., Tulsa, Okla.; DEE-1829, crude oil

Green Pipe and Supply Co., filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit the firm the sell the crude oil produced from the Nora Bruner Lease, located in Seminole County, Oklahoma, at upper tier ceiling prices. In considering the exception request, the DOE found that Green Pipe's operating costs had increased to the point where the firm no longer had an economic incentive to continue the production of crude oil from the lease. On the basis of the criteria applied in previous Decisions, the DOE determined that Green Pipe should be permitted to sell at upper tier ceiling prices 49.67 percent of the crude oil produced from the lease for the benefit of the working interest owners during the period November 14, 1978 through August 30, 1979.

Gulf Oil Corp., Tulsa, Okla.; DEE-0837, DEE-0838, DEE-0839, DEE-0840, DEE-0841 natural gas liquids

Gulf Oil Corporation filed a Statement of Objections to a May 15, 1978 Proposed Decision and Order which tentatively determined that the firm should be granted an exception from the provisions of 10 CFR 212.165 to permit it to increase the prices it charges for natural gas liquids and natural gas liquid products at five natural gas processing plants. In considering the Gulf Objection, the DOE found that the proposed exception relief was based upon incorrect data that the firm had submitted. Accordingly, the DOE modified the level of exception relief to reflect the corrected data.

Jack Halbert, Tyler, Tex.; FEE-4844, FEE-4845, crude oil

Jack Halbert filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit Halbert to treat two leases as stripper well properties. Subsequent to the submission of Halbert's request, DOE Region VI determined that the leases had qualified for stripper well status on September 1, 1976. The portion of the firm's Application which related to the period subsequent to that date was therefore dismissed. In considering Halbert's request for exception relief for the period prior to September 1, 1976, the DOE determined that no showing that retroactive relief was appropriate had been made. Accordingly, Halbert's request for retroactive exception relief was denied.

O. B. Mobley, Shreveport, Louisiana, DEE-1021, crude oil

Mr. O. B. Mobley, Jr., filed an Application for Exception which, if granted, would permit him to determine the base production control level (BPCL) for the Lewisville Smackover Lime Unit (Lewisville Unit) under the provisions of 10 CFR 212.75 rather than 10 CFR 212.72. In his exception request, Mobley contended that the working interest owners of the Lewisville Unit are suffering a serious hardship and gross inequity as a result of the requirement that they determine the BPCL under Section 212.72. In considering the request, the DOE found that Mobley had not been harmed by any undue administrative delay which may have occurred in the issuance of Interpretation 1978-6, which determined that Mobley is required to calculate the BPCL for the Lewisville Unit under Section 212.72. The DOE also found that Mobley had not shown that actions of the Arkansas Oil and Gas Commission had resulted in a distortion of the objectives of the DOE Regulations. Finally, the DOE determined that the financial data submitted by Mobley indicated that the working interest owners of the Lewisville Unit were earning substantial profits on the operation of that property. Accordingly, the Mobley Application for Exception was denied.

Pennzoil Producing Company, Houston, Texas, DXE-1877 crude oil

Pennzoil Producing Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would result in an extension of the exception relief previously granted to Pennzoil and would permit the firm to sell a portion of the crude oil produced from the Perry Sand Waterflood Unit, North Segment, located in Yazoo County, Mississipi, at upper tier ceiling prices. In considering the Pennzoil request, the DOE found that the firm had continued to incur increased operating expenses at the Perry Unit, and that, in the absence of continued exception relief, the working interest owners would lack an economic incentive to continue the production of crude oil from the property. On the basis of the operating data which Pennzoil submitted for the most recent fiscal period, the DOE granted exception relief which permitted Pennzoil to sell at upper tier ceiling prices 91.04 percent of the crude oil produced from the Perry Unit for the benefit of the working interest owners for a period of six months.

REMEDIAL ORDERS

Central Oil Company, Raynham, Massachusetts, DRO-0048, motor gasoline; No. 2 heating oil

Central Oil Company filed a Statement of Objections to a Proposed Remedial Order which DOE Region I issued to the firm on April 24, 1978. In the Proposed Remedial Order, the Regional Office found that during 1973 and 1974 Central had charged prices for motor gasoline and No. 2 heating oil that were in excess of the prices permitted under 10 CFR 212.92 and 212.93. The Regional Office therefore proposed that Central be required to refund $53,561.76, plus interest, to its customers. In its Statement of Objections, Central contended that the Proposed Remedial Order should be rescinded in view of the new audit policy of the Office of enforcement. In considering the Objection, the DOE held that the new audit policy did not apply to Central since the firm had been audited prior to the commencement of the new policy. Central also contended that it had made voluntary reductions in the prices of motor gasoline and No. 2 heating oil subsequent to the period in which the overcharges occurred and that these reductions should offset the amount of the required refund. However, the DOE found that there was no evidence that Central had reduced its prices below the prevailing market prices and that reductions had in fact been made for the purpose of making restitution for prior overcharges. Accordingly, the Central Objection was denied and the DOE issued the Proposed Remedial Order as a final Remedial Order.

Don E. Pratt Oil Operations, Hays, Kansas, DRO-0039, crude oil

Don E. Pratt Oil Company filed a Statement of Objections to a Proposed Remedial Order which DOE Region VII issued to the firm on April 7, 1978. In the Proposed Remedial Order, the Regional Office found that Pratt had overcharged its customers in sales of crude oil from 24 properties. In its Objection, Pratt contended that the Proposed Remedial Order failed to adequately inform the firm of the basis for the calculation of the alleged overcharges. In considering the Objection, the DOE found that Pratt had been served with copies of workpapers setting forth the DOE's methodology for computing overcharges. The DOE therefore concluded that Pratt had been given ample opportunity to challenge the Regional Office's findings. However, the DOE found that the Proposed Remedial Order did not contain any provisions setting forth the method or the timing for refunds. The DOE therefore remanded the Proposed Remedial Order to the Regional Office to design a payback schedule that would minimize the disruption of Pratt's ongoing business operations.

PETITION FOR SPECIAL REDRESS

Propane Industrial, Inc., Kansas City, Missouri, DSG-0019, propane

Propane Industrial, Inc. (PII) filed a Petition for Special Redress which, if granted, would result in the issuance of an Order quashing a subpoena that DOE Region VII issued to the firm on December 22, 1977. In considering the Petition, the DOE noted that Section 205.8(h)(4) of the DOE Regulations provides that a preliminary review of a Petition will be made in order to determine whether a reasonable probability exists that

the petitioner will be able to satisfy the criteria for relief. *See* 41 Fed. Reg. 55322 (December 20, 1976). The DOE reviewed the contentions which PII advanced in its Petition and concluded that PII had failed to demonstrate that an immediate review was warranted to correct substantial errors in law, to prevent substantial injury to legal rights, or to cure a gross abuse of administrative discretion. The PII Petition was therefore dismissed.

REQUEST FOR STAY

Petroleum Management, Inc., Wichita, Kansas, DRS-0125, crude oil

Petroleum Management, Inc. (PMI) filed an Application for Stay of a Remedial Order which was issued to the firm by FEA Region VII on April 27, 1977. On October 19, 1978, the DOE denied PMI's Appeal of the Remedial Order with respect to ten of the 12 properties at issue and remanded the Remedial Order for further findings with respect to the two remaining properties. *Petroleum Management, Inc.*, 2 DOE Par. —— (October 19, 1978). If the present request were granted, the refund provisions of the Remedial Order would be stayed pending judicial review. In considering the Application, the DOE found that the approval of stay relief would have an adverse affect upon PMI's customers who are entitled to receive refunds of the overcharges involved. The DOE also concluded that stay relief would frustrate the compelling public interest in securing timely compliance with DOE regulations. Accordingly, the Application for Stay was denied.

DISMISSALS

The following submissions were dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

American Petrofina, Inc, Washington, D.C., DEE-0867
Armstrong Gas, Inc., Fort Myers, Florida, DRC-0008
Wallace B. Jayred, Houston, Texas, DEE-1985

The following submission was dismissed for failure to correct deficiencies in the firms's filing as required by the DOE Procedural Regulations:

KE-LA-DA Enterprises, Inc., Archie, Missouri, DEE-1790

Copies of the full text of these Decisions and Orders are 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. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

MELVIN GOLDSTEIN,
Director,
Office of Hearings and Appeals.

FEBRUARY 16, 1979.

[FR Doc. 79-5670 Filed 2-23-79; 8:45 am]

[6450-01-M]

ISSUANCE OF DECISIONS AND ORDERS

Week of December 26 through December 29, 1978

Notice is hereby given that during the week of December 26 through December 29, 1978, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals and the basis for the dismissal.

APPEALS

Leigh Hauter, Falls Church, Virginia, DFA-0258, Freedom of Information

Leigh Hauter appealed from a denial of a request for information that he had submitted under the Freedom of Information Act (the FOIA). In his request Hauter had sought the release of all documents held by the DOE that contained any reference to him. The Information Access Officer identified two drafts of an intra-agency memorandum and a transcript of information received and recorded by the Energy Operations Center, as being responsive to Hauter's request. However, the documents were withheld from Hauter on the grounds that they were exempt under the provisions of Section 552(b)(5) of the FOIA. In considering Hauter's Appeal, the DOE determined that the documents were pre-decisional, intra-agency communications the disclosure of which could impair the quality of agency decisions. The DOE therefore held that this material was properly withheld under Section 552(b)(5) of the FOIA and the Hauter Appeal was denied.

Riddle Oil Company, et al., Dallas, Texas, DFA-0256, Freedom of Information

Riddle Oil Company, *et al.* (Riddle) appealed from an order isued by the DOE Information Access Officer on October 25, 1978 denying in part a request for information that Riddle had filed under the Freedom of Information Act, 5 U.S.C. 552 (the FOI Act). In response to the request, the Information Access Officer withheld all or part of twenty-eight documents on the grounds that they were exempt from mandatory disclosure under the provisions of Sections 552(b)(4), 552(b)(5), 552(b)(7)(A) or 552(b)(7)(B) of the FOI Act. In considering the Appeal, the DOE noted that Riddle and the other appellants, were the working interest owners of the J. P. Little, Bracero Transportation Company and Holdsworth A Leases, and in that capacity should have access to audit workpapers relating to those leases. In addition, the DOE determined that some of the information contained in the documents withheld in the October 25 Order was already in the public domain and was therefore no longer confidential. Accordingly, the DOE directed that this material be released. However, the DOE determined that two documents and portions of seven others were properly withheld under Sections 552(b)(4) or 552(b)(5). In addition, the DOE rejected Riddle's contention that the October 25 Order was erroneous because it was signed by the Director of the Division of Freedom of Information and Privacy Act Activities rather than by the Information Access Officer. Finally, the DOE rejected Riddle's contentions that the October 25 Order failed to describe adequately the documents withheld or to state adequately the grounds for invoking the statutory exemptions. The Riddle Appeal was therefore granted in part and denied in part.

REQUEST FOR EXCEPTION

Sentry Refining, Inc., Corpus Christi, Texas, DEE-1459, crude oil

Sentry Refining, Inc. filed an Application for Exception in which it requested additional entitlement benefits with respect to the low gravity California crude oil that it processes in its Corpus Christi, Texas refinery. The DOE noted that the issues raised by Sentry had been considered at length in a Decision and Order issued to the Commonwealth Oil Refining Company, Inc. (Corco) and that in that decision the DOE had approved exception relief of an analogous type. *Commonwealth Oil Refining Co., Inc.*, 2 DOE Par. 81,069 (1978). After reviewing the Sentry submission, the DOE determined that the conclusions reached in the *Corco Decision* with regard to the need to provide an additional market for certain low gravity California crude oil through the exceptions process also applied in this case. Accordingly, an excpetion was granted to Sentry, and the firm was authorized to receive $4.57 in additional entitlement benefits for each barrel of low gravity, high sulfur Santa Maria Valley crude oil that it processes in its refinery. The DOE also observed, however, that the market for California crude oil has improved substantially in recent months as a result of a number of factors, including the approval of exception relief, and consequently future exceptions of this type would be approved on an extremely limited basis.

REQUEST FOR STAY

Tosco Corporation, Los Angeles, California, DES-1910, motor gasoline

Tosco Corporation filed an Application for Stay of certain provisions of Section 212.83 (the refiner price rule) pending a determination on the merits of an Application for Exception that it had filed. In that exception application Tosco requested an extension of exception relief previously granted to the firm. *See Tosco Corp.*, 1 DOE Par. 80,193 (1978). In particular, Tosco requested that it be permitted to treat the prices established in certain variable price contracts as its May 15, 1973 prices for purposes of computing its maximum allowable selling prices for motor gasoline to two of its classes of purchaser. In considering the stay request, the DOE determined that it would be desirable to maintain the *status quo ante* pending a decision on the Application for Exception. The DOE found that denial of the stay request could result in an irreparable injury to the firm, while approval of the request would not result in comparable injury to other affected persons. Based on this finding, and taking into consideration the determination in the previous excpetion proceeding, the DOE concluded that the Tosco Application for Stay should be approved.

REQUEST FOR TEMPORARY STAY

Schulze Processing, Inc., Washington, D.C., DST-0012, crude oil

Schulze Processing, Inc. filed an Application for Temporary Stay in which it requested that its obligation to purchase entitlements in the amount specified in the Entitlements Notice for October 1978 be suspended pending a final determination on an Appeal that it had filed of that Notice. In considering the Schulze request, the DOE found that the financial material provided by the firm generally supported the claim the Schulze would incur an irreparable injury if it were required to satisfy immediately the entitlement purchase obligation specified in the October Entitlements Notice. The DOE also found that the contentions raised by Schulze regarding the propriety of the method by which its October entitlement purchase obligation was determined were substantial and warranted further analysis. Finally, the DOE observed that it could adjust in future months the entitlement obligation of Schulze and effectively compensate other firms unable to sell entitlements, and consequently no significant harm would be incurred by third parties as a result of approval of a temporary stay. The Schulze Application for Temporary Stay was therefore granted.

SUPPLEMENTAL ORDER

Edgington Oil Company, Los Angeles, California, DEX-0134, crude oil

On December 6, 1978, the DOE issued a Proposed Decision and Order to Edgington Oil Company, granting in part the firm's request for an exception from the provisions of the Entitlements Program (10 CFR 211.67). Subsequent to that date, the Office of Hearings and Appeals discovered a computational error in the data on which the level of exception relief granted to the firm was based. The DOE therefore recalculated the level of exception relief and modified the December 6, 1978 Proposed Decision and Order to reflect the correct data.

DISMISSAL

The following submission was dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

Craft Petroleum Company, Jackson, Mississippi, DEE-1560

Copies of the full text of these Decisions and Orders are 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. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

MELVIN GOLDSTEIN,
Director,
Office of Hearings and Appeals.

FEBRUARY 16, 1979.

[FR Doc. 79-5673 Filed 2-23-79; 8:45 am]

[4110-87-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

Center for Disease Control

OCCUPATIONAL SAFETY AND HEALTH FIELD RESEARCH PROJECT

Initiation

AGENCY: National Institute for Occupational Safety and Health (NIOSH). Center for Disease Control, PHS, HEW.

ACTION: Notice of Research Project Initiation.

SUMMARY: NIOSH announces that it is ready to begin data collection on a field research project entitled "Reproductive History Study of Workers Exposed to Carbon Disulfide". Carbon disulfide is a colorless, volatile liquid with excellent solvent properties. The substance is used in the production of viscose rayon and cellophane. This project is part of the NIOSH industrywide research effort conducted under the Occupational Safety and Health Act of 1970.

This notice does not constitute a request for proposal.

DATES: Field work is scheduled to begin on or about April 9, 1979.

FOR FURTHER INFORMATION CONTACT:

Sherry G. Selevan, Division of Surveillance, Hazard Evaluations and Field Studies; NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226 Telephone: (513) 684-2761.

SUPPLEMENTARY INFORMATION: On September 20, 1978, NIOSH published in the FEDERAL REGISTER (43 FR 42306) a list of field research projects scheduled for initiation in calendar year 1978. That notice stated that more specific information would be provided to the public 6 weeks before starting field work on any of the proposed projects. On December 20, 1978 NIOSH published in the FEDERAL REGISTER (43 FR 59442) a notice announcing that data collection for a research project entitled "Cross-sectional Medical Study of Workers Exposed to Carbon Disulfide" would begin on or about February 15, 1979. Field investigation and data collection on the following study will begin on or about April 9, 1979 and will be conducted simultaneously with the medical study announced on December 20.

Title: Reproductive History Study of Workers Exposed to Carbon Disulfide.

Project Officer: Sherry G. Selevan, Division of Surveillance, Hazard Evaluations and Field Studies, NIOSH.

Purpose: The purpose of this study is to determine what, if any, adverse pregnancy outcomes occur in the families of workers exposed to carbon disulfide.

Background: Reports from the Soviet Union, Romania and Italy, suggest that carbon disulfide has reproductive effects on both men and women. Early reports, in 1931 and 1928, reported abnormal sexual function, loss of sex drive and impotence in male workers.

Clinical observations of male workers with carbon disulfide intoxication in Italy (1956) mentioned that 17 of 100 observed cases spontaneously reported sexual dysfunction, the severity of which correlated with patients' overall symptoms.

In 1969 Romanian researchers reported the results of an analysis of semen of 31 exposed men with chronic carbon disulfide poisoning and that of an equal number of unexposed men. Twenty-five percent of the expose workers had some sperm abnormality. Data from questionnaires given to the exposed workers also indicates changes in sexual function for 78 percent.

This study was planned to examine male exposure to carbon disulfide and pregnancy outcome in the wives of these male workers.

Study Description: The proposed study group will consit of approximately 300 workers from a viscose rayon plant. A comparison group of 300 workers will be chosen using a stratified random selection with the stratification on age and sex. The wives of these 600 workers will be interviewed using a questionnaire covering demographic data, occupational history and reproductive history. Individual participation in this study is on a voluntary basis. These data will be combined with work history data obtained from the husbands to get a complete view of the effects of occupational exposures from both the husband and the wife.

The NIOSH field research project described above will be conducted under the authority of Section 20 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669) and in accordance with the provision of Part 85a of Title 42, Code of Federal Regulations. The protocol for this type of project has been reviewed by the Office of Management and Budget and determined to be in compliance with the Federal Reports Act.

Dated: February 7, 1979.

ANTHONY ROBBINS,
Director, National Institute for Occupational Safety and Health.

[FR Doc. 79-5739 Filed 2-23-79; 8:45 am]

[4310-84-M]

DEPARTMENT OF INTERIOR

Bureau of Land Management

NATIONAL WORKSHOP ON INTERIM MANAGEMENT POLICY FOR WILDERNESS STUDY AREAS

Meeting

Notice is hereby given that on March 8, 1979, a workshop will be held on the draft "Interim Management Policy and Guidelines for Wilderness Study Areas" and proposed regulations for mining in wilderness study areas. The workshop will convene from 9:00 a.m. to 5:00 p.m. in the Department of the Interior auditorium, 18th and C Streets, N.W., Washington, D.C.

The workshop format will provide opportunities for discussion of issues in small groups. Individual oral statements will not be accepted at this meeting. Written statements on the draft documents may be submitted to the Director (303), Bureau of Land Management, Washington, D.C. 20240, until March 14, 1979.

Interested persons who wish to attend are requested to notify the Wilderness and Environmental Areas Staff (303), Bureau of Land Management, Washington, D.C. 20240 (telephone: 202-343-6064). Preregistration materials will be provided.

This workshop will come at the conclusion of a series of meetings, hearings and workshops currently being conducted by BLM State Offices. Information on those meetings is available through the appropriate BLM State Offices.

A summary of the results of the workshop will be provided to participants and will be available in the office of the Wilderness and Environmental Areas Staff, room 5600, Main Interior Building.

ARNOLD E. PETTY,
Acting Associate Director,
Bureau of Land Management.

FEBRUARY 22, 1979.

[FR Doc. 79-5661 Filed 2-23-79; 8:45 am]

[4310-84-M]

CALIFORNIA DESERT CONSERVATION AREA (CDCA) PLAN

Intent to Prepare an Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management, Department of Interior, will prepare an environmental statement for the proposed management of the California Desert Conservation Area (CDCA). This Notice of Intent is issued in accordance with the Council on Environmental Quality Regulations on implementing procedures for the National Environmental Policy Act (40 CFR 1501.7).

The Federal Land Policy Management Act of 1976 (Sec. 601) directs development of a management plan for the 25-million acre CDCA to provide for the immediate and future protection and administration of the public lands in the California Desert within the framework of multiple use and sustained yield, and the maintenance of environmental quality. The environmental statement will analyze the environmental impacts of a preferred land-use plan, and alternatives to it, for the CDCA.

The land-use plan is currently being prepared, and therefore it is premature to identify the specific proposed action and alternatives. These will evolve through the ongoing planning and environmental assessment process. A prototype outline for the plan, however, has been developed. It consists of a Desert-wide plan of mappable multiple use classes, including wilderness, protective-limited use, moderate use, and intensive-production-consumptive use designations. Each class contains management guidelines and restrictions. The prototype also contains a set of plan elements to interpret multiple use decisions as they apply to the key issues of: cultural resources; livestock; wild horses and burros; energy production and transmission; land tenure; mineral exploration and development; motorized vehicle use; recreation; wildlife; wilderness.

