

regional register federal

Thursday
April 5, 1979

Highlights

- 20396 Rural Rental Housing Loans** USDA/FmHA amends rules; comments by 6-4-79; effective 4-5-79
- 20423 Treasury Tax and Loan Depositories** Treasury/FS issues amendments concerning the remittance of the proceeds of sales of U.S. Savings Bonds; effective 4-2-79
- 20614 Securities** SEC proposes amendments with respect to the lost and stolen securities program, comments by 5-4-79 (Part V of this issue)
- 20416 Income Tax** Treasury/IRS adopts rules concerning investment credit for movie and television films
- 20398 Certification of Use of Natural Gas To Displace Fuel Oil** DOE issues interim-final rule establishing procedures; comments by 5-4-79; hearing on 4-18-79
- 20444 Inclusion of Gasoline Retailers Within State Set-Aside Program** DOE/ERA proposes amendment to mandatory petroleum allocation regulations; comments by 5-15-79; hearing on 4-12-79
- 20447 Federal Credit Unions** NCUA solicits comments by 5-15-79 on advance notice of proposed rulemaking concerning the regulation of debt collection practices



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Highlights

- 20430 Social Services Programs** HEW/HDS issues rules to reorganize, recodify and clarify existing rules on nonexpendable personal property; effective 4-5-79
- 20433 Marking of Tank Car Tanks** DOT/MTB adopts rules concerning the use of proper shipping name or the authorized common name for all requirements; effective 1-1-80
- 20532 Transport of Radioactive Materials** DOT/MTB requests comments by 5-1-79 concerning revision of regulations
- 20518 Acquisition of Commercial or Industrial Products and Services Needed by the Government** OMB issues policy revision (Part III of this issue)
- 20471 Floodplain Management and Protection of Wetlands** Commerce/EDA gives notice of availability of procedures to implement executive orders; comments by 5-7-79
- 20533 Highway Safety** DOT/NHTSA solicits comments by 7-2-79 on proposed five-year plan for research, development and demonstration activities
- 20553 Special Aviation Fire and Explosion Reduction Advisory Committee** DOT/FAA gives notice of meeting on 5-10 and 5-11-79 (Part II of this issue)
- 20538 Nonqualified Stock Options** Treasury/IRS solicits comments by 7-5-79 on methods for valuing
- 20594 Energy-Cooperative Agreements** DOE proposes rules providing administrative mechanisms, comments by 6-4-79 (Part IV of this issue)
- 20461 Canned and Preserved Seafood Processing—Pollution Control** EPA proposes rules concerning the reasonableness of existing effluent guidelines, comments by 5-7-79
- 20441 Surf Clam and Ocean Quahog Fisheries** Commerce/NOAA amends rules on allowable level of fishing during second quarter of 1979
- 20518 Agency Forms** OMB issues list under review
- 20543 Sunshine Act Meetings**

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- 20553** Part II, DOT/FAA
- 20556** Part III, OMB
- 20594** Part IV, DOE
- 20614** Part V, SEC

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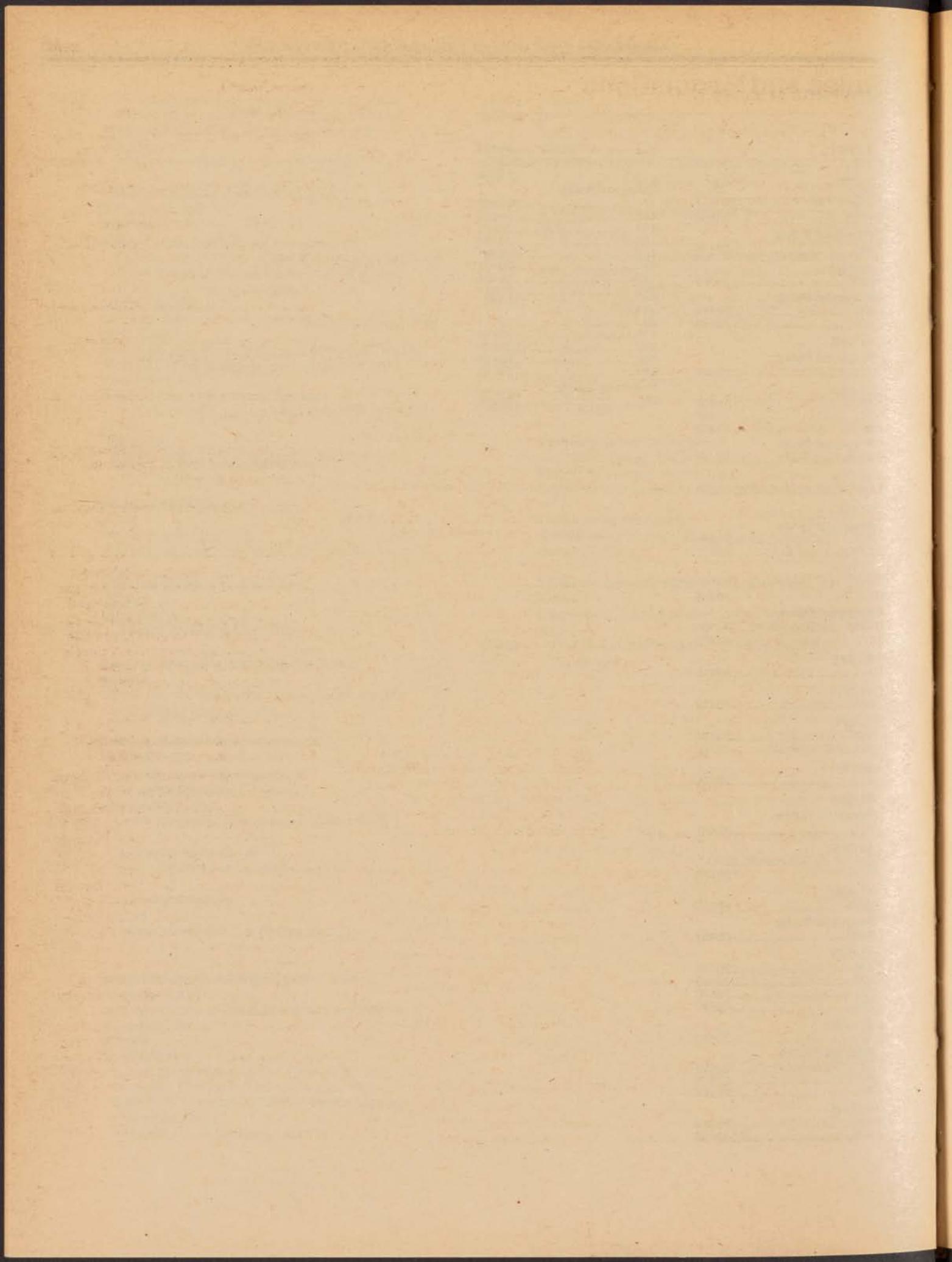
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Rules and Regulations

Federal Register

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period April 6-12, 1979, and increases the quantity of such oranges that may be so shipped during the period March 30-April 5, 1979. Such action is needed to provide for orderly marketing of fresh navel oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: The regulation becomes effective April 6, 1979, and the amendment is effective for the period March 30-April 5, 1979.

FOR FURTHER INFORMATION CONTACT: Charles R. Brader, (202) 447-6393.

SUPPLEMENTARY INFORMATION: Findings. This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendations and information submitted by the Navel Orange Administrative Committee, and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act by tending to establish and maintain,

in the interests of producers and consumers, an orderly flow of oranges to market and avoid unreasonable fluctuations in supplies and prices. The action is not for the purpose of maintaining prices to farmers above the level which is declared to be the policy of Congress under the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on April 3, 1979 to consider supply and market conditions and other factors affecting the need for regulation, and recommended quantities of navel oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for navel oranges continues to be reasonably firm on all sizes and grades.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of navel oranges. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 907.760 Navel Orange Regulation 460.

Order. (a) The quantities of navel oranges grown in Arizona and California which may be handled during the period April 6, 1979, through April 12, 1979, are established as follows:

- (1) District 1: 1,000,000 cartons;
- (2) District 2: Unlimited movement;
- (3) District 3: Unlimited movement.

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

2. Paragraph (a)(1) in § 907.759 Navel Orange Regulation 459 (44 FR 18640), is hereby amended to read:

907.759 Navel Orange Regulation 459.

- (1) District 1: 1,035,000 cartons.

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

Dated: April 4, 1979.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[Navel Orange Regulations 460, and 459, Amendment 1]

[FR Doc. 79-10810 Filed 4-4-79; 11:35 am]

BILLING CODE 3410-02-M

7 CFR Part 908

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period April 6-12, 1979. Such action is needed to provide for orderly marketing of fresh Valencia oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: April 6, 1979.

FOR FURTHER INFORMATION CONTACT: Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Findings. This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendations and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that the action will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on April 3, 1979 to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports the demand for Valencia oranges is showing improvement.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the *Federal Register* (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 908.906 Valencia Orange Regulation 606.

Order. (a) The quantities of Valencia oranges grown in Arizona and California which may be handled during the period April 6, 1979, through April 12, 1979, are established as follows:

- (1) District 1: Unlimited;
- (2) District 2: Unlimited;
- (3) District 3: 214,003 cartons.

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

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

Dated: April 4, 1979.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-10811 Filed 4-4-79; 11:35 am]

BILLING CODE 3410-02-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1822

Rural Housing Loans and Grants; Rural Rental Housing Loan Policies, Procedures, and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule with comments requested.

SUMMARY: The Farmers Home Administration amends its regulations regarding rural rental housing loans. This action is taken as a result of a Memorandum of Understanding with the Administration on Aging. The intended effect is to provide needed housing for the elderly.

EFFECTIVE DATE: April 5, 1979. Comments must be received on or before June 4, 1979.

ADDRESSES: Submit written comments to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Conn, Director, Multiple Housing Management and Support Division, Telephone 202-447-7207.

SUPPLEMENTARY INFORMATION: New Exhibits S and S-1 are added to Subpart D, Part 1822, Chapter XVIII, Title 7 in the Code of Federal Regulations. These Exhibits implement the Memorandum of Understanding between Farmers Home Administration (FmHA) and the Administration on Aging (AOA). The memorandum provides that: (1) Title V, Section 515 of the Housing Act of 1949 which provides rental housing in rural areas for low- and moderate-income families, elderly and handicapped persons shall be utilized together with (2) the authorities of Title III of the Older Americans Act of 1965 to provide support services for the elderly to (3) assure the availability of adequate support services for elderly persons and elderly families who occupy rural rental housing projects financed by the FmHA in at least six demonstration projects.

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 addition, however, is effective on publication. This action is being taken to make the program immediately available to interested sponsors and developers which includes individuals, public bodies, nonprofit, limited profit and profit organizations. AOA and FmHA have earmarked \$7,500,000 to the joint effort. Therefore, as soon as the six demonstration areas are identified, interested parties may submit proposals for the construction of rural rental

housing projects. Such proposals must be reviewed and those selected must be funded before September 15, 1979. Because of the start time frame and because this housing is currently needed, publication for comment would be contrary to the public interest. This determination was made by Paul R. Conn.

Accordingly Exhibits S and S-1 are added to Subpart D of 7 CFR part 1822 and read as follows:

Exhibit S—Joint Working Relationship With the Administration on Aging on Providing Congregate Housing for the Elderly

I General. This exhibit provides program guidelines for the initial implementation, continued operation and processing procedures for Rural Rental Housing (RRH) applications for congregate housing projects. It covers all those RRH applications in which the Administration on Aging (AOA) will provide support services for the elderly tenants in accordance with the Memorandum of Understanding between Farmers Home Administration (FmHA) and AOA which is Exhibit S-1 of this Subpart.

II Processing Procedures.

A. Demonstration Projects. The Memorandum of Understanding will be initially implemented in fiscal year 1979. A total of \$6,000,000 of Rural Rental Housing (RRH) funds will be earmarked for approximately six projects in 1979 for states that will be selected by the National Office staff of FmHA with the assistance of the staff of the Administration on Aging. Selections will be based on data that identifies areas of greatest need for housing and support services for the elderly. The availability of funds and the locations of the areas selected will be advertised in the following manner:

1. The Administrator of the Farmers Home Administration will publish in the "Notice Section" of the *Federal Register* a list of the locations selected for the demonstration projects. The publication will encourage interested persons and organizations to submit proposals for funding in accordance with FmHA Instruction 444.5, Exhibits F-6 and F-7 (7 CFR, Part 1822, Subpart D) except that specific data on the items listed in paragraph F, "Criteria for Site Selection," of the Memorandum of Understanding (Exhibit S-1 of this publication) must also be included.

2. The State Director of the Farmers Home Administration in the State selected for a demonstration project will also inform interested persons and organizations by formal or informal notification. Formal notification may consist of public notice in widely circulated newspapers in the state or area selected. Informal notification may consist of notification by letter or written notice to builders, developers and others known to be interested in the Section 515 RRH program. Such applications may be processed on a priority basis.

3. All applications will be reviewed by the District Director and promptly forwarded to

the State Director with comments and recommendations.

4. The State Director will list the applications in the order he/she determines to be the priority for funding and forward the complete applications and appropriate comments to the National Office.

5. The National Office will review the applications from all of the selected states and select those projects that are to be authorized for further development. The Administration on Aging will assist the FmHA National Office in identifying those projects where the necessary support services can be provided. The State Director of FmHA will be notified by the National Office of the additional steps that are to be taken on each application.

B. *Processing Other Requests for Congregate Housing with Support Services After the Initial Demonstration Period.* The Memorandum of Understanding between FmHA and AOA applies to projects developed during the demonstration period. However, to the extent that support services can be provided by the applicant and by the State Director obtaining the cooperation of the AOA and the state agencies, the joint effort of providing support services to FmHA projects may and should be continued. Applications developed after the initial demonstration period will be handled in accordance with Exhibit F-6 and Exhibit F-7 except that the applicant must include with the application evidence that support services will be provided by the state agency. Such applications will not be given priority over other applications already in process.

III *Planning and Performing the Development of the Project.* A. Once a project is selected for funding, the applicant will consult with AOA, the state agency and FmHA to determine the design of the project needed to incorporate the facilities that will be necessary for the support services.

B. The applicant will provide documentation as to how the support services will be operated during the life of the loan. There must be adequate assurances that such services will be available on a long-term basis if FmHA finances the facilities for such services.

IV *Special Consideration for Support Services.* Before approving a loan developed in accordance with this exhibit, the loan approval official will be guided by the following:

A. The facilities being financed by the RRH loan must meet the requirements of Subpart D, sections 1822.85 and 1822.86, and must not exceed the needs of the tenants.

B. Any facility whose capacity exceeds the needs of the occupants of the housing must be financed totally or on a pro rata basis by other sources.

C. There must be evidence that the support services will be available initially and on a long-range basis.

D. The cost of support services may be charged separately to the tenants but cannot be considered as part of the rent nor can the utilization of the available support services be a condition of occupancy by any tenant.

Exhibit S-1—Memorandum of Understanding between Farmers Home Administration and Administration on Aging

A *Introduction.* The lack of adequate, affordable housing is a serious problem for the elderly, particularly those who live in nonmetropolitan areas. Data indicate that 44 percent of the substandard housing in rural America is occupied by persons 60 years of age and older. Moreover, at least 60 percent of older persons living in rural communities occupy homes that were built prior to 1920.

The housing requirements for older persons are significantly different than those for the rest of the population, due to the progressive limitations of their mobility and physical capabilities over time. This creates seemingly contradictory needs and demands, with the progressive need for medical and support services vying with the ability to maintain an active life. Congregate housing is an alternative for the elderly who need an assisted residential living environment. It offers the functionally impaired or socially deprived but not ill elderly residential accommodations with supporting services to assist them in maintaining or returning to an independent or semi-independent life style and prevent premature or unnecessary institutionalization as they grow older.

In light of this, the Farmers Home Administration (FmHA) of the U.S. Department of Agriculture and the Administration on Aging (AOA) of the U.S. Department of Health, Education, and Welfare have joined forces to enhance the quality of housing provided for the rural elderly.

B *Objectives.* The Memorandum of Understanding encourages and fosters coordinated efforts between FmHA and AOA to meet these objectives:

1. To support a joint demonstration to establish in several selected communities model congregate housing facilities for the elderly with adequate supportive services. Some of the services provided the occupants will also be available for other elderly persons residing in the community.

2. To ensure the participation of local FmHA and AOA counterparts as well as the developers and community representatives in the planning, development, and implementation of the model congregate housing and related facilities.

3. To encourage the provision and expansion of outreach and information and referral services in the selected rural communities to inform older residents of this and other FmHA programs from which they may benefit.

4. To encourage the replication of this effort in other rural communities throughout the country.

C *Relevant Programs Administered by FmHA.* FmHA administers several programs which can benefit senior citizens (By FmHA definition, persons 62 years of age or over and, in the case of a married couple, only one of whom must be 62 years of age or over).

Under Section 515 of the Housing Act of 1949 as amended, loans for rental housing in rural areas are available to individuals and

various types of organizations to provide living units for eligible persons, including the elderly. The Congregate Housing for the Elderly Program is a new use of the Section 515 Rural Rental Housing Loan Program.

Other pertinent FmHA programs from which the elderly may benefit are listed below. All programs are authorized under the Housing Act of 1949 as amended.

1. Section 502, Rural Housing Loans, which may be made available to individuals to buy, build, rehabilitate, improve, or relocate a dwelling and related facilities to be used as permanent residence. The regulations for this program are being revised to allow the addition of a separate independent living unit to be added onto the family dwelling for senior relatives of the immediate family. It is expected that the regulations will be available by June 1979.

2. Section 504, Home Repair Programs, under which low-interest loans and/or grants may be made to owner-occupants who because of inadequate income do not qualify for Section 502 loans to enable them to make basic repairs to their dwelling or to make such dwelling safe and sanitary.

3. Sections 523 and 524, Rural Housing Site Loans, which may be made for the purchase of land and development of building sites for housing.

D *Relevant Programs Administered by the Administration on Aging.* Under the authority of the Older Americans Act of 1965, as amended, programs administered by AOA are designed to foster the development of comprehensive and coordinated service systems which promote independence and reduce the need for institutionalization among the elderly. State and Area Agencies on Aging have major responsibilities in the areas of planning, management, and serve as focal points for all matters pertaining to older persons in the State and community. Funds are awarded to State and Area Agencies on Aging to enable them to enter into cooperative arrangements with other agencies and providers of social services to remove individual and social barriers to economic and personal independence for older persons.

In its assigned role as focal point of all aging-relating activities at the Federal level, the Administration on Aging is currently directing its efforts in new directions to begin to develop comprehensive community-based service systems in areas throughout the country to meet the needs of the Nation's older population. In order to successfully establish the proposed comprehensive community-based service systems to serve older persons, most services, including housing, need to be developed, expanded, or improved in local communities, particularly in rural communities.

Under the new amendments to the Older Americans Act, enacted in October 1978, previous Titles III, V, and VII have been consolidated under one Title III. The new Title III provides for the planning and development of comprehensive and coordinated service systems, authorizing funding and providing for one administrative structure of three key service areas—social

services, nutrition services, and senior centers.

Under the new amendments, no State receives less than that received in Fiscal Year 1978. Provisions have been made in the Act, however, to address the special needs of the rural elderly including that provision under Section 307 which requires States to increase their allocations to rural areas by 5 percent.

E Joint Demonstration Effort. The Farmers Home Administration, under the authority of Section 515 of the Housing Act of 1949, as amended, is implementing its Congregate Housing for the Elderly Program. In doing so, a demonstration effort is being proposed to develop, in six diversified rural areas, model congregate housing projects for older persons with FmHA funds being used to construct the facilities and AOA funds being used to support the service components of those facilities.

F FmHA. FmHA is earmarking for Fiscal Year 1979 a total of \$6.0 million for the construction of model congregate housing facilities in six (6) rural areas.

G Criteria for Site Selection. In selecting the sites for demonstration purposes, priority will be given to those areas which meet the following minimum criteria:

1. Areas that provide a diversity of racial and ethnic composition or low-income elderly.
2. Areas with a significant number of persons 62 years of age and older who need and want to occupy rural housing.
3. Areas that are representative of diverse rural communities.
4. Areas known to have poor housing facilities for the elderly.
5. Areas where planning and service areas are or can be covered by Area Agencies on Aging.
6. Areas accessible to central services, that is, shopping, medical facilities, transportation assistance.
7. Areas where State and local officials understand and support the intent and objectives of the joint demonstration program.
8. Areas where there are no other resources to support such an effort.
9. Areas where water and sewer facilities are available.

H AOA. AOA is reserving grants in the amount of \$500,000 for each year of the 3-year demonstration period beginning in FY 1979. These nonrenewable grants will be provided for the following purposes:

1. To support a full-time Project Director for each site to ensure the successful implementation of this effort. (The Project Director would be selected by the Area Agency on Aging, using as a guide the criteria appearing in this agreement and would be considered a member of the Area Agency Staff.) Such a position is expected to attract persons with some experience in neighborhood organization and community development and with some degree of knowledge and experience in working with aging and housing programs, rural populations, and ethnic and low-income groups. The duties of the Project Director would include:

- a. Seeking the support of community leaders to assure the availability of appropriate and necessary supportive services at the housing site both during the demonstration period and to seek such continued support beyond the demonstration period.

- b. Initiating outreach efforts to identify potential residents.

- c. Conducting a needs assessment survey to identify the housing and housing-related needs for the elderly living in the community.

- d. Working with developers through FmHA to assure that the physical design of the congregate structure reflects the needs of the potential residents.

- e. Arranging for provision of supportive services which, at a minimum, would include:

- (1) meal service—full or partial;
- (2) housekeeping elements for those unable to perform these responsibilities;
- (3) personal care and services for those who need assistance in daily care;
- (4) transportation and other access to essential services; and
- (5) social and recreational activities.

- f. Serving as a resource housing specialist for older persons in the community.

2. To assist in supporting the cost of gap-filling services based on the availability of local resources.

I Modification/Cancellation Provision
Request for modifications and amendments to the Memorandum of Understanding may be initiated by either party. Such modifications or amendments will only be effective upon mutual agreement by both parties.

Signatures

Dated: January 22, 1979.

Gordon Cavanaugh,
Administrator, Farmers Home Administration.

Dated: January 23, 1979.

Alex P. Mercure,
Assistant Secretary for Rural Development.

Dated: January 26, 1979.

Bob Bergland,
Secretary of Agriculture.

Dated: January 26, 1979.

Robert Benedict,
Commissioner, Administration on Aging.

Dated: January 26, 1979.

Arabella Martinez,
Assistant Secretary for Human Development Services.

Dated: January 30, 1979.

Joseph A. Califano, Jr.,
Secretary of Health, Education, and Welfare.

This regulation has not been determined significant under the USDA criteria implementing Executive Order 12044. A copy of the Impact Statement prepared according to these criteria is available from the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6316, Washington, D.C. 20250.

This document has been reviewed in accordance with FmHA Instruction 1901-G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance

with the National Environmental Policy of 1969, Public Law 91-190, and Environmental Impact Statement is not required.

Authorities: 42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.

Dated: March 22, 1979.

Gordon Cavanaugh,
Administrator, Farmers Home Administration.

[FmHA Instructions 444.5]

[FR Doc. 79-10441 Filed 4-4-79; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF ENERGY

10 CFR Part 595

Natural Gas for Oil Certification Programs, Interim-Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas for Fuel Oil Displacement

AGENCY: Department of Energy (Economic Regulatory Administration).

ACTION: Interim-Final rule.

SUMMARY: The Economic Regulatory Administration of the Department of Energy publishes this interim-final rule establishing the procedures to be followed by the Administrator of the Economic Regulatory Administration for certification to the Federal Energy Regulatory Commission of the use of natural gas to displace fuel oil. This rule is intended to facilitate the transportation of gas used to displace fuel oil. Due to the immediate need to implement this rule as a means of reducing the Nation's reliance on imported oil, we have waived the usual procedural requirements of notice and comment and are issuing this rule in interim final form, effective upon publication. However, written comments are invited and a public hearing will be held after issuance of this interim final rule, and any modifications, if warranted by the comments, will be made at the time a final rule is adopted.

DATES: Written comments are due by May 4, 1979. Requests to speak are due by April 11, 1979. Hearing to be held on April 18, 1979.