Alternatives presently being developed include no action (i.e., continuation of present management), a production/consumptive alternative which represents public concerns favoring production and consumptive use of CDCA resources, and a protection-preservation alternative which represents public concerns favoring protection and preservation of CDCA resources.

Scoping has been under way since 1977 as a result of public meetings, workshops, field trips and other public participation and will include additional meetings of the California Desert Advisory Committee and additional consultation with all interested agencies, organizations and individuals. Adequacy of issue coverage, depth of impact analysis, and adequacy of the range of alternatives will be the key scoping elements.

Comment on this notice of intent, the scoping process or the Desert Plan should be received by March 31, 1979. All comments should be directed to:

Neil Pfulb, Director, Desert Planning Staff, Bureau of Land Management, 3610 Central Avenue, Suite 402, Riverside, CA 92506.

ED HASTEY,
State Director.

[FR Doc. 79-5690 Filed 2-23-79; 8:45 am]

[4310-84-M]

Office of the Secretary

[INT DES 79-8]

PROPOSED ADDITIONS TO EMERY POWERPLANT IN EMERY COUNTY, UTAH

Availability of Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for the proposed addition of two generating units to a powerplant in Emery County, Utah.

The proposal involves construction of two additional 430 megawatt generating units, a new coal mine portal, coal transportation systems, transmission line, and employment of 1,610 people. The Department of the Interior invites written comments on the draft statement to be submitted within 45 days of this notice to the District Manager, Richfield District, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701.

A limited number of copies are available upon request at the following locations:

Office of Public Affairs, Bureau of Land Management, Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240, Telephone (202) 343-5717.

Richfield District Office, Bureau of Land Management, 15 East 900 North, Richfield, Utah 84701, Telephone (801) 896-8221.

Utah State Office, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111, Telephone (801) 525-4227.

Price River Resource Area, Office, Bureau of Land Management, Price, Utah 84501, Telephone (801) 637-4584.

A copy may be reviewed at the following locations:

College of Eastern Utah-Library, 451 East 400 North, price, Utah 84501.

Harold B. Lee Library, Brigham Young University, Provo, Utah.

Emery County Library, Castle Dale, Utah 84513, Telephone (801) 748-2554.

Notice is also given that oral and/or written comments will be received at formal public hearings held at the following locations:

Eastern Utah State College, Main Building, Gomer Peacock Room, Price, Utah, on April 17, 1979, at 7:00 p.m.

The Salt Palace, Suite A, Salt Lake City, Utah, on April 18, 1979, at 7:00 p.m.

An administrative law judge will preside over the hearings. Witnesses pre-

senting oral comment should limit their testimony to ten (10) minutes. Written request to testify orally should be submitted to the District Manager, Richfield District, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701, prior to the close of business, April 12, 1979.

Comments on the draft environmental statement, whether written or oral, will receive equal consideration in preparation of a final environmental statement.

Dated: February 16, 1979.

Larry E. Meierotto,
Deputy Assistant Secretary.

[FR Doc. 79-5666 Filed 2-23-79; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON THE SEQUOYAH NUCLEAR POWER STATION

Meeting

The ACRS Subcommittee on the Sequoyah Nuclear Power Station will hold a meeting on March 12, 1979, in Room 1046, 1717 H Street NW., Washington, DC 20555 to review the application of the Tennessee Valley Authority (TVA) for a permit to operate Units 1 and 2 of this station.

In accordance with the procedures outlined in the FEDERAL REGISTER on October 4, 1978, (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

MONDAY, MARCH 12, 1979

8:30 A.M. UNTIL THE CONCLUSION OF BUSINESS

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold Discussions with representatives of the NRC Staff, TVA, and their consultants, pertinent to this review. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with Subsection 10(d) of Pub. L. 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Richard P. Savio, (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, TN 37402.

Dated: February 22, 1979.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc. 79-5803 Filed 2-23-79; 8:57 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

AGENCY FORMS UNDER REVIEW

BACKGROUND

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 U.S.C., Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

LIST OF FORMS UNDER REVIEW

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, or extensions. Each entry contains the following information:

The name and telephone number of the agency clearance officer;

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. In addition, most repetitive reporting requirements or forms that require one half hour or less to complete and a total of 20,000 hours or less annually will be approved ten business days after this notice is published unless specific issues are raised; such forms are identified in the list by an asterisk (*).

COMMENTS AND QUESTIONS

Copies of the proposed forms may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Stanley E. Morris, Deputy Associate Director for Regulatory Policy and Reports Management, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF COMMERCE

Agency Clearance Officer—Edward Michaels—377-4217.

NEW FORMS

Bureau of the Census
Questionnaire for Census Promotional Campaign
S-483(X)

Single time
Households with telephones; 150 responses; 50 hours
Office of Federal Statistical Policy and Standard, 673-7974

REVISIONS

Bureau of the Census
Metalworking Machinery (Shipments and Unfilled Orders)
MQ-35W
Quarterly
Manufacturers of metalworking machinery; 2,136 responses; 1,068 hours
Caywood, D. P., 395-6140

Bureau of the Census
Shipments of Refractories
MQ-32C
Quarterly
Refractories manufacturers; 1,100 responses; 734 hours
Office of Federal Statistical Policy and Standard, 673-7974

Bureau of the Census
*Cotton Ginned (Statistical Prior to Specified Dates)
CAG-1A through CAG-1-L
Other (See SF-83)
Cotton gins; 42,900 responses; 2,145 hours
Ellett, C. A., 395-5080

DEPARTMENT OF ENERGY

Agency Clearance Officer—Albert Linden—633-9021.

NEW FORMS

Schedule B—General and Special Costs Tests for New Installations
ERA-318
Single time
New major fuel burning installations; 200 responses; 15,200 hours
Hill, Jefferson B., 395-5867

Schedule C—No Alternative Power Supply
ERA-319
Single time
New power plants/new major fuel burning installations; 50 responses; 6,600 hours
Hill, Jefferson B., 395-5867

Schedule D—Use of Fuel Mixtures
ERA-320
Single time
New power plants/new major fuel burning installations; 235 responses; 19,740 hours
Hill, Jefferson B., 395-5867

Schedule E—General Requirement for Alternative Sites (Power Plants)
ERA-321
Single Time
New power plants; 35 responses; 2,100 hours
Hill, Jefferson B., 395-5867

Schedule A—General and Special Cost Tests for New Power Plants
ERA-317
Single Time
New power plants; 35 responses; 2,940 hours
Hill, Jefferson B., 395-5867

Temporary Public Interest Exemption for Use of Natural Gas by Existing Power Plants
ERA-316
Single Time
Power plants; 100 responses; 1,200 hours
Hill, Jefferson B., 395-5867

Permanent Exemption for Installations Necessary To Meet Scheduled Outages
ERA-315
Single Time
New Major fuel burning installations; 40 responses; 640 hours
Hill, Jefferson B., 395-5867

Permanent Exemption for Intermediate Load Power Plants
ERA-314
Single Time
New power plants; 10 responses; 200 hours
Hill, Jefferson B., 395-5867

Permanent Exemption for Peakload Power Plants
ERA-313
Single Time
New power plants; 5 responses; 60 hours
Hill, Jefferson B., 395-5867

General Form for New Power Plant Exemption Petition
ERA-301A
Single Time
New power plants; 35 responses; 1 hour
Hill, Jefferson B., 395-5867

Selected Refiners Production Projection
ERA-155
Single Time
18 selected refineries; 18 responses; 1,080 hours
Hill, Jefferson B., 395-5867

Permanent Exemption for New Power Plants Necessary To Maintain Reliability of Service
ERA-312
Single Time
New power plants; 5 responses; 320 hours
Hill, Jefferson B., 395-5867

Permanent Exemption for Emergency Purposes for New Power Plants and New Installations
ERA-311
Single Time
New power plants/new major fuel burning installations; 25 responses; 600 hours
Hill, Jefferson B., 395-5867

Permanent Exemption for Fuel Mixtures for New Power Plants and New Installations
ERA-310
Single Time
New power plants/new major fuel burning installations; 60 responses; 2,400 hours
Hill, Jefferson B., 395-5867

Permanent Exemption for Cogeneration for New Power Plants and New Installations
ERA-309
Single Time
New power plants/new major fuel burning installations; 20 responses; 1,440 hours
Hill, Jefferson B., 395-5867

Permanent Exemption for New Power Plants and New Installations Due to Certain State and Local Requirements
ERA-308
Single Time
New power plants/new major fuel burning installations; 25 responses; 800 hours
Hill, Jefferson B., 395-5867

Permanent Exemption for Inability To Obtain Adequate Capital
ERA-307
Single Time
New power plants/new major fuel burning installations; 40 responses; 7,680 hours
Hill, Jefferson B., 395-5867

Exemption Due to an Inability To Comply With Applicable Environmental Requirements
ERA-306
Single Time
New power plants/new major fuel burning installations; 75 responses; 7,200 hours
Hill, Jefferson B., 395-5867

Temporary and Permanent Site Limitation Exemption for New Power Plant and New Installations
ERA-305
Single Time
New power plants/new major fuel burning installations; 40 responses; 1,920 hours
Hill, Jefferson B., 395-5867

Exemption Due to a Lack of Alternate Fuel for New Power Plants and New Major Fuel Burning Installations
ERA-304
Single Time
New power plants/new major fuel burning installations; 25 responses; 1,000 hours
Hill, Jefferson B., 395-5867

Temporary Public Interest Exemption for New Power Plants and New Installations
ERA-303
Single Time
New power plants/new major fuel burning installations; 20 responses; 480 hours
Hill, Jefferson B., 395-5867

Temporary Exemption for Future Use of Synthetic Fuels for New Powerplants and New Installations

ERA-302
Single Time
New power plants/new major fuel burning installations; 35 responses; 1,680 hours
Hill, Jefferson B., 395-5867

General Form for New Installation Exemption Petition
ERA-301B
Single Time
Major fuel burning new/installations; 200 responses; 12,800 hours
Hill, Jefferson B., 395-5867

REVISIONS

Standby Mandatory Crude Oil Allocation Program Report
ERA-59
Monthly
Petroleum refiners; 150 responses; 450 hours
Hill, Jefferson B., 395-5867

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Agency Clearance Officer—Peter Gness—245-7488.

NEW FORMS

Alcohol, Drug Abuse and Mental Health Administration
Mother's Health History, Child Health and Development and Family Nutrition
Single time
Mothers of 75 child subjects in study of undernutrition; 75 responses; 37 hours
Richard Eisinger, 395-3214

Alcohol, Drug Abuse and Mental Health Administration
Prevalence of Depression Among Members of a Prepaid Group Practice Plan
Single time
Prepaid medical care plan users; 1,000 responses; 67 hours
Richard Eisinger, 395-3214

Office of Education
Basic Educational Opportunity Grant Quality Control Study
OE-628-1
Single time
Student financial aid officers—IHE's; 200 responses; 200 hours
Laverne V. Collins, 395-3214

Office of Human Development
Head Start Health Evaluation Forms
Other (See SF-83)
Head Start staff; 4,338 responses; 6,897 hours
Reese, B.F., 395-6132

Office of Human Development
Instuments for Migrant Head Start Program Evaluation
Single time
Home base interview; 1,692 responses; 1,178 hours
Reese, B.F., 395-6132

Public Health Service
Study of the Reliability of the National Hospital Discharge Survey (HDS)
Single time
Hospitals participating in HDS; 3,500 responses; 93 hours
Office of Federal Statistical Policy and Standard, 673-7974

REVISIONS

Office of Education
FY-1980 Annual Program Plan for Part B (P.L. 94-142) and for P.L. 89-313
OE-9055
Annually
State educational agencies; 57 responses; 3,990 hours
Laverne V. Collins, 395-3214

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—John Kalagher—755-5184.

NEW FORMS

Policy Development and Research
Gautreaux Housing Demonstration Study
Single time
Participants in Sec. 8 existing housing assistance program; 1,700 responses; 550 hours
Strasser, A., 395-5080

EXTENSIONS

Federal Insurance Administration
National Flood Insurance Program Annual Report
HUD 1615
Annually
Communities participating in the NFIP; 15,000 responses; 15,000 hours
Strasser, A., 395-5080

Housing Production and Mortgage Credit
Request for Credit Approval of Substitute Mortgagor
FHA-2210
On occasion
FHA approved lending institutions; 1,000 responses; 1,000 hours
Srrasser, A., 395-5080

DEPARTMENT OF JUSTICE

Agency Clearance Officer—Donald E. Larue—376-8283.

NEW FORMS

Law Enforcement Assistance Administration
Environmental Evaluation
Series 4550
On occasion
Applicants for LEAA funds; 100 responses; 500 hours
Laverne V. Collins, 395-3214

DEPARTMENT OF LABOR

Agency Clearance Officer—Philip M. Oliver—523-6341.

NEW FORMS

Employment and Training Administration
Assessment of Uses of OA Products Outside the Employment Service
MT-299
Single time
Purchasers of DOT; 400 responses; 100 hours
Strasser, A., 395-5080

Employment and Training Administration
Manual for Extended Win Follow-Through Survey
ETA-16
Other (See SF-83)
WIN clients obtaining employment and WIN sponsors; 120,162 responses; 25,000 hours
Strasser, A., 395-5080

REVISIONS

Employment and Training Administration
Validation Handbook
ETA-361
Quarterly
State employment security agencies; 416 responses; 149,760 hours
Strasser, A., 395-5080

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—Bruce H. Allen—426-1887.

NEW FORMS

Federal Highway Administration
* External Youth Opportunity Program
FHWA-1469
Annually
State highway agencies; 52 responses; 26 hours
Geiger, Susan B., 395-5867

EXTENSIONS

Federal Aviation Administration
* Application for an Airman Certificate and/or Rating
FAA 8400-3
On occasion
Airmen; 8,000 responses; 800 hours
Geiger, Susan B., 395-5867

SMALL BUSINESS ADMINISTRATION

Agency Clearance Officer—John Reidy—653-6081.

NEW FORMS

Client Questionnaire
Single time
Recipients of SBA's management assistance services; 2,500 responses; 1,250 hours

Caywood, D. P., 395-6140

STANLEY E. MORRIS,
Deputy Associate Director for Regulatory Policy and Reports Management.

[FR Doc. 79-5565 Filed 2-23-79; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1555, Amdt. No. 2]

ARIZONA

Declaration of Disaster Loan Area

The above numbered declaration (see 44 FR 1812, January 8, 1979) and Amendment No. 1 (see 44 FR 5037, January 24, 1979) is amended in accordance with the President's declaration of December 21, 1978, to include Santa Cruz County in the State of Arizona. The Small Business Administration will accept applications for disaster relief loans from disaster victims in the above named counties and adjacent counties within the State of Arizona. All other information remains the same, i.e., the termination date for filing applications for physical damage is close of business on February 21, 1979, and for economic injury until the close of business on September 21, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 16, 1979.

A. VERNON WEAVER,
Administrator.

[FR Doc. 79-5631 Filed 2-23-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1578]

INDIANA

Declaration of Disaster Loan Area

Switzerland County and adjacent counties within the State of Indiana constitute a disaster area as a result of damage caused by flooding which occurred on December 11, 1978 through December 16, 1978. Applications will be processed under the provisions of Pub. L. 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 April 16, 1979, and for economic injury until the close of business on November 14, 1979, at:

Small Business Administration, District Office, Federal Building—5th Floor, 575 North Pennsylvania Street, Indianapolis, Indiana 46204

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 14, 1979.

WILLIAM H. MAUK, Jr.
Acting Administrator.

[FR Doc. 79-5632 Filed 2-23-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1567]

MISSISSIPPI

Declaration of Disaster Loan Area

Bolivar, Coahoma, Tunica and Washington Counties and adjacent counties within the State of Mississippi constitute a disaster area as a result of damage caused by an ice storm which occurred on January 6, 1979. Applications will be processed under the provisions of Pub. L. 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 April 6, 1979, and for economic injury until the close of business on November 6, 1979 at:

Small Business Administration, District Office, Petroleum Building—Room 690, 200 East Pascagoula, Jackson, Mississippi 39201

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 6, 1979.

A. VERNON WEAVER,
Administrator.

[FR Doc. 79-5633 Filed 2-23-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1576]

NEW YORK

Declaration of Disaster Loan Area

Orange County and adjacent counties within the State of New York constitute a disaster area as a result of damage resulting from heavy rains, rising water, and flooding which occurred on January 19, 1979, through January 25, 1979. Applications will be processed under provisions of Pub. L. 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 April 12, 1979, and for economic injury until close of business on November 9, 1979, at:

Small Business Administration, District Office, 26 Federal Plaza—Room 3100, New York, New York 10007

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 9, 1979.

WILLIAM H. MAUK, Jr.,
Acting Administrator.

[FR Doc. 79-5634 Filed 2-23-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1579]

NEW YORK

Declaration of Disaster Loan Area

Kings, Queens, and Richmond Counties and adjacent counties within the State of New York constitute a disaster area as a result of damage resulting from heavy rains, flooding, winds, and snow which occurred on January 19, 1979, through January 25, 1979. Applications will be processed under provisions of Pub. L. 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 April 16, 1979, and for economic injury until close of business on November 14, 1979 at:

Small Business Administration, District Office, 26 Federal Plaza—Room 3100, New York, New York 10007

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 14, 1979.

WILLIAM H. MAUK,
Acting Administrator.

[FR Doc. 79-5635 Filed 2-23-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1561]

TEXAS

Declaration of Disaster Loan Area

The following 6 counties and adjacent counties within the State of Texas constitute a disaster area as a result of natural disasters as indicated:

County	Natural disaster(s)	Date(s)
Coke	Drought	06/06/78-12/06/78
Culberson	Excessive rain.	09/22/78-09/29/78
Hudspeth	Excessive rain.	09/22/78-09/29/78
Nolan	Drought	06/06/78-12/06/78
Palo Pinto	Drought	01/01/78-11/14/78
Parker	Drought	01/01/78-11/14-78

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on August 7, 1979, and for

economic injury until the close of business on November 7, 1979, at:

Small Business Administration, District Office, 1100 Commerce Street—Room 3C36, Dallas, Texas 75242.

Small Business Administration, District Office, 1205 Texas Avenue, 712 Federal Office Bldg. and U.S. Courthouse, Lubbock, Texas 79401.

Small Business Administration, Branch Office, 4100 Rio Bravo, Suite 300 Pershing Bldg., El Paso, Texas 79902.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 7, 1979.

A. VERNON WEAVER,
Administrator.

[FR Doc. 79-5636 Filed 2-23-79; 8:45 am]

[8025-01-M]

[License No. 04/05-0095]

SOUTHEAST SBIC, INC.

Filing of Application for Approval of Conflict of Interest Transaction

Notice is hereby given that Southeast SBIC, Inc., 100 South Biscayne Boulevard, Miami, Florida 33131, a Federal Licensee under the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. 661 et seq.), has filed an application with the Small Business Administration pursuant to § 107.1004(b)(1) of the Rules and Regulations (13 CFR 107.1004 (1978)), governing Small Business Investment Companies (SBIC) for approval of conflict of interest transaction falling within the above cited Section of the Regulations.

The proposed financing is brought within the purview of Section 107.1004 since a former Director of Southeast SBIC, Inc. (resigned December 26, 1978), is now employed by a portfolio concern namely Seacraft, Inc., and is therefore considered as an associate.

Section 107.3(a) of the Regulations defines an associate, among other things as one who served the Licensee as an officer, director, partner manager, etc., etc.: * * * sub-section (g) further provides that any person described above who held such a position within six months before or after the date of financing is considered as an associate.

Subject to such approval, Southeast SBIC, Inc., proposes to guarantee a line of credit for the portfolio concern.

Section 312 of the Act requires public disclosure of any such transaction.

Notice is hereby given that any interested person may, not later than March 13, 1979, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistant Program No. 59.011, Small Business Investment Companies)

Dated: February 13, 1979.

PETER F. MCNEISH,
Deputy Associate Administrator, for Investment.

[FR Doc. 79-5637 Filed 2-23-79; 8:45 am]

[8025-01-M]

SMALL BUSINESS CONFERENCE COMMISSION

White House Conference on Small Business

In accordance with Section 10(a) of the Federal Advisory Committee Act (5 U.S.C. appendix I), announcement is made of the following national commission meeting.

Because scheduling of the first meeting of the Small Business Conference Commission was to occur concurrently with the swearing-in of the Commission, and scheduling of the swearing-in was dependent on official announcement of the appointments by the White House and on the schedules of several individuals involved, notice is being given in less than the required 15 days in advance. It should be noted that announcement of this same meeting was made in the FEDERAL REGISTER on January 23, 1979 and subsequently cancelled February 5, 1979.

SMALL BUSINESS CONFERENCE COMMISSION

February 28, 1979—4:30 p.m. to 6:00 p.m.—New Executive Office Building, Room 2010, 726 Jackson Place, N.W., Washington, DC 20506.

OPEN MEETING

Purpose: The Small Business Conference Commission was established by Executive Order to provide advice with respect to the holding of a White House Conference on Small Business in early 1980. In pursuit of the goal of a strong small business community, the Commission shall recommend issues to be considered by the conference including those related to fostering of small business and the expansion of opportunities for entry into small business enterprises. The Commission shall make recommendations for legislative and policy changes primarily based upon the findings of the White House Conference on Small Business.

Agenda: The Commission shall address the above issues in an introductory meeting.

Contact: Cynthia Howar, Commission Liaison, White House Conference on Small Business, 730 Jackson Place, N.W., Washington, DC 20506.