ADDRESSES: All written comments and requests to speak at the public hearing should be sent to the Office of Public Hearings Management, Economic Regulatory Administration, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461. Hearing Location: Room 2105, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Office of Public Hearing Management), Economic Regulatory Administration, 2000 M Street, NW., Washington, D.C. 20461, (202) 254-5201.

Lawrence A. DiRiccio, Division of Natural Gas Regulations, Economic Regulatory Administration, 2000 M Street, NW., Room 3308, Washington, D.C. 20461, (202) 632-4721.

James G. Beste (Office of the General Counsel), Department of Energy, 12th and Pennsylvania Ave., N.W., Room 7140, Washington, D.C. 20461, (202) 633-8788.

SUPPLEMENTAL INFORMATION:

- I. Background
- II. Description of the Rule
- III. Waivers of Comment Periods
- IV. Public Comment
- V. Environmental Analysis
- VI. Significance Review

I. Background

It is essential that the Nation immediately reduce its reliance on imported oil. The need to protect the Nation's security of energy supplies and economic well-being, as well as the need to reduce the Nation's balance of payments deficit and the domestic inflation rate requires immediate action. Expanded use of natural gas would be a significant step toward reducing our short term oil consumption. Increased use of gas would help the United States meet its commitment to reduce its demand for imported oil together with the other member nations of the International Energy Agency. Increased gas use would not only help protect the Nation from the effects of any oil shortages but also would serve to cushion the increasing world oil prices, which have a detrimental effect on the Nation's balance of payments and domestic inflation rate.

On March 18, 1979, pursuant to section 403 of the DOE Act, the Economic Regulatory Administration (ERA) issued a proposed rule for action by the Federal Energy Regulatory Commission (the Commission) designed to encourage and facilitate the filing of applications by interstate pipeline companies to transport natural gas to displace fuel oil (44 F.R. 17644, March 22, 1979). As we noted in the preamble to that proposed rule, the proposal was intended to fill a significant gap in existing natural gas regulations by providing for the transportation of natural gas purchased directly by end-users for fuel oil displacement. Under that proposed rule, any interstate pipeline company may file an

application with the Commission under section 7(c)(1) of the Natural Gas Act for a one-year renewable certificate of public convenience and necessity to transport natural gas purchased by an end-user to displace fuel oil. An applicant may also request a temporary certificate which the Commission could grant without notice or hearing pending action on the certificate application. As a prerequisite to the Commission's issuance of a transportation certificate, including a temporary certificate, the ERA Administrator (Administrator) must certify that the gas in question would be consumed for fuel oil displacement.

On March 29, 1979 the Commission issued an order commencing rulemaking on the rule proposed to it by ERA (FERC Docket No. RM-34). In its order the Commission indicated that, during the interim period before final action, it would consider, on an expedited basis, applications for transportation certificates conforming to the filing requirements of the proposed FERC rule, including the need for ERA certification. The ERA rule issued today establishes the procedure for obtaining the Administrator's certification.

II. Description of the Rule

This rule establishes the procedures for the Administrator's certification to the Commission that the natural gas in question will be used to displace fuel oil. Under this rule any end-user who wishes to purchase natural gas directly from an "eligible seller" to displace fuel oil may apply to the Administrator for certification that the use is an "eligible use." Prior to the expiration of his certification, an end-user may apply for additional recertifications. An "end-user" is any person who purchases natural gas for its own consumption and not for resale (section 595.02(b)). An "eligible seller" is any willing seller of natural gas (section 595.02(c)). An "eligible use" is that use of natural gas certified by the Administrator to displace fuel oil that would otherwise be consumed in the end-user's facilities and where neither the gas nor the displaced fuel oil will be used by the end-user to displace coal (section 595.03).

The Administrator may determine that it is in the public interest to limit the applicability of this rule to certain specified end-users or certain specified geographic areas (section 595.04). An application for certification or recertification should contain certain basic information as specified in section 595.05(a). Among other things, an application must include an affidavit stating the displaced fuel oil will not be

used by the applicant to displace coal (section 595.05(a)(3)(iii)). Failure by the Administrator to take action within 30 days of receipt of an application shall be considered denial of the application (section 595.05(c)). Applications for initial certification may be filed through December 31, 1979; applications for recertification may be filed either before or after December 31, 1979 (section 595.05(d)). Section 595.06 authorizes the Administrator to terminate a certification or recertification whenever he finds that the gas in question is no longer used for an "eligible use" or whenever the Administrator determines that termination is in the public interest.

An applicant whose application for certification or recertification has been denied or whose certification or recertification has been terminated may file a request for reconsideration within 30 days of denial or termination (section 595.07(a)). Failure by the Administrator to take action on a request for reconsideration within 30 days of its filing shall be considered a denial of the request (section 595.07(b)). An applicant is deemed to have exhausted his administrative remedies when his request for reconsideration has been acted upon or deemed denied (section 595.07(c)).

III. Waivers of Comment Periods

Pursuant to section 501(e) of the Department of Energy Organization Act, we have determined that compliance with the requirements of section 501(b), which requires a 30-day public comment period prior to promulgation of a regulation, would be likely to cause serious harm or injury to the public health, safety, and welfare. This determination is based on the following factors:

1. The detrimental effects of reliance on imported oil and increasing oil prices upon our security of energy supplies, balance of payments, and domestic inflation rate requires immediate action to reduce the Nation's demand for imported oil. A delay of 30 days before the implementation of this rule would serve to aggravate an already serious situation.
2. The currently unsettled nature of the international oil market due to the recent tightening of world oil supplies and increases in international oil prices demands that we act immediately to reduce our reliance on oil imports.

Accordingly, we are waiving the requirements of Section 501(b). The 60-day public comment period required for proposed significant rulemakings pursuant to Executive Order 12044, entitled "Improving Government

Regulations" (43 FR 12661 (March 23, 1978)) and DOE's implementing regulations, has also been waived for the same reasons by the Deputy Secretary (see Appendix to this rule).

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are soliciting public comments to be filed after issuance of this interim-final rule and will hold a public hearing as outlined below. Based on the comments received, we will determine later whether revisions to the rule adopted today are needed.

IV. Public Comment

A. Written Comments. You are invited to participate in this rulemaking by submitting data, views or arguments with respect to this rule. Written comments should be submitted by 4:30 p.m., e.s.t. May 4, 1979, to the address indicated in the "Addresses" section of this preamble and should be identified on the outside envelope and on the document with the designation: "DOE Certification Rule Docket No. ERA-R-79- . ." Ten copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, Room GA-152, James Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, and the ERA Office of Public Information, Room B-110, 2000 M Street, NW., Washington, D.C., 20461, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determination.

B. Public Hearings.

1. Procedures for Request to Make Oral Presentation.

The time and place for the hearing are indicated in the "Dates" and "Addresses" sections of this preamble.

If you have any interest in the matters discussed in this proposed rulemaking, or represent a group or class of persons that has an interest, you may make a written request for an opportunity to make oral presentation by 4:30 p.m., April 11, 1979. You should also provide a telephone number where you may be contacted through the day before the hearing.

If you are selected to be heard, you will be so notified before 4:30 p.m., April 12, 1979. Fifty copies of your statement are due one work day prior to the date of the hearing and should be delivered

to the address indicated in the "Addresses" section. In the event any person wishing to testify cannot meet the 50 copy requirement, alternative arrangements can be made with the Office of Regulations Management in advance of the hearing by so indicating in a letter requesting an oral presentation or by calling the Office of Regulations Management at (202) 254-5201.

2. Conduct of the Hearings. We reserve the right to schedule participants' presentations and to establish the procedures governing the conduct of the hearing. We may limit the length of each presentation, based on the number of persons requesting to be heard. We encourage groups that have similar interests to choose one appropriate spokesperson qualified to represent the views of the groups.

An ERA official will be designated to preside at the hearing. This will not be a judicial type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

If you wish to have a question asked at the hearing, you may submit the question, in writing, to the presiding officer. The ERA, or, if the question is submitted at the hearing, the presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer. The question will be asked of the witness by the presiding officer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the ERA and made available for inspection at the DOE Freedom of Information Office, Room GA-152, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., 20585, and the ERA Office of Public Information, Room B-110, 2000 M Street, N.W., Washington, D.C., 20461, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday: You may purchase a copy of the transcript from the reporter.

V. Environmental Analysis

Due to the urgent need to take immediate action to reduce the Nation's dependence on oil imports, this rule is

being issued in interim-final form prior to completion of ERA's environmental analysis in accordance with 10 C.F.R. 208.12(c). Upon completion of ERA's review of its responsibilities under the National Environmental Policy Act of 1969 (Pub. L. No. 91-190, 83 Stat. 852 (42 U.S.C. 4321)), in regard to this rule, ERA will publish its findings in the Federal Register (See Appendix).

VI. Significance Review

We have determined that this is a significant regulation and will have a major impact within the meaning of DOE's procedures to implement Executive Order No. 12044 on "Improving Government Regulations" (DOE Order No. 2030.1, December 18, 1978). However, due to the urgent need to take immediate action to reduce the Nation's dependence on oil imports, this rule is being issued in interim-final form prior to the completion by ERA of a regulatory analysis. Upon completion, the regulatory analysis will be published in the Federal Register (See Appendix).

VII. Waiver of the Provisions of Executive Order No. 12044 on "Improving Government Regulations" and the Department of Energy's Implementing Regulations

Pursuant to the authority vested in me by the Department of Energy Organization Act (Pub. L. 95-91) and the Department's regulations which implement the terms of Executive Order No. 12044 on "Improving Government Regulations", I hereby waive the rulemaking procedures contained in the Executive Order and implementing regulations, including the 60 day public comment period for proposed significant regulations having a major impact as well as a regulatory analysis, and environmental review, with respect to this interim-final rule on the certification of the use of natural gas to displace fuel oil. I base this waiver on the following factors:

1. The detrimental effects of reliance on imported oil and increasing oil prices upon our security of energy supplies, balance of payments, and domestic inflation rate requires immediate action to reduce the Nation's demand for imported oil. A delay of 60 days before the implementation of this rule would serve to aggravate an already serious situation.

2. The currently unsettled nature of the international oil market due to the recent tightening of world oil supplies and increases in international oil prices demands that we act immediately to reduce our reliance on oil imports.

Issued in Washington, D.C., March 28, 1979.

John F. O'Leary,

Deputy Secretary, Department of Energy.

(Department of Energy Organization Act, Pub. L. No. 95-91, 91 Stat. 565 (42 U.S.C. 7101); E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Chapter II of Title 10, Code of Federal Regulations, is amended by adding a Part 595 as set forth below, effective on April 5, 1979.

Issued in Washington, D.C., April 2, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

Subchapter G of Chapter II of Title 10, Code of Federal Regulations, is amended by adding a Part 595 to read as follows:

**SUBCHAPTER G—NATURAL GAS
(ECONOMIC REGULATORY
ADMINISTRATION)**

* * * * *

**PART 595—CERTIFICATION OF USE
OF NATURAL GAS TO DISPLACE FUEL
OIL**

Sec.

- 595.01 Purpose.
- 595.02 Definitions.
- 595.03 Certification of Eligible Use.
- 595.04 Limitations of Applicability.
- 595.05 Application for Certification and Recertification.
- 595.06 Termination of Eligibility.
- 595.07 Request for Reconsideration.

Authority: Sections 102(3) and (8), 501(e), 644, Pub. L. No. 95-91, 91 Stat. 567, 568, 588, 599, 42 U.S.C. 7112(3), (8), 7191(e), 7254; E.O. 12009, 42 FR 46267.

§ 595.01 Purpose.

(a) The extensive reliance of the United States on imported crude oil and petroleum products has severe detrimental effects on the security of our energy supplies, balance of payments, and economic well-being. The national interest requires that every practical means be taken to restrain imports quickly.

(b) The use of natural gas is one vehicle for displacing certain fuel oils. The regulations in this Part 595 will facilitate oil displacement by establishing a procedure whereby the Administrator of ERA may certify to the Federal Energy Regulatory Commission (FERC) that consumption of natural gas, purchased by an end-user for its own consumption, will displace fuel oil. The certification will be used in conjunction with applications filed with the FERC requesting a certificate of public convenience and necessity permitting transportation by interstate pipeline companies of natural gas purchased directly by end-users to displace fuel oil.

(c) All end-users that purchase natural gas directly from eligible sellers to displace fuel oil which would otherwise be consumed in their own facilities may apply to the Administrator under this rule for the certification of eligible use. This certification is a prerequisite to the granting by the FERC of a transportation certificate under its applicable regulations.

§ 595.02 Definitions.

For the purpose of this Part 595:

- (a) "Administrator" means the Administrator of the Economic Regulatory Administration or his or her delegate;
- (b) "End-user" means any person who purchases natural gas for consumption in a facility operated by that person and not for resale;
- (c) "Eligible seller" means any willing seller of natural gas;
- (d) "Eligible use" means that use of natural gas certified by the Administrator pursuant to § 595.03;
- (e) "FERC" means the Federal Energy Regulatory Commission;
- (f) "Fuel oil" means middle distillates or residual fuel oils including #1 and #2 heating oils, kerosene-base jet fuel, #4, #5, and #6 fuel oils; crude oil burned directly as a fuel; and blends of any of the above.

§ 595.03 Certification of eligible use.

(a) The Administrator may certify that a purchase or proposed purchase of natural gas is for an eligible use if the end-user demonstrates, upon proper application that: (1) the natural gas will be used to displace fuel oil which would otherwise be consumed in the facilities the end-user operates, (2) the gas will not be used by the end-user to displace coal, and (3) the fuel oil displaced will not be used by the end-user to displace coal.

(b) The Administrator will provide his certification of eligible use to the FERC directly and will also provide a copy to the applicant. An initial certification will be effective for up to one year. The Administrator may also issue recertifications, effective for up to one year, upon proper application within 60 days prior to the expiration of the initial certification or a previous recertification.

§ 595.04 Limitations of applicability.

The Administrator may determine to limit applicability of this rule to certain end-users or specific geographic areas when such limitation is in the public interest. In making a determination whether to establish any limitations, the Administrator may consider, among

other criteria, the impact of certification or recertification on air quality, on regional or local energy supply, on refinery output and regional availability of petroleum products in light of refinery capabilities, on facilitating and advancing coal conversion programs, and on system supplies of natural gas.

§ 595.05 Application for certification and recertification.

(a) An end-user may apply for certification or recertification of an eligible use by filing a written application which contains the following information:

- (1) The company name, mailing address, telephone number of the end-user, and name of person to contact;
- (2) The geographic location of, and the volumes of natural gas assigned to, each facility which will receive the natural gas;
- (3) An affidavit, signed by a responsible officer or other person representing the end-user which states:
 - (i) An estimate of the volumes, type, and sulfur content of the fuel oil which will be displaced by the natural gas at each of the end-user's facilities;
 - (ii) That any natural gas intended to be transported under the FERC certificate will only be used by the end-user to displace fuel oil and not to displace coal;
 - (iii) That the end-user will not use the displaced fuel oil to displace coal in its facilities;
- (4) The names and addresses of the eligible sellers and interstate pipeline companies with which the end-user has entered into gas purchase and transportation contracts; and
- (5) Any additional information requested by the Administrator.

(b) An original and fifteen copies of the application should be submitted to: Assistant Administrator for Fuels Regulation, Economic Regulatory Administration, Room 6318, 2000 M Street, N.W., Washington, D.C. 20461.

(c) If the Administrator fails to take any action on the application within 30 days of receipt of filing, the application shall be deemed denied.

(d) Applications for initial certifications will be accepted until close of business on December 31, 1979, unless a later date is established by the Administrator. Applications for recertification may be filed either before or after December 31, 1979.

(e) Applications for initial certifications will be accepted until close of business on December 31, 1979, unless a later date is established by the Administrator. Applications for recertification may be filed either before or after December 31, 1979.

(f) Applications for initial certifications will be accepted until close of business on December 31, 1979, unless a later date is established by the Administrator. Applications for recertification may be filed either before or after December 31, 1979.

§ 595.06 Termination of eligibility.

The Administrator may terminate certification or recertification of an eligible use whenever the Administrator determines, after notice and opportunity

to be heard, the natural gas is no longer being used for an eligible use as defined in § 595.02 or when the Administrator determines that termination is in the public interest. Upon making this determination, the Administrator will immediately notify FERC and request appropriate action to terminate any FERC transportation certificate.

§ 595.07 Request for reconsideration.

(a) Any applicant whose application for certification or recertification has been denied, or whose certification or recertification terminated, may request reconsideration within 30 days of denial or termination. The request shall contain a statement of facts and reasons supporting reconsideration and shall be submitted in writing to: Assistant Administrator for Fuels Regulation, Economic Regulatory Administration, Room 6318, 2000 M Street, N.W., Washington, D.C. 20461.

(b) If the Administrator fails to take action on the request for reconsideration within 30 days, the request is deemed denied, and the applicant may seek such judicial review as may be appropriate and available.

(c) An applicant has not exhausted his other administrative remedies until a request for reconsideration has been filed and acted upon or deemed denied.

[Docket No. ERA R-79-16]

[FR Doc. 79-10587 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

Airworthiness Directives; AiResearch Model TPE331 -1, -2, -3, -5, and -6 Series Engines

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment extends the final compliance date of Airworthiness Directive AD 78-05-02 which requires the removal from service and replacement of an older design propeller pitch control sleeve assembly on AiResearch TPE331 -1, -2, -3, -5, and -6 series engines. This action is intended to minimize a problem of scheduling of compliance with the original AD caused by a lack of spare parts. This amendment is needed to minimize the burden on operators.

DATE: Effective April 5, 1979.

Compliance schedule—As prescribed in the body of the AD.

ADDRESS: The applicable service information may be obtained from: AiResearch Manufacturing Company of Arizona, P.O. Box 5217, Phoenix, Arizona 85010, Telephone: (602) 267-3011.

Also, a copy of the service bulletin may be reviewed at, or a copy obtained from: Rules Docket in Room 916, FAA, 800 Independence Avenue, S.W., Washington, D.C. 20591, or Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT:

Jerry J. Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-3145 (43 FR 7979, February 27, 1978) AD 78-05-02 which requires the removal from service of an older design propeller pitch control sleeve assembly and replacement of it with a sleeve assembly of strengthened design on the AiResearch TPE331 -1, -2, -3, -5, and -6 series engines. The AiResearch Manufacturing Company of Arizona has recently advised the FAA that of the approximately 3400 engines affected by this AD, as many as 1500 have not had the new strengthened design sleeve assembly incorporated. The basic reason given by the manufacturer for this situation is lack of available replacement parts. Furthermore, the AiResearch Manufacturing Company of Arizona presented to the FAA additional data indicating that the extension of the final compliance date from April 1, 1979, to September 30, 1979 does not affect the acceptable level of safety. The FAA has determined that this extension is necessary to prevent any undue burden on the public.

Since this amendment relieves a restriction and imposes no additional burden on any person, notice of public procedure hereon is unnecessary and good cause exists for making this amendment effective in less than thirty days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by amending Amendment 39-3145, Paragraph (1) to read in pertinent part as follows:

* * * * *

(1) Within the next 500 hours time in service after April 1, 1978 or prior to September 30, 1979, or at next engine overhaul, whichever comes first, unless already accomplished,

* * * * *

This amendment becomes effective April 5, 1979.

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

Issued in Los Angeles, California on March 30, 1979.

Leon C. Daugherty,

Director, FAA Western Region.

[Docket No. 77-WE-37-AD; Amdt. 39-3445]

[FR Doc. 79-10540 Filed 4-4-79; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Alteration of Fort Rucker, Ala., Control Zone; Additional Correction to Final Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule

SUMMARY: In a correction to a rule published in the Federal Register on March 1, 1979, Vol. 44, page 11530, altering the Fort Rucker, Ala., Control Zone, the "Words of Issuance" were not clearly stated thereby creating some doubt as to the extent and intent of the alteration. This action corrects that ambiguity in the "Words of Issuance" only.

EFFECTIVE DATE: April 5, 1979.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Federal Register Document 79-5846 was published on March 1, 1979, that amended the description of the Fort Rucker, Ala., Control Zone. An error was noted in the "Word of Issuance" which could be interpreted to mean that all of § 71.171 of Part 71 of the Federal Aviation Regulations was rewritten and only Fort Rucker Control Zone remained. This action corrects that error.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the "Word of Issuance" contained in Airspace Docket No. 79-WA-3, published in the *Federal Register* (44 FR 11530) on March 1, 1979, is corrected, effective April 6, 1979, to read as follows:

"Accordingly, pursuant to the authority delegated to me by the Administrator, the description of the Fort Rucker Control Zone under § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 353) is amended, effective upon publication in the *Federal Register* and revised to read as follows:"

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

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on March 27, 1979.

William E. Broadwater,
Chief, Airspace and Air Traffic Rules Division.

[Airspace Docket No. 79-WA-3]

[FR Doc. 79-10452 Filed 4-4-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

operations under instrument flight rules at the affected airports.

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

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

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

FOR FURTHER INFORMATION CONTACT: Lewis O. Ola, Flight Procedures and Airspace Branch (AFS-730), Aircraft Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

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

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the *Federal Register*

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

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

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

Adoption of the Amendment

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

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

* * * Effective June 14, 1979

Bloomington-Normal, IL—Bloomington-Normal, VOR Rwy 11, Amdt. 7

Bloomington-Normal, IL—Bloomington-Normal, VOR Rwy 21, Amdt. 14
 Spencer, IA—Spencer Muni, VOR Rwy 11, Amdt. 4
 Spencer, IA—Spencer Muni, VOR Rwy 29, Amdt. 4
 Ann Arbor, MI—Ann Arbor Municipal, VOR Rwy 6, Amdt. 7
 Ann Arbor, MI—Ann Arbor Municipal, VOR Rwy 24 Amdt. 6
 Big Rapids, MI—Roben-Hood, VOR—A, Amdt. 2
 Duluth, MN—Duluth International, VOR Rwy 3 (TAC), Amdt. 14
 Duluth, MN—Duluth International, VOR/DME or Tacan Rwy 21, Amdt. 9
 Fayetteville, NC—Fayetteville Muni (Grannis Field), VOR Rwy 21, Original.

**** Effective May 17, 1979*

Monticello, AR—Monticello Muni, VOR—A, Amdt. 4
 Alma, GA—Bacon County, VOR Rwy 33, Amdt. 4
 Indianapolis IN—Indianapolis International, VOR Rwy 13, Amdt. 19
 Councils Bluffs, IA—Council Bluffs Muni, VOR—A, Amdt. 2
 Mayfield, KY—Mayfield-Graves County, VOR/DME—A, Amdt. 1
 Dansville, NY—Dansville Muni, VOR/DME Rwy 18, Amdt. 1
 Shelby, NC—Shelby Muni, VOR/DME Rwy 4, Amdt. 4
 Dayton, TN—Mark Anton, VOR/DME—A, Amdt. 1
 Nashville, TN—Nashville Metropolitan, VOR/DME Rwy 13, Amdt. 8
 Houston, TX—Houston Intercontinental, VOR/DME Rwy 14, Amdt. 7
 Prairie du Chien, WI—Prairie du Chien Municipal, VOR/DME Rwy 29, Amdt. 2
 Stevens Point, WI—Stevens Point Municipal, VOR Rwy 3, Amdt. 9
 Stevens Point, WI—Stevens Point Municipal, VOR Rwy 21, Amdt. 13
 Stevens Point, WI—Stevens Point Municipal, VOR Rwy 30, Amdt. 12

**** Effective April 19, 1979*

Marquette, MI—Marquette County, VOR—A, Original, cancelled
 Marquette, MI—Marquette County, VOR Rwy 8, Original
 Marquette, MI—Marquette County, VOR Rwy 26 Original

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

**** Effective June 14, 1979*

Bloomington-Normal, IL—Bloomington-Normal, LOC BC Rwy 11, Amdt. 3

**** Effective May 17, 1979*

Tampa, FL—Tampa International, LOC BC Rwy 18R, Amdt. 5
 East St. Louis, IL—Bi-State Parks, LOC Rwy 30, Amdt. 3, cancelled
 Indianapolis, IN—Indianapolis International, LOC BC Rwy 13, Amdt. 8
 Sioux City, IA—Sioux City Muni, LOC Rwy 13, Original
 Sioux City, IA—Sioux City Muni, LOC (BC) Rwy 13, Amdt. 16, cancelled

Salem, OR—McNary Field, LOC BC Rwy 13, Amdt. 1
 Rock Springs, WY—Rock Springs-Sweetwater County, LOC/DME BC Rwy 7, Original, cancelled

**** Effective April 19, 1979*

San Diego, CA—Montgomery Field, LOC Rwy 28R, Original
 Marquette, MI—Marquette County, LOC BC Rwy 26, Amdt. 5

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

**** Effective June 14, 1979*

Spencer, IA—Spencer Muni, NDB Rwy 29, Amdt. 4
 Murray, KY—Murray-Calloway County, NDB Rwy 23, Amdt. 1
 Chillicothe, MO—Chillicothe Municipal, NDB Rwy 14, Amdt. 3
 Point Lookout/Branson/, MO—M. Graham Clark, NDB Rwy 29, Amdt. 3
 Trenton, MO—Trenton Municipal, NDB Rwy 17, Amdt. 3
 Trenton, MO—Trenton Municipal, NDB Rwy 35, Amdt. 5
 Platteville, WI—Grant County, NDB Rwy 25, Amdt. 3

**** Effective May 17, 1979*

St. Petersburg-Clearwater, FL—St. Petersburg-Clearwater Int'l, NDB Rwy 17L, Amdt. 18
 Tampa, FL—Tampa International, NDB Rwy 18L, Amdt. 31
 McRae, GA—Telfair-Wheeler, NDB Rwy 20, Amdt. 5
 Sylvester, GA—Sylvester, NDB Rwy 1, Amdt. 3, cancelled
 East St. Louis, IL—Bi-State Parks, NDB Rwy 30, Amdt. 11
 Indianapolis, IN—Indianapolis International, NDB Rwy 4L, Amdt. 15
 Indianapolis, IN—Indianapolis International, NDB Rwy 31, Amdt. 8
 Sioux City, IA—Sioux City Muni, NDB Rwy 13, Amdt. 13
 Charlevoix, MI—Charlevoix Municipal, NDB Rwy 8, Amdt. 4
 Charlevoix, MI—Charlevoix Municipal, NDB Rwy 26, Amdt. 4
 Penn Yan, NY—Penn Yan, NDB Rwy 28, Amdt. 1
 Houston, TX—Houston Intercontinental, NDB Rwy 8, Amdt. 6
 Killeen, TX—Killeen Muni, NDB—B Amdt. 4, cancelled

**** Effective April 19, 1979*

Marquette, MI—Marquette County, NDB Rwy 8, Amdt. 1
 Marquette, MI—Marquette County, NDB Rwy 26, Amdt. 1

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

**** Effective June 14, 1979*

Bloomington-Normal, IL—Bloomington-Normal, ILS Rwy 29, Amdt. 4

**** Effective May 17, 1979*

St. Petersburg-Clearwater, FL—St. Petersburg-Clearwater Int'l, ILS Rwy 17L, Amdt. 16

Tampa, FL—Tampa International, ILS Rwy 18L, Amdt. 32
 East St. Louis, IL—Bi-State Parks, ILS Rwy 30, Original
 Indianapolis, IN—Indianapolis International, ILS Rwy 22R, Amdt. 3
 Indianapolis, IN—Indianapolis International, ILS Rwy 31, Amdt. 10
 Rochester, NY—Rochester-Monroe County, ILS Rwy 22, Amdt. 2
 Salem, OR—McNary Field, ILS Rwy 31, Amdt. 22
 Rock Springs, WY—Rock Springs, Sweetwater County, ILS Rwy 25, Amdt. 19, cancelled

**** Effective April 19, 1979*

Portland, ME—Portland International Jetport, ILS/DME Rwy 29, Original
 Boston, MA—General Edward Lawrence Logan International, ILS/DME Rwy 15R, Amdt. 4
 Marquette, MI—Marquette County, ILS Rwy 8, Amdt. 6
 Las Vegas, NV—McCarran Int'l, ILS Rwy 25, Amdt. 9

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

**** Effective May 17, 1979*

Indianapolis, IN—Indianapolis International, RADAR—1, Amdt. 23
 Nashville, TN—Nashville Metropolitan, RADAR—1, Amdt. 16

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

**** Effective June 14, 1979*

Point Lookout/Branson/, MO—M. Graham Clark, RNAV Rwy 29, Original
 Ann Arbor, MI—Ann Arbor Municipal, RNAV Rwy 24, Original
 Platteville, WI—Grant County, RNAV Rwy 25, Amdt. 1

**** Effective May 17, 1979*

Montgomery, AL—Dannelly Field, RNAV Rwy 3, Amdt. 4
 Tampa, FL—Tampa International, RNAV Rwy 18R, Amdt. 2
 Indianapolis, IN—Indianapolis International, RNAV Rwy 4L, Amdt. 6
 Neosho, MO—Neosho Memorial, RNAV Rwy 18, Amdt. 1

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

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C. on March 30, 1979.

James M. Vines,
Chief, Aircraft Programs Division.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1969.

[Docket No. 18921; Amdt. No. 1135]
[FR Doc. 79-10450 Filed 4-4-79; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

Prohibited Trade Practices and Affirmative Correction Actions; TRW, Inc., et al.

Correction

In FR Doc. 79-9068 appearing at page 18006 in the issue for Monday, March 26, 1979, in the third column, in the second line of 1(a), delete "such" and insert "any" in its place; and in the third line of 1(a), insert the following after "corporation": "if TRW, Inc. and Addressograph Multigraph Corp., or such other corporation".

[Docket 9084]

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

24 CFR Part 1917

Final Flood Elevation Determinations for the Town of Hayden, Gila County, Ariz.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Hayden, Gila County, Ariz.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

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

ADDRESSES: Maps and other information showing the detailed outlines of the

flood-prone areas and the final elevations for the Town of Hayden, are available for review at Town Hall, 520 Ray Avenue, Hayden, Ariz.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-5581 or Toll Free Line (800) 424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Hayden, Ariz.

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

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

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|--------------------|--|---|
| Gila River..... | Along Golf Course Road (500 feet from eastern corporate limits). | 1,928 |

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

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

Issued: March 12, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-4683]

[FR Doc. 79-9971 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 1917

Final Flood Elevation Determinations for the Town of Winkelman, Gila County, Ariz.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Winkelman, Gila County, Ariz.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-5581 or Toll Free Line (800) 424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Winkelman, Ariz.

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

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

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|--------------------|--|---|
| Gila River..... | Intersection of Front Street and Hewes Avenue. | 1934 |
| | Intersection of 2nd Street and Stevenson Avenue. | 1938 |
| | Intersection of 6th Street and Valencia Avenue. | 1942 |

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

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

Issued: March 12, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-4631]

[FR Doc. 79-9972 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 1917

Final Flood Elevation Determinations for the City of Indian Wells, Riverside County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Indian Wells, Riverside County, Calif.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of Indian Wells, Calif.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Indian Wells, are available for review at City Hall, 45-300 Club Drive, Indian Wells, Calif.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh

Street, SW., Washington, D.C. 20410, (202) 755-5581 or Toll Free Line (800) 424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Indian Wells, Calif.

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

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

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

| Source of flooding | Location | Depth in feet, above ground |
|---------------------------------|---|-----------------------------|
| Deep Canyon Stormwater Channel. | West of Cook Street along Deep Canyon Stormwater Channel and south of Deep Canyon Stormwater Channel. | 3 |

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

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

Issued: March 21, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-4769]

[FR Doc. 79-9973 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 1917

Final Flood Elevation Determinations for the City of Indio, Riverside County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Indio, Riverside County, Calif.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

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

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

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Indio, Calif.

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

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

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|-----------------------------------|---|---|
| Ponding Along All American Canal. | Between 45th Avenue and 46th Avenue and West of Madison Street. | 29 |

| Source of flooding | Location | Depth in feet, above ground |
|--|--|-----------------------------|
| East of Oasis Street ¹ . | Intersection of Oasis Street and 46th Avenue. | 2 |
| | Intersection of Calhoun Street and 47th Avenue. | 2 |
| | Intersection of Cabazon Road and Dillon Road. | 2 |
| West of Oasis Street and East of All American Canal ¹ . | Intersection of Hjorth Street and Highway 111. | 1 |
| | Intersection of 4th Street and Stables Road. | 1 |
| East of Whitewater River and West of All American Canal ¹ . | Adjacent to Whitewater River between 45th and 46th Avenue. | 3 |

¹Shallow flooding.

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

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

Issued: March 21, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-4741]

[FR Doc. 79-9874 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 1917

Final Flood Elevation Determinations for Orange County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

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

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

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Orange County, Calif., are available for review at Environmental Management Agency, 400 Civic Center Drive, West, Santa Ana, Calif.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, Assistant

Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-5581 or Toll Free Line (800) 424-8872

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for Orange County, Calif.

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

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

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|------------------------|--|---|
| Santa Ana River | Imperial Highway ¹ | 283 |
| | Confluence with Weir Canyon | 330 |
| | Confluence with Bee Canyon | 364 |
| | Confluence with Coal Canyon | 409 |
| (Lower) Santiago Creek | Southern Pacific Railroad—25 feet ¹ | 278 |
| | Santiago Canyon Road ¹ | 308 |
| | Loma Street ¹ | 360 |
| (Upper) Santiago Creek | Confluence with Silverado Canyon | 905 |
| | Santiago Canyon Road ¹ | 975 |
| | Confluence with Williams Canyon | 1,118 |
| | Confluence with Modjeska Canyon | 1,214 |
| Modjeska Canyon | Santiago Canyon Road ¹ | 1,214 |
| | Downstream crossing of Modjeska Canyon Road ¹ | 1,271 |
| | Upstream crossing of Modjeska Canyon Road ¹ | 1,314 |
| | Kommers Lane—50 feet downstream of centerline. | 1,334 |
| | Kommers Lane—25 feet ¹ | 1,339 |
| Handy Creek | Orange Park Boulevard—30 feet ¹ | 433 |
| | Meads Avenue ¹ | 449 |
| | Newport Boulevard—80 feet ¹ | 510 |
| Silverado Canyon | Star Canyon Road ¹ | 972 |
| | Silverado Canyon Road, 2.51 miles above mouth—150 feet ¹ | 1,121 |
| | Kitterman Drive—30 feet ¹ | 1,201 |
| | Silverado Canyon Road, Approximately 3.72 miles above mouth—25 feet ¹ | 1,251 |
| | Rancho Way | 1,281 |
| | Downstream crossing of Shady Brook Drive ¹ | 1,332 |
| | Silverado Canyon Road approximately 4.56 miles above mouth ¹ | 1,360 |

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---|---|---|
| | Oak Lane—20 feet ¹ | 1,576 |
| | Haifa Way—50 feet ¹ | 1,654 |
| | Silverado Canyon Road, approximately 8.33 miles above mouth—40 feet ¹ | 1,729 |
| Niguel Canyon (Emerald Bay Channel) | Pacific Coast Highway—15 feet ¹ | 29 |
| | Emerald Drive ¹ | 46 |
| Laguna Canyon | Laguna Canyon Road, 2.27 miles above mouth ¹ | 151 |
| | El Toro Road—40 feet ¹ | 234 |
| Aliso Creek | Pacific Coast Highway—25 feet ¹ | 14 |
| | Confluence with Wood Canyon | 89 |
| | Confluence with North Sulphur Creek | 133 |
| | Confluence with Facility No. J05 | 225 |
| | Moulton Parkway—25 feet ¹ | 271 |
| | Paseo De Valencia—100 feet downstream of centerline. | 310 |
| | Paseo De Valencia—100 feet ¹ | 320 |
| | Muirlands Boulevard ¹ | 394 |
| | Jeronimo Road ¹ | 433 |
| | Rancho Valiso—150 feet ¹ | 561 |
| Sulphur Creek | Central Park Drive—90 feet downstream of centerline. | 224 |
| | Central Park Drive—95 feet ¹ | 232 |
| | La Paz Road—110 feet downstream of centerline. | 262 |
| | La Paz Road—100 Feet ¹ | 268 |
| | Crown Park Circle—35 feet ¹ | 231 |
| Niguel Storm Drain (J03P01) | Alicia Parkway ¹ | 143 |
| North Sulphur Creek (Narco Channel J04) | | |
| Facility No. J05 | Moulton Parkway—90 feet ¹ | 235 |
| English Canyon | Downstream crossing of Los Aliso Boulevard ¹ | 470 |
| | Trabuco Road—80 feet downstream of centerline. | 545 |
| | Trabuco Road—110 feet ¹ | 554 |
| Salt Creek | Confluence with Arroyo Salada. | 121 |
| | Confluence with San Juan Canyon | 206 |
| San Juan Canyon | Confluence with Salt Creek | 206 |
| Arroyo Salada | Confluence with Salt Creek | 121 |
| (Lower) San Juan Creek | Pacific Coast Highway 60 feet ¹ | 10 |
| Arroyo Trabuco Creek | Downstream Corporate Limit (San Juan Capistrano). Area approximately 700 feet east of intersection of Tunas Drive and Escalona Drive. | 235 |
| | Area approximately 1000 feet east of intersection of Marguerite Parkway and Crown Valley Parkway. | 250 |
| | Area approximately 3500 feet east of intersection of Felipe Road and El Retiro. | 327 |
| | Area approximately 1.2 miles east of intersection of Oso and Marguerite Parkways. | 450 |
| | Confluence with Tijeras Canyon. | 500 |
| | Area approximately 1.0 mile East of Via Granados. | 627 |
| Arroyo Trabuco Creek | Area approximately 1.0 mile east of intersection of Via Tirso and Calle Azorin. | 700 |
| | Area approximately 1.3 miles east of Oso Retention Dam. | 810 |
| | Area south of intersection of Live Oak Canyon and Trabuco Canyon Roads. | 910 |
| | Confluence with Hickey Canyon. | 964 |
| | Trabuco Creek Road approximately 0.4 mile east of intersection with Rose Canyon Road. | 1,050 |

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|-----------------------|---|---|
| | Trabuco Creek Road approximately 1.4 miles east of intersection with Rose Canyon Road. | 1,150 |
| | Trabuco Creek Road approximately 2.1 miles east of intersection with Rose Canyon Road. | 1,250 |
| Hickey Canyon..... | Trabuco Canyon Road—150 feet ¹ | 997 |
| | Area adjacent to but not including Sage Lane. | 1,050 |
| | Intersection of North Lane and Sycamore Drive. | 1,075 |
| | Private Road approximately 0.96 mile above mouth ¹ . | 1,091 |
| | Area east of intersection of Trabuco Oaks Drive and Hamilton Trail. | 1,280 |
| | Area approximately 0.3 mile north of intersection of Trabuco Oaks Drive and Hamilton Trail. | 1,400 |
| Oso Creek..... | Crown Valley Parkway—50 feet ² | 258 |
| | San Diego Freeway ¹ | 297 |
| | Marguerite Parkway—55 feet ² | 374 |
| | Casta Del Sol ¹ | 534 |
| La Paz Channel..... | Confluence with Oso Creek... | 296 |
| Canada Gobernado..... | Via Conejo Road—25 feet ² ... | 814 |
| San Diego Creek..... | Sand Canyon Avenue ¹ | 145 |
| | Laguna Freeway ¹ | 171 |

¹ At centerline.² Upstream of centerline.

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

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

Issued: October 19, 1978.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-4361]

[FR Doc. 79-9975 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 1917

Final Flood Elevation Determinations for the City of Rancho Mirage, Riverside County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Rancho Mirage, Riverside County, California. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to

qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Rancho Mirage, California.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Rancho Mirage, are available for review at City Hall, 69-825 Highway 111, Rancho Mirage, California.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Rancho Mirage, California.

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

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

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

| Source of flooding | Location | Depth in feet, above ground |
|-----------------------------------|---|-----------------------------|
| East Rancho Mirage Storm Channel. | Intersection of Gardess Road and Magnesia Falls Drive. | 1 |
| | Intersection of San Gorgonio Road and Magnesia Falls Drive. | 1 |
| Magnesia Spring Channel. | Intersection of Indian Trail Road and Halgar Road. | 2 |
| | Intersection of Mirage Road and Sahara Road. | 1 |
| | Intersection of Indian Trail Road and San Gorgonio Road. | 1 |
| | Intersection of Dunes View Road and Estellita Drive. | 2 |
| | Intersection of San Jacinto Drive and Indian Trail Road. | 1 |

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

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

Issued: March 21, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-4745]

[FR Doc. 79-9976 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 1917

Final Flood Elevation Determinations for the City of Santa Ana, Orange County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

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

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Santa Ana, California.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Santa Ana, are available for review at City Hall, 20 Civic Center Plaza, 8th Floor, Santa Ana, California.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of

flood elevations for the City of Santa Ana, California.

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

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

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|--------------------|---|---|
| Santiago Creek | Confluence with Santa Ana River | 108 |
| | Bristol Street | 119 |
| | Flower Street—50 feet upstream from centerline. | 133 |
| | Santa Ana freeway | 142 |
| | Main Street | 147 |
| | Santiago Avenue | 157 |
| | Atchison, Topeka and Santa Fe Railroad | 163 |
| | Corporate Limits | 165 |

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

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

Issued: March 21, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[Docket No. FI-4746]

[FR Doc. 79-9977 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 1917

Final Flood Elevation Determinations for the City of San Juan Capistrano, Orange County, California

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

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

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of San Juan Capistrano, California.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of San Juan Capistrano, are available for review at City Hall, 32400 Baseo Adelanto, San Juan Capistrano, California.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of San Juan Capistrano, California.

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

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

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|--------------------|---|---|
| San Juan Creek | 100 feet upstream from Corporate Limits | 38 |
| | Atchison, Topeka and Santa Fe Railroad—10 feet ¹ | 73 |
| | La Novia Street—10 feet ¹ | 106 |

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|--------------------|---|---|
| Trabuco Creek | Del Obispo Street—75 feet ¹ | 90 |
| | Oso Road—25 feet ¹ | 141 |
| | Atchison, Topeka and Santa Fe Railway—25 feet ¹ | 163 |
| | Camino Capistrano—25 feet ¹ | 186 |
| Horno Creek | At upstream Corporate Limits | 235 |
| | Interstate Highway 5 (downstream crossing)—10 feet ¹ | 103 |
| | Acjachema Street—10 feet ¹ | 130 |
| | At upstream Corporate Limits | 209 |

¹Upstream from centerline.

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

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

Issued: March 21, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[Docket No. FI-4770]

[FR Doc. 79-9978 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 1917

Final Flood Elevation Determinations for the City of Tustin, Orange County, California.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Tustin, Orange County, California.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of Tustin, California.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Tustin, are available for review at City Hall, 300 Centennial Way, Tustin, California.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Tustin, California.

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

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

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|-----------------------------|--|---|
| Santa Ana-Santa Fe Channel. | Atchison, Topeka and Santa Fe Railway (downstream crossing)—75 feet ¹ . | 58 |
| | Atchison, Topeka and Santa Fe Railway (upstream crossing)—10 feet ¹ . | 66 |
| El Modena-Irvine Channel. | Intersection of El Modena-Irvine Channel and Santa Ana Freeway—200 feet north. | 81 |
| | Atchison, Topeka and Santa Fe Railway—20 feet ¹ . | 99 |

¹Upstream of centerline

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

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

Issued: March 21, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-4747]

[FR Doc. 79-9979 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 1917**Final Flood Elevation Determinations for Collier County, Florida**

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

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

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

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

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Collier County, are available for review at Collier County Courthouse Complex, Building F, Naples, Florida.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for Collier County, Florida.

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

The Administrator has developed criteria for flood plain management in

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

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|----------------------|--------------------------------------|---|
| Gulf of Mexico | Cocohatchee Street & Shores Avenue. | 12 |
| | Huntington Drive & Sussex Street. | 11 |
| | 8th Street & 109th Avenue | 12 |
| | Long Boat Drive & State Route 31. | 9 |
| | Lakewood Boulevard & U.S. Route 41. | 9 |
| | Dolphin Avenue & Pelican Street. | 11 |
| | Kendall Drive & Colonial Avenue. | 12 |
| | South Barfield Drive & Hawaii Court. | 13 |
| | State Route 951 & U.S. Route 41. | 9 |

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

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

Issued: February 23, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-3644]

[FR Doc. 79-9980 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 1917**Final Flood Elevation Determinations for the Village of Buffalo Grove, Cook and Lake Counties, Ill.**

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

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

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood

elevations, for the Village of Buffalo Grove, Cook and Lake Counties, Illinois.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of Buffalo Grove, Cook and Lake Counties, Illinois, are available for review at the Village Office, 50 Raupp Boulevard, Buffalo Grove, Illinois.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Village of Buffalo Grove, Cook and Lake Counties, Illinois.

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

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

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|--------------------|--|---|
| Buffalo Creek | Buffalo Grove Road | 669 |
| | Raupp Boulevard | 673 |
| | Lake-Cook Road | 678 |
| | Confluence of Farrington Ditch | 678 |
| Farrington Ditch | Confluence of Aspen Ditch | 689 |
| | Arlington Heights Road (Corporate Limits) | 691 |
| | Corporate Limits (Upstream of Checker Road) | 712 |
| | Confluence with Buffalo Creek | 678 |
| White Pine Ditch | Corporate Limits (2,600 feet upstream of Checker Road) | 681 |
| | St. Marys Parkway | 678 |
| | Bernard Drive (Upstream) | 681 |
| | Corporate Limits (2,000 feet Upstream of Bernard Drive, Dundee Road (Upstream) | 687 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act

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

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

Issued: March 13, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-4024]

[FR Doc. 79-9981 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 1917

Final Flood Elevation Determinations for the Village of Hodgkins, Cook County, Illinois

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

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

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

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of Hodgkins, Cook County, Illinois, are available for review at Hodgkins Village Hall, 8990 Lyons Street, Hodgkins, Illinois.

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

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

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to

the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

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

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|--------------------|---|---|
| Des Plaines River | Downstream Corporate Limit of Willow Springs and Hodgkins | 598 |
| | Interstate 55 | 598 |
| | Upstream Corporate Limit of Hodgkins and Unincorporated Cook County | 599 |

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

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

Issued: March 13, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-4659]

[FR Doc. 79-9982 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 1917

Final Flood Elevation Determination for the Town of Friendsville, Garrett County, Maryland.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Friendsville, Garrett County, Maryland.

These base (100-year) flood elevations are the basis for the flood plain management measures that the

community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

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

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Township of Friendsville, Garrett County, Maryland, are available for review at the Friendsville Library, Friendsville, Maryland.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Friendsville, Garrett County, Maryland.

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

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

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|-------------------------|--|---|
| Youghiogheny River..... | Downstream Corporate Limits. | 1,470 |
| | Upstream of confluence with Bear Creek. | 1,470 |
| | 2,700 feet upstream of confluence with Bear Creek. | 1,479 |
| | Upstream side of confluence with Minnow Creek. | 1,483 |
| | Upstream side of Maple Street. | 1,484 |
| | Upstream side of U.S. Route 48. | 1,492 |

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|--------------------|---|---|
| | Upstream side of U.S. Route 42. | 1,494 |
| Minnow Creek..... | Downstream confluence with Youghiogheny River. | 1,485 |
| | Upstream side of Water Street (culvert). | 1,487 |
| | Upstream side of Blane Franz Road. | 1,505 |
| Bear Creek..... | Downstream Limit of study and confluence with Youghiogheny River. | 1,470 |
| | Upstream side of Second Avenue. | 1,496 |
| | Upstream side of Old Selbysport Road. | 1,504 |
| | Upstream side of U.S. Route 48. | 1,523 |
| | Upstream side of Maple Street. | 1,532 |

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

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

Issued: March 21, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-4691]

[FR Doc. 79-9983 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 1917

Final Flood Elevation Determination for the Town of North Attleboro, Bristol County, Massachusetts

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

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

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the town of North Attleboro, Bristol County, Massachusetts.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of North Attleboro are available for review at the Town Clerk's Office, Town Office Building, North Attleboro, Massachusetts.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the town of North Attleboro, Bristol County, Massachusetts.