Please write or call (456-6268) before February 25, 1979 if you wish to attend this meeting. Attendance by the public will be limited to space available.

Summaries of the transcripts of the meeting will be made available to the public upon request.

K DREW,
Deputy Advocate for Advisory Councils, U.S. Small Business Administration.

[FR Doc. 79-5638 Filed 2-23-79; 8:45 am]

[4910-60-M]

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

OFFICE OF HAZARDOUS MATERIALS REGULATION

Applications for Exemptions

AGENCY: Materials Transportation Bureau, D.O.T.

ACTION: List of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein.

DATES: Comment period closes March 28, 1979.

ADDRESSED TO: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION:

Copies of the applications are available for inspection in the Dockets Branch, Room 6500, Trans Point Building, 2100 Second Street, SW., Washington, D.C.

Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

NEW APPLICATION

Application No.	Applicant	Regulation(s) affected	Nature of application
8144-N	Hercules Inc., Wilmington, Del	49 CFR 173.133	To ship a 1 to 9 ratio of nitroglycerin to propylene glycol as "Spirits of nitroglycerin." (Mode 1.)
8145-N	American Box Co., Fernwood, Miss	49 CFR 173.366	To manufacture, mark and sell a non-DOT specification composite corrugated fiberboard-wirebound pallet wooden box for the shipment of arsenic trioxide. (Modes 1, 2.)
8146-N	Thiokol Corp., Brigham City, Utah	49 CFR 173.375	To ship sodium azide, Poison B, in DOT Specification 56 portable tanks or non-DOT specification collapsible flexible containers. (Modes 1, 2.)
8148-N	U.S. Department of Energy, Washington, D.C.	49 CFR 173.304	To ship liquid natural gas in a modified DOT Specification 4L200 cylinder. (Mode 1.)
8149-N	Matheson Gas Co., Lyndhurst, N.J	49 CFR 173.333(b)	For authorization of an alternate method of testing cylinders charged with phosgene, for leakage. (Mode 1.)
8150-N	Herbert-Verkamp-Calvert Chemical Co., Cincinnati, Ohio.	49 CFR 177.848	To transport certain packages of corrosive liquids and oxidizing materials loaded in the same motor vehicle. (Mode 1.)
8151-N	Ropak West, Inc., La Mirada, Calif	49 CFR Part 173, Subparts D and F.	To manufacture, mark and sell non-DOT specification 5 gallon capacity, removable head polyethylene containers for shipment of certain flammable liquids and corrosive liquids. (Modes 1, 2, 3.)
8152-N	Allied Chemical Corp., Morristown, N.J	49 CFR 178.343-2(c)(2)	To ship 70% hydrofluoric acid in an MC-312 unlined steel cargo tank having a wall thickness less than prescribed. (Mode 1.)
8153-N	Browning-Ferris Industries Chemical Services, Inc., Houston, Tex.	49 CFR 173.119(a)(17), 173.245(a)(30).	To transport flammable or corrosive waste liquids or semi-solids in non-DOT specification cargo tanks complying generally with DOT MC-307 specification except for bottom outlet valve variation. (Mode 1.)
8154-N	Rohm and Haas Co., Philadelphia, Pa	49 CFR 173.248(a)(4)	To authorize shipment of spent sulfuric acid in DOT 111A100W1 and 111A100W3 tank cars without bottom outlet valves. (Mode 2.)
8155-N	Badger Powhatan, Charlottesville, Va	49 CFR 173.304	To authorize shipment of bromochlorodifluoromethane charged with nitrogen in a DOT Specification 4B195 cylinder. (Modes 1, 2, 3, 4.)
8156-N	Gardner Cryogenics Corp., Bethlehem, Pa	49 CFR 173.302(a)(4), 173.304(a)(1)(i).	To authorize shipment of various flammable gases in DOT Specification 39 steel cylinders not exceeding 225 cubic inch capacity. (Modes 1, 2.)
8157-N	Igloo Corp., Houston, Tex	49 CFR 173.346	To manufacture, mark and sell DOT Specification 34 containers for the shipment of dinitro-phenol solution, Poison B. (Modes 1, 2, 3.)
8158-N	Ford Aerospace and Communications Corp., Palo Alto, Calif.	49 CFR 173.260(a)(i), 175.3	To authorize shipment of wet electric storage batteries weighing 26 to 150 pounds in DOT Specification 15A or 15B wooden boxes. (Modes 1, 2, 3, 4.)
8159-N	Fauvet-Girel, Paris, France	49 CFR 173.266	To authorize shipment of hydrogen peroxide not exceeding 70% in ISO-IMCO Type 1 portable tanks. (Mode 1.)

This notice of receipt of applications for new exemptions is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on February 14, 1979.

J. R. GROTHE,
Chief, Exemptions Branch,
Office of Hazardous Materials Regulation,
Materials Transportation Bureau.

[FR Doc. 79-5582 Filed 2-23-79; 8:45 am]

[1505-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

PROPOSED REVENUE PROCEDURE ON PRIVATE TAX-EXEMPT SCHOOLS

Proposed Revenue Procedure

Correction

In FR Doc. 79-4801, appearing at page 9451 in the issue of Tuesday, February 13, 1979, the following changes should be made:

(1) On the following pages, the word "nondiscriminatory" should read "discriminatory":

(a) On page 9452, in the middle column, under the heading of "SEC. 2. BACKGROUND." in the fifth paragraph, in the second line;

(b) On page 9452, in the last column, the first paragraph, in the fourth line;

(c) On page 9453, in the middle column, in the third full paragraph, the third line.

(2) On page 9453, in the first column, the fourth full paragraph, the second line, correct the word "significantly" to read "significant".

[4810-40-M]

Office of the Secretary

[Dept. Circular—Public Debt Series—No. 5-79]

TREASURY NOTES OF MARCH 31, 1983—SERIES D-1983

Auction

FEBRUARY 22, 1979.

1. INVITATION FOR TENDERS

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $2,500,000,000 of United States securities, designated Treasury Notes of March 31, 1983, Series D-1983 (CUSIP No. 912827 JM 5). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued for cash to Federal Reserve Banks as agents of foreign and international monetary authorities.

2. DESCRIPTION OF SECURITIES

2.1. The securities will be dated March 5, 1979, and will bear interest from that date, payable on a semiannual basis on September 30, 1979, and each subsequent 6 months on March 31 and September 30, until the principal becomes payable. They will mature March 31, 1983, and will not be subject to call for redemption prior to maturity.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. SALE PROCEDURES

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Tuesday, February 27, 1979. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, February 26, 1979.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3.3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in Section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and othe banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their polictical subdivisions or instrumentalitities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5% of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determinations is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.000. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. RESERVATIONS

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. PAYMENT AND DELIVERY

5.1. Settlement for allotted securities must be made or completed on or before Monday, March 5, 1979, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the insititution to which the tender was submitted, which must be received at such institution no later than:

(a) Friday, March 2, 1979, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Friday, March 2, 1979, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. GENERAL PROVISIONS

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificated pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

SUPPLEMENTARY STATEMENT

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

[FR Doc. 79-5750 Filed 2-22-79; 3:38 pm]

[4810-40-M]

[Supplement to Depart. Circular—Public Debt Series—No. 4-79]

TREASURY NOTES OF SERIES Q-1981

Interest Rate

FEBRUARY 22, 1979.

The Secretary announced on February 21, 1979, that the interest rate on the notes designated Series Q-1981, described in Department Circular—Public Debt Series—No. 4-79, dated February 14, 1979, will be 9¾ percent. Interest on the notes will be payable at the rate of 9¾ percent per annum.

SUPPLEMENTARY STATEMENT

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

[FR Doc. 79-5751 Filed 2-23-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 241, Rule 19, Exemption No. 149, Amdt. No. 4]

ALL RAILROADS

Exemption Under Mandatory Car Service Rules

Upon further consideration of Exemption No. 149 issued April 28, 1978.

It is ordered, That under authority vested in me by Car Service Rule 19, Exemption No. 149 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 is amended to *expire May 15, 1979.*

This amendment shall become effective February 15, 1979.

Issued at Washington, D.C., February 12, 1979.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 79-5648 Filed 2-23-79; 8:45 am]

[7035-01-M]

[Amdt. No. 1 to I.C.C. Order No. 15 Under Service Order No. 1344]

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

Rerouting Traffic

To: All Railroads.

Upon further consideration of I.C.C. Order No. 15 (Chicago, Milwaukee, St.

Paul and Pacific Railroad Company), and good cause appearing therefor:

It is ordered,

I.C.C. Order No. 15 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., March 15, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., February 15, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 8, 1979.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-5649 Filed 2-23-79; 8:45 am]

[7035-01-M]

[Amdt. No. 1 to I.C.C. Order No. 13 Under Service Order No. 1344]

ALL RAILROADS

Rerouting Traffic

Upon further consideration of I.C.C. Order No. 13, and good cause appearing therefor:

It is ordered,

I.C.C. Order No. 13 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., March 15, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., February 15, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 14, 1979.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 79-5650 Filed 2-23-79; 8:45 am]

[7035-01-M]

[Amdt. No. 1 to I.C.C. Order No. 10 Under Service Order No. 1344]

ILLINOIS CENTRAL GULF RAILROAD CO.

Rerouting Traffic

To: All Railroads.

Upon further consideration of I.C.C. Order No. 10 (Illinois Central Gulf Railroad Company), and good cause appearing therefor:

It is ordered,

I.C.C. Order No. 10 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., May 15, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., February 15, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 8, 1979.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-5651 Filed 2-23-79; 8:45 am]

[7035-01-M]

[Revised I.C.C. Order No. 16 Under Service Order No. 1344]

CHICAGO SWITCHING DISTRICT

Rerouting Traffic

To: All Railroads.

In the opinion of Robert S. Turkington, Agent, many of the railroads operating in the Chicago switching district are unable to interchange traffic routed via Chicago because of heavy snow in the Chicago terminals.

It is ordered,

(a) *Rerouting traffic.* Any railroad operating in the Chicago switching district which is unable to interchange traffic routed via Chicago because of interference with the operations of the delivering, intermediate, or receiving line due to heavy snow, is authorized to divert or reroute such traffic via any available route to expedite the movement under the terms listed in paragraphs (b) through (g). Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Acceptance of traffic in interchange at Chicago.* In the event a railroad operating in the Chicago switching district cannot accept traffic in interchange from a connecting carrier, the delivering carrier, after establishing such condition, may reroute or divert the traffic via any available route.

(c) *Concurrence of receiving road to be obtained.* The railroad rerouting cars in accordance with this order, shall receive the concurence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(d) *Notification to shippers.* The railroad rerouting cars in accordance with this order shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(e) *Rerouting which is not authorized.* This order shall not authorize any carrier to divert or reroute any traffic via Chicago and North Western Transportation Company through the St. Louis Gateway. This exception applies to cars billed after 11:59 p.m., February 9, 1979.

(f) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(g) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers, or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(h) *Effective date.* This order shall become effective at 11:59 p.m., February 9, 1979.

(i) *Expiration date.* This order shall expire at 11:59 p.m., February 23, 1979, unless otherwise modified, changed or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the

American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 8, 1979.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-5652 Filed 2-23-79; 8:45 am]

[7035-01-M]

[Ex Parte No. 241, Rule 19, Revised Exemption No. 155, Amdt. No. 3]

ALL RAILROADS

Exemption Under Mandatory Car Service Rules

Upon further consideration of Revised Exemption No. 155 issued January 19, 1979.

It is ordered, That under the authority vested in me by Car Service Rule 19, Revised Exemption No. 155 to the Mandatory Car Service Rules ordered in Ex Parte No. 241, is amended to *expire February 23, 1979.*

This amendment shall become effective February 9, 1979.

Issued at Washington, D.C., February 8, 1979.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-5655 Filed 2-23-79; 8:45 am]

[7035-01-M]

[Amdt. No. 2 to I.C.C. Order No. 24 Under Service Order No. 1344]

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

Rerouting Traffic

Upon further consideration of I.C.C. Order No. 24 and good cause appearing therefor:

It is ordered,

I.C.C. Order No. 24 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., February 23, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., February 9, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 8, 1979.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-5653 Filed 2-23-79; 8:45 am]

[7035-01-M]

[Amdt. No. 2 to I.C.C. Order No. 22 Under Service Order No. 1344]

Rerouting Traffic

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

Upon further consideration of I.C.C. Order No. 22, and good cause appearing therefor:

It is ordered,

I.C.C. Order No. 22 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., February 23, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., February 9, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement, under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 8, 1979.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-5654 Filed 2-23-79; 8:45 am]

[7035-01-M]

[Amdt. No. 1 to Revised I.C.C. Order No. 21 Under Service Order No. 1344]

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

Rerouting Traffic

Upon further consideration of I.C.C. Order No. 21, and good cause appearing therefor:

It is ordered,

I.C.C. Order No. 21 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., February 23, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., February 9, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 8, 1979.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-5647 Filed 2-23-79; 8:45 am]

[7035-01-M]

[Finance Docket No. 28499 (Sub-No. 1)]

NORFOLK AND WESTERN RAILROAD CO. AND BALTIMORE AND OHIO RAILROAD—CONTROL—DETROIT, TOLEDO AND IRONTON RAILROAD CO.

[Finance Docket No. 28676 (Sub-No. 1)]

GRAND TRUNK WESTERN RAILROAD—CONTROL—DETROIT, TOLEDO, AND IRONTON RAILROAD CO. AND DETROIT AND TOLEDO SHORELINE RAILROAD CO.

Decided: January 23, 1979.

We have considered the petition filed December 18, 1978, by Michigan Interstate Railway Company (MI), a designated operator of the Ann Arbor Railroad System, seeking discovery of certain information or, in the alternative, waiver of certain material required by sections 1111.1(b)(1) thru (6), 1111.1(c)(1) thru (12), 1111.1(d)(4) thru (8), and 1111.2 of the *Railroad Acquisition, Control, Merger, Consolidation, Coordination Project, Tackage Rights and Lease Procedures,* 49 C.F.R. part 1111 (1977) (Railroad Consolidation Precedures), and postponement of the filing date in which to file its trackage rights applications.[1]

MI intends to file, in this proceeding, on or about January 15, 1979, applications under 49 U.S.C. 11343 (formerly section 5(2) of the Interstate Commerce Act) requesting trackage rights over specificed routes of the Detroit, Toledo and Ironton Railroad Company (DT&I), Baltimore and Ohio Railroad Company (Chessie System), and the Grand Trunk Western Railroad (GTW), as a condition to approv-

[1] We have accepted and considered the separate reply petitions filed January 9 and 10, 1979, by Norfolk and Western Railroad Company, Baltimore and Ohio Railroad Company, Detroit, Toledo and Ironton Railroad Company, and Pennsylvania Company, jointly, and by Grand Trunk Western Railroad Company, respectively.

al of either of the proposed applications for control of DT&I. On August 15, 1978, Administrative Law Judge Richard H. Beddow, Jr., instructed counsel for MI to submit for the September, 1978, hearings a formal pleading requesting trackage rights. On December 11, 1978, the Administrative Law Judge, not recalling the September deadline, (1) permitted MI to file the petition here by December 18, 1978, (2) ruled that the proposed applications will be presumed major market extensions, and (3) set January 15, 1979, as the final date for filing the applications.

49 C.F.R. sections 1111.1(b)(1) thru (6) require MI to provide information respecting identification of applicant to the trackage rights. Petitioner MI indicates that with respect to DT&I, the Chessie System, and GTW, this information is already in the record in these proceedings. Accordingly, MI should incorporate by reference this material to its application. Petitioner makes no allegation that it cannot provide this information about itself. In our opinion, therefore, petitioner has not shown good cause for granting the requested waiver of these sections.

49 C.F.R. sections 1111.1(d)(4) thru (8) require certain information respecting the nature of the transaction proposed and the term and conditions thereof. Section 1111.1(d)(4) requires information on any financial or other relationship, direct or indirect, not disclosed in responses to prior instructions existing at the present time between applicants and other parties and affiliates involved in the proposed transaction. Petitioner alleges that this information concerning DT&I, the Chessie System, and GTW are all matters exclusively within their respective knowledge. Petitioner states further that the information on these three carriers is already in the record. MI should, therefore, incorporate by reference this material concerning these three carriers to its application. Petitioner makes no allegation that it cannot provide this information about itself. In our opinion, petitioner has not shown good cause for a waiver of the requirements of section 1111.1(d)(4).

Section 1111.1(d)(5) requires route, termini and mileage data of all involved lines, and the principle points of interchange, with the main line mileage and branch line mileage shown separately. Petitioner alleges that this material is not in the record in a form suitable for consideration of the trackage rights application. The information that MI needs to comply with section 1111.1(d)(5) can be found in its own file and in the application of the N&W/Chessie or GTW (Exhibit A-13). Therefore, good cause has not been shown for a waiver of the requirements of section 1111.1(d)(5).

Section 1111.1(d)(6) requires a description of the property of the applicant included in the proposed transaction. The information MI needs to comply with this section can be found in its own file and in the applications of the N&W/Chessie and GTW. Therefore, good cause has not been shown for waivers of this section.

Section 1111.1(d)(7) requires valuation data of the property involved in the proposed transaction. Petitioner states that it is not in a position to provide this information because it is probably not in the record in a form suitable for consideration of the trackage rights application to be filed. Records on this information are not readily available to MI. Thus, it would be an undue burden to require MI to make an independent appraisal of the properties. Similarly, it would be an undue burden to require DT&I, the Chessie System, and GTW to research their records on valuation of these properties. In our opinion, petitioner has shown good cause for granting the requested waiver.

Section 1111.1(d)(8) requires a statement of the policy and practice followed by applicant with respect to reserves for depreciation and similar reserves, including rates by class of property. To the extent that this information is already in the record in these proceedings, MI should incorporate by reference this material to its application; we will require DT&I, the Chessie System and GTW, upon a request pursuant to section 1100.60 of the *General Rules of Practice*, to promptly provide this information not in the record to MI. Petitioner makes no allegation that it could not provide this information about itself. In our opinion, therefore, petitioner has not shown good cause for a waiver of the requirements of this section.

49 C.F.R. sections 1111.2(a) (1) thru (12) (Exhibits 1-12) detail the exhibits to be filed in all applications pursuant to the consolidation procedures. Exhibits 1 and 2 require articles of incorporation, by laws, amendments, and annual report data of each applicant. This information on the DT&I, GTW, and Chessie System is already in the record and should, therefore, be incorporated by reference by MI in its application. Petitioner makes no allegation that it cannot provide this information about itself. Therefore, petitioner has not shown good cause for waiver of the requirements of Exhibits 1 and 2.

Sections 1111.2(a) (3), (4) and (7) (Exhibits 3, 4 and 7) require, among other things, directors' and shareholders' resolutions of DT&I, GTW, the Chessie System, and MI. Petitioner alleges that it cannot supply these resolutions because the other corporations have not yet considered or written such documents. Petitioner states further that waiver of the requirement to furnish this information is justified under *Itel Corporation-Control-Green Bay and Western*, 354 I.C.C. 232 (1978). In similar circumstances, the Commission ruled in the present proceeding that such resolutions and opinions of counsel were not required for DT&I in the NW/B&O application nor for DT&I and DTSL in the GTW inconsistent application. In our opinion, petitioner has shown good cause for granting the requested waiver.

Section 1111.2(a)(8) (Exhibit 8) requires a general or key map indicating the line or lines of applicant or parts of the line of each applicant in their true relation to each other. Petitioner states that in order to comply with this section it must have detailed maps from DT&I, GTW, and Chessie. The application of GTW in this proceeding has detailed maps of the DT&I and GTW. Therefore, this information is readily available to MI. The NW/Chessie application does not show the B&O lines which MI is requesting trackage rights over. However, there are several public sources, such as the *Official Railroad Guide*, which show the entire Chessie System. Therefore, MI could comply with Exhibit 8 without the Commission requiring the parties to supply the information. Accordingly, petitioner has not shown good cause for a waiver of the requirements of this section.

Section 1111.2(a)(10) (Exhibit 10) provides for employment and work force information. MI alleges that all of the information required by this exhibit to the extent it relates to either DT&I, GTW and the Chessie System should be provided to MI by such parties because this information is exclusively within the control of such other parties. The application of GTW and N&W/Chessie already provide most of this information as it relates to those carriers. Therefore, MI could comply with Exhibit 10 with the Commission requiring the parties to supply the information. Petitioner makes no allegation that it cannot provide this information about its own employment and work force and the effects these trackage rights will have on its own employees. Accordingly, petitioner has not shown good cause for a waiver of the requirements of this section.

49 C.F.R. section 1111.2(b)(1) (i) thru (iii) (Exhibit A-13) require MI to provide gross ton mile traffic density charts, revenue carload interchange data between applicant and connecting line-haul rail carriers or water carriers, and revenue carload origin and destination data for the latest available full calendar year preceding the filing of the application. By decision

served August 25, 1978, the Commission ruled that *all traffic data* submitted in this proceeding cover the period May 1, 1976, to April 30, 1977. To prevent undue hardship on potential protestants to the transaction, notice of this time requirement was published in the FEDERAL REGISTER. The applications of GTW and N&W/Chessie include Exhibit A-13 information as it relates to those carriers and the DT&I for this time period. Therefore, MI can incorporate by reference this material into its applications. However, it is impossible for MI to supply this information with respect to its operations inasmuch as during the period April 1, 1976, through September 30, 1977, the Ann Arbor was operated by Conrail which is not a party to this proceeding. MI states that it can supply this information for calendar year 1978. Therefore, although it is extremely difficult to compare this data for different time periods, the Commission will accept data for calendar year 1978 for Exhibit A-13 as it relates to MI's operation of the Ann Arbor. Accordingly, good cause has not been shown for waiver of Exhibit A-13, except as mentioned above.