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

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

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---------------------|---------------------------------------|---|
| Ten Mile River..... | Downstream Corporate Limits. | 137 |
| | Just Upstream of Cedar Road. | 139 |
| | Just Upstream of Freeman Street. | 144 |
| | Just Upstream of Sturdy Lane. | 146 |
| | Just Upstream of Towne Street. | 148 |
| | Just Upstream of Mount Hope Street. | 151 |
| | Just Upstream of Falls Pond Dam. | 176 |
| | Just Downstream of Washington Street. | 176 |
| | Just Upstream of Chestnut Street. | 181 |
| | Just Upstream of Orne Street. | 184 |
| | Just Downstream of Whiting Pond Dam. | 185 |
| | Just Upstream of Whiting Pond Dam. | 191 |
| | Upstream Corporate Limit..... | 191 |
| Bungay River..... | Downstream Corporate Limit. | 126 |
| | Confluence of Landry Avenue Brook. | 128 |

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum | |
|---|---|---|-----|
| Sevenmile River | Bungay Road | 129 | |
| | Downstream Corporate Limit | 141 | |
| | Just Upstream of Old Mill Dam | 145 | |
| | 845 feet Upstream of Old Mill Dam | 146 | |
| | 2,100 feet Downstream of Interstate 295 | 152 | |
| | Just Upstream of Interstate 295 | 157 | |
| | Just Upstream of Adams Avenue | 161 | |
| | Just Downstream of private drive, near Adams Avenue | 164 | |
| | Just Upstream of private drive, near Adams Avenue | 168 | |
| | 1,100 feet Downstream of Washington Street | 169 | |
| Rattlesnake Brook..... | 1,020 feet Upstream of Washington Street | 178 | |
| | 300 feet Downstream of Hoppin Hill Road | 186 | |
| | Just Upstream of Hoppin Hill Road | 189 | |
| | At Confluence with Ten Mile River | 142 | |
| | Just Downstream of Commonwealth Avenue | 146 | |
| | Just Upstream of Commonwealth Avenue | 150 | |
| | Just Upstream of Ivy Street ... | 162 | |
| | Just Downstream of Towne Street | 175 | |
| | Just Upstream of Towne Street | 180 | |
| | At Confluence with Ten Mile River | 150 | |
| Mason Park Brook | At Mount Hope Cemetery..... | 151 | |
| | Just Downstream of Spring and Lyman Street | 175 | |
| | Just Upstream of Spring and Lyman Street | 180 | |
| | Just Downstream of Janice Lane | 187 | |
| | Just Upstream of Janice Lane | 191 | |
| | 420 feet Upstream of Janice Lane | 196 | |
| | 100 feet Downstream of Landry Avenue | 202 | |
| | 150 feet Upstream of Landry Avenue | 206 | |
| | Scotts Brook | At the Confluence with Ten Mile River | 179 |
| | | Just Downstream of Washington Street | 187 |
| Just Upstream of Washington Street | | 189 | |
| Just Downstream of gravel road, Upstream of Washington Street | | 191 | |
| Just Upstream of gravel road, Upstream of Washington Street | | 193 | |
| Just Downstream of Avery Street | | 206 | |
| Just Upstream of Avery Street | | 209 | |
| 100 feet Downstream of Broadway | | 209 | |
| Just Downstream of Broadway | | 214 | |
| Just Upstream of Broadway... | | 217 | |
| Elmwood Street Brook | Just Downstream of old railroad grade | 218 | |
| | Just Upstream of old railroad grade | 222 | |
| | Just Downstream of Arnold Road | 249 | |
| | Just Upstream of Arnold Road | 253 | |
| | Just Downstream of High Street | 266 | |
| | Upstream of High Street..... | 271 | |
| | At Confluence with Ten Mile River | 185 | |
| | Just Downstream of Washington Street | 188 | |
| | Just Upstream of Washington Street | 192 | |

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|-----------------------|--|---|
| Whiting Pond Bypass.. | Just Downstream of Parmenter Lane | 285 |
| | Just Upstream of Parmenter Lane | 288 |
| | At Confluence with Ten Mile River | 182 |
| Mary Kennedy Brook .. | Just Upstream of Whiting Street | 182 |
| | Upstream Corporate Limit | 185 |
| | At Confluence with Bungay River | 126 |
| Armstrong Brook | 200 feet Upstream of Mary Kennedy Drive Extension | 126 |
| | Just Downstream of Mary Kennedy Drive | 131 |
| | Just Downstream of Kelley Boulevard | 133 |
| | Just Upstream of Kelley Boulevard | 138 |
| | At Confluence with Bungay River | 126 |
| | Just Upstream of gravel road near confluence with Bungay River | 127 |
| | Just Downstream of Lindsey Street | 129 |
| | 200 feet Upstream of Lindsey Street | 130 |
| | Just Downstream of Fish Hatchery Road | 128 |
| | Just Upstream of Fish Hatchery Road | 131 |
| Landry Avenue Brook.. | Just Downstream of Bungay Road | 135 |
| | Just Upstream of Bungay Road | 138 |
| | 150 feet Downstream of Tennant Circle | 140 |
| | Just Downstream of Kelley Boulevard | 152 |
| | Just Upstream of Interstate 95 | 164 |
| | Just Upstream of Landry Avenue | 177 |
| | Just Upstream of Kostka Drive | 184 |
| | Just Upstream of Hall Drive ... | 191 |
| | 200 feet Downstream of Mendon Road | 78 |
| | 740 feet Upstream of Mendon Road | 80 |
| Abbott Run | Just Upstream of Cushman Road | 88 |
| | Just Upstream of abandoned railroad | 92 |
| | Just Downstream of Hunts Bridge Road | 93 |
| | Just Upstream of Hunts Bridge Road | 96 |
| | Upstream Corporate Limits ... | 101 |

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

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

Issued: March 21, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-4614]

[FR Doc. 79-9984 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 1917

Final Flood Elevation Determinations for the Town of Whately, Franklin County, Massachusetts

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

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

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

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

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

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

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

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

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|------------------------|---|---|
| Connecticut River..... | Downstream Corporate Limits. | 129 |
| | Confluence with Sugarloaf Brook. | 132 |
| | Sugarloaf Brook..... | 135 |
| Sugarloaf Brook..... | Driveway Box Culvert (approximately 0.61 mile upstream from mouth)—50 feet ¹ . | 140 |
| | River Road Bridge (most downstream crossing)—50 feet ¹ . | 147 |
| | River Road Bridge (most upstream crossing)—25 feet ¹ . | 158 |
| Mill River..... | Upstream Corporate Limits | 166 |
| | Claveric Road Bridge—75 feet ¹ . | 173 |
| | Christian Lane Bridge—at centerline. | 185 |
| Great Swamp Brook ... | North Street—downstream face. | 171 |
| | U.S. Highway 5—40 feet ¹ | 174 |
| Bloody Brook | U.S. Highway 5—50 feet ¹ | 185 |
| | Driveway Culvert (approximately 0.09 mile upstream from mouth)—at centerline. | 178 |
| West Brook | Downstream Corporate Limits. | 313 |
| | West Brook Road Bridge—at centerline. | |

¹Upstream from centerline
²Downstream from centerline

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

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

Issued: February 23, 1979.
 Gloria M. Jimenez,
 Federal Insurance Administrator.

[Docket No. FI-4754]

[FR Doc. 79-9985 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 1917

Final Flood Elevation Determinations for the City of Windom, Cottonwood County, Minn.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Windom, Cottonwood County, Minnesota. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of

being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

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

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Windom, are available for review at City Hall, 444 9th Street, Windom, Minnesota.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of Windom, Minnesota.

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

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

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|-----------------------------|---------------------------------------|---|
| West Fork Des Moines River. | Chicago and Northwestern Railroad. | 1350 |
| | State Highway 60 and U.S. Highway 71. | 1352 |
| | Dam at Island Park..... | 1353 |
| | 6th Street Bridge | 1353 |
| | Confluence with Perkins Creek. | 1355 |
| | Upstream Corporate Limits | 1357 |
| Perkins Creek | River Road | 1355 |
| | 6th Avenue Bridge..... | 1355 |
| | 4th Avenue Bridge..... | 1356 |
| | U.S. Highway 71 | 1359 |
| | Upstream Corporate Limits | 1365 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act

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

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

Issued: March 12, 1979.

Gloria M. Jimenez,
 Federal Insurance Administrator.

[Docket No. FI-4704]

[FR Doc. 79-9986 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 1917

Final Flood Elevation Determinations for the Borough of Brooklawn, Camden County, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

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

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Borough of Brooklawn, Camden County, N.J.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Borough of Brooklawn, are available for review at Borough Hall, 213 Pennsylvania Avenue, Brooklawn, N.J.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Borough of Brooklawn, N.J.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to

the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

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

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---------------------|--|---|
| Big Timber Creek | New Broadway ¹ | 10 |
| Little Timber Creek | South Boradway ¹ | 10 |
| | U.S. Highway 130 (Crescent Boulevard) ¹ | 10 |

¹ At centerline.

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

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

Issued: March 21, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-4756]

[FR Doc. 79-9987 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 1917

Final Flood Elevation Determinations for the Township of Eastampton, Burlington County, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Township of Eastampton, Burlington County, N.J. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect

in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Township of Eastampton, N.J.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Township of Eastampton are available for review at Township Hall, Smithfield Road, Mount Holly, N.J.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Township of Eastampton, N.J.

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

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

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|--------------------|-------------------------------------|---|
| North Branch | Smithville Dam—60 feet ¹ | 22 |
| Rancocas Creek | Smithville Dam—40 feet ² | 25 |
| | U.S. Route 206—50 feet ¹ | 26 |

¹ Downstream of centerline.

² Upstream of centerline.

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

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

Issued: January 31, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-4591]

[FR Doc. 79-9988 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 1917

Final Flood Elevation Determinations for the Borough of Florham Park, Morris County, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

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

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Borough of Florham Park, Morris County, N.J.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Borough of Florham Park, Morris County, N.J., are available for review at the Florham Park Borough Hall, 111 Ridgedale Avenue, Florham Park, N.J.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Borough of Florham Park, Morris County, N.J.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and

Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

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

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|--------------------------|------------------------------------|---|
| Passaic River | Corporate Limits (Downstream)..... | 176 |
| | Columbia Turnpike..... | 177 |
| | Passaic Avenue..... | 177 |
| | Corporate Limits (Upstream)..... | 178 |
| Black Cat Ditch..... | Vreeland Road..... | 176 |
| | Fernwood Road..... | 179 |
| | Columbia Turnpike..... | 189 |
| Fish's Brook..... | Brooklake Road..... | 192 |
| | Brooklake Road..... | 177 |
| | Lakeview Avenue..... | 195 |
| Spring Garden Brook..... | Brooklake Road..... | 177 |
| | Dam..... | 177 |
| | East Madison Avenue..... | 181 |
| | Corporate Limits (Upstream)..... | 183 |
| Pinch Brook..... | Corporate Limits (Downstream)..... | 183 |
| | Ridgedale Avenue..... | 185 |
| | Corporate Limits (Upstream)..... | 186 |
| Black Brook..... | Columbia Turnpike..... | 183 |
| | Private Road..... | 183 |

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

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

Issued: March 21, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-3903]

[FR Doc. 79-9989 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Tax; Investment Credit for Movie and Television Films

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the investment credit for movie and television films. Changes to the applicable tax law were made by the Tax Reform Act of 1976. These regulations provide necessary guidance to the motion picture and television industry for compliance with the law, and affect all investors in movie and television films.

DATES: Generally, the amendments are effective for taxable years beginning after December 31, 1974. However, rules relating to entitlement to the credit are effective for all years.

FOR FURTHER INFORMATION CONTACT: Lawrence M. Axelrod of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T (202-566-3458, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1977, the Federal Register published amendments to the Income Tax Regulations (26 CFR Part 1) under sections 48(k) of the Internal Revenue Code of 1954 (42 FR 63791). The amendments were proposed to conform the regulations to section 804 (a) and (b) of the Tax Reform Act of 1976 (90 Stat. 1591). A public hearing was held on March 1, 1978. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Section 48(k)(1)(B) provides that the term "qualified film" does not include any film or tape the market for which is primarily topical or is otherwise essentially transitory in nature. The notice of proposed rulemaking provided that variety shows do not qualify for the credit because they deal with personalities of current interest. Several comments were received which suggested that the proposed rule was inappropriate. Nevertheless, examination of the legislative history leads to the conclusion that Congress did not intend that a mere video and

sound recording of a game, performance, or event would automatically qualify for the credit. Accordingly, the proposed rule has been adopted substantially unchanged. Also, with respect to eligibility for the credit, no inference is to be drawn from the fact that the names of particular shows have been eliminated.

With respect to lenders and guarantors, the rule set forth in the notice has been adopted substantially unchanged because certain lenders or guarantors are, in substance, owners in that they take the same risks and expect the same returns as do investors. However, the regulations have been modified to make clear that lenders of normal commercial loans are not to be regarded as obtaining an ownership interest.

To clarify which taxpayer is entitled to the investment credit in certain circumstances, additional examples in § 1.48-8(a)(4) have been provided. Also, the rules for electing the 90-percent rule have been clarified.

Under the notice of proposed rulemaking, a lessee could, theoretically, receive the credit if the lessor elected to treat the lessee as having acquired a film, as provided in section 48(d). However, the notice also provided that the election is only available with respect to a "lessee" that possesses rights which constitute a part and only to the extent of the "lessee's" amount at risk. The practical effect of these limitations is that the "lessee" would be entitled to the credit only if it were an owner. Accordingly, § 1.48-8(g)(2) provides that the election under section 48(d) is not available with respect to a qualified film.

Drafting Information

The principal author of this regulation is Lawrence M. Axelrod of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation both on matters of substance and style.

Adoption of amendments to the regulation

Accordingly, 26 CFR Part 1 is amended as follows:

§ 1.38 [Deleted]

Paragraph 1. Section 1.38 is deleted.

Par. 2. Section 1.38-1 is revised to read as follows:

§ 1.38-1 Investment in certain depreciable property.

Regulations under sections 46 through 50 are prescribed under the authority granted the Secretary by section 38(b) to prescribe regulations as may be necessary to carry out the purposes of section 38 and subpart B, part IV, subchapter A, chapter 1 of the Code.

§ 1.48 [Deleted]

Par. 3. Section 1.48 is deleted.

Par. 4. The following new section is added immediately after § 1.48-7.

§ 1.48-8 Motion picture and television films and tapes.

(a) *Entitlement to investment credit*—(1) *In general.* Under section 48(k) an investment credit is allowable under section 38 with respect to certain motion picture films and video tapes. For the taxpayer to be entitled to the investment credit, the film or tape placed in service must be "new section 38 property", determined without regard to its useful life. The film or tape must be a qualified film within the meaning of paragraph (a)(3) of this section, and the taxpayer must have an ownership interest in at least a part of the film (within the meaning of paragraph (a)(4) of this section). The investment credit is allowable only for the year in which the qualified film is placed in service except for investment credit with respect to subsequently incurred costs described in paragraph (e)(9) of this section. The refund (or credit) of any overpayment of tax that is attributable to the investment credit is subject to the provisions of section 6511. The provisions of this paragraph apply to all films and tapes regardless of the taxable year in which the film or tape was placed in service.

(2) *Film may be divided into parts.* Once a qualified film is placed in service in any medium of exhibition in any geographical area of the world, it becomes used property and no investment credit with respect to the film is available to a taxpayer that acquires the film after that time (except for subsequently incurred costs described in paragraph (e)(9) of this section which the taxpayer incurs). Thus, for example, a film previously exhibited in theaters will not be new section 38 property even when modified for television. However, where parts of film have been sold before the film or any of its parts have been placed in service in any medium of exhibition in any geographical area of the world, each part is new section 38 property until that part is first placed in service. For purposes of this section, "a part" of a film means the exclusive right to display

a qualified film in one or more mediums of exhibition in one or more geographical areas over the entire period of substantial exploitation of the film in the medium(s) in the geographical area(s). The period will be determined on the basis of a reasonable estimate made as of the date the film is first placed in service. For purposes of this section the term "medium of exhibition" includes, for example, free television (network telecasts and television syndications) or movie theaters. The term does not include the video tape or video disc household markets. For purposes of this section, the term "geographical area" means a geographically defined commercial market recognized by the movie or television industry, but which in no case may be smaller than one country or include a portion of a country. Notwithstanding the preceding sentence, border areas of Canada and Mexico, which under industry practice are considered part of the United States television market, may be treated as within the geographical area that includes the United States and not within the geographical area that includes Canada or Mexico. (See paragraph (g)(1) of this section for apportionment of amount paid if a taxpayer purchases one or more parts of a film and in the same transaction acquires an interest which does not constitute a part.) If the owner of a qualified film transfers to another person rights to display the film on a limited basis, which do not constitute a transfer of an ownership interest in a part of the film, the owner will still be treated as having "the exclusive right to display the film." For example, if the owner of a film transfers to a television network the right to display the film on network television (but does not transfer to the network syndication rights) the owner is considered to retain the "exclusive right to display the film." On the other hand, if the owner transfers to a television network all free television rights (network telecasts and television syndications) to the film before the film or any of its parts have been placed in service, the owner is considered to have sold a part of the film to the network and the network will be entitled to claim investment credit based on its qualified United States production costs as determined under paragraph (g)(1) of this section.

(3) *Qualified film*—(i) *In general.* Under section 48(k)(1)(B), the term "qualified film" means a motion picture film or video tape or part thereof created primarily for use as public entertainment or for educational

purposes. A film or tape is a single asset consisting of the physical films and tapes (including the original negative or tape and duplicate negatives, release prints or tapes, and original sound recordings and all other sound recordings, if any, created to simultaneously accompany the pictorial material), and the worldwide rights to exploit the completed film or tape in all mediums of exhibition in all geographical areas of the world.

(ii) *Public entertainment or educational purposes.* A film or tape is created primarily for use as public entertainment only if created principally for public exhibition for the amusement, enlightenment, or gratification of an audience. Thus, a dramatic or situation comedy show or episode of a dramatic or situation comedy series would be a film or tape created primarily for use as public entertainment. A film or tape is created primarily for educational purposes if it is created principally for use by educational institutions or governmental units such as primary or secondary schools, colleges and universities, vocational and post-secondary educational institutions, public libraries, and other government agencies. Films and tapes created primarily for use by industrial or commercial organizations do not qualify for the credit. Thus, advertisements and industrial training films and tapes do not qualify for the credit.

(iii) *Topical or transitory films and tapes.* The term "qualified film" does not include any film or tape the market for which is primarily topical or is otherwise essentially transitory in nature. A film or tape is topical or essentially transitory in nature if it primarily deals with events and personalities of current interest at the time the film or tape is placed in service. It does not matter that a film or tape which is topical or essentially transitory in nature may be shown in subsequent years or is actually shown in subsequent years. These films or tapes include news shows such as the evening news and news specials relating to current affairs, interview shows such as "The Tonight Show" or "Meet the Press", game shows, award shows, and shows consisting of sporting events. Similarly, variety shows do not qualify for the credit since they present entertainers primarily as personalities of current interest, as opposed to dramatic or situation comedy shows which present entertainers as characters in a dramatization. Topical or transitory films and tapes do not include, however, dramatized recreations of recent events.

(4) *Ownership interest*—(i) *In general.* To obtain the investment credit with respect to a qualified film, a taxpayer must have an ownership interest in at least a part of the film. That is, the taxpayer must have a depreciable interest in at least a part of the film. However, the amount of credit allowable to a taxpayer with respect to a qualified film is determined only on the basis of that taxpayer's proportionate share of any loss which may be incurred with respect to the production costs of the qualified film. The proportionate share of any loss which may be incurred with respect to production costs by a taxpayer is the amount that the taxpayer's capital is at risk. Advance rentals (i.e., payments for the transfer of less than a part) received or accrued by a taxpayer prior to the date on which a qualified film is placed in service, and which are includible as ordinary income in the taxpayer's gross income will not reduce the amount that the taxpayer's capital is at risk. If a taxpayer's capital is considered at risk under the principles of section 465, the taxpayer's capital will be considered to be at risk under this paragraph. Regardless of whether a taxpayer is at risk under the principles of section 465, a taxpayer's capital will be considered at risk under this paragraph if the taxpayer will suffer the economic loss if the qualified film fails to generate sufficient revenue to cover or repay production costs. For purposes of this paragraph, the amount which a taxpayer has at risk will not be considered to be reduced by a deduction for participations or residuals paid or accrued, or by a deduction under section 167 with respect to the costs of preparing prints described in paragraph (f)(1)(ii) of this section.

(ii) *Time ownership interest is determined.* An ownership interest in a qualified film and the amount that the taxpayer's capital is at risk with respect to the interest is determined at the time the film is placed in service. However, an ownership interest with respect to subsequently incurred costs (described in paragraph (e)(9) of this section) and the amount at risk with respect to such costs are determined at the time they are paid or incurred. Thus, a taxpayer purchasing a part of a qualified film after the film has been placed in service acquires no ownership interest in that part for purposes of the credit except with respect to subsequently incurred costs. However, if a taxpayer had purchased the part before the film has been placed in service in any medium of exhibition in any geographical area of the world, the taxpayer will have

acquired an ownership interest in that part of the film for purposes of the credit.

(iii) *Certain lenders and guarantors considered to have an ownership interest.* To qualify for the investment credit with respect to a qualified film, the taxpayer must have a depreciable interest in at least a part of the film. Solely for purposes of this paragraph, a taxpayer who, at the time a film is first placed in service, is a lender or guarantor of all or a portion of the funds used to produce or acquire the film or part thereof, will be regarded as having a depreciable interest in at least a part of the film if he can look for repayment or relief from liability solely to the proceeds generated from the exhibition or disposition of at least a part of the film. In addition, if the financing for a film was part of an agreement which provided funds for the production of several qualified films, and a lender or guarantor can look for repayment or relief from liability solely to the aggregate proceeds generated from at least a part of each film, the lender or guarantor will be considered to have an ownership interest in each film. A commercial lender will not be considered to have an ownership interest in any film simply by reason of a commercial loan. If a lender or guarantor (other than a producer who owned the film and made or guaranteed a loan to a purchaser) is regarded as having an ownership interest in the film, the lender or guarantor shall be treated as having purchased the interest under paragraph (g)(1) of this section for an amount equal to the principal amount of the loan which it made or guaranteed.

(iv) *Partnerships, electing small business corporations, and estates and trusts.* If a partnership has an ownership interest in a qualified film, the qualified investment will be apportioned pro rata among the partners on the basis of their percentage of capital at risk in the partnership at the time the film is placed in service. If an electing small business corporation has an ownership interest in a qualified film, the qualified investment will be apportioned among the shareholders on the basis of their percentage of ownership of stock of the corporation on the last day of its taxable year in which the film is placed in service. If an estate or trust has an ownership interest in a qualified film, the qualified investment will be apportioned between the estate or trust and the beneficiaries on the basis of the distributable net income of the estate or trust allocable to each in the taxable year of the trust or estate in which the film is placed in service. For purposes of

determining ownership interest with respect to subsequently incurred costs (described in paragraph (e)(9) of this section), a taxpayer's proportionate share of the capital at risk in a qualified film owned by a partnership or electing small business corporation is determined on the basis of the taxpayer's capital at risk in the entity on the last day of the taxable year of the entity in which the subsequently incurred costs are paid or incurred. The amount of capital which a taxpayer has at risk does not include any amount previously taken into account in determining the investment credit to which the taxpayer is entitled under section 48(k). For example, if a taxpayer has claimed investment credit with respect to the entire amount which he has at risk in a partnership, no additional investment credit may be claimed by the taxpayer with respect to that amount. However, if a taxpayer's capital at risk that was invested in a qualified film is recovered and re-invested in another qualified film, investment credit with respect to the amount reinvested may be claimed.

(v) *Examples.* This subparagraph may be illustrated by the following examples:

Example (1). (a) Partnership P executes a production-distribution agreement with D, a motion picture distribution company, for P to produce a new feature-length motion picture. D agrees to provide the funds for the production by direct loans to P. The amounts borrowed by P would be repayable only out of net profits from the distribution of the picture. P assumes no liability for the repayment of any amount. In consideration for the sum advanced by D, P assigns to D the sole and exclusive right to rent, lease, exhibit, license and otherwise dispose of, or trade and deal in and with the picture. Proceeds realized from the sale or distribution of the picture would first be used to reimburse D for amounts advanced. Any amount remaining following the reimbursement to D would be distributed 50 percent to D and 50 percent to P. For purposes of this example, it is assumed that neither a partnership nor a joint venture is created.

(b) Under paragraph (a)(4)(iii) of this section, D is regarded as having a depreciable interest in the picture for purposes of the credit. P's only interest in the picture is to share in any future profits. Since only D's capital is at risk, D may claim the allowable credit with respect to the entire qualified U.S. production costs of the picture.

Example (2). (a) A and B execute a partnership agreement under which B agrees to provide the funds for the production of a motion picture in return for a 50-percent interest in the net profits of the film. A agrees to provide his services and to supply the necessary talent to produce the film in exchange for the remaining 50-percent interest. Any lease, exhibition, license, or

other disposition of the film is subject to the veto of either party.

(b) The AB partnership has a depreciable interest in the film. Under paragraph (a)(4)(iv) of this section, the qualified investment will be apportioned among the partners on the basis of their percentage of capital at risk in the partnership. A has no capital at risk in the partnership and therefore is not entitled to any credit with respect to the film. Since B has supplied all the risk capital for the partnership, B may claim all the investment credit with respect to the film.

Example (3). (a) X produces a new feature-length motion picture with its own funds. Upon completion X sells the film to Y. The purchase price is payable solely out of the proceeds generated from the exhibition of the film in movie theaters in the United States. Y obtains exclusive control over the distribution of the film and agrees to use its best efforts in promoting the distribution.

(b) Since X can look solely to the proceeds generated from the exhibition of the film to recoup its funds used to produce the film, X is treated as having a depreciable interest for purposes of the credit. Since X's capital at risk equals the production costs of the film, X may claim all of the investment credit with respect to the film.

(c) The facts are the same as in (a) of this example except that as part of the purchase agreement Y paid to X \$200,000 on the delivery of the film which could be recouped by Y before any further amount was paid to X. At the time the film is placed in service both X and Y have an ownership interest in the film. Y has \$200,000 of its capital at risk and is entitled to investment credit to the extent that the amount does not exceed the qualified United States production costs (as defined in paragraph (e)(1) of this section) of the film. X is entitled to the credit with respect to the remainder, if any, of the qualified United States production costs.

Example (4). (a) T, a television network, produces an in-house film for television. Prior to the time the film is placed in service, T transfers to S the rights to syndicate the film among nonaffiliated stations within the United States, beginning two years after the film is first shown on network television. In exchange for the syndication rights, S pays T an amount equal to 25 percent of the total production costs of the film.

(b) Under paragraph (a)(2) of this section, if the owner of a qualified film transfers to another taxpayer rights to display a film on a limited basis, which do not constitute a transfer of an ownership interest in a part of the film, the owner will still be treated as having the exclusive right to display the film. The transfer of only syndication rights to S is a transfer of less than a part of the film. Accordingly, T is treated as retaining the exclusive right to display the film and is entitled to the entire investment credit.

Example (5). (a) Individuals C and D form a partnership and each makes a capital contribution of \$50,000. The partnership produces a qualified film which has qualified United States production costs of \$100,000 and places it in service. On the partnership return for the taxable year, gross receipts from the film are \$120,000, a depreciation

deduction of \$90,000 is allowed, and \$50,000 of other expenses relating to the film are properly deducted. The partnership uses the \$70,000 remaining after the loss on the film to produce a second qualified film entirely in the United States which is also placed in service.

(b) C and D may each claim investment credit with respect to \$50,000 of the qualified investment relating to the first qualified film produced by the partnership. In addition, under paragraph (a)(4)(iv) of this section, if a taxpayer's capital at risk that was invested in a qualified film is recovered and reinvested in another qualified film, investment credit with respect to the amount reinvested may be claimed. Accordingly, each partner may also claim an additional investment credit with respect to \$35,000 of the qualified investment relating to the second qualified film.

(5) *Placed in service.* A qualified film is placed in service when it is first exhibited or otherwise utilized before the primary audience for which the qualified film was created. Thus, a qualified film is placed in service when it is first publicly exhibited for entertainment purposes and a qualified educational film is placed in service when it is first exhibited for instructional purposes. Each episode of a television film or tape series is placed in service when it is first exhibited. A qualified film is not placed in service merely because it is completed and therefore in a condition or state of readiness and availability for exhibition, or merely because it is exhibited to prospective exhibitors, sponsors, or purchasers, or is shown in a "sneak preview" before a select audience.

(b) *Applicable percentage for post-1974 qualified films.* For all qualified films placed in service in taxable years beginning after December 31, 1974, the applicable percentage under section 46(c)(2), which is used to determine the qualified investment, is 66 $\frac{2}{3}$ percent unless the taxpayer elects to have the credit computed under the 90 percent rule provided in section 48(k)(3). If the taxpayer determines the credit under section 48(k)(2) (using an applicable percentage of 66 $\frac{2}{3}$ percent), section 47 (relating to recapture of investment credit upon early disposition) will not apply with respect to investment credit claimed on a qualified film.

(c) *Election of 90-percent rule—(1) In general.* If a taxpayer makes an election under section 48(k)(3), the applicable percentage under section 46(c)(2) for each qualified film will be determined on a film-by-film basis. The taxpayer must state an estimated useful life for each qualified film and any investment credit claimed is subject to recapture upon early disposition or upon early expiration of its useful life. For purposes

of this paragraph, a qualified film's useful life will be considered to have expired at the close of the first taxable year in which the aggregate amount allowable as a deduction under section 167 equals or exceeds 90 percent of the basis of the film. If the taxpayer determines the deduction under section 167 using a method which does not require an estimate of the useful life of the film in terms of years (e.g., the income forecast method), the estimated total income or other estimate used in computing the deduction for the taxable year in which a qualified film is placed in service must be used for all subsequent years in determining whether the aggregate amount allowable as a deduction under section 167 equals or exceeds 90 percent of the basis of the film. In determining whether the aggregate amount allowable as a deduction under section 167 equals or exceeds 90 percent of the basis of the film, contingent costs determined after a film is placed in service are not taken into account.

(2) *Time and manner for making the election.* To elect under section 48(k)(3) to use the 90-percent rule in determining investment credit with respect to qualified films placed in service in taxable years beginning after December 31, 1974, the taxpayer shall write in parentheses, "48(k)(3)" after the cost or basis of property upon which the credit is claimed on the Form 3468 filed with the original return for the taxable year for which the 90-percent rule will first apply. The election may not be made on an amended return filed after the time prescribed for filing the original return (including extensions) for that taxable year. Notwithstanding the preceding sentences, an election with respect to taxable years ending before April 5, 1979, will be valid if the taxpayer indicates on an amended return or returns filed with the district director having audit jurisdiction over the last return to which the election relates on or before July 5, 1979, that the taxpayer wishes section 48(k)(3) to apply. A taxpayer that has claimed investment credit for any preceding taxable year with respect to any qualified film placed in service in a taxable year beginning after December 31, 1974, using the applicable percentage determined under section 46(c)(2), may not elect to use section 48(k)(3) unless the consent of the Secretary has been obtained.

(3) *Who may elect.* The election under section 48(k)(3) may be made by any taxpayer that has a depreciable interest in a qualified film. However, where a qualified film is owned by a partnership, electing small business corporation (as

defined in section 1371(b)), estate, or trust, the election must be made separately by each partner, shareholder or beneficiary. The election is not to be made by a partnership or electing small business corporation and is to be made by a trust or estate only if the trust or estate in determining its tax liability would be allowed investment credit on a qualified film subject to the election. The election of any partner, shareholder, beneficiary or trust or estate will be effective regardless of whether any related partner, shareholder, beneficiary, or trust or estate makes the election. The method used by the taxpayer or any related business entity for the first taxable year for which investment credit under section 48(k) (2) or (3) was claimed must be used for all subsequent years. A different method may be used by the taxpayer or any related business entity for subsequent years only if permission is first obtained from the Secretary.

(4) *Related business entity.* Two or more corporations, partnerships, trusts, estates, proprietorships, or other entities are "related business entities" if the conditions described in section 48(k)(3)(D) are met.

(d) *Predominant use test and qualified investment*—(1) *Place of exhibition not relevant.* For qualified films placed in service in taxable years beginning after December 31, 1974, section 48(a)(2) (relating to property used outside the United States) does not apply. Whether a qualified film is ultimately exhibited entirely within the United States, entirely outside the United States, or partially within and partially outside the United States, is not relevant for purposes of determining the investment credit.

(2) *Qualified investment.* In determining the qualified investment under section 46(c)(1), in place of the basis of a qualified film an amount equal to the qualified United States production costs (as defined in section 48(k)(5) and paragraph (e)(1) of this section) with respect to the film must be used.

(e) *Definitions*—(1) *Qualified United States production costs.* For purposes of section 48(k), the term "qualified United States production costs" means with respect to any film—

(i) Direct production costs allocable to the United States, plus

(ii) If 80 percent or more of the direct production costs are allocable to the United States, all other production costs except direct production costs allocable outside the United States.

(2) *Production costs.* The term "production costs", for purposes of section 48(k), includes the following:

(i) A reasonable allocation of general overhead costs, if capitalized,

(ii) The cost of obtaining screen rights and other material being filmed, and of developing the screenplay, if capitalized,

(iii) Residuals (as defined in paragraph (e)(3) of this section) whether or not capitalized,

(iv) Participations (as defined in paragraph (e)(4) of this section) whether or not capitalized, subject to the limitations provided in paragraph (e)(5) of this section, and

(v) All direct production costs described in paragraph (f) of this section. The term "production costs" does not include advertising, marketing, distribution costs, and any cost (other than residuals and participations) that is not capitalized for United States tax purposes. It also does not include any subsequently incurred costs except for the costs described in paragraph (e)(9) of this section.

(3) *Residuals.* The term "residuals", for purposes of section 48(k) and paragraph (e) of this section, means contingent compensation payments (as opposed to payments fixed in amount that will be paid in all events) paid to creative and technical personnel, to their unions (including guilds) or to pension, health, or welfare funds, pursuant to the terms of collective bargaining agreements between a union and a member of the film industry. A payment which is fixed in amount and payable in all events will not be characterized as a contingent compensation payment merely because it may be applied against an obligation to make a contingent compensation payment. The collective bargaining agreements generally cover all films produced over a period of several years. For example, the conditions which fix the amount of residuals payable in any instance may be based upon a percentage of gross receipts of the film or upon the number of times the film has been broadcast in a particular market.

(4) *Participations.* The term "participations" for purposes of section 48(k) and paragraph (e) of this section means contingent compensation payments, paid for the services of actors, production personnel, writers, composers, directors and producers for their services in connection with the production of the film. The terms of participations generally are negotiated on a film-by-film basis. The amount of a participation due in any case generally is based upon the gross income or net income of the film. Participations do not

include any payment which represents a distribution of profits to a person on the basis of an ownership interest.

However, the mere fact that a payment is contingent on the net profits derived from the exhibition of a film does not mean that the payment is based on an ownership interest.

(5) *Limitations.* Notwithstanding any other provision of this paragraph, the term "production costs" does not include participations, paid during the taxable year, with respect to all qualified films placed in service by the taxpayer during a particular taxable year, to the extent that such participations exceed the lesser of:

(i) The sum of 25 percent of each participation paid to each person (excluding that part of any participation payable to one person in excess of \$1,000,000 for one qualified film) for each qualified film placed in service during the same particular taxable year; or

(ii) Twelve and one-half percent of the aggregate United States production costs determined under paragraph (e)(1) of this section (other than residuals described in paragraph (e)(3) of this section and participations described in paragraph (e)(4) of this section) of all qualified films placed in service during the same particular taxable year.

(6) *Rules with respect to the 25-percent limitation.* In applying paragraph (e)(5)(i) of this section in taxable years after qualified films were placed in service, participations paid in all prior years on the films placed in service in the same taxable year are taken into account. Thus, if films X and Y were placed in service in 1975 and participations of \$100 on film X and \$40 on film Y were paid in 1975 and participations of \$20 on film X and \$16 on film Y were paid in 1976, the 25-percent limitation would limit participations includible in production costs with respect to all films placed in service in 1975 to a maximum of \$44 (25 percent of \$176 (\$100 + \$40 + \$20 + \$16)). If paragraph (e)(5)(i) of this section limits total includible participations for all qualified films placed in service during a particular taxable year, the includible participations with respect to each qualified film placed in service in that year will be 25 percent of each participation paid during the taxable year (excluding that part of any participation payable to one person in excess of \$1,000,000) with respect to each of these qualified films. Accordingly, under the example in this subparagraph, if the \$44 amount is less than the limitation computed under paragraph (e)(5)(ii) of this section,

participations taken into account under section 49(k)(5)(B)(vi) in 1976, for films placed in service in 1975, is \$9 (25 percent of (\$20 + \$16)).

(7) *Rules with respect to the 12½-percent limitation.* If paragraph (e)(5)(ii) of this section limits total includible participations for all qualified films placed in service during a particular taxable year, the includible participations with respect to films placed in service in that year will be 12½ percent of the taxpayer's aggregate qualified United States production costs (other than residuals and participations) of those films, reduced by participations includible in production costs in prior years with respect to those films. In such a case, includible participations with respect to each such qualified film shall be determined by apportioning total includible participations pro rata among all qualified films placed in service in the particular taxable year on the basis of total participation paid with respect to each such qualified film, taking into account no more than \$1,000,000 in participations for any one individual with respect to any one film. If participations are based on the income from a group of films, for purposes of applying the 12½-percent limitation and the \$1,000,000 limitation, participations will be allocated among the films in the group on any reasonable basis that is satisfactory to the district director. In determining includible participations under paragraph (e)(5)(ii) of this section in taxable years after a qualified film has been placed in service, costs of preparing prints described in paragraph (f)(1)(ii) of this section are taken into account.

(8) *Examples.* Paragraph (e)(5) of this section may be illustrated by the following examples:

Example (1). (a) X, a corporation using a calendar taxable year, produced two motion picture films entirely within the United States, film L and film M, and placed them both in service in 1975. Corporation X incurred \$5,750,000 in aggregate production costs other than residuals and participations in producing film L and \$565,000 in aggregate production costs other than residuals and participations in producing film M. On December 31, 1975, \$1,250,000 in residuals and \$2,000,000 in participations were paid in connection with film L and \$25,000 in residuals and \$10,000 in participations were paid in connection with film M. Participations paid in connection with film L consisted of \$1,100,000 paid to the starring actor and \$900,000 paid to the director. All participations paid in connection with film M were paid to one actor.

(b) The 25-percent limitation on participations in paragraph (e)(5)(i) of this section would limit participations includible in production costs to a maximum of \$475,000

with respect to film L. This amount consists of \$250,000 (25 percent of \$1,000,000 (\$1,100,000 participation paid to the starring actor—\$100,000 paid in excess of \$1,000,000)) plus \$225,000 (25 percent of the \$900,000 participation paid to the director). The 25-percent limitation would limit participations with respect to film M to \$2,500 (25 percent of the \$10,000). The 25-percent limitation would limit participations includible in production costs with respects to all film placed in service in 1975 to a maximum of \$477,500 (\$475,000 plus \$2,500).

(c) The 12½-percent limitation on participations in paragraph (e)(5)(ii) of this section would limit participations includible in production costs with respect to all films placed in service in 1975 to a maximum of \$789,375 (12½ percent of \$6,315,000 (\$5,750,000 in aggregate production costs of film L other than residuals and participations + \$565,000 in aggregate production costs of film M other than residuals and participations)).

(d) Under paragraph (e)(5) of this section, the lower limit on participations in paragraph (b) of this example applies to limit the participations includible in production costs on December 31, 1975, to \$475,000 for film L and \$2,500 for film M. Production costs to be taken into account in 1975 for film L are \$7,475,000 (\$5,750,000 in aggregate production costs other than residuals and participations plus \$1,250,000 in residuals and \$475,000 for includible participations). Production costs to be taken into account in 1975 for film M are \$592,500 (\$565,000 in aggregate production costs other than residuals and participations plus \$25,000 in residuals and \$2,500 for includible participations). The cumulative unused balance of includible participations, for films placed in service in 1975, available for future years under the 12½-percent limitation, at the end of 1975, is \$311,875 (\$789,375—\$477,500).

Example (2). (a) The facts are the same as in example (1) except that in 1976 an additional \$20,000 in residuals and \$10,000 in participations were paid with respect to film L. In addition, corporation X produced film N entirely within the United States and placed it in service. Corporation X incurred \$750,000 in aggregate production costs other than residuals and participations in producing film N. On December 31, 1976, \$25,000 in residuals and \$25,000 in participations were paid in connection with film N. All participations paid in connection with film L were paid to the director and all participations paid in connection with film N were paid to the starring actor.

(b) The 25-percent limitation on participations in paragraph (e)(5)(i) of this section would limit participations includible in production costs with respect to all films placed in service in 1975 to a maximum of \$480,000 (\$475,000 for includible participations under paragraph (e)(5)(i) of this section in 1975 with respect to film L plus \$2,500 for includible participations under paragraph (e)(5)(i) of this section in 1975 with respect to film M plus \$2,500 (25 percent of the \$10,000 participations paid in 1976 for film L)). It would also limit participations includible in production costs with respect to

all films placed in service in 1976 to a maximum of \$6,250 (25 percent of the \$25,000).

(c) The 12½-percent limitation on participations in paragraph (e)(5)(ii) of this section would limit additional participations includible in production costs with respect to all films placed in service in 1975 (films L and M) to a maximum of \$311,875 (See computation in paragraph (d) of Example (1).) It would also limit production costs with respect to the only film placed in service in 1976 (film N) to a maximum of \$93,750 (12½ percent of \$750,000 in aggregate production costs other than residuals and participations).

(d) Under paragraph (e)(5) of this section, the lower limit on participations in paragraph (b) of this example applies to limit the participations includible in production costs on December 31, 1976, to \$2,500 for film L and \$6,250 for film N. Total production costs to be taken into account by corporation X in 1976 are \$22,500 (\$20,000 in residuals + \$2,500 in participations) for film L and \$781,250 (\$750,000 in aggregate production costs other than residuals and participations + \$25,000 in residuals and \$6,500 in includible participations) for film N. The cumulative unused balance of includible participations, for films placed in service in 1975, available for future years under the 12½-percent limitation, at the end of 1976, is \$309,375 (\$789,375—(\$477,500 + \$2,500)). The balance for film N, placed in service in 1976, is \$87,500 (\$93,750—\$6,250).

Example (3). (a) The facts are the same as in examples (1) and (2) except that in 1977 an additional \$250,000 in residuals and \$700,000 in participations were paid with respect to film N. In addition, corporation X produced film O and P entirely within the United States and placed them in service in 1977. Corporation X incurred \$1,000,000 in aggregate production costs other than residuals and participations in producing film O and \$500,000 in aggregate production costs other than residuals and participations in producing film P. On December 31, 1977, \$200,000 in residuals and \$1,000,000 in participations were paid in connection with film O and \$100,000 in residuals and \$300,000 in participations were paid in connection with film P. Participations paid in connection with films N, O, and P were all paid to the starring actor of each film.

(b) The 25-percent limitation on participations in paragraph (e)(5)(i) of this section would limit participations includible in production costs with respect to all films placed in service in 1976 to a maximum of \$181,250 (\$6,250 in participations included in 1976 with respect to film N plus \$175,000 (25 percent of the \$700,000 participation paid in 1977 for film N)). It would also limit participations includible in production costs with respect to all films placed in service in 1977 to a maximum of \$250,000 (25 percent of the \$1,000,000 participation paid to the starring actor) with respect to film O and \$75,000 (25 percent of the \$300,000 participation paid to the starring actor) with respect to film P.

(c) The 12½ percent limitation on participations in paragraph (e)(5)(ii) of this section would limit additional participations

includible in production costs with respect to all films placed in service in 1976 (film N) to a maximum of \$87,500. (See computation in paragraph (d) of Example (2)). It would also limit participations includible in production costs with respect to all films placed in service in 1977 to a maximum of \$187,500 (12½ percent of \$1,500,000 (\$1,000,000 in aggregate production costs of film O other than residuals and participations plus \$500,000 in aggregate production costs of film P other than residuals and participations)).

(d) Under paragraph (e)(5) of this section, the lower limit on participations in paragraph (c) of this example applies to limit the participations includible in production costs on December 31, 1977, to \$87,500 for all films placed in service in 1976 and to \$187,500 for all films placed in service in 1977. No additional payments of participations with respect to films placed in service in 1976 or 1977 are includible in production costs.

(9) *Subsequently incurred costs.* The only costs incurred after a qualified film has been placed in service which are includible in production costs are the cost of preparing prints placed in service within 12 months after the film (or part) is initially released for public exhibition in any medium, residuals described in paragraph (e)(3) of this section, and participations described in paragraph (e)(4) of this section. Thus, the cost of additions, modifications, or editing of a film for a new medium incurred after the film is placed in service, is not includible in production costs.

(f) *Direct production costs.*—(1) *Definition.* The term "direct production costs", for purposes of section 48(k)(5), includes the following capitalized costs:

(i) Compensation for services performed by actors, production personnel, writers, composers, directors, and producers (not including participations and residents),

(ii) The cost of preparing prints placed in service (as described in § 1.46-3(d)) within 12 months after the qualified film is initially released for public exhibition in any medium (excluding the cost of distributing those prints),

(iii) The cost of equipment and supplies, and related shipping costs,

(iv) The cost of costumes, props, scenery, and all accessories,

(v) Any rental charges other than overhead,

(vi) The cost of film editing,

(vii) Per diem and other living allowances for all personnel involved in the motion picture production, and

(viii) Travel expenses for personnel.

The term does not include any cost described in paragraph (e)(2)(i) through (e)(2)(iv) of this section or any cost which is not includible in the term "production costs".

(2) *Allocation of direct production costs.* For purposes of section 48(k)(5) of the Code and paragraph (e)(1) of this section, direct production costs are characterized as either direct production costs allocable to the United States or direct production costs allocable outside the United States, under the following rules:

(i) Compensation paid for services (including fringe benefits) is allocated to the country in which the services are performed, except that payments to United States persons (within the meaning of section 7701(a)(30) of the Code) for services performed outside the United States are allocated to the United States. For purposes of this subparagraph (2), and expense described in paragraph (f)(2) (iii) or (iv) of this section will be treated as compensation and not subject to the allocation rules described therein, to the extent that the expense is treated by the taxpayer as compensation paid to an employee and as wages to the employee for purposes of withholding under chapter 24 (relating to collection of income tax at source on wages). Payments to an electing small business corporation (within the meaning of section 1371) or to a partnership are considered payments to a United States person only to the extent that the payments are included in the gross income of a United States person other than an electing small business corporation or partnership. Payments to a domestic corporation, other than an electing small business corporation, are not considered payments to a United States person to the extent of the value of services provided by the corporation which are performed by persons who are not United States persons.

(ii) All printing costs (within the meaning of section 48(k)(B)(ii) and paragraph (f)(1)(ii) of this section) are allocated to the country in which the costs are incurred.

(iii) Per diem and other living allowances are allocated to the country in which the expenses are incurred.

(iv) Travel expenses for personnel are apportioned one-half to direct production costs allocable to the country of departure and one-half to direct production costs allocable to the country of arrival.

(v) Amounts for equipment, supplies, and related shipping costs are allocated to the country in which, with respect to the production of the film, the predominant use occurs. In the absence of better evidence as to the actual place of predominant use, allocations may be made in accordance with the shooting days of the film.

(vi) All other items are allocated consistent with the principle set forth in section 48(k)(5)(D)(ii) and paragraph (f)(2)(v) of this section.

(g) *Entitlement to investment credit by taxpayers other than original owner.*—(1) *Purchase or sale of a qualified film.* If a taxpayer purchases an entire qualified film before it is placed in service, the purchaser's qualified United States production costs are equal to the lesser of the total qualified United States production costs of the seller or the fixed purchase price of the film. If a taxpayer purchases a part of a film before it is placed in service, the purchaser's qualified United States production costs are equal to the lesser of (i) the qualified United States production costs of the seller at the time of the sale or at the time of completion if later, reduced by the amount of any prior purchase, or (ii) the fixed purchase price of that part of the film purchased. Notwithstanding the preceding sentences, in determining a purchaser's qualified United States production costs, the purchaser of a qualified film may include subsequently incurred costs (as described in paragraph (e)(9) of this section) which he incurs. If a taxpayer purchases one or more parts of a film, and in the same transaction acquires an interest in the film that does not constitute a part, the fixed purchase price for purposes of this subparagraph (1) is reduced by the amount paid attributable to the interest. If a taxpayer sells a part of a film before the film is placed in service, his qualified United States production costs are reduced by the fixed purchase price of that part of the qualified film sold. For example, assume a producer sells, for \$75, all rights to display a film in Europe. The total qualified United States production costs for the film were \$100. The producer's qualified United States production costs for that part of the film retained are \$25 (\$100 in total qualified United States production costs for the whole film reduced by the \$75 purchase price).