49 C.F.R. sections 1111.2(b)(2) (i) thru (iv) (Exhibit A-14) require MI to provide separate tables showing for the 10-year period preceding the filing of the trackage rights application specified data related to freight car fleet cars owned and leased by applicant, applicant's revenue freight traffic, commodity group revenue, and commodity group tonnage. For each of the above items, MI is also required to prepare similar data for class I railroad subsidiaries and predecessor railroads. Petitioner states that this data, as it relates to DT&I, Chessie, and GTW, is not in its possession. However, the applications of GTW and N&W/Chessie include Exhibit A-14 information as it relates to those carriers and the DT&I, and may be incorporated by reference in the MI application.

Petitioner indicates that it can provide the data requirements for Exhibit A-14 about itself only for calendar year 1978 because, as mentioned above, Conrail and DT&I have this data for the periods prior to September 30, 1977. Absence of this data for the full ten-year period will not materially affect the disposition of MI's application; therefore, the Commission finds good cause for waiver of the ten-year requirement and will accept data for calendar year 1978 for Exhibit A-14 as it relates to MI. Accordingly, no good cause for granting the requested waiver, except as mentioned above, has been shown by petitioner.

49 C.F.R. 1111.2(b)(3) (i) thru (vii) (Exhibit A-15) require MI to provide a copy of a traffic study detailing estimated gains in traffic and revenues expected to result from the consummation of the proposed trackage rights transaction. MI states that preparation of this exhibit requires abstracts of interline settlements and waybills showing all traffic originating, terminating, and overhead to the particular line segments involved in the transaction from DT&I, GTW, and the Chessie System. This information is in the record of this proceeding. Two copies of the waybill abstracts relied upon by GTW and N&W/Chessie for their A-15 traffic studies are on file with the Commission. In addition, a copy of these abstracts is maintained at the headquarters of GTW and Chessie and will be made available, upon request, to parties in the proceeding. In our opinion, MI has not shown good cause for granting waiver of Exhibit A-15.

49 C.F.R. 1111.2(d) (1) thru (3) (Exhibits C-13, C-14, and C-15) provide that MI submit (a) specified information and data, projected 3 years following the consummation of the proposed transaction, describing various aspects of the operating plan, (b) general balance sheets of applicants DT&I, GTW, Chessie, and MI, and their respective parent company on a corporate entity basis, and (c) income statements of MI as lessee on a corporate entity basis. Petitioner MI states that with respect to items (i), (ii), (iv), (v), and (vi), of Exhibit C-13, the DT&I, GTW and Chessie should be required to furnish MI with their train schedules, numbers of trains per day operated each way and the size of existing trains, by weight and number of cars, for each of the line segments over which trackage rights are proposed. To comply with item (iii) of Exhibit C-13, MI requests detailed descriptions of each of the yards and interchange points located on or at the termini of the line segments over which trackage rights are sought. With respect to exhibits C-14 and C-15, MI states that the balance sheets and income statements for DT&I, the Chessie System, and GTW, giving effect to the proposed transaction, cannot be prepared. MI also implies that these exhibits require projections. Much of the information for preparing exhibits C-13, C-14, and C-15 is in the applications and exhibits of GTW and N&W/Chessie. Exhibit A-13(i) to the primary and inconsistent applications contain traffic density data MI can use to comply with Exhibit C-13(ii). GTW's Exhibit A-16 sets out train schedules, number of trains operated per day and major yard facilities. Exhibit A-17 (i) and (v) to the primary and inconsistent applications contain information for Exhibit C-14. Exhibit C-15 requires that MI only supply income statements; we will require base years 1976, 1977, and 1978 income statements. Accordingly, to the extent that this information is already in the record, MI should first compile all such data and request from GTW, DT&I, and Chessie specific information not in the record. DT&I, GTW, and Chessie will be required to promptly provide such information. In our opinion, therefore, petitioner has not shown good cause for a waiver of the requirements of Exhibit C-13, C-14, and C-15.

Petitioner requests a postponement of the January 15, 1979, trackage rights application filing deadline called for by Administrative Law Judge Richard H. Beddow, Jr., on December 11, 1978, for a 60 day period from the date petitioner receives the information called for by this decision. In support of this request, petitioner states that the complexity of all data, the traffic sampling process, and analysis, in conjunction with the fact that petitioner has a limited general staff to assimilate and analyze the material, makes it impossible for petitioner MI to meet the January 15 filing date. Petitioner states further that the analysis process can not begin until requested data has been received from the other parties to the trackage rights applications.

Good cause has not been shown for postponement of the January 15, 1979, filing date for a 60 day period from the date petitioner receives the information called for by this decision. We are very concerned with meeting the time limits set forth in 49 U.S.C. 11343 beyond the Congressionally mandated deadline. On August 15, 1978, the Administrative Law Judge instructed counsel for petitioner to submit a formal pleading requesting trackage rights for the September, 1978, hearings (see page 82, line 16 of transcript). It was not until December 11, 1978, through the testimony of Mr. Vincent M. Malanaphy, Chairman and Chief Executive Officer of MI, that the request for trackage rights was made. Petitioner has had plenty of time to prepare for this proceeding. Therefore, petitioner MI has until 30 days of service of this decision to file its trackage rights applications.

We realize that MI anticipates difficulty in receiving the necessary information from DT&I, the Chessie System, and GTW. To avoid this problem, we will require DT&I, the Chessie System, and GTW, as provided in the above paragraphs, to promptly provide information necessary to complete the trackage rights applications.

This decision is not a major Federal action significantly affecting the quality of the human environment.

It is ordered:

1. The petition of Michigan Interstate Railway Company is granted to the extent set forth in this decision.

2. DT&I, the Chessie System, and GTW are ordered upon a request made pursuant to section 1100.60 of the *General Rules of Practice* to provide the information set forth in this decision for the completion of the proposed traffic rights applications.

3. Michigan Interstate Railway Company has until 30 days of service of this decision to file its trackage rights applications.

4. Public notice of our action shall be given to the general public by delivery of a copy of this order to the Director, Office of the Federal Register, for publication.

5. This decision shall be effective on the date of service.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Vice Chairman Brown would give MI 15 days from service of this decision to file its trackage rights applications.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-5646 Filed 2-23-79; 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).

CONTENTS

[6714-01-M]

1

FEDERAL DEPOSIT INSURANCE CORPORATION.

NOTICE OF CHANGE IN SUBJECT MATTER OF AGENCY MEETING

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10 a.m. on February 16, 1979, the Corporation's Board of Directors voted, on motion of Chariman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), and concurred in by Mr. H. Joe Selby, acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required the addition to the agenda for the meeting, on less than seven days' notice to the public, of a request by certain State branches of foreign banks for an exemption from the insurance requirement of section 6(b) of the International Banking Act of 1978.

The Board also determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: February 16, 1979.

FEDERAL DEPOSIT INSURANCE CORPORATION,
HOYLE L. ROBINSON,
Acting Executive Secretary.

[S-360-79 Filed 2-22-79; 11:35 am]

[6714-01-M]

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 2 p.m., Monday, February 26, 1979.

PLACE: Board Room, 6th Floor, FDIC Building, 550 17th Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Disposition of minutes of previous meetings.
Recommendations with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Kantrow, Spaht, Weaver & Walter, Baton Rouge, Louisiana, in connection with the liquidation of Republic National Bank of Louisiana, New Orleans, Louisiana.

Atkinson, Mueller & Dean, New York, New York, in connection with the liquidation of Franklin National Bank, New York, New York.

Kaye, Scholer, Fierman, Hays & Handler, New York, New York, in connection with the liquidation of Franklin National Bank, New York, New York.

Taback & Hyams, Jericho, New York, in connection with the liquidation of Franklin National Bank, New York, New York.

Bass, Berry & Sims, Nashville, Tennessee, in connection with liquidation of The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee.

Sutherland, Asbill & Brennan, Atlanta, Georgia, in connection with the liquidation of the Hamilton National Bank of Chattanooga, Chattanooga, Tennessee.

Memorandum and resolution proposing the publication for comment of amendments to the Corporation's rules and regulations which would implement title VIII ("Correspondent Accounts") and title IX ("Disclosure of Material Facts") of the Financial Institutions Regulatory and Interest Rate Control Act of 1978.
Memorandum proposing the payment of a second dividend of 34 percent in connection with the receivership of Franklin Bank, Houston, Texas.
Resolution reducing the nonforeign area cost of living allowance for Puerto Rico for Corporation employees.
Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

CONTACT PERSON FOR MORE INFORMATION:

Hoyle L. Robinson, Acting Executive Secretary, 202-389-4425.

[S-366-79 Filed 2-22-79; 3:57 pm]

[6714-01-M]

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 2:30 p.m., Monday, February 26, 1979.

PLACE: Board Room, 6th Floor, FDIC Building, 550 17th Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Applications for Federal deposit insurance:

Camarillo Community Bank, a proposed new bank to be located at 380 Mobil Avenue (near Pickwick Street), Camarillo, California, for Federal deposit insurance.

First Community Bank and Trust Company, Bossier City, Louisiana, Bossier City, Louisiana, a proposed new bank to be located at the corner of Airline Drive and Village Lane, Bossier City, Louisiana, for Federal deposit insurance.

Applications for consent to establish branches:

Peoples Bank of Lakeland, Lakeland, Florida, for consent to establish a branch at 6711 U.S. Highway 98 North, Lakeland, Florida.

Bank of Carroll County, Temple, Georgia, for consent to establish a branch on the east side of Main Street (State Highway 16—U.S. Highway 27 Alternate) approximately 350 feet north of its intersection with Acock Street, Whitesburg, Georgia.

Commerce Bank of New Jersey, Evesham Township (P.O. Marlton), New Jersey, for consent to establish a branch on East Main Street, near its intersection with High Street, Moorestown, New Jersey.

United Mutual Savings Bank, New York, New York, for consent to establish a branch at 556 Main Street, Islip (Unincorporated Area), Town of Islip, New York.

Application for consent to the issuance of subordinated capital debentures as an addition to capital structure and for advance consent to their retirement at maturity:

Farmers and Merchants Bank of Highland, Highland, Illinois.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 43,814-L—Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico .

Case No. 43,815-L—The Hamilton Bank & Trust Company, Atlanta, Georgia.

Memorandum re: United States National Bank, San Diego, California.

Memorandum re: The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee.

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Schall, Boudreau & Gore, San Diego, California, in connection with the receivership of United States National Bank, San Diego, California.

Recommendations with respect to the initiation or termination of cease-and-desist proceedings, termination-of-insurance proceedings, or suspension or removal proceedings against certain insured banks or officers or directors thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5) U.S.C. 552b(c)(2) and (c)(6)).

CONTACT PERSON FOR MORE INFORMATION:

Hoyle L. Robinson, Acting Executive Secretary, 202-389-4425.

[S-367-79 Filed 2-22-79; 3:57 p.m.]

[6715-01-M]

4

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Thursday, March 1, 1979, at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: Portions of this meeting will be open to the public and portions will be closed.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC

Setting of dates for future meetings.
Correction and approval of minutes.
Advisory Opinion 1979-6.
Appropriations and budget.
Pending legislation.
1980 elections and related matters.
Classification actions.
Routine administrative matters.

PORTIONS CLOSED TO THE PUBLIC (FOLLOWING OPEN SESSION)

Audits and Audit Policy. Compliance. Personnel. Litigation. Labor/Management Relations.

PERSONS TO CONTACT FOR INFORMATION:

Mr. Fred S. Eiland, Public Information Officer, telephone 202-532-4065.

MAJORIE W. EMMONS,
Secretary to the Commission.

[S-365-79 Filed 2-22-79; 3:50 pm]

[6820-12-M]

5

FEBRUARY 15, 1979.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 9889, February 15, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., February 20, 1979.

CHANGES IN THE MEETING: The above scheduled meeting has been canceled.

PERSON TO CONTACT FOR INFORMATION:

Joanne Kelley, 202-653-5632.

DONALD F. TERRY,
Executive Director.

[S-361-79 Filed 2-22-79; 12:24 pm]

[6820-12-M]

6

FEBRUARY 12, 1979.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., February 12, 1979.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

MATTERS CONSIDERED:

DISPOSITION ON THE MERITS

Secretary of Labor v. *Peter White Coal Mining Corp.* HOPE 78-374, etc., 78-344 etc., 78-509, 78-535 etc.; *Peabody Coal Co.*, VINC 78-386; *United States Steel Corp.*, PITT 78-335; *Monterey Coal Co.*, VINC 78-416; *Rochester & Pittsburgh Coal Co.*, PITT 78-323; *Helvetia Coal Co.*, PITT 78-322; *Iselin Preparation Co.*, PITT 78-344; and *Energy Fuels Corp.*, DENV 78-410.

Eastern Associated Coal Corp. v. *Secretary of Labor*, PITT 76X203; *Florence Mining Company, Helen Mining Company, Oneida Mining Company, North American Coal Corp.* v. *Secretary of Labor*, PITT 77-15, 77-16, 77-17, 77-18, 77-19, 77-23; *Alabama By-Products Corp.* v. *Secretary of Labor*, BARB 76-153; *Inland Steel Coal Company* v. *Secretary of Labor*, VINC 77-164.

VOTE

Voting to close the meeting: Commissioners Waldie (Chairman), Lawson, Nease, Backley and Jestrab. 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

Those present at that closed meeting were Commissioners Waldie (Chairman), Lawson, Nease, Backley and Jestrab; Al Treherne, Robert Phares, Mary Masulla, Dan Delacey, Jim Lastowka, Art Sapper, Acting General Counsel Howard Schellenberg and Joanne Kelley.

CONTACT FOR MORE INFORMATION:

Joanne Kelley, 202-653-5632.

[S-362-79 Filed 2-22-79; 12:30 pm]

[6210-01-M]

7

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 2:30 p.m., Wednesday, February 28, 1979.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

SUMMARY AGENDA

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Tax certification request of American Affiliates, Inc., South Bend, Indiana.

DISCUSSION AGENDA

1. Proposed amendments to Regulation O (Loans to Executive Officers of Member Banks) to implement Title 1 of the Financial Institutions Regulatory and Interest Rate Control Act. (Proposed earlier for public comment; docket No. R-0194).

2. Proposals to implement Titles VIII and IX of the Financial Institutions Regulatory and Interest Rate Control Act.

3. Board's regulatory improvement program: review of Regulation S (Bank Service Arrangements).

4. Any agenda items carried forward from a previously announced meeting.

NOTE.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: February 21, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[S-356-79 Filed 2-22-79; 11:14 am]

[7600-01-M]

8

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 9648.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 1 p.m., February 22, 1979.

CHANGES IN THE MEETING: This meeting has been rescheduled for Friday, February 23, 1979, at 9:30 a.m.

Dated: February 21, 1979.

[S-358-79 Filed 2-22-79; 11:14 am]

[7600-01-M]

9

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 11 a.m., February 28, 1979.

PLACE: U.S. District Court, Courtroom 13 East, 13th Floor, 500 Gold Avenue, S.W., Courthouse and Federal Building, Albuquerque, New Mexico.

STATUS: Open meeting.

MATTERS TO BE CONSIDERED: The Commissioners will hear and consider oral argument from the parties in the matter of *Secretary of Labor* v. *Navajo Forest Products Industries*, OSHRC Docket No. 76-5013.

CONTACT PERSON FOR MORE INFORMATION:

Mrs. Patricia Bausell, 202-634-4015.

Dated: February 21, 1979.

[S-359-79 Filed 2-22-79; 11:14 am]

[4410-01-M]

10

UNITED STATES PAROLE COMMISSION.

TIME AND DATE: 9 a.m., February 21, 1979.

PLACE: Room 814, 320 First Street NW., Washington, D.C.

STATUS: Closed, pursuant to a vote to be taken at the beginning of the meeting.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: February 14, 1979, 44 FR No. 32, pp. 9649-9687.

CHANGES IN THE MEETING: On February 21, 1979, due to adverse weather conditions the Commission determined that the time for the above meeting be changed to 11:30 a.m. and that the place be changed to the Sheraton International Conference Center, 11810 Sunrise Valley Drive, Reston, Virginia, and that the above change be announced at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION:

A. Ronald Peterson, Analyst, 202-724-3094.

[S-364-79 Filed 2-22-79; 3:09 p.m.]

[8120-01-M]

11

TENNESSEE VALLEY AUTHORITY.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 10568, February 21, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 1:30 p.m., Monday, February 26, 1979.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tennessee.

STATUS: Open.

CHANGES IN MATTERS TO BE CONSIDERED: The following items are added to the previously announced agenda:

C—PURCHASE AWARDS

4. Invitation No. 51-824520—Fill modifications to mechanical draft cooling towers for the Browns Ferry Nuclear Plant.

5. Contract 78K71-823941—Amendment to contract with Atlas Machine & Iron Works, Inc., for drywell framed embedments for the Hartsville and Phipps Bend Nuclear Plants.

D—PROJECT AUTHORIZATIONS

1. Feasibility studies and site acquisition for a Chattanooga office complex.

H—UNCLASSIFIED

3. Interagency agreement between TVA and the Department of Energy in furtherance of the TVA/DOE/TVPPA distribution automation and load managment demonstration project.

CONTACT PERSON FOR MORE INFORMATION:

Lee Sheppeard, Assistant Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington, Office, 202-566-1401.

SUPPLEMENTARY INFORMATION:

TVA BOARD ACTION

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting to be changed to include the additional items shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below.

Approved:

S. DAVID FREEMAN.

RICHARD M. FREEMAN.

Dated: February 21, 1979.

[S-357-79 Filed 2-22-79; 11:14 am]

[8240-01-M]

12

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: 9 a.m., March 1, 1979.

PLACE: Board Room, Room 2-500, Fifth Floor, 955 L'Enfant Plaza North SW., Washington, D.C. 20595.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED BY THE BOARD OF DIRECTORS

PORTIONS CLOSED TO THE PUBLIC (9 A.M.)

1. Review of Delaware and Hudson Railway Company proprietary and financial information for monitoring and investment purposes.

2. Litigation report.

3. Review of Missouri-Kansas-Texas Railroad Company proprietary and financial information.

4. Review of Conrail proprietary and financial information for monitoring and investment purposes.

5. Consideration of internal personnel matters.

PORTIONS OPEN TO THE PUBLIC (1:30 P.M.)

6. Approval of minutes of the February 1, 1979 Board of Directors meeting.

7. Report on Conrail monitoring.

8. Consideration of Conrail waivers to Financing Agreement.

9. Consideration of Conrail drawdown request for March 1979.

10. Consideration of 211(h) request.

11. Contract Actions (extensions and approvals).

CONTACT PERSON FOR MORE INFORMATION:

Alex Bilanow, 202-426-4250.

[S-363-79 Filed 2-22-79; 1:36 pm]

federal register

MONDAY, FEBRUARY 26, 1979

PART II

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

■

IMPROVING GOVERNMENT REGULATIONS

Regulatory Policies and Procedures

[4910-62-M]

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. 58]

IMPROVING GOVERNMENT REGULATIONS

Regulatory Policies and Procedures

AGENCY: Department of Transportation.

ACTION: Adoption of Regulatory policies and procedures.

SUMMARY: The Department of Transportation establishes policies and procedures for simplification, analysis, and review of regulations. These policies and procedures are issued pursuant to Executive Order 12044 on "Improving Government Regulations." It is expected that these policies and procedures would result in fewer, simpler, more comprehensible and less burdensome regulations; improve the opportunity for effectiveness of public involvement; and generally increase the efficiency of the Department's regulatory programs by requiring periodic review of regulations to assure their continued need.

EFFECTIVE DATE: March 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Neil R. Eisner, Assistant General Counsel, Office of Regulation and Enforcement, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-4723.

SUPPLEMENTARY INFORMATION:

Background

Improvement of government regulations has been a prime goal of the Carter Administration. There should be no more regulations than necessary, and those that are issued should be simpler, more comprehensible, and less burdensome. Regulations should not be issued without appropriate involvement of the public; once issued, they should be periodically reviewed and revised, as needed, to assure that they continue to meet the needs for which they originally were designed.

To further encourage and promote the many efforts to improve the Department of Transportation's ("Department") regulations, on January 31, 1978, the Secretary of Transportation issued a statement of Policies and Procedures for Simplification, Analysis, and Review of Regulations published in the FEDERAL REGISTER on March 8, 1978 (43 FR 9582). These policies and procedures were the product of many months of work by all elements of the Department. They were issued initially as an internal memorandum, rather than as a formal Department Order, for two reasons. One, so that the Department might gain a working familiarity with them and make any required changes before issuing them as an Order. Two, so that the Department might more easily make any changes required when the anticipated final Executive Order addressing these concerns was issued.

On March 23, 1978, the President issued a final Executive Order on this matter, "Improving Government Regulations" (E.O. 12044; 43 FR 12661, March 24, 1978). Section 5 of that Executive order requires the following:

> Each agency shall review its existing process for developing regulations and revise it as needed to comply with this Order. Within 60 days after the issuance of the Order, each agency shall prepare a draft report outlining (1) a brief description of its process for developing regulations and the changes that have been made to comply with this Order; (2) its proposed criteria for defining significant agency regulations; (3) its proposed criteria for identifying which regulations require regulatory analysis; and (4) its proposed criteria for selecting existing regulations to be reviewed and the list of regulations that the agency will consider for its initial review. It shall be published in the FEDERAL REGISTER for public comment.