(2) *Purchases before January 20, 1978.* For a qualified film purchased before January 20, 1978,—

(i) The district director may require the purchaser to establish the seller's qualified United States production costs. If the purchaser informs the district director in writing that the purchaser does not know, and after making reasonable efforts cannot establish those costs, then the district director may establish them by making appropriate inquiries of the seller or any other person. (See paragraph (e)(2) of this section which requires that all

production costs other than residuals and participations be capitalized for United States tax purposes by the producer.)

(ii) If the seller's qualified United States production costs cannot be established, the amount of those costs will be presumed to equal the amount of the fixed purchase price: *Provided*, The purchaser can show that the film was produced entirely in the United States. Absent such a showing, the purchaser must establish the seller's qualified United States production costs on the basis of a reasonable estimate.

(3) *Purchases after January 19, 1978.* For a qualified film purchased after January 19, 1978, no credit is allowable unless the purchaser attaches to its income tax return in which the credit is claimed, a statement addressed to the district director, signed by the seller which (i) describes the nature and an amount of each item qualifying as United States production costs, (ii) specifies the nature and purchase price of any part of the film previously sold, and (iii) states that the seller has not previously placed the film in service. If prior to December 20, 1977, a person has entered into a binding contract to purchase a qualified film, the qualified film will be regarded as having been purchased prior to January 20, 1978.

(4) *Credit unavailable to lessees.* The election under section 48 (d) by which a lessor of property may elect to treat a lessee as having acquired the property is not available with respect to a qualified film. To obtain the credit with respect to a film a taxpayer must acquire full rights to exploit a qualified film for its estimated useful life through at least a particular medium in a particular geographical area. Furthermore, the amount with respect to which the credit may be claimed is limited by the amount that the taxpayer has at risk. Under paragraph (a) of this section, a taxpayer who possesses such rights and is at risk is an owner of a part, irrespective of the term used to characterize the taxpayer in any private agreement of contract. Accordingly, a taxpayer who meets these requirements is entitled to the credit without the use of section 48 (d). If a lessee does not meet these requirements, a lessor cannot elect under section 48 (d) to treat the lessee as having acquired the film. For example, where a taxpayer is precluded (by law, regulation or government action) from acquiring a part of a film and thus can only lease the film, the lessor cannot elect under section 48 (d) to treat the lessee as having acquired the film.

(Secs. 38(b) and 7805, Internal Revenue Code of 1954 (76 Stat. 962, 68A Stat. 917; 26 U.S.C. 38(b), 7805))

Jerome Kurtz,
Commissioner of Internal Revenue.
Approved: March 28, 1979.

Donald C. Lubick,
Assistant Secretary of the Treasury.

[T.D. 7809]

[FR Doc. 79-10493 Filed 4-4-79; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 203

Treasury Tax and Loan Regulations Concerning Remittance of Proceeds of Sales of United States Savings Bonds

AGENCY: Fiscal Service, Department of the Treasury.

ACTION: Final Rule.

SUMMARY: Current Treasury regulations allow all Treasury tax and loan depositaries at their volition to credit to their tax and loan accounts the proceeds of their sales of United States Savings Bonds. Treasury tax and loan depositaries participate in the Treasury tax and loan account system under one of two options: The note option or the remittance option. On April 2, 1979, the rules governing the remittance of savings bond sales proceeds will be revised to provide for more timely receipt of such proceeds by the Treasury. The Department has determined that while the payment of proceeds of the sale of savings bonds by credit to tax and loan accounts should be available for note option depositaries, it is no longer a practicable alternative for remittance option tax and loan depositaries.

The purpose of this rulemaking is to amend the Treasury tax and loan regulations (31 CFR Part 203) so as to preclude remittance option tax and loan depositaries from crediting the proceeds of the sale of savings bonds to their tax and loan accounts.

EFFECTIVE DATE: April 2, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John Kilcoyne, Assistant Fiscal Assistant Secretary (Banking), Office of the Secretary, Department of the Treasury, Washington, D.C. 20220, 202-566-2553. Additionally, financial institutions having questions as to operating procedures may direct such questions to the Federal Reserve Bank or Branch serving the geographical area in which the institution is located.

SUPPLEMENTARY INFORMATION: The Bureau of the Public Debt, Department of the Treasury, is issuing new "Rules Governing Remittance of Proceeds of Sales of United States Savings Bonds", effective April 2, 1979, to provide for more timely receipt of such proceeds by the Treasury. Currently, qualified savings bond issuing agents that are also Treasury tax and loan depositaries may remit the proceeds of their sales of savings bonds by credit to their respective Treasury tax and loan accounts.

Tax and loan depositaries participate in the Treasury tax and loan account system under one of two options: The note option and the remittance option. A remittance option depositary is required to forward supporting information about funds credited to its tax and loan accounts so that such information arrives at its Federal Reserve Bank prior to the Bank's designated cut-off time for processing such credits on the first business day after the date of credit. If that information arrives at the Federal Reserve Bank after the designated cut-off time, a late fee is assessed for each day's delay in receipt of such information.

Currently, in addition to remitting savings bonds proceeds by credit to a tax and loan account, an issuing agent, at its volition, may remit those proceeds either by check or by a charge to the reserve account of a member bank of the Federal Reserve System. If a savings bond issuing agent which is also a remittance option tax and loan depositary were to (1) remit its sales proceeds by credit to its tax and loan account and (2) mail the supporting information to the Reserve Bank, and this information arrived late, a late fee would be assessed. Moreover, the agent must support each credit advice with sales records (registration stubs). If these records are transmitted with the credit advice by a method designed to insure timely delivery, the shipping costs will be increased substantially; on the other hand, if the records are shipped separately by a less costly method, the need to reconcile the separate transmittals will create administrative problems with attendant expense. However, if that same issuing agent had chosen one of the other forms of remittance, i.e., (1) either a check or (2) a charge to the reserve account of a member bank of the Federal Reserve System, no late fee would have been assessed.

In view of the fact that such form of payment operates to the detriment of a remittance option depositary which is an issuing agent, the Department has

determined that the remittance of savings bond sales proceeds by credit to the tax and loan account is not longer practicable for those agents. Consequently, by this rulemaking, the Treasury Tax and Loan Regulations (31 CFR Part 203) are being amended to preclude that form of payment. The preexisting authority to effect remittance of savings bond sales proceeds by credit to a tax and loan account, which applied to both the remittance option and the note option tax and loan depositaries, is restated to explicitly limit that authority to note option tax and loan depositaries.

On page 18965 of the *Federal Register* of May 2, 1978 (43 FR 18965) in the preamble to the tax and loan regulations which are currently in effect, the Department stated the following:

Savings Bond Remittance Procedures

31 CFR, Part 203 contemplates that the interest and penalty provisions of the investment program will apply both to tax and loan deposits representing tax receipts and tax and loan deposits representing savings bond sales proceeds. However, as an interim measure, to facilitate implementation of the investment program, remittances of savings bond sales proceeds by credit to tax and loan accounts will initially be functioned as follows:

Note Option depositaries. The amount of credits covering savings bond sales proceeds will be added to notes as of the dates of processing of the credit advices by the Federal Reserve Banks.

Remittance Option—Class 1 depositaries. Penalty provisions will not be applied to savings bond sales proceeds remittances.

Remittance Option—Class 2 depositaries. For purposes of computing the analysis credit, the amount of credits covering savings bond sales proceeds will be added to the balances in the depositaries' tax and loan accounts as of the dates of processing by the Federal Reserve Banks.

About three months after implementation of the investment program, the Treasury will prescribe definitive procedures under which credit advices for savings bond sales proceeds will be handled on the same basis as credit advices for tax deposits. Before the definitive procedures are put into effect, a notice of their effective date will be published in the *Federal Register* and depositaries will be notified through the Federal Reserve Bank of the District.

The following constitutes the notice referred to in the preceding paragraph. As of the opening of business on April 2, 1979, the credit advices of note option tax and loan depositaries which are remitting savings bond sales proceeds by credit to their tax and loan accounts will be handled on the same basis as credit advices for tax deposits. The interim practice of adding the amounts of credits covering savings bond sales

proceeds to the note accounts as of the date of processing of the credit advices by the Federal Reserve Banks is being terminated at that time.

Because each Treasury tax and loan depositary enters into a depositary contract as stated at 31 CFR 203.6, the Treasury is of the view that the amendments involve a matter relating to "contracts" as that term is used in 5 U.S.C. 553(a)(2). In addition, because amounts credited by tax and loan depositaries to their tax and loan accounts are considered public moneys upon such credit, the Treasury is of the view that the amendments involve a matter relating to "public property" within the meaning of 5 U.S.C. 553(a)(2). Further, the Treasury is of the view that because the amendments eliminate the use of procedures that would impose added costs on remittance option tax and loan depositaries and the Treasury, significant benefit will be realized by their immediate adoption. Consequently, it has been determined that the amendments are not subject to the rule making requirements, including notice of proposed rulemaking, which are contained in 5 U.S.C. 553.

On May 24, 1978, a proposed Treasury directive entitled "Criteria and Procedures for the Preparation, Review and Approval of Regulations" was published at 43 FR 22319, in implementation of Executive Order 12044 (March 23, 1978; 43 FR 12661). Although the proposed directive was made effective on May 22, 1978, it was provided that regulations in process of preparation before that date which had been the subject of a public hearing would, in effect, be exempt from the requirements of the directive. The instant publication is an inherent part of a regulatory project which was the subject of a public hearing on January 12, 1978. Nevertheless, the proposed amendments are in substantial compliance with the intent of the Treasury directive.

In consideration of all the foregoing, 31 CFR Part 203 is amended as follows:

* * * * *

1. By revising 31 CFR Part 203.4 to read as follows:

§ 203.4 Sources of deposit.

A tax and loan depositary shall credit to its Treasury tax and loan account payments of such Federal taxes as the Secretary of the Treasury may from time to time by regulation authorize to be paid through Treasury tax and loan accounts. (See also § 203.9(c).)

2. By amending 31 CFR 203.9(c) to add a new subparagraph (3) to read as follows:

§ 203.9 Note Option.

* * * * *

(c) * * *

(3) Also, a tax and loan depositary may credit to its note funds representing:

(i) Payment for United States Savings Bonds issued by the tax and loan depositary, in its issuing agent capacity, and,

(ii) Payments for United States Savings Bonds subscribed for through the tax and loan depositary on behalf of its customers, but which may be issued only by Federal Reserve Banks and the United States Treasury Department.

April 2, 1979.

(Sec. 8, Act of Sept. 24, 1917, Chapter 56, 40 Stat. 291, as amended (31 U.S.C. 771); Sec. 6302(c), Internal Revenue Code of 1954; and Secs. 1, 2, and 3, Pub. L. 95-147, 91 Stat. 1227 (31 U.S.C. 1038))

Paul H. Taylor,
Fiscal Assistant Secretary.

[FR Doc. 79-10439 Filed 4-4-79; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 127

Establishment of Security Zone in New London Harbor, New London, Connecticut

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The amendment of the Coast Guard's Security Zone Regulations establishes a portion of the waters of New London Harbor, New London, Connecticut as a Security Zone. This Security Zone is established due to the launching USS DALLAS (SSN 700) from the Electric Boat Division, General Dynamics, Groton, Connecticut. No person or vessel may enter or remain in a security zone without the permission of the Captain of the Port, New London, Connecticut.

EFFECTIVE DATE: This amendment is effective on April 28, 1979 from 10 a.m. E.S.T. to 12 p.m. E.S.T.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander J. E. Tamalonis, Captain of the Port, U.S.C.G. Station, Fort Trumbull, New London, Connecticut 06320, (203) 442-4471.

SUPPLEMENTARY INFORMATION: Since the establishment of this Security Zone

involves a military function of the United States, this amendment is issued without notice of proposed rulemaking and is effective in less than 30 days from the date of publication.

DRAFTING INFORMATION: The principal persons involved in the drafting of this rule are: Lieutenant Commander J. E. Tamalonis, Project Manager, Captain of the Port, New London, Connecticut; and Lieutenant T. J. Donlon, Project Attorney, Legal Office, Third Coast Guard District, New York, New York.

In consideration of the above, Part 127 of Title 33 of Code of Federal Regulations is amended by adding Section 127.365 to read as follows:

§ 127.365 New London Harbor, New London, Connecticut

The area enclosed by the following boundary is a security zone: a line beginning at 41°20'32" N, 72°06'00" W; thence north to 41°21'03" N, 72°06'00" W; thence east to 41°21'03" N, 72°05'00" W; Thence south to 41°20'32" N, 72°05'00" W; thence to the beginning point.

Authority: (40 Stat. 220, as amended (50 U.S.C. 191), § 1, 63 Stat. 503 (14 U.S.C. 91), § 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: March 20, 1979.

J. E. Tamalonis,
Lieutenant Commander, U.S. Coast Guard, Captain of the Port, New London, Connecticut.

[CGD 3-79-3-R]

[FR Doc. 79-10518 Filed 4-4-79; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

Lower Los Angeles River Channel North of the City of Long Beach, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Coast Guard Safety Zone Regulations established a safety zone consisting of the lower Los Angeles River Channel from the Anaheim Street Bridge to the boat launching ramp entrance at Golden Avenue. It is expected that the zone will remain in effect for approximately 3 months. During this period the zone will be occupied by derrick barges, tugs, workboats, and equipment necessary for construction of flood control sills for the U.S. Army Corps of Engineers. Numerous anchor wires will cross the

river making the entire area extremely hazardous to vessel traffic. Accordingly, the zone will be closed to all vessel traffic not involved in the construction project.

EFFECTIVE DATE: This amendment becomes effective on March 2, 1979 and remains in effect until completion of the construction project in the zone or until June 2, 1979 whichever is earlier.

FOR FURTHER INFORMATION CONTACT: Ens. J. T. Roosen, Vessel Management Officer, USCG Station, 165 N. Pico Avenue, Long Beach, CA 90802, 213-590-2316.

SUPPLEMENTARY INFORMATION: 1. Buoys or other suitable marking devices will mark the boundaries of the safety zone in the river channel. The river channel south and downstream of the Golden Street ramp is not part of the safety zone.

2. As provided in the general safety zone regulations (33 CFR 165.20) no person or vessel may enter a safety zone unless authorized by the Captain of the Port or the District Commander. Also as provided in these general regulations (33 CFR 165.25) any person directly affected by the establishment of a safety zone may request the Coast Guard, through the Captain of the Port, to reconsider its action. These general regulations in 33 CFR 165 apply to the safety zone established for the lower Los Angeles River Channel.

3. 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 public interest. This safety zone re-established an existing one expiring March 1, 1979. Inclement weather has caused delays in construction resulting in numerous anchor wires, underwater cables, derrick barges, workboats, tugs, and other equipment to remain in place presenting a continuing hazard to vessel traffic. There was not sufficient time to allow an opportunity for public comment or to provide for a delayed effective date. Following these administrative procedures would have prevented timely establishment of the safety zone and thus would have thwarted the safety purpose of the zone.

4. In order to provide local notice of the safety zone, a local notice to mariners will be published. Additional notices will be also published and distributed at the Golden Street ramp area.

Drafting Information

The principal persons involved in drafting this rule are: Ens. J. T. Roosen, Vessel Management Officer, COTP LA-LB, CA.

In consideration of the above, part 165 of title 33, Code of Federal Regulations, is amended by adding a new § 165.1106 to read as follows:

§ 165.1106 11th Coast Guard District

(a) The waters of the lower Los Angeles River Channel between the Anaheim Street Bridge and the following line are a safety zone; a straight line that extends from the western tip of the entrance to the Golden Avenue launching ramp on a bearing of 270 degrees T to the western shore of the lower Los Angeles River Channel.

(b) The safety zone becomes effective on March 2, 1979. It remains in effect until completion of the construction project in the zone or until June 2, 1979, whichever is earlier.

(Sec. 101, 104, 86 Stat. 427 (33 U.S.C. 1221, 1224); 49 CFR 1.46(n)(4).)

Dated March 1, 1979.

W. W. White,

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

[CGD 11-79-04]

[FR Doc. 79-10517 Filed 4-4-79; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

Safety Zone—Illinois River, Mile 0 to Mile 187.3

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Coast Guard's Safety Zone Regulations establishes the Illinois River, Mile 0 to Mile 187.3, as a safety zone. This safety zone is established to protect the integrity of flood protection levees during a period of dangerously-high water levels from wakes caused by transiting vessels.

DATES: This amendment is effective at 3 P.M. CST, March 21, 1979 and will remain effective until further notice.

FOR FURTHER INFORMATION CONTACT: LCDR C. G. Hill, USCG, c/o Marine Safety Office, 210 N. 12th St., St. Louis, MO 63101 TEL: 314-425-4657.

SUPPLEMENTARY INFORMATION: This amendment is issued without publication of a notice of proposed rulemaking and is effective in less than 30 days from the date of publication, because public procedures on this amendment are impractical due to the

emergency nature of flooding conditions and potential damage to the levee system.

DRAFTING INFORMATION: The principal persons involved in the drafting of this rule are LT G. W. Abrams, USCG, Project Officer, c/o Marine Safety Office, 210 N. 12th St., St. Louis, MO 63101 TEL: 314-425-4657, and LCDR S. L. Swann, USCG, Project Attorney, c/o Commander, Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103 TEL: 314-425-4614. In consideration of the above, Part 165 of Title 33 of the Code of Federal Regulations is amended by adding 165.204, to read as follows:

§ 165.204 Illinois River, Mile 0 to Mile 187.3.

(a) *Safety Zone:* All the waters of the Illinois River from Mile 0 to Mile 187.3 are a safety zone.

(b) *Special regulations:* No vessel may enter into or proceed within the safety zone described in subsection (a) without the express permission of the Captain of the Port, St. Louis, 210 N. 12th St., St. Louis, MO 63101 TEL: 314-425-4657.

Authority: (86 STAT. 427 (33 U.S.C. 1224); 49 CFR 1.46(n)(4)).

Dated: March 21, 1979.

A. E. TANOS,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, MO.

[CGD 2-79-2-R]

[FR Doc. 79-10519 Filed 4-4-79; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 9

Recordation of Unpatented Mining Claims

AGENCY: National Park Service, Department of the Interior.

ACTION: Emergency final rule.

SUMMARY: By this rulemaking the National Park Service (NPS) amends 36 CFR 9.5 concerning the recordation of unpatented mining claims. The purpose of this amendment is to clarify the relationship between the requirements of section 8 of the Act of September 28, 1976 (16 U.S.C. 1907) and those of section 314 of the Federal Land Policy and Management Act (43 U.S.C. 1744) (FLPMA) as implemented by 43 CFR, Part 3830, Subpart 3833. This clarification is particularly important as it concerns areas of the National Park System established after September 28,

1976 in light of the President's action of December 1, 1978, establishing thirteen new or expanded national monuments in Alaska under NPS jurisdiction. The Department is concurrently amending its regulations at 43 CFR Part 3830, Subpart 3833 to make them consistent with this rulemaking.

Because of the short time remaining in which mining claims in those areas may be recorded, the inquiries to the Department of the Interior on this matter and the serious consequences befalling a claimant who fails to record, it would not be in the public interest to publish these revisions for public comment. They are, therefore, promulgated on an emergency basis as final rules, effective April 5, 1979.

EFFECTIVE DATE: April 5, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. John Cook, Alaska Area Office, NPS, 540 West 5th Ave., Room 202, Anchorage, Alaska 99501 (907) 276-8166.

Mr. Roger Contor, National Park Service, U.S. Department of the Interior, 18th and C Streets N.W., Washington, D.C. 20240—(202) 343-5193.

SUPPLEMENTAL INFORMATION: The "Mining in the Parks" Act (16 U.S.C. 1901 *et seq.*) (MPA) imposed upon all owners of unpatented mining claims in any unit of the National Park System an obligation to record their claims within one year of the effective date of that Act, September 28, 1976. The Notice implementing this requirement was published on October 20, 1976 (41 FR 46357) and the regulations authorized by section 2 of the MPA (16 U.S.C. 1902) also contained a section outlining the obligation, 36 CFR 9.5. The period for recording such claims expired September 28, 1977.

On October 21, 1976, the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*) (FLPMA) was enacted. Section 314 of FLPMA (43 U.S.C. 1744) imposes on owners of unpatented mining claims an obligation to record their claims with the Bureau of Land Management (BLM). Claimants are required to record their claims:

1. Within a three-year period if the claims were located prior to the date of enactment; or
2. Within 90 days of location if located after that date. Additionally, section 314 imposes an obligation to file annually either evidence of assessment work or a notice of intention to hold the claim.

The Department has concluded that the recording provision of the MPA controls the recordation of claims in the National Parks insofar as units in existence on September 28, 1976 are concerned. However, because the MPA

had no provision regarding annual filings and because FLPMA by its terms applies to all unpatented mining claims, it was concluded that claimants in National Park System units were obliged to comply with the requirements of section 314 regarding the filing of either evidence of assessment work or a notice of intention to hold a claim. The regulations at 36 CFR 9.5 and 43 CFR Part 3830, Subpart 3833 reflect this interpretation.

Neither regulation, however, specifically deals with the matter of how a claimant complies with the requirements where his claim is in a National Park Service area established after September 28, 1976. This issue is made particularly pertinent by the President's creation of thirteen new or expanded national monuments under NPS jurisdiction. In the opinion of the Solicitor's Office, the MPA recordation requirement was intended to have a one-time application only to those areas which were established prior to September 28, 1976. Thus, with the passing of the one-year period provided, section 8 of the MPA has no further application. Accordingly, claimants in new areas of the National Park System and in areas added to existing units continue to be governed by section 314 of FLPMA, as do claimants in national monuments administered by either the Fish and Wildlife Service or the Forest Service.

The amendment accomplished by this rulemaking is a complete revision of the existing § 9.5. As amended:

1. Subsection (a) recognizes that the one-year recording time provided by the MPA has passed and the claims subject to that requirement which have not been recorded are void.

2. Subsection (b) provides that in units established after September 28, 1976 or in an area added to a unit after that date a claim must be recorded under FLPMA with BLM.

3. Section (c) clarifies that all owners of unpatented claims must comply with the requirement of FLPMA to file annually either a notice of intention to hold a claim or evidence of assessment work.

4. Subsection (d) describes the effect of failure to comply with the applicable requirements.

Concurrently with this amendment, the Department is amending 43 CFR Part 3830, Subpart 3833 to reflect these changes and to provide consistency between the two sets of regulations. This will be accomplished as follows:

1. Section 3833.1-1 is amended to parallel 36 CFR 9.5(a) providing that claims in units of the National Park

System existing on September 28, 1976, not properly recorded prior to September 28, 1977, are void.

2. Section 3833.1-2(a) and (b) are amended to reflect the differentiation between National Park System units established before September 28, 1976 and those established after, and to provide that in the latter case the claimant will record with the BLM, which will provide copies of pertinent records to the appropriate Superintendent.

3. The several amendments to § 3833.2-1 serve two purposes. They provide clearly the method by which the owner of a claim in a unit of the National Park System is to comply with the requirement of section 314 of FLPMA that evidence of assessment work or a notice of intention to hold a claim be filed annually. Because of the assessment work provisions of 36 CFR 9.7, the claimant will in most cases file a notice of intention to hold the claim. Where the claimant has received a permit to perform assessment work, evidence that the work has been completed may be filed in lieu of the notice of intention. The amendments also clarify that, while claims in areas under NPS administration are subject to special regulations, claimants in national monuments administered by the Fish and Wildlife Service or the Forest Service are treated, under this section, like those claimants on lands administered by the BLM.

Claimants in Alaska affected by the Presidential Proclamations of December 1, 1978, have expressed concern to the NPS over the proper recording procedure. Faced with the loss of their claims for failure to record, the mining community has asked for an immediate clarification of its obligations under MPA and FLPMA. Additionally, there is now a relatively short time in which to comply with the FLPMA requirements (claims must be recorded before October 22, 1979) and any confusion in the applicable requirements might cause delay which is not affordable. For these reasons, the Department has concluded that publication of these rules for public comment with the concomitant delay in their effective date is not in the public interest. This rule, therefore, is promulgated on an emergency basis and is effective upon publication.

Authority: Act of September 28, 1976 (16 U.S.C. 1901 *et seq.*), Act of August 25, 1916 (16 U.S.C. 1 and 2-4) and 245 DM (42 FR 12931), as amended.

Drafting Information

The following persons participated in the writing of this regulation: David

Jones, National Park Service, San Francisco, California; and John G. DeKoster, Office of the Solicitor, Washington, D.C.

Impact Analysis

It has been determined that this is not a major federal action which will significantly affect the quality of the human environment. Accordingly, no environmental impact statement has been prepared. An environmental impact statement covering proposed federal actions in Alaska was prepared in 1974 and supplemented on November 28, 1978, by an analysis of alternative administrative actions.

It has also been determined pursuant to 43 CFR, Part 14 that this is not a significant rule requiring a regulatory analysis. The basis for this determination is the amendment's purpose being limited solely to a clarification of existing regulatory requirements. This revision imposes no new or additional recordation or filing requirements.

Dated: March 12, 1979.

William J. Whalen,
Director, National Park Service.

In consideration of the foregoing, Part 9 of Title 36, Code of Federal Regulations, § 9.5 is amended to read as follows:

§ 9.5. Recordation.

(a) Any unpatented mining claim in a unit in existence on September 28, 1976, which was not recorded on or before September 28, 1977, in accordance with the Notice of October 20, 1976 (41 FR 46357) or 36 CFR 9.5 as promulgated on January 26, 1977, is, pursuant to section 8 of the Act, conclusively presumed to be abandoned and shall be void.

(b) Any unpatented mining claim in a unit established after September 28, 1976, or in an area added to an existing unit after that date, shall be recorded with the Bureau of Land Management in accordance with the provisions of section 314 of the Federal Land Policy and Management Act (FLPMA), 90 Stat. 2769, 43 U.S.C. 1744, and regulations implementing it (43 CFR 3833.1).

(c) A claimant of an unpatented mining claim in any unit must file annually with the Bureau of Land Management a notice of intention to hold a claim or evidence of annual assessment work required by section 314 of FLPMA, as implemented by 43 CFR 3833.2. A copy of each such filing will be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

(d) The effect of failure to file the instruments required by subsections (b) and (c) of this section shall be controlled by 43 CFR 3833.4. Recordation or filing under this section shall not render any claim valid which would not otherwise be valid under applicable law and shall not give the claimant any rights to which he is not otherwise entitled by law.

[FR Doc. 79-10515 Filed 4-4-79; 8:45 am]

BILLING CODE 4310-79-M

DEPARTMENT OF AGRICULTURE

41 CFR Ch. 4

Procurement

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This rule amends the Agriculture Procurement Regulations by requiring Departmental agencies to report annually any actions taken and progress made in maximizing the use of recovered materials in items procured to comply with the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The intended effect of this amendment is to provide the Office of Federal Procurement Policy (OFPP) with data which can be reported to Congress to help in assessing the impact of the policy.

EFFECTIVE DATE: April 10, 1978.

FOR FURTHER INFORMATION CONTACT: Douglas I. Metzger, Procurement Division, Office of Operations and Finance, U.S. Department of Agriculture, Washington, D.C. 20250, Phone: (202) 447-7527.

SUPPLEMENTARY INFORMATION: This amendment involves matters relating to agency management and contracting and, therefore, is not subject by law to the notice and public rulemaking procedures under 5 U.S.C. 553. This amendment is subject to the Secretary's Statement of Policy (36 FR 13804) of July 20, 1971. As this amendment implements a mandatory OFPP reporting requirement, no useful purpose would be served by public participation. Therefore, in accordance with the Secretary's Policy Statement, it is found for good cause that notice and other public rulemaking procedures are impracticable and unnecessary.

PART 4-1—GENERAL

1. The Table of Contents of Part 4-1 is amended by adding the following:

Subpart 4-1.25—Recovered Materials

§ 4-1.2550 Annual report.

2. Subpart 4-1.25 is added as follows:

§ 4-1.2550 Annual report.

The Office of Federal Procurement Policy (OFPP), pursuant to their policy letter 77-1 dated February 2, 1977, requires an annual report on actions taken and progress made by agencies in maximizing the use of recovered materials in items procured. Reports must be prepared by each agency and submitted to the Office of Operations and Finance (Procurement Division) by March 15 of each year for the preceding calendar year. Reports should substantiate any efforts made to encourage use of recovered materials, i.e., specifications revisions, use of specifications which require recovered materials, number of contracts awarded which contain the Certification of Recovered Materials clause in § 1-1.2504 of this title, or any other efforts which would indicate progress made in complying with the policy. There is no specific format prescribed for this report.

Authority: This amendment is made under the provisions of 5 U.S.C. 301, 40 U.S.C. 486(c).

Done at Washington, D.C., this 28th day of March 1979.

E. Alvarez,
Acting Director, Office of Operations and Finance.

[FR Doc. 79-10550 Filed 4-4-79; 8:45 am]

BILLING CODE 3410-98-M

41 CFR Ch. 4**Procurement**

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This rule amends the Agriculture Procurement Regulations by revising the section covering procurements subject to the Anti-Pinkerton Act, to reflect recent court decisions and interpretation by the Comptroller General. This amendment clarifies existing policy by permitting agencies to contract for guard or protective services from firms which also provide general investigative or "detective" services.

EFFECTIVE DATE: Upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Douglas I. Metzger, Procurement Division, Office of Operations and Finance, U.S. Department of Agriculture, Washington, D.C. 20250. Phone: (202) 447-7527.

SUPPLEMENTARY INFORMATION: This amendment involves matters relating to agency management and contracting and, therefore, is not subject by law to the notice and public rule making procedures under 5 USC 553. This amendment is subject to the Secretary's Statement of Policy (36 FR 13804) of July 20, 1971. As this amendment corrects or clarifies existing policy, no useful purpose would be served by public participation. Therefore, in accordance with the Secretary's Policy Statement, it is found for good cause that notice and other public rule making procedures are impracticable and unnecessary.

PART 4-4—SPECIAL TYPES AND METHODS OF PROCUREMENTS

1. The Table of Contents of Part 4-4 is revised by changing the heading to read: § 4-4.5025 Guard or protective services.

2. Revise section 4-4.5025 to read as follows:

§ 4-4.5025 Guard or protective services.

Government agencies are prohibited by law (5 U.S.C. 3108) from using the services of any detective agency. The Comptroller General has interpreted this to apply only to the services of quasi-military armed forces. Agencies may procure guard or protective services, even if the individual guards are armed, and even though the company may also be engaged in the business of providing general investigative or "detective" services.

Authority: This amendment is made under the authority of 5 USC 301 and 40 USC 486(c).

Done at Washington, D.C., this 28th day of March 1979.

E. Alvarez,
Acting Director, Office of Operations and Finance.

[FR Doc. 79-10549 Filed 4-4-79; 8:45 am]

BILLING CODE 3410-98-M

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****43 CFR Part 3830****Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Intention to Hold Mining Claims**

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency final rulemaking.

SUMMARY: This emergency final rulemaking amends subpart 3833 of title 43 to clarify the interrelationship between the requirements of section 8 of

the Act of September 28, 1976, and those of section 314 of the Federal Land Policy and Management Act of 1976. This clarification is particularly important as it relates to areas of the National Park System established after September 28, 1976, in light of the President's action on December 1, 1978, establishing new or expanded national monuments in Alaska under the jurisdiction of the National Park Service. This amendment will make clear that an unpatented mining claim located in one of those areas is to be recorded with the Bureau of Land Management.

DATE: Effective April 5, 1979.

ADDRESS: Any comments or inquiries concerning the emergency final rulemaking should be sent to: Director (720), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Neal Bassett, Alaskan State Office, Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99501, (907) 277-1561, or George Schmidt, (202) 343-7722.

SUPPLEMENTARY INFORMATION: The Act of September 28, 1976, (16 U.S.C. 1901 et seq.) commonly referred to as the Mining in the Parks Act, requires all owners of unpatented mining claims in any unit of the National Park System to record their claims within one year of the effective date of the Act. The Notice implementing this requirement was published on October 20, 1976 (41 FR 46357), and the regulations authorized by section 2 of the Mining in the Parks Act also contained a section imposing this obligation (36 CFR 9.5). The period for recording such claims ended on September 28, 1977.

On October 21, 1976, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) was enacted. Section 314 of that Act required owners of unpatented mining claims to record their claims with the Bureau of Land Management. Claimants are required to record their claims as follows:

1. Within a three-year period if the claim was located on or before October 21, 1976.

2. Within 90 days of location if the claim was located after October 21, 1976.

Additionally, section 314 of the Federal Land Policy and Management Act of 1976, requires claimant to file, annually, either evidence of assessment work or a notice of intention to hold a claim.

The Department of the Interior has concluded that the Mining in the Parks Act controls the recordation of claims in areas of the National Park System only

insofar as units in existence on September 28, 1976, are concerned, however, because the Mining in the Parks Act had no provisions regarding annual filings and because the Federal Land Policy and Management Act by its terms applies to all unpatented mining claims, it was concluded that mining claimants in units of the National Park System are obligated to comply with the requirements of section 314 regarding the filing of either evidence of assessment work or a notice of intention to hold a claim. The regulations at 36 CFR 9.5 and 43 CFR Subpart 3833 reflect this interpretation.

Neither regulations, however, specifically deals with the matter of how a claimant complies with the recordation requirement where a claim is located in an area of the National Park System established or enlarged after September 26, 1976. This issue is made particularly pertinent by the President's creation of 13 new or expanded national monuments under the jurisdiction of the National Park Service. In the opinion of the Office of the Solicitor, the Mining in the Parks Act recordation requirements were intended to have a one-time application only to those areas which were established prior to September 28, 1976. Thus, with the expiration of the one-year period provided in the Mining in the Parks Act, section 8 of the Act has no further application. Accordingly, claimants in new areas of the National Park System and in areas added to existing units of the System are governed by the provisions of section 314 of the Federal Land Policy and Management Act, as are claimants in national monuments under the administration of either the Fish and Wildlife Service or Forest Service.

In this rulemaking, subpart 3833 of title 43 is being amended to address these matters and to provide consistency between the regulations of the Bureau of Land Management and those of the National Park Service. This is accomplished as follows:

1. Section 3833.1-1 is revised to parallel section 9.5(a) of title 36 to provide that claims in units of the National Park System existing on September 28, 1976, not properly recorded on or before September 28, 1977, are void.

2. Sections 3833.1-2 (a) and (b) are amended to reflect the differentiation between National Park System units established before September 28, 1976, and those established after, and to provide that, in the latter case, the claimant will record with the Bureau of

Land Management. The Bureau of Land Management will provide copies of pertinent records to the appropriate National Park Service Superintendent.

3. The several amendments to § 3833.2-1 serve two purposes. They provide the method by which the owner of a claim in a unit of the National Park System is to comply with the requirement of section 314 of the Federal Land Policy and Management Act for the annual filing of evidence of assessment work or a notice of intention to hold a mining claim. Because of the assessment work provisions of 36 CFR 9.7, the claimant will, in most cases, file a notice of intention to hold the claim. Where the claimant has received a permit to perform assessment work, evidence that the work has been completed will be filed in lieu of the notice of intention. The amendments also make it clear that claimants in national monuments administered by the Fish and Wildlife Service or the Forest Service are treated for recordation purposes like claimants on lands administered by the Bureau of Land Management.

Further, in order to achieve consistency between the regulations relating to the National Park Service and those relating to the Bureau of Land Management, 36 CFR 9.5 will be amended in a separate document to reflect the following:

1. Subsection (a) will recognize that the one-year recording period provided by the Mining in the Parks Act has passed and claims subject to the requirements of that Act which have not been recorded are void.

2. Subsection (b) will provide that claims located in units of the National Park Systems established after September 28, 1976, or in an area added to a unit after that date must be recorded with the Bureau of Land Management.

3. Subsection (c) will make it clear that all owners of unpatented mining claims must comply with the requirement of the Federal Land Policy and Management Act of 1976 to file annually a notice of intention to hold a claim or evidence of assessment work.

4. Subsection (d) will describe the effect of failure to comply with the applicable requirements.

Claimants in Alaska affected by the Presidential Proclamations on December 1, 1978, have expressed concern to the National Park Service over the proper recording procedure. Faced with the loss of their claims for failure to record, the mining community asked for an immediate clarification of the recording requirements under the Mining in the

Parks Act and the Federal Land Policy and Management Act. Additionally, there is now a relatively short time in which to comply with the requirements of the Federal Land Policy and Management Act (claims must be filed before October 23, 1979), and any confusion in the applicable requirements might cause an unaffordable delay. For these reasons, the Department of the Interior has concluded that publication of this rulemaking for public comment with the concomitant delay in its effective date is not in the public interest. This rulemaking is, therefore, promulgated on an emergency basis and is effective upon publication.

The principal authors of this rulemaking are George Schmidt, Division of Mineral Resources, Bureau of Land Management, and Kenneth Lee, Office of the Solicitor, Department of the Interior.

It is hereby determined that the publication of this document is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a significant rulemaking and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. The basis for this determination is that the purpose of the rulemaking is solely as clarification of existing regulatory requirements. This revision imposes no new or additional recordation or filing requirements.

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740, 1744) and section 2319 of the Revised Statutes (30 U.S.C. 22), Subpart 3833, Part 3830, Group 3800, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

Gary J. Wicks,
Acting Assistant Secretary of the Interior.
March 30, 1979.

1. Section 3833.1-1 is revised as follows:

§ 3833.1-1 Manner of recordation—National Park System units established before September 28, 1976.

Any unpatented mining claim, mill site or tunnel site in any National Park System unit in existence on September 28, 1976, which was not recorded on or before September 28, 1977, in accordance with the Notice of October 20, 1976 (41 FR 46357) or 36 CFR 9.5 is,

pursuant to section 8 of the Act of September 28, 1976 (16 U.S.C. 1907), conclusively presumed to be abandoned and shall be void.

2. Section 3833.1-2 is amended by amending subparagraph (a) and by adding a sentence to the end of subparagraph (b) as set forth below.

§ 3833.1-2 Manner of recordation—Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, excluding lands within units of the National Park System established before September 28, 1976, but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section shall be filed. Where the claim so recorded lies within a unit of the National Park System, a copy of the documents filed shall be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

(b) * * * Where the claim so recorded lies within a unit of the National Park System, a copy of the documents filed shall be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

3. Section 3833.2-1 is amended by revising subparagraph (b), and by amending subparagraphs (c) and (d) as set forth below.

§ 3833.2-1 When filing required.

(b)(1) Except as provided in (2) of this subsection, the owner of an unpatented mining claim, mill site or tunnel site located within any unit of the National Park System shall file before October 22, 1979, and on or before December 30 of each calendar year after the year of recording (See 36 CFR § 9.5), a notice of intention to hold the mining claim, mill site or tunnel site. Such notice shall be in the form prescribed by § 3833.2-3 of this title and shall be filed with the proper BLM office. A copy of each such filing shall be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

(2) Where a claimant has received a permit under 36 CFR § (9.5 to do assessment work on a claim in a unit of the National Park System, the claimant may file with the Bureau of Land Management in lieu of the notice required by (1) above, evidence of assessment work in the form prescribed in § 3833.2-2 of this title. A copy of such filing shall be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

(c) The owner of an unpatented mining claim located on Federal lands, excluding lands within a unit of the National Park System, but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, after October 21, 1976, shall, on or before December 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

(d) The owner of a mill or tunnel site located on Federal lands, excluding lands within a unit of the National Park System but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, shall file in the proper BLM office on or before December 30 of each year following the year of recording pursuant to § 3833.1-2 of this title, a notice of intention to hold the mill or tunnel site.

[Circular No. 2444]

[FR Doc. 79-10516 Filed 4-4-79; 8:45 am]

BILLING CODE 4310-84-M

**DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE**

Social and Rehabilitation Service

45 CFR Parts 205, 220, 222, 228

**Nonexpendable Personal Property:
Conditions for Federal Financial
Participation**

AGENCY: Administration for Public Services (APS), Office of Human Development Services (OHDS), Department of Health, Education, and Welfare.

ACTION: Final rule.

SUMMARY: These regulations reorganize, recodify and clarify existing rules on nonexpendable personal property, including conditions for Federal financial participation for acquisition and depreciation and rules for

accounting for and managing this property. For social services programs under titles I, IV-A and B, X, XIV, XVI (AABD) and XX, the regulations remove the \$5,000 limitation on FFP in the full cost of acquisition at the time of purchase of motor vehicles used for direct service delivery or administration.

EFFECTIVE DATE: These regulations will be effective upon April 5, 1979. Although this is a final rule, comments will be accepted and any changes found necessary will be made. Consideration will be given to written comments or suggestions received on or before March 1, 1979. Agencies and organizations are requested to submit their comments in duplicate.

ADDRESS: Address comments to: Commissioner, Administration, for Public Services, Department of Health, Education, and Welfare, P. O. Box 1923, Washington, D.C. 20013. Comments will be available for public inspection beginning approximately two weeks after publication, in room 2225 of the Department's offices at 330 C Street, SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (area code 202-245-9415).

FOR FURTHER INFORMATION CONTACT: Mrs. Johnnie U. Brooks, 202-245-9415.

SUPPLEMENTARY INFORMATION:

Background

45 CFR 205.160 currently contains the rules governing nonexpendable personal property that are applicable to all programs formerly administered by the Social and Rehabilitation Service (SRS).

This regulation recodifies, modifies and replaces 45 CFR 205.160 with respect to social services programs under titles I, IV-A and B, X, XIV, XVI(AABD), and XX of the Social Security Act that are now administered by the Office of Human Development Services. The rules on nonexpendable personal property as they pertain to social services are replaced as follows: in a new section 45 CFR 220.66 for titles IV-A (applicable in Guam, Puerto Rico and the Virgin Islands) and IV-B (applicable in the 50 States, the District of Columbia and the Territories); in a new section 45 CFR 222.92 for titles I, X, XIV, and XVI(AABD) (applicable in Guam, Puerto Rico and the Virgin Islands); and in a new section 45 CFR 228.93 for title XX (applicable in the 50 States and the District of Columbia).

45 CFR 205.160(a) currently provides that, if a State agency acquires nonexpendable personal property of \$5,000 or more for its own use (or, where the State retains title, for the use of a provider under a cost reimbursement

contract with the State agency), the cost must be capitalized and depreciated. The cost may not be written off in full in the year of acquisition. This requirement in the current regulation has proved to be a serious barrier to flexible administration of the social services program. Three years' experience with title XX has demonstrated that transportation for recipients is one of the most useful services that State or local social services agencies can provide, and that this requirement is a serious barrier to the provision of transportation services.

Regulation Change

This rule modifies present requirements by making the following additional changes:

1. Creates new sections on nonexpendable personal property (45 CFR 220.66, 222.92, and 222.93) for social services under titles I, IV-A and B, X, XIV, XVI(AABD), and XX; and removes the social services titles from the old Social and Rehabilitation Service's regulation on nonexpendable personal property (45 CFR 205.160).

2. Removes the \$5,000 limitation in the full cost of acquisition of motor vehicles to be used either for service delivery by the State or local social service agency or by a provider of services, or for administration of the social services program by the State or local services agency. There would be no change in the requirement that the State retain title for vehicles used by providers.

3. Conforms the requirements on nonexpendable personal property to the new provisions of 45 CFR Part 74 published on August 2, 1978 (43 FR 34076). There were several inconsistencies between § 205.160 and the new Part 74, pertaining to capitalization of assets. We have not carried those inconsistencies forward in this draft. As indicated in § 228.90, the provisions of 45 CFR Part 74 govern.

Waiver of Proposed Rulemaking

Because the only substantive change in these regulations, the removal of the \$5,000 limitation on FFP in the full acquisition cost at the time of purchase of motor vehicles used for social services under the relevant programs, was made at the request and for the benefit of State agencies, and will benefit the recipients under these programs, we believe that proposed rulemaking is unnecessary and contrary to the public interest. The regulations are effective April 5, 1979. Therefore, the Secretary amends 45 CFR Chapter II as set forth below.

PART 228—SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES: TITLE XX OF THE SOCIAL SECURITY ACT

1. 45 CFR Part 228 is amended by adding a new § 228.93, that reads as follows:

§ 228.93 Nonexpendable personal property: Conditions for FFP.

(a) *Basis and Purpose.* This section prescribes rules on availability of FFP for acquisition and depreciation of nonexpendable personal property and on accounting for and managing the property.

(b) *Definitions.* As used in this section, unless the context indicates otherwise:

"Book value" of property traded in means acquisition cost minus the amount depreciated through the date of trade-in. (If the State claimed FFP in the acquisition cost when it acquired the property, the book value is zero.)

"Depreciation expense" means the portion of the acquisition cost assignable to a particular time period of the estimated useful service life of the property.

"Nonexpendable personal property" means tangible property of any kind, except real property, that has a useful life of more than one year and an acquisition cost of \$300 or more per unit.

(c) *Availability of FFP.* Except as provided in paragraph (d) of this section, FFP is available in expenditures for nonexpendable personal property only in the depreciation expense, or an annual use allowance of 6 $\frac{2}{3}$ percent of acquisition cost, applicable to the period for which the property is used in the social services program.

(d) *Exceptions based on acquisition cost and use of property.* (1) Except as specified in paragraphs (d)(2), (d)(3), and (d)(4), the State agency may claim FFP in full in expenditures for acquiring nonexpendable personal property costing less than \$5,000. In the case of property acquired with a trade-in, this \$5,000 limitation is applied to the amount paid for the new property plus the book value of the property traded.

(2) Subject to the rules governing reasonable and necessary rates in § 228.71(a), a State agency may claim FFP in full during the year of purchase, without regard to the \$5,000 limitation in paragraph (d)(1), for motor vehicles to which it has title and that are used for:

(i) Social services delivery program by the State or local agency or by a provider of services under a contract with either of them; or

(ii) Administration of the social services program by the State or local agency.

(3) FFP is available only on the basis of paragraph (c) of this section if the property is acquired by a provider under a cost reimbursement contract with the State agency, unless the State agency has title to the property and the contract provides for the return of the property or its residual value at the completion of the contract.

(4) In the case of property acquired by the State agency for use by organizational units of that agency, or of a parent agency, that are treated as indirect cost centers or pools in a HDS cost allocation plan, FFP is available only in accordance with paragraph (c) of this section or on the basis of indirect costs negotiated by HEW.

(e) *Distribution of costs.*—(1) *Costs of property used in a single activity.* The State agency may charge costs directly to a single activity that has a separate rate of FFP, if the property is being used exclusively for that activity at the time of expenditures for the property.

(2) *Costs of property used in more than one activity.* The State agency must distribute costs by one of the following methods:

(i) Using cost centers or pools and allocation bases that will distribute the costs consistent with use of the property at the time of expenditures. The agency must distribute any credits for property sold or retained for use in non-Federal programs in a manner consistent with the method used to distribute expenditures when the property was acquired (see 45 CFR 74.139 for HEW policies on disposition).

(ii) Using a common distribution factor for all property or for classifications of property (e.g., costs of desks may be distributed by number of staff employed in each activity). For property sold or retained for use in non-Federal programs, the agency must distribute credits to programs or activities by using the same distribution factors that are applied to expenditures for property acquired in the quarter in which credits occurred.

PART 220—SERVICE PROGRAMS FOR FAMILIES AND CHILDREN: TITLE IV PARTS A AND B OF THE SOCIAL SECURITY ACT

2. 45 CFR Part 220 is amended by adding a new § 220.66, that reads as follows:

§ 220.66 Nonexpendable personal property: Conditions for FFP.

Federal financial participation in State claims for nonexpendable personal property is governed by 45 CFR 228.93.

PART 222—SERVICE PROGRAMS FOR AGED, BLIND, OR DISABLED PERSONS: TITLES I, X, XIV, XVI(AABD) OF THE SOCIAL SECURITY ACT

3. 45 CFR Part 222 is amended by adding a new § 222.92, that reads as follows:

§ 222.92 Nonexpendable personal property: Conditions for FFP.

Federal financial participation in State claims for nonexpendable personal property is governed by 45 CFR 228.93.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

4. 45 CFR 205.160 is amended by revising paragraph (a) to read as follows:

§ 205.160 Non-expendable personal property.