Based upon Executive Order 12044, and the Department's working experience with its internal procedures, appropriate modifications to the Department's Policies and Procedures for Simplification, Analysis, and Review of Regulations were made. As modified, those policies and procedures, were published for public comment in the FEDERAL REGISTER on June 1, 1978 (43 FR 23925); the Department's list of regulations that it planned to consider for its initial review and the Department's first semi-annual Regulations Agenda of each proposed and each final regulation that the Department expects to publish in the FEDERAL REGISTER during the succeeding 12 months or such longer period as anticipated also appeared in the same FEDERAL REGISTER. (43 FR 23918 and 23884)

In response to the Department's publication of its Notice of Proposed Regulatory Policies and Procedures (proposal), a large number of public comments were received. To assist the public in reviewing the changes that have been made to the Department's proposal in response to these public comments, the following paragraph-by-paragraph analysis of the changes made has been provided.

Explanation of Changes to Regulatory Policies and Procedures

PARAGRAPH 1. PURPOSE

No comments directly relating to this paragraph were received and no changes have been made to the Department's proposal.

PARAGRAPH 2. CANCELLATION

No comments directly relating to this paragraph were received and no changes have been made to the Department's proposal.

PARAGRAPH 3. EFFECTIVE DATE

No public comments pertaining to this paragraph were received but an effective date of October 1, 1978, has been inserted in the blank.

PARAGRAPH 4. REFERENCES

No public comments directly relating to this paragraph were received and no changes have been made to the Department's proposal.

PARAGRAPH 5. COVERAGE

A number of commenters suggested that additional detail be added to the procedures to help determine when a regulation is significant. The different commenters provided a variety of criteria for inclusion in the proposal. The Department believes that its procedures for identifying significant regulations are working quite well. Moreover, it is noteworthy that the Department publishes as Agenda which includes all significant as well as non-significant regulations it is considering issuing over the next year or longer, as anticipated. Thus, the public can determine, for itself, how the procedures are being applied in practice. Additionally, many of the criteria suggested by the commenters already fit within the existing, general criteria contained in the Department's proposal. Still others addressed too specific a problem and, if included, could eventually result in an extremely lengthy list of items. However, where suggested additional criteria could be helpful, the Department has decided to incorporate them into its proposal. Some of the suggested language was changed because, as proposed, it could have included many nonsignificant regulations. The new criteria that the Department has added are contained in paragraphs 5a(2) (d) through (g).

One commenter was concerned about the use of the nearly identical terms "major" and "significant" to define regulations. The regulatory policies and procedures which were in effect in the Department at the time Executive Order 12044 was issued used the term "major". In the proposal, the term "major" was changed to "significant" to conform with the language in the Executive Order. This should have answered the commenter's concern.

One commenter suggested that the public should be provided an opportunity to comment on the determination that a regulation is or is not significant. The initial classification of significant or nonsignificant may be made a year or more before the issu-

ance of the first regulatory document; however, if an agency knows that it is going to take action in an area, it must list the regulation, with its classification, in the Department's Regulations Agenda which is published in the FEDERAL REGISTER. The classification of the regulation can be changed at any time up to the issuance of the final rule. For example, generally, a nonsignificant regulation would be published as an ANPRM or NPRM in the FEDERAL REGISTER, with an opportunity for public comment. This public comment could lead to a reclassification of the item. For these reasons, it is the opinion of the Department that no change need be made to the proposal.

Several commenters stated that the definition of "emergency" regulation should be more carefully defined and limited. One of these commenters suggested that "emergency regulations should instead be issued in interim form with a self-executing nullification clause written into the rule." Another commenter suggested that "emergency" regulations should be subject to public comment, even after issuance. To ensure that emergency regulations are given full consideration in the Department and to avoid possible abuses, the Department's proposal required the completion of a Regulatory Analysis or Evaluation subsequent to the issuance of the otherwise significant emergency regulation, unless the Secretary grants an exception. The Department's proposal also suggested the solicitation of comments, through a formal notice, subsequent to the issuance of an emergency rule. Thus, if warranted, the rule could be changed. To further restrict discretion in this area would be unwise, especially within the Department of Transportation which is made up of agencies that basically have responsibility for safety regulation. Moreover, to issue all emergency regulations in an "interim form" would not be workable. For example, an emergence regulation might require the immediate purchase and installation of a replacement part. Once the installation is completed, withdrawing the "interim rule" would be of no value. Finally, there are other possible steps the public can take. For example, many of the initiating offices have procedures for petitions for rulemaking; the public can request a rule change by petition and the agency must respond to that petition. For these reasons, the Department has determined that no changes to the proposal are necessary.

One commenter asked for clarification on "the exclusion of regulations issued in accordance with forward rulemaking provisions of the Administrative Procedure Act." Apparently, by the word "forward", the commenter was referring to "formal". The proposal stated that the procedures do not apply to "[r]egulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557)." This statement is taken directly from Executive Order 12044 (Sec. 6(b)(1)), which also does not apply to these sections. For these reasons, the Department has determined that no changes to the proposal are necessary.

Another commenter was concerned with rulemakings which are begun before the new procedures go into effect and suggested that a "freeze" be instituted on new rulemaking until the procedures are in effect. The Department already has in effect, since March 1, 1978, regulatory policies and procedures which are substantially similar to those that are contained in this document. When this is considered along with the fact that many Departmental regulatory proposals may either be required by statute or needed to correct a safety problem, a "freeze" would be unwarranted. The Department has determined, therefore, that no change to its proposal is necessary.

PARAGRAPH 6. OBJECTIVES

Two commenters had suggestions that related to the paragraph on "necessity". One thought there was a lack of criteria for what would constitute a justifiable need for a regulation and the other suggested that a regulation should not be issued until it is demonstrated that it "is needed and will attain its objectives without unintended side effects." The Department believes that the concept of "necessity" within the framework of its regulatory responsibilities is not subject to any clearer, more workable definition. However, for clarity, a phrase has been added to paragraph 6e ("Reasonableness") to clearly indicate that anticipated side affects should be considered. It should also be noted that, under paragraph 9a(3), the "direct and indirect effects" of a regulation are considered in determining its significance.

One commenter suggested that, in addition to the objectives of simplification and public involvement, another "area of prime concern is the determination by an agency that legislative goals are being met by a regulation in the most effective way without unnecessary burden to the public" and that this criterion should be stressed during all stages of the development of a regulation. As a general objective, the Department's proposal already provides for this in paragraph 6e ("Reasonableness") and thus the Department believes that no change to the proposal is necessary.

Another commenter suggested that "once rules are in place, changes and reinterpretations of such rules should be severely limited." Any change to an existing regulation would be subject to the "necessity" standard of paragraph 6a. This should meet the concern of the commenter and the Department has determined that a change to the proposal is not necessary.

One commenter suggested that "a statement should be made to the effect that regulations should not be issued which are overlapping or duplicative of the regulations of either the initiating office or of another governmental agency regulating in the same area." Paragraph 6c ("Simplicity") already essentially sets forth this objective. Therefore, the Department has determined that a change to the proposal is not necessary.

PARAGRAPH 7. DEPARTMENT REGULATIONS COUNCIL

A number of commenters suggested that the Regulations Council's meetings should be open to th public and/or that the minutes should be made available to the public. Two of the commenters suggested that the proceedings of the Department Regulations Council are subject to the Government in the Sunshine Act (5 U.S.C. 552b).

There is no legal requirement that Council meetings be open to the public. The Government in the Sunshine Act requires open meetings of agencies headed by more than one person. The Federal Advisory Committee Act, the other general "open meeting" statute, requires open meetings of advisory committees at least one of whose members is not a full-time federal official or employee. Neither of these statutes applies because the Regulations Council is not an agency and all of its members are full-time Federal officials.

In the opinion of the Department, the Council's usefulness to the Secretary depends upon the candor with which members express their views and that candor might well be inhibited were the meetings or minutes completely open and available. Secondly, many of the matters to be discussed by the Council will be in the preliminary and developmental stages, subject to considerable modification prior to any publication. Premature disclosure of some of these matters might tend to mislead the public as to the Department's position, as well as hinder implementation of the ultimate decision.

The creation of a Department Regulations Council goes beyond the requirements of Executive Order 12044. The Department believes that the Council will provide many benefits to the public, such as ensuring that a va-

riety of views and interests are represented when a matter is reviewed. The Department believes that, as proposed, this portion of the policies and procedures ensures the full effectiveness of the Council and no change is warranted.

A number of commenters also suggested that there should be a mechanism for the public to appeal matters to the Regulations Council. The Council's primary responsibility is to review matters within the Secretary's areas of responsibility and make recommendations to him or her. As part of this responsibility, the Regulations Council is actively involved in the review of significant regulations and the Regulations Agenda and in assuring compliance with the regulatory policies and procedures. Thus, no special appeal to the Council is deemed necessary and the Department has determined that no change to its proposal should be made.

One commenter was concerned with a "lack of precision as to which matters are referred to the Council" and how those matters are handled when before the Council. The commenter requested rules of procedure and accountability. Since the Council is comprised of the top policymaking officials of the Department and is generally only providing advice or recommendations, not taking final action on any matter, discretion and informality appear to be better working tools than the detailed procedures suggested by the commenter. For that reason no change has been made to the proposal.

PARAGRAPH 8. RESPONSIBILITIES OF INITIATING OFFICES

Four commenters expressed concerns about the relationship between the Secretary and the head of the initiating office with respect to the authority to classify or issue a regulation. One was concerned that the Secretary might be taking away power vested in an Administrator; the other three stated that the Secretary should have more responsibility in this area. One commenter noted that the proposal required "only that the new regulation and work plan be reviewed and approved by the head of the initiating office before proceeding with further development" and felt that this was inconsistent with Executive Order 12044 which requires that such review must be by "the agency head." The head of the initiating office has the authority to formulate or issue regulations; therefore, the head of the initiating office has the authority to carry out the review steps required by Executive Order 12044. However, to enable the Secretary to carry out his or her responsibilities, the Departmental procedures provide for review and concurrence by the Secretary at any time, including commenting on the development of issues, reviewing progress, and concurring in decisions. For example, at various stages, but especially during review of the Semi-annual Regulations Agenda and the bi-monthly updates of the Agenda, the Secretary plays a role in the classification of a regulation as "significant" or "nonsignificant". Additionally, for information purposes, the Work Plan is also submitted to the Office of the Secretary as soon as it is prepared. For these reasons, the Department has determined that changes to the proposal are not necessary.

One commenter was concerned with the accountability of decisionmaking officials. The Department believes that the increased responsibility for regulations given to the heads of the initiating offices by the proposal provides effective accountability and no change is deemed necessary.

PARAGRAPH 9. REVIEW OF SIGNIFICANT REGULATIONS

One commenter noted the lack of an explanation of how a proposal originally judged nonsignificant can be changed to significant (or vice versa) after public review. The Department agrees that this does warrant amplification and the proposal has been revised to include a new paragraph 91 which provides that, if the initiating office wishes to reclassify a significant regulation to nonsignificant, it shall so advise the Secretary in writing, and shall make the change only after receiving the Secretary's concurrence. This can be done at any time during the rulemaking process, if the initiating office determines the change is necessary. If a regulatory project is changed from nonsignificant to significant, the Secretary would be advised either through the Semi-annual Regulations Agenda, the bi-monthly updates to that Agenda, or through the submission of a regulatory document to the Secretary for concurrence. If the Secretary decides that a regulation should be reclassified as significant, under existing procedures the Secretary already has the authority to send a simple memorandum directing such a change.

Because regulations can be reclassified at any time under the procedures, the Department believes that it is important to keep the public advised at each stage of the regulatory process of the classification of a regulation. Therefore, the Department has decided to revise paragraph 9a to provide that if a regulation is considered nonsignificant it will now be accompanied by a statement in the FEDERAL REGISTER to that effect both at the time the regulation is proposed, as the proposal required, and when the final rule is published.

Two commenters suggested additional items for inclusion in the Work Plan. Some of the items requested were already included in the proposed requirements for a Work Plan. With respect to the others, it is the opinion of the Department that to further expand the Work Plan is unnecessary and might make the proposal unworkable. Therefore, no changes have been made to the proposal.

One commenter suggested that a Work Plan should be required for *all* non-emergency rulemaking proposals, not just significant ones. The Department believes that imposing such additional paperwork requirements on the initiating offices would not achieve benefits worth the additional burden. Therefore, the Department's proposal has not been changed.

One commenter was concerned that there was no provision in the Work Plan for an assessment of necessary technical expertise before the rulemaking begins. Such an assessment would generally be part of the consideration by the head of the initiating office of the major issues involved and the alternative approaches to be explored. For that reason, no change has been made to the proposal.

PARAGRAPH 10. REGULATORY ANALYSES AND EVALUATIONS

A number of commenters recommended that the Department expand and further define its criteria for requiring a Regulatory Analysis. One also suggested that when an agency is authorized to regulate in more than one area, such as safety and fuel economy, both areas of regulation should be taken into account. Another commenter suggested a more precise explanation of the methods used for the economic analyses. Finally, one of the commenters suggested that regulations should be issued only when it is demonstrated that the prospective benefits are not outweighed by the economic costs. On its own initiative, the Department has decided to add one new item to paragraph 10a to cover matters which have a substantial impact on the balance of trade. Because the Department requires either a Regulatory Analysis or an Evaluation, both of which include economic analyses, for all regulations the Department does not believe that the list of criteria need be expanded further. Although it is contemplated that an Evaluation usually would not be as extensive as Regulatory Analysis, some regulations not requiring a Regulatory Analysis might have an economic effect that would result in an extensive Evaluation. With respect to the concern about agencies that regulate in more than one area, this is covered by paragraph 6a ("Reasonableness"), which requires consideration of

consequences. In response to the request for a more precise definition of the analytical methods to be used, it is the Department's opinion that the variety of regulatory actions handled within the Department requires a great deal of discretion in the choice of methodology. For example, there might be a great deal of difference between the methodology used to examine a Federal Aviation Administration regulation which affects air carriers and another which affects only the operators of small aircraft; this methodology may differ further from that necessary to analyze a National Highway Traffic Safety Administration regulation which affects all automobile operators. With respect to the comment on the cost/benefit ratio, the economic evaluation required for every regulation includes an assessment of the costs and benefits. In addition, the "Reasonableness" provision requires consideration of burdens. Therefore, the Department believes no change to its proposal is necessary.

One commenter suggested explaining fully to the public any decision not to require a Regulatory Analysis by providing a detailed estimate of how the proposed rule fell short of the criteria. As explained above, if a Regulatory Analysis is not done, an Evaluation must be prepared and placed in the public rulemaking docket. The economic analysis contained in the Evaluation would, by its very nature, provide a detailed estimate of where the proposed rule falls short of the Department's criteria for a Regulatory Analysis. Therefore, the Department believes no change to its proposal is necessary.

Two commenters suggested that a full and detailed Regulatory Analysis should be completed even before issuing an advance notice of proposed rulemaking. One purpose of an advance notice of proposed rulemaking is to encourage early public participation in the development of a rule. For this reason, an advance notice of proposed rulemaking often may simply identify a problem that has been raised and ask for comments and suggestions. It is noteworthy that Executive Order 12044 does not even require that a Regulatory Analysis be made available when an advance notice of proposed rulemaking is issued. The Department has gone beyond the Executive Order but recognizes that in many instances the economic analysis will be very preliminary and may primarily identify the questions that must be asked and the data that must be gathered. Because it wishes to encourage early public participation, the Department does not believe any change to its proposal would be appropriate.

One commenter suggested that the proposal be changed to require a statement of how the public may obtain a copy of any draft Evaluation or final Regulatory Analysis or Evaluation. The Department's proposal simply required that the advance notice or notice of proposed rulemaking include "a statement of how the public may obtain a copy of the draft Regulatory Analysis for review and comment." The Department agrees that it would be advantageous to provide the suggested information; therefore, advance notices, notices of proposed rulemaking, and final rules will advise the public how they may obtain a copy of a draft or final Regulatory Analysis or Evaluation. Paragraph 10e and f of the proposal have been revised accordingly.

One commenter suggested a brief statement of the "cost/benefit relationship considered in the development of a regulation" be released with a proposed rulemaking. Placing the draft Evaluation or Regulatory Analysis in the docket, and indicating in any advance notice or notice of proposed rulemaking how the public may obtain copies of it, appears to satisfy this request. For this reason, no change appears necessary to the Department's proposal.

PARAGRAPH 11. REVIEW AND REVISION OF EXISTING REGULATIONS

One commenter suggested that in reviewing existing regulations special consideration be given to the nature and extent of "complaints and/or suggestions received from users who implement your rules and regulations—states and local governments." The Department agrees that this emphasis can be added to the list of factors considered by the initiating office in identifying existing regulations for review. However, it should refer generally to "users" and not just to States and local governments. Paragraph 11b(1) has been amended accordingly.

On its own initiative, the Department has also expanded paragraph 11b(2) to stress the consideration, in determining the need for a review, that should be given to the number of requests for interpretation or the problems evidenced in enforcement.

Two commenters had suggestions concerning the scheduling of reviews. One commenter suggested establishing a schedule for review of each existing regulation on a regular pre-determined basis. The other commenter suggested establishing a definite period of time for the agency to complete a review. This commenter further suggested that if the review was not conducted during the set time, the regulation should be declared void until such time as the review is completed. Arbitrary schedules may mean delaying other, more important regulatory activity. Moreover, the Department believes that regulations, especially safety regulations, should not be declared void because some pre-determined schedule has not been met for what may be valid reasons. It must be stressed that, generally, the public does have the right to submit to the initiating office a petition for rulemaking if, in its opinion, changing technology or economic conditions or other factors support the need for a change in the regulations. For these reasons, the Department has decided to make no change to its proposal.

PARAGRAPH 12. OPPORTUNITY FOR PUBLIC PARTICIPATION

The Department recognizes the need for early and effective public participation. In light of that, as the following paragraphs indicate, a number of additions or changes have been made to paragraph 12. The Department wishes to stress, however, that other possible, additional methods of improving public participation are under consideration and may be added at a later date. The public will be given an appropriate opportunity to comment before they are added.

Several commenters suggested that the Department's procedures should provide for earlier and more meaningful public participation. A number of them suggested a variety of means to accomplish this. One commenter suggested making the draft of a notice of proposed rulemaking "available to those directly affected approximately 30 days in advance of its publication in the FEDERAL REGISTER." Much of what was requested by the commenters has already been provided to the maximum extent possible. For example, publication of the Work Plan or a summary of its major elements, as one commenter suggested, would defeat its purpose as a working tool. Much of the information in the Work Plan is published in the Agenda. However, to publish the rest of it at too early a stage could be misleading and could lead to premature public comment. It is the opinion of the Department that the public should be involved at the earliest stages, but that when a regulatory project has been sufficiently developed so that it can be discussed with the public, it should be discussed with all interested parties. The Department is also concerned that such steps as the circulation of draft notices of proposed rulemaking or the allowance of public participation in the development of a proposed regulation before any documents are even published in the FEDERAL REGISTER could violate either the Administrative Procedure Act (5 U.S.C. 551 et seq.) or the Federal Advisory Committee Act (5 U.S.C. App. I). For these reasons the Department believes that a change should not be made to its proposal.

One commenter felt Executive Order 12044 requires public comment before the issuance of a notice of proposed rulemaking. The Department believes that the Executive Order does not require this and that it is not necessary to change the Department's proposal. The Department does however, wish to note that its procedures do provide for numerous, proper methods for obtaining public participation in the earliest stages in the development of a rule. For example, the Department encourages the appropriate use of advance notices or proposed rulemaking, advisory committees, regulatory conferences, and other general meetings with the public prior to the issuance of notices or advance notices.

Several commenters suggested that a longer comment period should be permitted on proposed regulations. However, requiring lengthy time periods may unnecessarily waste time. It appears better to allow the initiating offices discretion to determine, in appropriate instances, that a particular rulemaking should have a comment period longer than the minimum set forth in the proposal. Moreover, the initiating offices generally can grant a petition for an extension of time where warranted. The Department believes that the initiating offices have been quite liberal in both providing for comment periods well in excess of the minimums established in the procedures, as well as in granting petitions for extensions of time to comment. Therefore, the Department has determined that no changes should be made to its proposal.

Three organizations commented on the Department's proposal concerning State and local participation. Two comments in favor of more participation offered suggestions for increasing the opportunities for State and local government participation. Contrasted with this was a comment that these provisions create the possibility that the legal restraints placed on agency contacts during rulemaking can be flouted and undermine the Federal Advisory Committee Act. These commenters are addressing a portion of the Department's proposal taken directly from the two Presidential memoranda referenced in paragraph 4c. The concerns expressed are now being reviewed within the Executive Branch of the government. For that reason, the Department deems it improper at the present time to change the Department's proposal in this area.

One commenter suggested an expanded list of specific actions which could be required for public participation. Many of the suggestions were already contained in the Department's proposal; however, the Department has decided that some of the items not already covered should be included, and paragraph 12a has been revised accordingly through the addition of paragraphs (3), (5) and (7).

Another commenter suggested that the nature and assumptions of the research relied on to support a particular regulatory approach be fully identified and its significance in the regulatory process acknowledged. The commenter further stated that any documentation should be clearly referenced and the source material made available for public review. The Department generally agrees with this commenter and, although it believes that the suggestions are being carried out within the Department, paragraph 12a has been revised by the addition of paragraph (6); this paragraph sets forth the need to (1) identify the nature and importance of the research and (2) place a copy of any source material in the public rulemaking docket.

One commenter suggested that critical research studies should be subject to peer review by persons with a demonstrated expertise in the area of the study. It is not clear at what stage or in what manner such peer review would be accomplished. The existence of such studies will be clearly noted in an advance notice or notice of proposed rulemaking, in accordance with paragraph 12a(6); peer review could be accomplished during the review of these notices. Additionally, when copies of critical research studies relating to rulemaking are ready for release, they should be made available to the public in general and not just to a limited group of individuals or organizations. For that reason, the Department has decided to make no changes to its proposal.

Another commenter was concerned about the public's limited ability to rebut comments submitted to the docket and also noted the limited availability of the docket to people outside Washington, D.C. As part of its effort to increase public participation in its rulemaking, the Department is interested in adopting reasonable methods for making the docket more readily available to the public and has examined this problem. For example, at least one agency has provided for a rebuttal period after the close of the initial comment period. Additionally, many of the Department's public hearings on rulemakings (many of which are held outside Washington, D.C.) allow speakers to rebut other comments. The Department does not feel that the use of a rebuttal period should be a requirement for all rulemakings, but to indicate its support for this procedure when it is deemed appropriate, the Department has added a new paragraph (4) to paragraph 12a.

Still another commenter suggested that all non-emergency rulemaking proposals should begin with an advance notice and public participation. This unnecessarily takes away agency discretion. Not only may there be no reason in many cases to go through the double steps of an advance notice and a notice of proposed rulemaking, but the flexibility of the current process allows supplemental notices of proposed rulemaking to be issued in the instances where the initial notice was insufficient. Therefore, the Department believes no change to its proposal is necessary.

One commenter suggested that an advance notice should be used only for the purpose of exploring a possible problem area to determine whether regulations are needed, and a notice of proposed rulemaking should be used only to explore alternative solutions once the need for regulatory action has been determined. In many instances an advance notice is used as suggested. There appears, however, no reason to limit its use. For example, there may be no question that a regulation is needed but the agency may not have a clear idea of how to proceed. In these instances an advance notice of proposed rulemaking could not be used under the commenter's suggestion. For these reasons, the Department has decided to make no changes to its proposal.

Another commenter was concerned that the Department's proposal did not require that all nonsignificant regulations be subject to notice and public comment. It is the Department's policy that notice and public comment should be provided to the maximum extent possible, if this could reasonably be expected to result in the receipt of useful information. Since this policy has been in effect in the Department, many more regulatory proposals have been subjected to public comment. It is the Department's opinion, however, that Executive Order 12044 does not require that all nonsignificant regulations be subject to notice and public comment. For example, the Department is currently preparing an amendment to its Time Act regulations. When originally issued, the regulations inadvertently referred to the border between North Dakota and Nebraska, thereby eliminating South Dakota from the "time map." Having noted the error, the Department is preparing an amendment to return the South Dakota-Nebraska border. There appears to be no reason to provide for notice and public comment on this matter as it could lead to no meaningful public comment; it would be a waste of time and money and it would not be in the public interest. For these reasons, the Depart-

ment has determined that no change is necessary to its proposal.

One commenter noted that the Department proposals suggested that the public be encouraged to comment subsequent to the issuance of a final rule in certain instances. The commenter felt that the Department's regulations (49 CFR 5.27) indicates that such comments need not be considered. Paragraph 12d was intended to provide an opportunity for the public to comment after the issuance of a final rule, when it is not possible to ask for comment prior to its issuance. It was the Department's intention that this request for comments would be done through a formal rulemaking document which would establish a specified comment period. To clarify this, the Department has revised its proposal through the addition of clarifying language in paragraph 12d. In addition, the Department has determined that additional language is necessary to make clear its general intent under paragraph 12d. The Department has also decided to add a sentence to this paragraph requiring that, when a determination is made that notice and an opportunity for comment cannot be provided, a statement of the reasons should be included with the regulation when it is published in the FEDERAL REGISTER.

Another commenter suggested that industry members usually do not know the results of studies conducted by or for the Department at the time they make presentations at hearings and suggested that additional hearings be scheduled after such studies are published. Existing agency procedures already permit this where appropriate. Therefore, a change to the proposal is unnecessary.

PARAGRAPH 13. REGULATIONS AGENDA

Two commenters had concerns about the Agenda. One suggested that listing the publication dates meant that the Department had already made up its mind to go ahead with rulemaking on that particular subject. The other commenter was concerned with references to the Federal-aid Highway Program Manual and other documents such as Operations Review Notices for FAA programs, and suggested that the Agenda include information on how to secure such items in a timely fashion. This commenter also suggested that the format for the Regulations Agenda appears more workable than the format for the Review List and suggested that, for the sake of clarity and uniformity, both have the same format.

The Agenda very carefully indicates that the listing of a date does not indicate that a decision has been made to issue a notice or final rule; rather, the date simply indicates to the public that, if a decision is made to issue such a document, it can be expected by that date. However, to alleviate any problems, the Department had revised paragraph 13b (3) to change "publication date" to the "date for a decision on whether to issue the proposed or final regulation." Other language changes to conform with this have been made to paragraphs 13 a and b.

With respect to the concern stated by the other commenter about the references to documents that some members of the public do not have, these references were provided as extra information to assist those who do have such documents. Moreover, contract points for further information were provided. However, to further assist the public, the Department has revised its procedures to indicate how referenced documents can be obtained by adding a new requirement to paragraph 13b (2).

GENERAL

Two commenters suggested that, after the first year, an analysis of how the procedures are working be preparing and published. The Department recognizes that the promulgation of these policies and procedures is only the first step and that it is more important to assure that they are being effectively implemented. Therefore, the Department plans to make such an evaluation and will provide the public with an opportunity to make comments. The Department does not believe a change to its proposal is necessary to accomplish this.

The Department of Justice has recommended that: (1) "no proposed regulation be considered non-significant if it will have a disparate impact based on sex"; (2) "the 'Review and Revision of Existing Regulations' should include a paragraph specifically calling for an amendment of unnecessary or inappropriate gender-based terminology"; in existing regulationss"; and (3) "compliance with E.O. [Executive Order] 12044 include a review of all proposed new regulations for unnecessary or inappropriate gender-based distinctions." The Department generally agrees with this policy and has already taken action on the matter. On December 12, 1977, the General Counsel advised the initiating offices of the Department to take appropriate action to phase sex-neuutral terms into their regulations. As a general rule, they were advised that sex-neutral terms should be used whenever a new part of the FEDERAL REGISTER was drafted or a major revision to a part was undertaken. Also, they advised that in many situations sex-neutral terms could be used in minor revisions and still avoid inconsistencies with other portions of the regulations. It is the Department's position that, proceeding in this fashion, it should be able to phase in sex-neutral terms in a relatively orderly manner. However, with respect to the Department of Justice's specific request, if a regulation would have a "disparate impact based on sex", it should fit within the definition already contained in the proposal for significant regulations. The other two recommendations seem unnecessary and inappropriate for inclusion in a general document such as the Department Regulatory Policies and Procedures. The Department wishes to stress, though, that it it taking steps to eliminate inappropriate gender-based terminology in existing regulations as well as in new regulations. Therefore, no further change to the proposal is deemed necessary.

One commenter suggested bi-monthly sessions be established as a forum for industry to give input to the Department on its regulations. Not enough information was given by the commenter to indicate how such hearings would be effective. Hearings are held by the Department to solicit suggestions on particular regulations or general areas of concern. General, bimonthly sessions do not appear structured enough to lead to meaningful results. Therefore, the Department has made no change to its proposal.

One commenter noted that one of the Department's initiating offices has never published procedures in the Code of Federal Regulations governing the features of its regulatory process. Although this matter is technically outside the scope of the notice, the Department will review this matter and determine the feasibility of having all its initiating offices publish such procedures.

One commenter was concerned that one of the initiating offices of the Department presently has procedures whereby regulatory materials are issued by means of "notices" and "orders". Any matter which fits within the definition of regulation as used in the Administrative Procedure Act, Executive Order 12044, or the Department's Regulatory Policies and Procedures must conform to the requirements in those documents. No change to the proposal is necessary.

One commenter suggested that the Department's proposal fails to achieve the objective of rendering a rulemaking process "more efficient and predictable in the creation and delivery of agency policy." The Department believes that the process will be much more efficient and predictable through the use of such procedures as the Agenda, the Work Plans and the devices to encourage greater public participation. Therefore, the Department does not believe that changes are needed in its proposal.

One commenter suggested that in the final procedures "a function responsibility chart be included that could be used to the follow the regulations through the various functions and departments of the agency during the development/review process." The Department does not feel it is necessary to amend its proposal to accomplish this objective but will give consideration to preparing such charts and publishing them in the FEDERAL REGISTER at a later date. Even if not published in the FEDERAL REGISTER, such charts could be used in conjunction with another recommendation, which the Department has adopted, to provide seminars around the country on use of the Department's regulatory processes.

One commenter expressed concern with the lack of provisions in the Departmental proposal to prohibit "retroactive rulemaking." It is not clear what the commenter means by "retroactive rulemaking." The only regulations which could be thought to be "retroactive" are rules which do not take effect until issued, but apply, for example, to any product manufactured or action taken after the date the notice was issued. This is generally intended to prevent defeat of the purpose of any final regulation by those who might take action in response to the proposed regualation. Not only is this not, technically, a retroactive rulemaking, but the public also has an opportunity to comment on the application date during the notice and comment stage. As a result, the Department does not deem it appropriate to revise its proposal.

One commenter suggested that the Department's procedures include a requirement for the development of a three- to five-year plan for significant regulatory activity relating to the safe transportation of hazardous goods. The National Highway Traffic Safety Administration has already published a five-year plan and another initiating office has one under consideration. Although others may consider it, due to the amount of effort necessary to prepare such a document and to the fact that the Department's current Regulations Agenda covers a full year or longer, the Department does not feel it appropriate to require initiating officers to prepare such a plan.

One commenter was "strongly opposed" to the "NHTSA policy of funding self-appointed and proclaimed consumer advocates and representatives in their journeys to Washington, or wherever the concerned hearings might be taking place in order to voice their own comments as the opinion of the general public." This comment is generally outside the scope of the notice. However, the Department would like to explain how the National Highway Traffic Safety Administration program works. Under the program regulations, members of the public are invited by notice in the FEDERAL REGISTER to apply for financial assistance. Funding is available to any individual or organization, both nonprofit and profit-seeking, that can demonstrate that it is financially unable to participate effectively, and that its participation could contribute substantially to a full and fair determination of the issues involved in the proceeding.

In addition to the above, the Department would like to note that other minor, editorial changes have been made throughout the proposal.

Issued in Washington, D.C. on February 15, 1979.

BROCK ADAMS,
Secretary of Transportation.

DEPARTMENT OF TRANSPORTATION

REGULATORY POLICIES AND PROCEDURES

1. PURPOSE

This Order establishes objectives to be pursued in reviewing existing regulations and in issuing new regulations; prescribes procedures and assigns responsibilities to meet those objectives; and establishes a Department Regulations Council to assist and advise the secretary in achieving those objectives and improving the quality of regulations and the policies and practices which affect the formulation of regulations.

2. CANCELLATION

a. The following documents are superseded and cancelled:

(1) The Secretary's memorandum of March 23, 1976, on the subject of "Departmental Regulatory Reform."

(2) Notice 76-5 entitled "Policies to Improve Analysis and Review of Regulations" issued April 13, 1976, and published in the FEDERAL REGISTER on April 16, 1976 (41 FR 16200-01).

(3) The Secretary's memorandum of February 8, 1977, on the subject of "DOT Regulations."

(4) The Deputy Secretary's memorandum of March 9, 1977, on the subject of "Review of Regulations—Interim Regulations."

(5) The General Counsel's memorandum of April 25, 1977, on the subject of "Authorship of Regulatory Documents."

(6) Department of Transportation Order 2050.4 on the subject of "Procedures for Considering Inflationary Impacts."

(7) The Secretary's memorandum of January 31, 1978, and the statement attached thereto, on the subject of "Policies and Procedures for simplification, analysis, and Review of Regulations."

b. The controls listed in the table of "Controls of Certain Powers and Duties" in the DOT organization manual (DOT Order 1100.23A, Figure I-C) requiring the head of an operating administration to coordinate notices of proposed rulemaking and regulations with the Office of the Secretary before issuance are superseded and suspended pending their cancellation by amendment to the orgianzation manual. The controls requiring the head of an operating administration to coordinate regulatory documents with another operating administration are not affected by this Order and continue to be the responsibility of the originating operating administration.

3. EFFECTIVE DATE

This Order is effective March 1, 1979.

4. REFERENCES

a. Title 5, United States Code, sections 552(a)(1) and 553 which prescribe general procedural requirements of law applicable to all Federal agencies regarding the formulation and issuance of regulations.

b. Executive Order 12044, "Improving Government Regulations," which prescribes general policy and procedural requirements applicable to all Federal executive agencies regarding the improvement of existing and future regulations.

c. Presidential memoranda of March 23, 1978, and February 25, 1977, for the heads of executive departments and agencies, which prescribe general policy and procedural requirements applicable to all Federal executive agencies regarding State and local government participation in the development and promulgation of significant Federal regulations having a major intergovernmental impact.

5. COVERAGE

a. *Definitions.*

(1) *Initiating office* means an operating administration or other organizational element within the Department, the head of which is authorized by law or delegation to issue regulations or to formulate regulations for issuance by the Secretary.

(2) *Significant regulation* means a regulation that is not an emergency regulation and that in the judgment of the head of the initiating office, or the Secretary, or the Deputy Secretary:

(a) Requires a Regulatory Analysis under paragraph 10a of this Order or is otherwise costly;

(b) Concerns a matter on which there is substantial public interest or controversy;

(c) Has a major impact on another operating administration or other

parts of the Department or another Federal agency;

(d) Has a substantial effect on State and local governments;

(e) Has a substantial impact on a major transportation safety problem;

(f) Initiates a substantial regulatory program or change in policy;

(g) Is substantially different from international requirements or standards; or

(h) Otherwise involves important Department policy.

(See paragraph 9a of this Order for factors to consider in applying this definition.)

(3) *Emergency regulation* means a regulation that:

(a) In the judgment of the head of the initiating office, circumstances require to be issued without notice and opportunity for public comment or made effective in less than 30 days after publication in the FEDERAL REGISTER; or

(b) Is governed by short-term statutory or judicial deadlines.

(4) *Nonsignificant regulations* means a regulation that in the judgment of the head of the initiating office is neither a significant nor an emergency regulation.

b. *Applicability.*

(1) This Order applies to all rules and regulations of the Department, including those which establish conditions for financial assistance.

(2) This Order does not apply to:

(a) Any rulemaking in which a notice of proposed rulemaking was issued before the effective date of this Order and which was still in progress on that date;

(b) Regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557);

(c) Regulations issued with respect to a military or foreign affairs function of the United States;

(d) Matters related to agency management or personnel; or

(e) Regulations related to Federal Government procurement.

6. OBJECTIVES

To simplify and improve the quality of regulations, it is the policy of the Department that the following objectives be pursued in issuing new regulations and continuing existing regulations:

a. *Necessity.* A regulation should not be issued or continue in effect unless it is based on a well-defined need to address a specific problem.

b. *Clarity.* A regulation and any supplemental material explaining it should be clear, precise, and understandable to all who may be affected by it.

c. *Simplicity.* A regulation should be as short and uncomplicated as possible; before issuance, it should be coordinated as required within the Department and between the Department and other Federal agencies to eliminate or minimize unnecessary duplication, inconsistency, and complexity; it should be issued only after compliance costs, paperwork and other burdens on the public are minimized.

d. *Timeliness.* A regulation should be issued in time to respond to the circumstances that require it and should be modified or cancelled as those circumstances change.

e. *Reasonableness.* A regulation should provide a feasible and effective means for producing the desired results; it should be developed giving adequate consideration to the alternatives, to anticipated safety, environmental, social, energy, economic, and legal consequences, and to anticipated indirect effects; it should not impose an unnecessary burden on the economy, on individuals, on public or private organizations, or on State and local governments.

f. *Fairness.* Generally, a regulation should be issued only after a reasonable and timely opportunity has been provided for all interested persons to comment on it.

7. DEPARTMENT REGULATIONS COUNCIL

a. *Membership; Chair and Vice-Chair.* A Department Regulations Council is hereby established comprised as follows:

Regular Members

(1) The Deputy Secretary—Chair
(2) General Counsel—Vice-Chair
(3) Assistant Secretary for Policy and International Affairs
(4) Assistant Secretary for Budget and Programs
(5) Assistant Secretary for Administration
(6) Assistant Secretary for Governmental Affairs
(7) Director, Office of Public and Consumer Affiars
(8) Director, Departmental Office Of Civil Rights

Ex Officio Members

(1) Commandant of the Coast Guard
(2) Federal Aviation Administrator
(3) Federal Highway Administrator
(4) Federal Railroad Administrator
(5) National Highway Traffic Safety Administrator
(6) Urban Mass Transportation Administrator
(7) Saint Lawrence Seaway development Corporation Administrator
(8) Research and Special Programs Administrator

b. *Functions and responsibilities.* The Council:

(1) Monitors initiating offices' programs for reviewing and revising their existing regulations and makes recommendations to the heads of initiating offices and the Secretary when appropriate with regard to the conduct and effectiveness of those programs;

(2) Considers each significant regulation referred to it and makes such recommendations as the members consider appropriate regarding the advisability of the Secretary's concurring in its issuance;

(3) On its own initiative or upon request, reviews, discusses, and makes such recommendations to the Secretary as the members consider appropriate regarding Department regulatory policies and procedures; and

(4) In coordination with the initiating office(s) concerned, designates such task forces or requires the preparation of such reports, analyses, or options papers as it considers necessary for proper Council consideration of any regulatory matter or inquiry referred to or initiated by the Council.

c. *Staff support.* The General Counsel provides regular staff support to the Council and designates an Assistant General Counsel to be responsible for performing the functions assigned to the General Counsel's office. These include the coordination of the staffing, analysis, and review of items coming before the Council or on which the Council requires additional information; the convening and management of task forces designed to review and improve major categories of existing regulations; and such additional duties as the Council may specify.

d. *Meetings; attendance of members.* The Council meets on a regular bimonthly basis. It also meets on special occasions, at the call of the Chair, either on his or her own initiative or at the request of the head of an initiating office. Attendance by ex officio members is optional. Any member who is unable to attend a meeting may be represented at the meeting only by the member's principal deputy or Chief Counsel. A member may be accompanied by supporting staff for purposes of briefing the Council or assisting the member with respect to an agenda item or a significant regulation scheduled for discussion.

e. *Agenda.* The General Counsel's office prepares an agenda for each meeting and distributes it to the members in advance of the meeting, together with any documents to be discussed at the meeting. When the agenda includes consideration of a significant regulation, the general Counsel's office makes such arrangements with the initiating office as may be appropriate for briefing the Council and responding to questions concerning the regulation.

f. *Minutes.* The general Counsel's office prepares summary minutes following each meeting and distributes them to the members.

8. RESPONSIBILITIES OF INITIATING OFFICES

a. The head of each initiating office is primarily responsible for:

(1) reviewing proposed regulations to ensure that they meet the objectives set forth in paragraph 6 of this Order;

(2) issuing regulations within the scope of his or her statutory or delegated authority;

(3) coordinating proposed regulations with other Federal agencies and other operating administrations and organizational elements within the Department; and

(4) In conjunction with the Assistant Secretary for Governmental Affairs, consulting with State and local governments as required under the memoranda referenced in paragraph 4c of this Order in the development of regulations to be issued by that office.

b. To improve the quality of existing and future regulations in accordance with the purposes and policies set forth in this Order, the head of each initiating office:

(1) Establishes and carries out a program for reviewing and revoking or revising existing regulations in accordance with paragraph 11 of this Order;

(2) Includes in the public docket for each proposed regulation a draft Regulatory Analysis or Evaluation as required under paragraph 10 of this Order;

(3) Includes in the public docket for each final regulation a final Regulatory Analysis or Evaluation as required under paragraph 10 of this Order;

(4) Submits Regulations Reports to the Department Regulations Council in accordance with paragraph 13a of this Order;

(5) Submits for the Secretary's concurrence, before issuance, regulatory documents pertaining to significant regulations, together with such supporting documentation as may be required by paragraph 9 of this Order;

(6) Advises the Secretary by memorandum, before issuance if possible, of the circumstances requiring emergency issuance of an otherwise significant regulation;

(7) Names a Regulations Officer to coordinate the review of regulations and act as principal staff liaison with the Council; and

(8) Informs the Deputy Secretary or the General Counsel of any regulatory matter that should be reviewed by or coordinated with the Council.

9. REVIEW OF SIGNIFICANT REGULATIONS

a. In determining whether a regulation is significant, the following things, among others, are considered:

(1) The type and number of individuals, businesses, organizations, and State and local governments affected;

(2) The compliance and reporting requirements likely to be involved;

(3) Direct and indirect effects of the regulation including the effect on competition; and

(4) The relationship of the regulations to those of other programs and agencies.

Proposed and final regulations that are not considered significant under this Order are accompanied by a statement in the FEDERAL REGISTER to that effect.

b. Before an initiating office proceeds to develop a significant regulation, the head of the initiating office considers the need for the regulation, the major issues involved and the alternative approaches to be explored. If he or she determines that further action is warranted, the initiating office then prepares a Work Plan. The Work Plan states or describes:

(1) The need for the regulation;

(2) The objective(s) of the regulation;

(3) The legal authority for the regulation;

(4) The names of the individual or organizational unit primarily responsible for developing the regulation and of the accountable official;

(5) Whether a Regulatory Analysis is likely to be required and how and where it will be produced;

(6) The probable reporting requirements (direct or indirect) that may be involved;

(7) A tentative plan for how and when the Congress, interest groups, other agencies, and the general public will have opportunities to participate in the regulatory process; and

(8) The tentative target dates for completing each step in the development of the regulation.

If the Work Plan is approved by the head of the initiating office, the development of the significant regulation may proceed.

c. As soon as it is approved, the Work Plan is submitted to the General Counsel for his or her information.

d. Before issuing for publication in the FEDERAL REGISTER any regulatory document of substantive significance (e.g., advance notice of proposed rulemaking, notice of proposed rulemaking, notice of withdrawal, supplemental notice or final rule) or a notice of an exclusively procedural nature (e.g., extending time for comments or scheduling a public hearing) pertaining to a significant regulation, the initiating office submits it to the Secretary for concurrence.

e. To receive Secretarial concurrence for the issuance of any regulatory document of substantive significance pertaining to a significant regulation, the initiating office submits it to the General Counsel's office at least 30 days before the proposed date of issuance; included with this submission is (1) an approved Work Plan, (2) a draft or final Regulatory Analysis or Evaluation, and (3) a summary of the results of any coordination outside the initiating office. Once a Work Plan and Regulatory Analysis or Evaluation is developed for a particular significant regulation, they are only updated and supplemented for successive regulatory documents pertaining to that significant regulation. In the case of a final rule submitted for Secretarial concurrence, there is an accompanying summary of meaningful public comments received.

f. Before submitting a final rule for Secretarial concurrence, the head of the initialing office reviews all the documents required to be submitted and determines that, at a minimum:

(1) The regulation is needed;

(2) The direct and indirect effects of the regulation have been adequately considered;

(3) Alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen;

(4) Public comments have been considered and an adequate response has been prepared;

(5) The regulation is written in plain English and is understandable to those who must comply with it;

(6) An estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulation;

(7) The name, address and telephone number of a knowledgeable agency official is included in the publication; and

(8) A plan for evaluating the regulation after its issuance has been developed.

g. The General Counsel's office distributes each regulatory document and accompanying supporting documents received from an initiating office under paragraph 9d of this Order to all appropriate Secretarial Officers for review and coordinates their comments and recommendations for transmittal, together with a staff analysis, to the Secretary through the Deputy Secretary.

h. The Deputy Secretary or the General Counsel may refer a significant regulation to the Department Regulations Council for its consideration at its next regular or special meeting. This is done if, in the judgment of the Deputy Secretary or the General Counsel, the views of the Council on that regulation are desirable or likely to assist the Secretary in determining whether to concur in its issuance. Council consideration of a significant regulation is in addition to and not in lieu of Secretarial staff review; both are scheduled and coordinated so as to minimize delay in transmitting the re-

sulting recommendations to the Secretary.

i. To receive Secretarial concurrence for the issuance of any notice of an exclusively procedural nature pertaining to a significant regulation, the initialing office submits a copy of the notice to the General Counsel's office at least 3 days before the intended date of issuance; included with this submission is a memorandum which specifies the intended date of issuance, states why the notice is required and describes any changes that it will cause in the previously anticipated schedule of action dates on the significant regulation concerned.

j. The General Counsel may concur for the Secretary in the issuance of a procedural regulatory document received from an initiating office under paragraph 9i of this Order, when warranted. The General Counsel advises the Secretary through the Deputy Secretary of such action as soon as possible. For all other such documents, the General Counsel's office advises the Secretary through the Deputy Secretary of each document received. Unless otherwise notified before the intended date of issuance, Secretarial concurrence may be presumed.

k. For an emergency regulation that otherwise would be significant, the initiating office includes with the regulation when published in the FEDERAL REGISTER, a statement of the reasons why it is impracticable or contrary to the public interest for the initiating office to follow the procedures of this Order and Executive Order 12044. Such a statement includes the name of the policy official responsible for this determination.

l. If, at any time during its development, the head of the initiating office determines that a regulation classified as significant should be reclassified as nonsignificant, he or she submits a memorandum providing the basis for the recommended change to non-significant to the Secretary for concurrence. The regulation continues to be handled as significant unless the Secretary concurs in the change.

10. REGULATORY ANALYSES AND EVALUATIONS

a. Except as indicated in paragraph 10g of this Order, an initiating office prepares and places in the public docket a draft Regulatory Analysis for each of its proposed regulations that:

(1) Will result in an annual effect on the economy of $100 million or more;

(2) Will result in a major effect on the general economy in terms of costs, consumer prices, or production;

(3) Will result in a major increase in costs or prices for individual industries, levels of government, or geographic regions;

(4) Will have a substantial impact on the United States balance of trade; or

(5) The Secretary or head of the initiating office determines deserves such analysis.

b. Each draft Regulatory Analysis contains:

(1) A succinct statement of the problem and the issues that make the regulation significant;

(2) A description of the major alternative ways of dealing with the problem that were considered by the initiating office;

(3) An analysis of the economic and any other relevant consequences of each of these alternatives; and

(4) A detailed explanation of the reasons for choosing one alternative over the others.

c. A draft Regulatory Analysis addresses all salient points to the maximum extent possible. If data are lacking or there are questions about how to determine or analyze points of interest, the problem is noted in the draft Regulatory Analysis; to help elicit the necessary information during the public comment period on the advance notice or notice of proposed rulemaking, the appropriate questions are included in the advance notice or notice of proposed rulemaking.

d. The initiating office includes in each advance notice or notice of proposed rulemaking on a proposal requiring a Regulatory Anaylsis, an explanation of the regulatory approach being considered or proposed, a short description of the alternative approaches, and a statement of how the public may obtain a copy of the draft Regulatory Analysis for review and comment.

e. An initiating office prepares and places in the public docket for each of its proposed regulations not requiring a draft Regulatory Analysis, a draft Evaluation. This Evaluation includes an analysis of the economic consequences of the proposed regulation, quantifying, to the extent practicable, its estimated cost to the private sector, consumers, Federal, State and local governments, as well as its anticipated benefits and impacts. Judgment is exercised by the head of the initiating office so that resources and time devoted to the Evaluation reflect the importance of the proposal. The initiating office includes in each advance notice or notice of proposed rulemaking requiring an Evaluation a statement of how the public may obtain a copy of the draft Evaluation for review and comment. If the head of the initiating office determines that the expected impact is so minimal that that the proposal does not warrant a full Evaluation, a statement to that effect and the basis for it is included in the proposed regulation; a separate statement is not placed in the public docket. For a significant regulation, the Evaluation also includes a succinct statement of the issues which make the regulation significant and an analysis of any other relevant consequences.

f. The initiating office prepares a final Regulatory analysis for each final regulation that meets the criteria of paragraph 10a of this Order, otherwise, a final Evaluation, in accordance with the requirements of paragraph 10e of this Order, is prepared. The Regulatory Analysis or the Evaluation is placed in the public docket at the time of or before issuing the final regulation and the regulation is accompanied by a statement of how the public may obtain a copy of the Regulatory Analysis or the Evaluation for review.

g. An emergency regulation that otherwise would be nonsignificant is excepted from the requirements for any Evaluation. For an emergency regulation that otherwise would be significant, the intitating office prepares and places in the public docket as soon as possible after issuance of the notice or final regulation a Regulatory Analysis or Evaluation, whichever is appropriate, unless an exception is granted by the Secretary.

11. REVIEW AND REVISION OF EXISTING REGULATIONS

a. Each initiating office establishes a program for reviewing its existing regulations and revoking or revising those regulations that it determines are not achieving their intended purpose. This review follows the same procedural steps for the development of new regulations.

b. In identifying existing regulations for review and possible revocation or revision and in determining the order in which they are to be reviewed, an initiating office considers:

(1) The nature and extent of complaints or suggestions (including petitions for rulemaking) received, especially ones received from those directly or indirect affected by the regulations;

(2) The need to simplify or clarify language, consideration should especially be given to the number of requests received for interpretations or the problems evidenced in the enforcement of the regulation;

(3) The need to eliminate overlapping and duplicative regulations;

(4) The need to eliminate conflicts and inconsistencies in its own regulations or those of other initiating offices or other agencies;

(5) The length of time since the regulations were last reviewed or evaluated.

(6) The importance and continued relevance of the problem the regulations were originally intended to solve;

(7) The burdens imposed on those directly or indirectly affected by the regulations;

(8) The degree to which technology, economic conditions or other factors have changed in the area affected by the regulation; and

(9) The number of requests received for exemption from a regulation and the number granted.

(c) Each initiating office prepares a list of the existing regulations it has selected for review and possible revocation or revision. It includes (1) a brief description of the reasons for each selection, (2) a target date for completing the review and determining the course of corrective action to be taken, and (3) the name and telephone number of a knowledgeable initiating office official who can provide additional information. The list of existing regulations selected is submitted to the Department Regulations Council through the General Counsel. It is updated as part of the initiating office's semi-annual Regulations Report and the bi-monthly supplements required under paragraph 13 of this Order. The semi-annual report includes any final action taken or determination made since the last list.

d. The General Counsel's office consolidates the initiating offices' lists of existing regulations selected for review for the Council and from that consolidation prepares a semi-annual list for publication in the FEDERAL REGISTER as part of the Department Regulations Agenda. FEDERAL REGISTER publication is for the stated purpose of sharing information with interested members of the public. Choosing to review a regulation does not indicate that it will be discarded or that it will not be enforced while under review.

12. OPPORTUNITY FOR PUBLIC PARTICIPATION

a. Initiating offices should take appropriate steps, including the following, to increase the opportunity for public participation:

(1) In addition to publishing proposals and notices of regulatory actions in the FEDERAL REGISTER, an initiating office should, in appropriate circumstances, provide a clear, concise notice to publications likely to be read by those affected, and, to the extent practical, notify interested parties directly.

(2) If the subject is unusually complex, or if there is a considerable potential for adverse effects from a failure to provide an opportunity for early public participation, the initiating office should consider supplementing the minimum rulemaking steps required by section 553 of Title 5, United States Code. For example, an advance notice of proposed rulemaking may be employed to solicit comments and suggestions on an upcoming notice of proposed rulemaking or an open conference may be held at which a discussion between all interested parties would help narrow or clarify issues. However, such supplementary procedures should be used only when they will serve to clarify the issues and enhance effective public participation. They should not be used if they would delay the process of developing the regulations unless significant additional information is to be gained by the initiating office or the public.

(3) When appropriate, an initiating office may solicit views through surveys or panels.

(4) When the issues involved warrant it and time permits, an initiating office should allow time for the public to submit rebuttal to comments submitted in response to proposals.

(5) To the extent permissible, an initiating office may consider providing financial assistance to persons who lack the resources to participate meaningfully in its regulatory proceedings.

(6) An initiating office should identify, in a statement accompanying a proposed or final regulation, the nature of the research relied on to support a particular regulatory approach; the statement should clearly indicate the importance of the research in the development of the regulation; and the source material should be made available for public review by placing a copy in the public docket.

(7) As necessary, the Department, and its initiating offices, provides information and instruction through public meetings and publications, in the use of its regulatory policies and procedures, especially with respect to public participation.

b. The public is provided at least 60 days to comment on proposed significant regulations. In the few instances where the initiating office determines this is not possible, the proposal is accompanied by a brief statement of the reasons for a shorter time period.

c. The public is generally provided at least 45 days to comment on proposed nonsignificant regulations. When at least 45 days are not provided, the proposal or the regulation is accompanied by a brief statement of the reasons.

d. To the maximum extent possible, notice and an opportunity to comment on regulations should be provided to the public, even when not required by statute, if such action could reasonably be anticipated to result in the receipt of useful information. When an initiating office does not provide notice and an opportunity for the public to comment, (1) a statement of the reasons is included with the final regulation when it is published in the FEDERAL REGISTER and (2) when reasonable, the initiating office should provide notice and opportunity to comment subsequent to the final regulation. This action can be taken in conjunction with a plan for evaluating the regulation after its issuance.

e. If any of the national organizations representing general purpose State and local governments (including the National Governor's Association, the National Conference of State Legislatures, the Council of State Governments, the National League of Cities, the United States Conference of Mayors, the National Association of Counties, and the International City Management Association) notifies the department, including any of its initiating offices, that it believes a regulation included on the Department's Regulations Agenda would have major intergovernmental impact, the initiating office develops a specific plan, in conjunction with the Assistant Secretary for Governmental Affairs, for consultation with State and local governments in the development of that regulation. Such consultation includes the solicitation of comments from the above named groups, from other representative organizations and from individual State and local governments as appropriate.

In determining appropriate action, to help ensure the practicality and effectiveness of the programs, the initiating office considers the following:

(1) State and local sectors constitute the delivery mechanisms for most of the actual services the Federal Government provides;

(2) State and local sectors have concerns and expertise;

(3) Early participation by State and local officials in the planning process helps ensure broad-based support for the proposals that are eventually developed; and

(4) Early participation also ensures that priorities developed at the Federal level will work in conjunction with and not at cross-purposes to priorities at the State and local level.

Whenever a significant proposed regulation identified as having a major intergovernmental impact, is submitted to the Office of management and Budget for review or is published in the FEDERAL REGISTER, it is accompanied by a brief description of (1) how State and local governments have been consulted, (2) what the nature of the State and local comments was and (3) how the agency dealt with such comments.

13. DEPARTMENT REGULATIONS AGENDA

a. Each initiating office prepares a semi-annual Regulations Report summarizing each proposed and each final regulation that office is considering for issuance and publication in the FEDERAL REGISTER during the succeeding 12 months or such longer period as may be anticipated. This Report is submitted to the Department Regula-

tions council through the General Counsel not later than the last working days of June and December each year and supplemented with a bimonthly updating report not later than the last working days of February, April, August, and October each year.

b. The Report specifies for each proposed and final regulation being considered for issuance and publication:

(1) A title;

(2) A description (including information on how any referenced document may be obtained);

(3) The earliest expected date for a decision on whether to issue the proposed or final regulation;

(4) The name and telephone number of a knowledgeable initiating office official who can provide additional information; and

(5) Whether it is a significant or a nonsignificant regulation.

The Semi-Annual Regulations Report includes any final action taken since the last report.

c. For a significant regulation, the Report also briefly states:

(1) Why it is considered significant;

(2) The past and anticipated chronology of the development of the regulation;

(3) The need for the regulation;

(4) The legal basis for the action being taken; and

(5) Whether a Regulatory Analysis is required.

d. For non-significant regulations issued routinely and frequently as part of an established body of technical requirements (such as the Federal Administration's Airspace Rules) to keep those requirements operationally current, the Report only states:

(1) The general category of the regulations;

(2) The identity of a contact office or official; and

(3) An indication of the expected volume of issuance; individual regulations are not listed.

e. The General Counsel's office consolidates the initiating offices' Regulations Reports for the Council and from that consolidation prepares a semi-annual Department Regulations Agenda for publication in the FEDERAL REGISTER. FEDERAL REGISTER publication is for the stated purpose of sharing with interested members of the public the Department's preliminary expectations regarding its future regulatory actions and does not impose any binding obligation on the Department or initiating offices with regard to any specific item in the agenda or preclude regulatory action on any unspecified item.

[FR Doc. 79-5572 Filed 2-23-79; 8:45 am]

Federal Register

MONDAY, FEBRUARY 26, 1979

PART III

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

■

COMMUNITY DEVELOPMENT BLOCK GRANTS

Applications for Discretionary Grants and Contracts for Technical Assistance

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER V—OFFICE OF THE ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT; DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-79-545]

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Applications for Discretionary Grants and Contracts for Technical Assistance

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This rule establishes procedures by which HUD awards grants or contracts for the purpose of providing technical assistance in planning, developing, and administering assistance under the Community Development Block Grant program. This rule is necessary to implement a 1977 amendment to the Block Grant program authorizing technical assistance.

EFFECTIVE DATE: March 28, 1979.

FOR FURTHER INFORMATION CONTACT:

Rich Coward, Director, Technical Assistance Division, Office of Policy Planning, Community Planning and Development, Room 7138, U.S. Department of Housing and Urban Development, Washington, D.C. 20410. Telephone: 755-6092.

SUPPLEMENTAL INFORMATION: On June 14, 1978, the Secretary of Housing and Urban Development published a Proposed Rule (43 FR 25780) adding a new § 570.402 to 42 CFR Subpart E. This new Section governs technical assistance under Section 107(a)(8) of Title I of the Housing and Community Development Act of 1974, as amended. Comments were invited until July 14, 1978. A total of 10 comments was received. Each comment was carefully considered. The following is a summary of the comments received and the changes made to the proposed rule.

Background

The 1977 amendments to the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) authorized grants from the Secretary's Discretionary Fund for "technical assistance." Under section 107(a)(8) of the Act, grants may be awarded to States, units of general local government, Indian tribes, or areawide planning organizations, for the purpose of providing technical assistance in planning, developing and administering Community Development Block Grant assistance. The Secretary may also provide technical assistance directly or through contracts.

This rule would implement the technical assistance program. The rule would provide grants and contracts for three categories of technical assistance: (1) HUD Regional Technical Assistance, administered by HUD Regional Offices and designed primarily to respond quickly to requests for assistance, utilizing such methods as training sessions or individual, or organizational experts; (2) State Technical Assistance, by which States would improve their ability to deliver community development block grant technical assistance; and (3) National Technical Assistance, which must address certain national priorities. The three categories are not mutually exclusive. States and HUD Regions may address aspects of the national priorities (§ 570.402(e)(i)).

Grants may be awarded either with or without competition at the discretion of the Secretary. Contracts will be awarded according to HUD's usual contracting procedures (41 CFR Part 24) and the Federal Procurement Regulations (41 CFR Part I). Technical Assistance is an eligible cost under the Community Development Block Grant program, and can be purchased through block grant funds directly, or obtained through the State, HUD Regional Office, or National Assistance programs by recipients of Community Development Block Grant funds. Areawide activities will generally be provided as components of the State or Regional assistance program.

HUD will invite applications for competitive grants by notice published in the FEDERAL REGISTER. A finding of inapplicability with regard to environmental impact has been made in accordance with HUD Handbook 1390.1.

Comments

1. A comment questioned whether all classes of eligible applicants may qualify for both grants and contracts in all three categories: Regional Technical Assistance, State Technical Assistance, and National Technical Assistance. The rule describes eligible applicants for grants and contracts (570.402 (d)(1) and (2)). State technical assistance, reserved for State applicants, is the only restricted category. Section 570.402 (e)(1)(ii) relating to State Technical Assistance has been clarified on this point.

2. Comments noted that the absence of fund amounts made it more difficult to prepare proposals. FY 1978 allocations for each of the categories have been provided in § 570.402(e)(2). These may be modified at the discretion of the Secretary.

3. A comment stated it was unclear whether the criteria for ranking proposals apply to all three categories and to both grants and contracts. The rule ((e)(3)) states that the criteria apply to competitive grant applications for the three categories. Competitive contract procurement is done in accordance with HUD's usual contracting procedures.

4. A comment expressed the concern that the description of Regional Assistance was too narrow when referred to only as "response" assistance. Response assistance is a primary purpose of regional assistance but not an exclusive one. The language in §570.402(e)(1)(i) has been appropriately modified.

5. A comment inquired whether in all cases Areawide Planning Organizations would be limited to participation in the program through HUD Regional Technical Assistance or State administered technical assistance. Areawide Planning Organizations may submit applications for the HUD Regional Technical Assistance or the National Technical Assistance. In either instance, it is advisable to contact the appropriate HUD Office before preparing a formal proposal. Areawide Planning Organizations may not apply directly to HUD under the State Technical Assistance category, but should consult with their respective States about participation in the State technical assistance program.

6. A comment expressed concern with the absence of explicit reference to urban counties in the proposed regulations and the explicit inclusion of areawide planning organizations. The language used in the regulations is consistent with the Housing and Community Development Act of 1974 as amended in 1977. The legislation explicitly refers to Areawide Planning Organizations and "units of general local government." A definition of "areawide planning organizations" is given in § 570.402(a)(2). Counties are included under "units of general local government."

7. Comments addressing Certification Requirements recommended the use of A-95 in one instance and additional waivers of Certification in another. Technical Assistance for community development block grants is exempted from A-95 by Paragraph 8.b. of Part I Attachment A of A-95. Additional certification exemptions are not anticipated.

8. A comment requested clarification on the eligibility of non-block grant communities for pre-application assistance. In the absence of legislative or administrative restrictions, such assist-

ance is allowable as stated in § 570.402(c).

9. A comment requested a submittal schedule for grant applicants for each category. The submittal schedule for grant applications for each category is clarified in § 570.402(f).

Accordingly, Part 570 is amended by adding a new § 570.402 as follows:

§ 570.402 Technical assistance grants and contracts.

(a) *Definitions.*—(1) *Technical Assistance* is defined as the transfer of skills and knowledge in planning, developing, and administering the Community Development Block Grant program from those individulas and institutions which possess them to eligible block grant entities and affiliated CDBG participants which need them (570.402(c)). The assistance is to increase the effectiveness with which eligible block grant communities can use Community Development Block Grant funds to meet community development national and local program objectives.

(2) "Areawide planning organization" means an organization authorized by law or by interlocal agreement to undertake planning and other activities for a metropolitan or non-metropolitan area.

(b) *Forms of Assistance.* Technical Assistance may be funded either by grant or by contract. Assistance may take several forms, such as the provision of written information, person-to-person exchange, seminars, workshops, or training sessions.

(c) *Recipients of Technical Assistance.* (1) Technical assistance may be provided, directly or through contract, to any party participating in, or likely to participate in, the planning, administration, implementation, or assessment of community development programs and activities under this Part, including but not limited to units of general local government, Indian tribes, and non-governmental organizations.

(2) Except as provided in paragraph (c)(3) of this section, where the technical assistance will be provided to a non-governmental organization, HUD will require a designation of the organization to receive the assistance from the chief executive of the unit of general local government in which the recipient non-governmental organization is located. Such a designation by the unit of general local government shall constitute recognition that the technical assistance received by the non-governmental organization is for the purpose of assisting that governmental unit to plan, develop, or administer its community development program.

(3) If a contract is for the purpose of providing technical assistance to non-governmental organizations to enable them to develop a capacity to participate in community development programs, the contractor shall assure that the units of general local government in which the recipient organizations are located do not object to the provision of such assistance.

(d) *Eligible Applicants*—(1) Grants. Grants may be made with or without competition at the discretion of the Secretary. Except as provided in § 570.402(e)(1)(ii), eligible applicants for grants are States, units of general local government, Indian tribes, and areawide planning organizations which can demonstrate that they have the capability, skill, experience, facilities, techniques and commitment to provide technical assistance in the administration, planning or implementation of a community development block grant program.

(2) Contracts. Except as provided in § 570.402(e)(1)(ii), eligible proposers for contracts are the same as those eligible for grants, and, in addition, but not limited to, universities, public interest groups, quasi-governments, for-profit and not-for-profit organizations and individuals which have the satisfactory qualifications for providing technical assistance.

(e) *Criteria for Selection and Weighting*—(1) *Threshold selection criteria for grants and contracts.* Each grant application or contract proposal must offer one of the following categories of technical assistance. States and HUD Regions may address aspects of national priorities.

(i) *HUD Regional Technical Assistance.* This assistance shall primarily respond to requests for aid in delivering Community Development Block Grant assistance, utilizing, for example, training sessions, existing assistance materials, individual and organizational experts, educational systems, or peer-to-peer exchanges. Regional technical assistance will be administered by each Region of HUD. Applicants seeking funds to provide this assistance should contact the appropriate HUD Regional Office. Applicants may propose to provide technical assistance throughout an entire HUD Region or only part of a Region.

(ii) *State Technical Assistance.* This assistance, for which only State applicants are eligible, shall improve States' ability to deliver Community Development Block Grant technical assistance. In order to provide this assistance, States may choose to expand their own existing staff resources, or may develop cooperative arrangements with other organizations. These arrangements may include combinations of State government agency staffs, areawide planning organizations, universities, municipalities, or other organizations with proven capability to provide technical assistance to block grant recipients. State technical assistance will be administered by HUD Central Office.

(iii) *National Technical Assistance.* This assistance shall address one or more of the following national priorities: (A) Development of city and county capacities to undertake block grant urban economic development and commercial revitalization;

(B) Development of city and county capacities to implement block grant neighborhood rehabilitation and urban homesteading programs;

(C) Promotion of effective citizen participation in the block grant program and improvement of the capacity of neighborhood and non-profit organizations to carry out community development and housing programs;

(D) Assistance to fair housing groups, housing agencies and local governments to provide housing in a manner which promotes spatial deconcentration of low- and moderate-income families, implements block grant Housing Opportunity Plans and Housing Assistance Plans or helps to meet the housing needs of households eligible for housing assistance;

(E) Improvement of the administrative capacity of smaller block grantees to effectively carry out community development and housing programs;

(F) Improvement of the technical capability of block grant grantees to meet environmental review requirements;

(G) Assistance to upgrade block grant environmental review requirements.

National Technical Assistance will be administered by HUD's Central Office in Washington, D.C.

(2) *Allocation for Fiscal Year 1978.* The Secretary is making available the following approximate amounts for each of the categories of technical assistance in paragraph (e)(1) of this section: Regional Technical Assistance $3 million. State Technical Assistance $3.5 million. National Priorities $5.5 million.

(3) Criteria for ranking competitive grant applications. Within each of the categories of paragraph (e)(1) of this section, grants made by competitive selection will be based on the following selection factors:

(i) Probable effectiveness of the proposal in meeting needs of localities and accomplishing overall project objectives; (Maximum 25 points)

(ii) Soundness of approach based on the extent to which applications identify techniques or systems that can significantly impact on the key problem(s) identified; (Maximum 25 points)

(iii) Methodology for transfer of successful technical assistance techniques to other potential assistance providers; (Maximum 10 points)

(iv) Organizational and management plan reflecting a rational project management system; (Maximum 15 points)

(v) Application qualifications based on present and past relevant experience and the competence of key personnel assigned to the project; (Maximum 15 points)

(vi) Potential for assistance activities being sustained beyond the period of the grant; (Maximum 10 points)

(4) *Contracts.* HUD will follow its usual contracting procedures in compliance with its Procurement Regulations (41 CFR Part 24) and the Federal Procurement Regulations (41 CFR Part 1).

(f) *Grant Application Requirements*—(1) Dates. HUD Regional Technical Assistance: consult respective HUD Regional Office; State Technical Assistance: Closed 7/31/78; National Priorities: No single closing date.

(2) Addresses: Applications for Regional Technical Assistance under § 570.402(e)(1)(i) must be submitted to the applicant's local HUD Regional Office. Grant Applications for State or National Priority Technical Assistance under § 570.402(e)(1) (ii) and (iii) must be submitted to:

Mr. Donald Dodge, Acting Director, Office of Policy Planning, Community Planning and Development, 451 7th Street, S.W., Room 7134, Washington, D.C. 20410.

(3) *Distribution.* Applicants for Regional Technical Assistance and National Technical Assistance will send three (3) copies of their applications to the appropriate HUD offices as designated above. States, in addition to sending three (3) copies of their applications to the Central Office, will also send one (1) copy to their local HUD Regional Office.

(4) *Contents.* Applications must include:

(i) A brief letter of transmittal signed by the Chief Executive Officer, i.e., the elected or appointed official who has responsibility for the conduct of affairs of the State, unit of general local government, Indian Tribe or area planning organization;

(ii) Standard Form 424 prescribed by OMB Circular A-102;

(iii) A one-page abstract of the project summarizing the proposal and its total cost;

(iv) A project narrative statement describing:

Proposed recipients of technical assistance;

Method of determining and prioritizing needs;

The goals and objectives of the project;

The duration of the project and the earliest and the latest start-up time;

The management plan indicating the resources to be used (including resources in addition to community development block grant funds);

The administrative tasks and program of work tasks to be carried out;

The staff to be assigned to the project;

The plan for monitoring and evaluating the project including the sequence of specific events, and data requirements;

(v) A proposed budget clearly showing how HUD funds would be used;

(vi) A proposed quarterly and final report format;

(vii) Certifications required by § 570.307 with the exceptions of the following paragraphs to that section:

(c) Concerning OMB Circular A-95

(d) Concerning Citizen Participation Plan

(f) Concerning Community Development Plan

(h) Concerning Labor Standards § 570.605.

Issued at Washington, D.C., February 15, 1979.

ROBERT C. EMBRY, Jr.,
Assistant Secretary for Community Planning and Development.

[FR Doc. 79-5622 Filed 2-23-79; 8:45 am]

federal register

MONDAY, FEBRUARY 26, 1979

PART IV

DEPARTMENT OF TRANSPORTATION

Coast Guard

■

LIGHTS TO BE DISPLAYED ON PIPELINES

Final Rule

[4910-14-M]

Title 33—Navigation, Navigable Waters

CHAPTER I—COAST GUARD; DEPARTMENT OF TRANSPORTATION

[CGD 73-216]

LIGHTS TO BE DISPLAYED ON PIPELINES

Final Rule Revising Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: These amendments revise the requirements for lights to be displayed on pipelines. Pipelines, whether attached to or disengaged from dredges, must display at night a row of flashing yellow lights, not more than 12 nor less than eight feet above the water. These changes are being made because of the limited effectiveness of the existing lights and because pipelines disengaged from dredges are not under the existing requirements. The change in the characteristic of the yellow lights from fixed to flashing is intended to make it easier for the lights to be distinguished against most backgrounds. The change in terminology from amber to yellow is consistent with the International Regulations for Preventing Collisions at Sea, 1972.

EFFECTIVE DATE: These amendments are effective March 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Lieutenant (jg) George W. Molessa, Jr., 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: On February 13, 1978, the Coast Guard published a proposed rule (43 FR 6200) concerning these amendments. Interested persons were given until March 30, 1978, to submit comments. Eight comments were received. No public hearing was held or requested.

Drafting Information

The principal persons involved in drafting this regulation are: Lieutenant (jg) George W. Molessa, Jr., Project Manager, Office of Marine Environment and Systems, and Lieutenant G. S. Karavitis, Project Attorney, Office of Chief Counsel.

Discussion of Major Comments

Eight comments were received. Three commenters expressed unqualified support. Three commenters expressed support for the regulations but also suggested changes. Two other commenters suggested changes without noting support for or opposition to the proposal.

One commenter, supporting the proposal, suggested two changes. The first suggestion was that there should be a specified maximum spacing for the lights on a pipeline that does not cross a navigable channel. The proposal provided, in this situation, that the lights must be "sufficient in number to clearly show the pipeline's location and direction." A number of factors affect the decision for the spacing of lights on pipelines. A variety of configurations of pipelines in use or awaiting use out of the main channel renders the specification of a maximum distance impractical. The Coast Guard's principal concern is that, in these circumstances, the light display on a pipeline adequately indicates to the mariner the length and course of the pipeline in order to minimize the risk of collision. The Coast Guard believes that in the many possible situations that could occur outside a navigable channel, the best judge of an adequate light display is the on scene operator of the dredge. Thus, the suggestion was not adopted.

The second suggested change by this commenter dealt with the proposed requirement that one of the two red lights required at the disconnected or discharge end of a pipeline be at the same height as the nearest flashing yellow light. The commenter stated that some flexibility should be permitted here and suggested changing the language to read "approximately the same height". It is not the Coast Guard's intention to require minute measurements to get the light at exactly the same height. The intent is that the visual display be recognized by mariners as marking the end of a pipeline. For this purpose, the lower of the two red lights must be seen by mariners to be at the same height as the nearest flashing yellow light. Minor variations, not detectable visually, would not be considered to violate the rule. However, approximation of the height introduces too much flexibility, so the suggestion was not adopted.

One commenter concurred with the intent of the proposal, but noted that there are instances where pipelines, either attached to or disengaged from dredges, are not hazardous to navigation. The commenter recommended that the local Coast Guard District Commander be given discretionary authority to rule on the necessity of lighting in these cases. The Coast Guard feels that any pipeline without lights would always present some hazard to navigation. Furthermore, a lack of uniformity which this change would introduce might increase the risk of collision. Therefore, the comment was not adopted.

One commenter suggested that the 12 foot upper height limit for the flashing yellow lights be lowered to eight feet. This comment was based on the belief that the range between the upper and lower height limits would permit too much variation and confuse the mariner. In response to another comment, the Coast Guard has raised the lower limit to eight feet, so that the range is not as great as this commenter supposed. Additionally, the flashing characteristic of the yellow lights should make the light display more distinctive and thus reduce the potential for confusion. For these reasons, the comment was not adopted.

Another commenter expressed concern over the proposed reduction of the lower limit to four feet. This commenter felt that the lights, at four feet, would be more difficult to see from the bridge of a large deep draft vessel. The proposal to lower the height limit to four feet was based on the difficulty boaters in smaller vessels had identifying the lights at the greater height against background lighting on the shore. The Coast Guard has considered this comment carefully. The Coast Guard has concluded on the basis of its experience with large vessels that the lights set at the four foot lower limit would indeed be more difficult to see from the bridge of a large deep draft vessel. The higher a light is from the surface of the water, the greater the range at which it can be seen. Larger vessels need this extra range because they are less maneuverable. The new flashing characteristic of the yellow lights should allow the light display to be distinct and readily identifiable so that smaller vessels will still recognize the display as marking a pipeline. Since many aid to navigation lights are set at 12-20 feet, this higher limit is not at variance with other lights in the marine environment. Upon consideration of all these factors, the Coast Guard determined that the comment should be adopted in the best interest of navigational safety.

One commenter suggested that the flash rate (50 to 70 times per minute) for the yellow lights should be reduced. This commenter felt that lights flashing at this rate might appear to be shining continuously if observed from a distance. The Coast Guard disagrees. This flash rate is a present requirement in 33 CFR 95, Pilot Rules for Western Rivers, for barges towed ahead or alongside. There are aids to navigation that have similar flash rates. Additionally, the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) allow

lights flashing in excess of 120 flashes per minute. With a flash rate of 50 to 70 times per minute, the Coast Guard has experienced no difficulty in perceiving these as flashing lights. Therefore, the comment was not adopted.

The general light sections for Parts 80, 90, and 95 have been amended to include reference to the new sections added by this regulation. Also, some editorial changes have been made to the text.

The Coast Guard has reviewed this regulation under the Department of Transportation "Policies for Improving Government Regulations" published on March 8, 1978 (43 FR 9582). A Final Evaluation has been filed with the docket and is available, at the above address, for review by the public.

In consideration of the foregoing, Parts 80, 90, and 95 of Title 33 of the Code of Federal Regulations are amended as follows:

PART 80—PILOT RULES FOR INLAND WATERS

1. By revising § 80.23 to read as follows:

§ 80.23 Lights to be displayed on pipelines attached to dredges.

(a) Dredges must display on pipelines attached to them, when the pipelines are floating or supported on trestles, the following lights at night:

(1) One row of yellow lights. The lights must be—

(i) Flashing from 50 to 70 times per minute;

(ii) Visible all around the horizon;

(iii) Not less than eight and not more than 12 feet above the water;

(iv) Approximately equally spaced; and

(v) Not more than 30 feet apart where the pipeline crosses a navigable channel. Where the pipeline does not cross a navigable channel the lights must be sufficient in number to clearly show the pipeline's length and course.

(2) Two red lights on the shore or discharge end of the pipeline. The lights must be—

(i) Visible all around the horizon; and

(ii) Three feet apart in a vertical line with the lower light at the same height above the water as the nearest flashing yellow light.

(b) If a section of the pipeline attached to the dredge is opened at night for the passage of vessels, the dredge must display, at each end of the opening, the lights required in paragraph (a)(2) of this section.

(Sec. 2, 30 Stat. 102 as amended (33 U.S.C. 157); 80 Stat. 937 as amended (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b).)

2. By adding a new § 80.23a as follows:

§ 80.23a Lights to be displayed on pipelines disengaged from dredges.

(a) If dredges disengage from pipelines and the pipelines remain either floating or supported on trestles, the dredges must—

(1) Display the lights on the pipelines as required in § 80.23 (a)(1) and (a)(2); and

(2) Display two red lights on the end that has been disengaged from the dredge. The lights must be—

(i) Visible all around the horizon; and

(ii) Three feet apart in a vertical line with the lower light at the same height above the water as the nearest flashing yellow light.

(b) If a section of the pipeline disengaged from the dredge is opened at night for the passage of vessels, the dredge must display, at each end of the opening, the lights required in paragraph (a)(2) of this section.

((14 U.S.C. 85, as amended); 80 Stat. 937, as amended (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b).)

3. By amending § 80.24(a) to read as follows:

§ 80.24 Lights generally.

(a) All the lights required by §§ 80.18 to 80.23a, inclusive, except as provided in § 80.18(b), shall be of such character as to be visible on a dark night with a clear atmosphere for a distance of at least two miles. The white lights provided for in § 80.18(b) shall be visible for at least five miles.

* * * * *

((14 U.S.C. 85, as amended); 80 Stat. 937, as amended (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b).)

PART 90—PILOT RULES FOR THE GREAT LAKES

4. By revising § 90.27 to read as follows:

§ 90.27 Lights to be displayed on pipelines attached to dredges.

(a) Dredges must display on pipelines attached to them, when the pipelines are floating or supported on trestles, the following lights at night:

(1) One row of yellow lights. The lights must be—

(i) Flashing from 50 to 70 times per minute;

(ii) Visible all around the horizon;

(iii) Not less than eight and not more than 12 feet above the water;

(iv) Approximately equally spaced; and

(v) Not more than 30 feet apart where the pipeline crosses a navigable channel. Where the pipeline does not cross a navigable channel the lights must be sufficient in number to clearly show the pipeline's length and course.

(2) Two red lights on the shore or discharge end of the pipeline. The lights must be—

(i) Visible all around the horizon; and

(ii) Three feet apart in a vertical line with the lower light at the same height above the water as the nearest flashing yellow light.

(b) If a section of the pipeline attached to the dredge is opened at night for the passage of vessels, the dredge must display, at each end of the opening, the lights required in paragraph (a)(2) of this section.

(Sec. 3, 28 Stat. 649, as amended (33 U.S.C. 243); 80 Stat. 937 as amended (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b).).

5. By adding a new § 90.27a as follows:

§ 90.27a Lights to be displayed on pipelines disengaged from dredges.

(a) If dredges disengage from pipelines and the pipelines remain either floating or supported on trestles, the dredges must—

(1) Display the lights on the pipelines as required in § 90.27 (a)(1) and (a)(2); and

(2) Display two red lights on the end that has been disengaged from the dredge. The lights must be—

(i) Visible all around the horizon; and

(ii) Three feet apart in a vertical line with the lower light at the same height above the water as the flashing yellow lights.

(b) If a section of the pipeline disengaged from the dredge is opened at night for the passage of vessels, the dredge must display, at each end of the opening, the lights required in paragraph (a)(2) of this section.

((14 U.S.C. 85, as amended); 80 Stat. 937, as amended (49 U.S.C. 1655(b)(1); 49 CFR 1.46(b).)

6. By amending § 90.28(a) to read as follows:

§ 90.28 Lights generally.

(a) All the lights required by §§ 90.22 to 90.27a, inclusive, except as provided in §§ 90.22(b) and 90.25(b), shall be of such character as to be visible on a dark night with a clear atmosphere for a distance of at least two miles.

* * * * *

((14 U.S.C. 85, as amended); 80 Stat. 937, as amended (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b).)

PART 95—PILOT RULES FOR WESTERN RIVERS

7. By revising § 95.57 to read as follows:

§ 95.57 Lights to be displayed on pipelines attached to dredges.

(a) Dredges must display on pipelines attached to them, when the pipelines are floating or supported on trestles, the following lights at night:

(1) One row of yellow lights. The lights must be—

(i) Flashing from 50 to 70 times per minute;

(ii) Visible all around the horizon;

(iii) Not less than eight and not more than 12 feet above the water;

(iv) Approximately equally spaced; and

(v) Not more than 30 feet apart where the pipeline crosses a navigable channel. Where the pipeline does not cross a navigable channel the lights must be sufficient in number to clearly show the pipeline's length and course.

(2) Two red lights on the shore or discharge end of the pipeline. The lights must be—

(i) Visible all around the horizon; and

(ii) Three feet apart in a vertical line with the lower light at the same height above the water as the nearest flashing yellow light.

(b) If a section of the pipeline attached to the dredge is opened at night for the passage of vessels, the dredge must display, at each end of the opening the lights required in paragraph (a)(2) of this section.

(Sec. 4, 62 Stat. 250, as amended (33 U.S.C. 353); 80 Stat. 937 as amended (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b).)

8. By adding a new § 95.57a as follows:

§ 95.57a Lights to be displayed on pipelines disengaged from dredges.

(a) If dredges disengage from pipelines and the pipelines remain either floating or supported on trestles, the dredges must—

(1) Display the lights on the pipeline as required in § 95.57 (a)(1) and (a)(2); and

(2) Display two red lights on the end that has been disengaged from the dredge. The lights must be—

(i) Visible all around the horizon; and

(ii) Three feet apart in a vertical line with the lower light at the same height above the water as the flashing yellow lights.

(b) If a section of the pipeline attached to the dredge is opened at night for the passage of vessels, the dredge must display, at each end of the opening, the lights required in paragraph (a)(2) of this section.

((14 U.S.C. 85, as amended); 80 Stat. 937, as amended (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b).)

9. By amending § 95.58(a) to read as follows:

§ 95.58 Lights generally.

(a) All the lights required by §§ 95.52 to 95.57a, inclusive, except as provided in § 95.52(b), shall be of such character as to be visible on a dark night with a clear atmosphere of at least two miles. The white lights provided for in § 95.52(b) shall be visible for at least three miles.

* * * * *

((14 U.S.C. 85, as amended); 80 Stat. 937, as amended (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b).)

Dated: February 15, 1979.

J. B. HAYES,
Admiral, U.S. Coast Guard
Commandant.

[FR Doc. 79-5645 Filed 2-23-79 8:45 am]

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