(a) *Conditions for Federal financial participation.* This section is applicable to titles IV-A (except for social services), and, with respect to Puerto Rico, Virgin Islands and Guam, the cash assistance programs under titles I, X, XIV, and XVI. Federal financial participation is available in amounts expended by a single State agency for a unit of non-expendable personal property having a useful life of more than one year only to the extent of the depreciation expense (or annual use allowance of 6 2/3 percent of acquisition cost) applicable to the period for which the property was used under a Federal program or activity; except that:

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302))
(Catalog of Federal Domestic Assistance Program No. 13.642, Social Services for Low Income and Public Assistance Recipients; 13.707 Child Welfare Services).

Dated: December 21, 1978.

Arabella Martinez,

Assistant Secretary for Human Development Services.

Approved: January 30, 1979.

Joseph A. Califano, Jr.,
Secretary.

[FR Doc. 79-10527 Filed 4-4-79; 8:45 am]

BILLING CODE 4110-92-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Television Broadcast Stations in Garden City, Randall and Lincoln Center, Kans.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: Action taken herein assigns a noncommercial educational television channel to Garden City and reassigns the noncommercial educational television channel assignment from Lincoln Center, Kansas, to Randall, Kansas. These assignments would enable noncommercial educational television service to be extended to areas in Kansas which do not now receive such service.

EFFECTIVE DATE: May 7, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Garden City, Randall and Lincoln Center, Kansas); Report and Order (Proceeding Terminated).

Adopted: March 22, 1979.

Released: March 27, 1979.

By the Chief, Broadcast Bureau:

1. The Commission herein considers the *Notice of Proposed Rule Making*, adopted September 28, 1978, 43 FR 47221, in the above-captioned proceeding, instituted in response to a petition filed by Garden City Community College ("petitioner"). The petition proposed the assignment of noncommercial educational television Channel *9 to Garden City, Kansas. In order to utilize Channel *9 at Garden City, petitioner also proposed deletion of Channel *9 (unoccupied and unapplied for) at Lincoln Center, Kansas, and its reassignment to Randall, Kansas. Supporting comments were filed by petitioner in which it reiterated its intention to apply for the channel, if assigned to Garden City. No oppositions to the proposal were received.

2. Garden City (pop. 14,790), seat of Finney County (pop. 19,029),¹ is located in southwest Kansas, approximately 305 kilometers (190 miles) west of Wichita,

¹ Population figures are taken from the 1970 U.S. Census.

Kansas. It has two current assignments: Channel 11 (KGLD) and Channel 13 (KUPK-TV). Randall (pop. 195), in Jewell County (pop. 8,099), is located in north-central Kansas, approximately 65 kilometers (40 miles) north of Lincoln Center, Kansas. It presently has no television assignments. Lincoln Center (pop. 1,582), seat of Lincoln County (pop. 4,582), is located in north-central Kansas, approximately 50 kilometers (30 miles) northwest of Salinas, Kansas. Channel *9 (unoccupied and unapplied for) is the only television channel assigned to Lincoln Center.

3. Petitioner claims that the proposed facility in Garden City would provide coverage to approximately 120,700 persons and would make educational programming available to a substantial population lacking such service. It asserts that the reassignment of Channel *9 from Lincoln Center to Randall would be consistent with the Kansas Public Television Board's ("KPTB") network plan for the state which is designed to serve many rural constituencies presently unserved by public television. Petitioner informs us that KPTB proposes to activate a station on the proposed Randall Channel *9 assignment, if assigned.

4. The *Notice* indicated that the proposed assignments meet the Commission's separation requirements and other technical criteria. In view of the above, and the fact that the proposed reserved assignments would enable noncommercial educational television service to be extended to areas now unserved, the Commission believes that the public interest would be served by adopting the amendments proposed.

5. Accordingly, it is ordered, That effective May 7, 1979, the Television Table of Assignments (§ 73.606(b) of the Commission's Rules) IS AMENDED with regard to the following communities:

| City | Channel No. |
|-----------------------------|--------------|
| Garden City, Kansas..... | *9, 11+, 13- |
| Lincoln Center, Kansas..... | |
| Randall, Kansas..... | *9- |

6. Authority for the action taken herein is found in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

7. *It is further ordered*, That this proceeding is terminated.

8. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307.)

Federal Communications Commission.

Wallace E. Johnson,
Chief, Broadcast Bureau.

[BC Docket No. 78-321; RM-3124]

[FR Doc. 79-10430 Filed 4-4-79; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

49 CFR Parts 173, 179

Shippers—General Requirements for Shipments and Packaging; Specifications for Tank Cars; Marking of Tank Car Tanks

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, D.O.T.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to place all of the requirements in Parts 172 and 173 of Title 49 for the marking of tank car tanks with the proper shipping name or the authorized common name. The regulations provide, in most cases, that tank car tanks transporting certain materials be marked in accordance with the requirements of § 172.330. However, the marking requirements in several sections of Parts 173 and 179 are conflicting and place the burden of compliance with the requirements on both the shipper and the tank car builder. This change ensures that the responsibility for these particular marking requirements will be uniform and will rest with the shipper and not the tank car builder.

EFFECTIVE DATE: January 1, 1980.

FOR FURTHER INFORMATION CONTACT:

R. W. Folden, Railroad Safety Specialist (Hazardous Materials), Federal Railroad Administration, 2100 Second Street, S.W., Washington, D.C. 20590, 202-426-2748.

SUPPLEMENTARY INFORMATION: The marking of tank car tanks has been a subject which was addressed a number of years ago. Based on observations during accident situations and on recommendations from fire, safety, and police personnel, the Department determined that markings on tank car tanks with regard to specific commodity descriptions, letter heights, stroke size, letter spacing and background color contrasts were not adequate. Therefore, a notice of proposed rulemaking covering marking of tank car tanks was published in the *Federal Register* under Docket HM-101 (37 FR 7104, April 8, 1972). The provisions of this notice were

eventually incorporated and expanded in another notice of proposed rulemaking published as Docket HM-103 (39 FR 3164, January 24, 1974).

Subsequently, the proposals in this latest notice were adopted as final rules under Docket HM-103/112 (41 FR 15972, April 15, 1976). Under these final rules the marking requirements became standardized, particularly for tank car tanks; however, there were a number of sections in the regulations which continued to require the obsolete tank car tank markings. These sections were inadvertently overlooked when the final rules to Docket HM-103/112 were published. The changes in this document will correct that oversight.

The only sections in Part 173 which require the marking of tank car tanks with the name of the material being shipped and have no cross reference to § 172.330 are Sections 173.183(a)(2) and 173.336(a)(4). Therefore, these sections are being amended by deleting the sentences referring to stenciling requirements and substituting language with reference to marking requirements in accordance with § 172.330. In addition, the reference for the requirements for stenciling the name of material being transported on tanks is being deleted from §§ 179.102-2(a)(5), 179.102-8(a)(1), 179.102-9(a)(1), 179.102-10(a)(1), 179.102-12(a)(1), 179.102-14, 179.202-4(a), 179.202-15, and 179.202-18(a)(1). All of the references deleted from Part 179 are presently contained in Part 173.

These amendments are editorial changes to the present regulations. They neither impose new requirements nor relax existing requirements and are not expected to impose any additional costs or burdens to the public, industry or government, or to have any environmental or economic impact.

The primary drafters of this document are R. W. Folden, Office of Safety, Federal Railroad Administration, Joseph T. Horning, Standards Division, Office of Hazardous Materials Regulation, and Evan Braude, Office of Chief Counsel, Research and Special Programs Administration.

In consideration of the foregoing, 49 CFR Parts 173 and 179 are amended as follows:

1. In § 173.183 paragraph (a)(2) is amended by revising the last sentence to read as follows:

§ 173.183 Potassium nitrate mixed (fused) with sodium nitrite.

(a) * * *

(2) * * * Each tank car must be marked "Fused Potassium Nitrate and Sodium Nitrite" in accordance with the

requirements of § 172.330 of this subchapter.

2. In § 173.336 paragraph (a)(4) is revised to read as follows:

§ 173.336 Nitrogen dioxide, liquid; nitrogen peroxide, liquid; and nitrogen tetroxide, liquid.

(a) * * *

(4) Specification 105A500W (§§ 179.100, 179.101 of this subchapter) tank cars. Authorized for nitrogen tetroxide only. Tanks must be lagged with not less than a four-inch thickness of cork. All valves and fittings must be protected by a securely attached cover made of metal not subject to deterioration by the lading, and all valve openings, except the safety valve, must be fitted with screw plugs or caps to prevent leakage in the event of valve failure. Safety valve must be equipped with an approved stainless steel or platinum frangible disc. Each tank car must be marked "NITROGEN TETROXIDE" in accordance with the requirements of § 172.330 of this subchapter. Written procedures covering details of tank car appurtenances, dome fittings and safety devices, and marking, loading, handling, inspection and testing practices, must be filed with and approved by the Bureau of Explosives before any tank car is offered for transportation of nitrogen tetroxide.

3. § 179.102 is amended by deleting paragraph (a)(5) in § 179.102-2; paragraph (a)(1) is revised in §§ 179.102-8, 179.102-9, 179.102-10 and 179.102-12; 179.102-14 is revised to read as follows:

§ 179.102 Special commodity requirements for pressure tanks.

§ 179.102-2 Chlorine.

(a) * * *
(5) Deleted.

§ 179.102-8 Motor fuel anti-knock compound.

(a) * * *

(1) Openings in tank heads to facilitate application of nickel lining are authorized if closed in an approved manner.

§ 179.102-9 Nitrogen tetroxide or Nitrogen tetroxide-nitric oxide mixtures.

(a) * * *

(1) Tanks must be insulated with not less than four inches of corkboard. All valves and fittings must be protected by the securely attached cover made of metal not subject to rapid deterioration by the lading, and all valve openings, except the safety relief valves, must be

fitted with screw plugs or caps to prevent leakage in the event of valve failure. Safety relief valve must be equipped with an approved stainless steel or platinum frangible disc. Written procedures covering details of tank car appurtenances, manway fittings and safety relief devices, and marking, loading, handling, inspection and testing practices, must be filed with and approved by the Bureau of Explosives before any tank car is offered for transportation of these commodities.

§ 179.102-10 Hydrocyanic acid.

(a) * * *

(1) Each tank car must be registered and the jacket stenciled "DOT-105A300W" and be equipped with the safety relief valves required by that specification. Tanks must be insulated with not less than four inches of corkboard. Written procedures covering details of tank car appurtenances, manway fittings and safety relief devices, and marking, loading, handling, inspection and testing practices must be filed with and approved by the Bureau of Explosives before any tank car is offered for transportation of hydrocyanic acid.

§ 179.102-12 Ethylene oxide.

(a) * * *

(1) The tank must be constructed in accordance with DOT-105A ***W specification, and its jacket stenciled "DOT-105A100W."

§ 179.102-14 Acrolein inhibited.

Each tank car used to transport acrolein, inhibited, must be a Specification DOT-105A300W or higher rated tank, registered and the jacket stenciled "DOT-105A200W" and be equipped with the safety relief valve required by that specification.

4. § 179.202 is amended by deleting the last sentence in § 179.202-4; § 179.202-15 and paragraph (a)(1) in § 179.202-18 are revised to read as follows:

§ 179.202 Special commodity requirements for non-pressure tank car tanks.

§ 179.202-15 Formic acid and formic acid solutions.

If a Specification DOT-103EW tank car tank is used, it must be fabricated from Type 316 stainless steel.

§ 179.202-18 Ethylene oxide.

(a) * * *

(1) The tank must be constructed in accordance with the DOT-111A100W4 specification.

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53.

NOTE.—The Materials Transportation Bureau has determined that this amendment will not result in a major economic impact under the terms of Executive Order 12044 and DOT implementing procedures (43 FR 9583). A regulatory evaluation is available in the public docket.

Issued in Washington, D.C. on March 27, 1979.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 79-10105 Filed 4-4-79; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 573

Defect and Noncompliance Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Response to petition for reconsideration.

SUMMARY: This notice responds to a petition for reconsideration submitted by the Motor and Equipment Manufacturers Association (MEMA) asking the agency to reconsider portions of its newly amended reporting regulation, Part 573, *Defect and Noncompliance Reports*. This notice responds to the issues raised by the MEMA and amends the regulation in several minor aspects in accordance with the recommendations of that organization.

EFFECTIVE DATE: Since the amendments made in response to the petition for reconsideration are minor clarifications of the regulation and do not make any substantive changes, the agency sees no reason to alter the existing effective date of the regulation. The amendments set forth in this notice and the entire Part 573 regulation are effective April 1, 1979.

FOR FURTHER INFORMATION: Mr. James Murray, Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-2840).

SUPPLEMENTARY INFORMATION: On December 26, 1978, the National Highway Traffic Safety Administration published a final rule on Part 573, *Defect*

and Noncompliance Reports (43 FR 60165). Subsequently, the effective date of Part 573 was extended twice, first to March 1, 1979 (44 FR 5137) then to April 1, 1979 (44 FR 11551), to give the agency time to complete interdepartmental coordination and to permit a considered response to petitions for reconsideration. One petition for reconsideration has been received from the Motor and Equipment Manufacturers Association (MEMA).

The Part 573 reporting regulation requires manufacturers to file reports with the NHTSA pertaining to safety-related defects and noncompliances. These reports enable the agency to monitor manufacturer campaigns for recalling and remedying defective and noncomplying motor vehicles and motor vehicle equipment. Through this monitoring process, the agency can determine whether a manufacturer's efforts to correct a defect or noncompliance are successful or whether further action is necessary on the part of the agency to ensure that a potential safety hazard is removed from the highways. Thus, the reporting regulation is a necessary tool for the agency's enforcement of the National Traffic and Motor Vehicle Safety Act of 1966 (the Act) (15 U.S.C. 1381 *et seq.*). The agency notes, for example, that section 156 of the Act authorizes the agency on its own motion to hold a hearing on the question of whether a manufacturer has reasonably met its recall and remedy obligations.

Prior to the Motor Vehicle and Schoolbus Safety Amendments of 1974 (Pub. L. 93-492), only motor vehicle manufacturers were responsible for conducting notification and recall campaigns. The 1974 amendments altered that situation by requiring equipment manufacturers to shoulder some of the responsibility for defects or noncompliances in their replacement equipment. Accordingly, the Act now requires some equipment manufacturers to make defect or noncompliance determinations and notifications in a manner similar to vehicle manufacturers.

The original Part 573 became effective in October 1971, and applied only to motor vehicle manufacturers in accordance with the then applicable defect determination and notification section of the Act. The 1974 amendments to the Act extending notification and remedy responsibilities to some equipment manufacturers require a corresponding extension of the reporting requirements to those manufacturers. Without this extension, the agency would be unable to carry out

its statutory mandate of ensuring that defects and noncompliances are quickly remedied.

The MEMA objected to the agency's reporting regulation for numerous reasons. Many of its objections raised in its petition for reconsideration restate suggestions voiced by the MEMA in its original comments to the agency's notice of proposed rulemaking. Since the agency declined to adopt many of the MEMA's recommendations, the MEMA has reargued some of its points. MEMA has even reargued several issues that were resolved in a manner essentially favorable to that organization. All of the MEMA's significant comments to the notice of proposed rulemaking were addressed in the preamble to the final rule. To the extent that the MEMA's petition for reconsideration merely restated arguments addressed by the final rule, their petition is being considered repetitious and the agency will not restate in detail the basis for decisions already discussed in that preamble. This notice will respond thoroughly to new or further substantiated issues raised by the MEMA in their petition.

The MEMA first suggested that the NHTSA does not understand the automotive parts business, and therefore the issuance of this regulation has not taken into account the particular problems faced by that industry. Accordingly, the MEMA alleged that the regulation is not practicable or objective and does not meet the need for motor vehicle safety. Further, it suggested that the agency's requirements are not supported by the Act or its legislative history.

The NHTSA has studied the equipment manufacturing business throughout this rulemaking action and during the other rulemaking actions promulgated pursuant to the 1974 Amendments. Further, the agency has a history of cooperation with equipment manufacturers predating the 1974 Amendments. Based on our knowledge of this industry gained from our relationship with it and on the industry's own comments on various parts of the agency's rulemaking, the NHTSA has tailored its rulemaking actions to reflect the capacity of equipment manufacturers to meet their statutory responsibilities. The NHTSA has not required equipment manufacturers to comply with regulations in the same manner as vehicle manufacturers. For example, vehicle manufacturers must give detailed information describing the defective or noncomplying vehicles. Since equipment manufacturers frequently have limited recordkeeping

abilities, they are required only to describe generally the affected equipment. The separate treatment of vehicle and equipment manufacturers recognizes the differing abilities of the two groups. The agency concludes that the tailoring of the regulation to the needs of equipment manufacturers has made it both objective and practicable.

The argument that the regulation does not meet the need for motor vehicle safety is without merit. As stated earlier, this reporting requirement is necessary to enable the agency to monitor adequately the recall and remedy campaigns of vehicle and equipment manufacturers. Only through careful monitoring of campaigns can the NHTSA exercise its statutory authority and responsibility to ensure that the public is being adequately protected from uncorrected defective or noncomplying vehicles and equipment.

The MEMA indicated that it could find nothing in the statutory history of the 1974 Amendments supporting a shift in the recall and notification responsibilities from vehicle manufacturers to equipment manufacturers. Therefore, it suggested that the NHTSA was exceeding its statutory authority by imposing this reporting requirement on equipment manufacturers. This argument can be summarily dismissed. The 1974 Amendments added sections 151, 152, and 153 to the Act (15 U.S.C. 1411-1413) which specifically require replacement equipment manufacturers to be responsible for their defects and noncompliances. Further, the Report of the House Committee on Interstate and Foreign Commerce (H.R. Rept. No. 93-1191) specifically states that replacement equipment manufacturers are to be responsible for their equipment.

MEMA made several comments that suggest a possible confusion of the requirements of Part 573 with separate requirements of the Act. For example, MEMA stated that the agency had underestimated the cost of the regulation. In support of its claim, the MEMA stated that TRW, Inc., has estimated that there are significant costs involved in obtaining names of distributors to whom defective or noncomplying equipment may have been sold several years before a defect or noncompliance determination is made. In a related vein, MEMA also objected to the language of section 573.1 on the ground that it appeared to suggest that the Act authorizes the agency to require equipment manufacturers to maintain lists of the names of all

purchasers or owners of their equipment.

The distinction between the statute's requirements and those of Part 573 was explained at length in the final rule. Nevertheless, the essence of that explanation will be repeated here. Sections 151-154 of the Act require equipment manufacturers to furnish notification regarding equipment that contains a safety-related defect or fails to comply with a Federal motor vehicle safety standard and to remedy the defect or noncompliance. The agency does not believe that maintenance of dealer or first purchaser lists for all items of equipment are necessary to comply with the statutory notification requirements, although some manufacturers may decide that such lists are desirable. If such lists are prepared, their costs result from a manufacturer's perception of its statutory requirements and cannot properly be attributed to Part 573.

Part 573 does not require equipment manufacturers to generate any lists of purchasers or dealers. If those manufacturers are not maintaining lists pursuant to the statutory notification requirements, they will not be required to begin doing so by this regulation. Part 573 merely requires that a list be maintained of the purchasers and dealers which are notified by the manufacturers of the existence of safety-related defects or of noncompliances. Authority to require this limited recordkeeping is provided by section 112(b) of the Act (15 U.S.C. 1401). Thus, the MEMA's suggestion that Part 573 requires significant costly generation of information lacks merit.

The agency believes that the interpretation in the preamble of the final rule of the list maintenance requirement finally resolved that issue. Nevertheless, the agency wishes to emphasize the point at this time to remove any possibility of continued confusion. Accordingly, the agency is amending section 573.1 and section 573.7(c) to incorporate this interpretation. These amendments make no substantive changes in the requirements as interpreted in the final rule.

The MEMA pointed out that the agency has modified the definitions of original and replacement equipment manufacturer through the issuance of Part 579. It suggested that since the rulemaking on Part 579 reserved action on one portion of that regulation until a future time the agency cannot now implement Part 573 without violating the Administrative Procedure Act (APA). The NHTSA disagrees.

The agency proposed both of these regulations several years ago. As a result of careful analysis of the comments to the regulations, the NHTSA decided to restudy a portion of Part 579. MEMA would have us delay a decision on this separate rulemaking pending a determination on the one remaining portion of Part 579. The agency believes that it is not inconsistent to assign responsibility in that particular area of defect noncompliance reporting while deferring decision on general defects responsibility. Since the agency proposed both rulemaking actions for comments in accordance with APA procedures, the NHTSA is unaware of how it could have violated the APA. Moreover, it would appear that the agency's further consideration of Part 579 in light of comments received fully embraces the philosophy of rulemaking by notice and comment. The final resolution of Part 579 will, of course, take into account its impact upon the compliance with all other agency regulations just as any amendment of any existing agency regulation considers its potential impact on all other regulations.

The MEMA once again objected to section 573.3(f) which in certain instances requires both the original equipment and vehicle manufacturers to submit the defect and noncompliance report specified in section 573.5. The agency wishes to emphasize that the dual reporting requirement applies only to initial reports. It does not apply to the quarterly reports specified in section 573.6. Further, the quarterly reports will be submitted in most instances by the vehicle manufacturers since it is that party that typically conducts the recall and remedy campaign.

The NHTSA needs an initial defect and noncompliance report from both manufacturers to discover fully the nature of the defect, its incidence, and the identity of the purchasers of the equipment. Currently, the agency gets a defect report from one vehicle manufacturer and then must go to the equipment manufacturer and request information from it relating to the nature of the defect and the purchasers of defective equipment. No equipment manufacturer has ever been unable to comply with such an agency request. This regulation simply requires original equipment manufacturers, in certain instances, to submit the necessary information routinely rather than wait for a specific request from the NHTSA. This will reduce the time between defect or noncompliance determinations and recall actions. Since the Agency already

gets this information and it is necessary for the recall process, the NHTSA considers this portion of the regulation necessary and not overly burdensome.

The MEMA suggested that the NHTSA define "manufacturer" to include brandname or trademark owners so that the burdens for compliance with this regulation would always be imposed upon them. Further, it suggested a definition of "fabricating manufacturer" be added to the regulation.

The NHTSA considers it unnecessary to define "fabricating manufacturer" in this regulation. That term applies only in the context of imported vehicles and permits the actual manufacturer or the importer of a vehicle to be responsible for compliance with the regulation. Since "importer" is defined in the Act as a manufacturer, the NHTSA considered it necessary to use the term "fabricating" to modify manufacturer to distinguish the fabricator from the importer.

The agency declines to redefine "manufacturer" to include trademark and brandname owners. "Manufacturer" is defined in the Act, and the agency concludes that it is unnecessary to depart from the Act's definition of the term. The existing regulation permits the trademark or brandname owner to be treated as the actual manufacturer for purposes of defect reports. Apparently the MEMA would rather have this option made mandatory. The agency sees no reason why optional compliance should not be retained, thus permitting the actual manufacturer and the brandname or trademark owner to contract for the responsibility of compliance with the regulation, instead of having the government impose the responsibility upon either of them by regulation.

With respect to the brandname and trademark issue, the MEMA indicated that the actual manufacturer's identity should be kept confidential for competitive reasons. If a manufacturer wants to maintain the confidentiality of this type of information, it should request confidentiality in accordance with Part 512, *Confidential Business Information*. That regulation is currently in the proposal stage, and manufacturers submitting information to the agency prior to the final confidentiality regulation are encouraged, but not required, to comply with it. Further elaboration of the confidentiality requirements in this regulation is unnecessary. The NHTSA does note that under the confidentiality regulation information that is determined to be confidential can be released in certain

circumstances when specific statutory tests are met. Accordingly, there may be instances when although the identity of the actual manufacturer is confidential, it must be made public to protect the safety of the public. Any such decision would be very carefully weighed before it was made.

The MEMA suggested that the words "if available" be inserted in section 573.5(c)(2)(iii) to indicate that the date of manufacture of equipment is supplied only if available. The agency agrees and amends the regulation accordingly.

The MEMA objected to section 573.5(c)(9) because they think that it is unnecessarily burdensome to submit notices and other information to the NHTSA within 5 days after they are initially sent to manufacturers, distributors, dealers, or purchasers. The MEMA suggested that this requirement would result in reducing the number of communications between manufacturers and dealers and in limiting the number of voluntary recalls. The agency disagrees with this argument. A provision similar to this has been in effect for vehicle manufacturers since the original Part 573 was implemented in 1971. No evidence is known to this agency that indicates that the number of communications between manufacturers and dealers or the number of voluntary recalls has been affected by this requirement.

The 5-day requirement for the submission of dealer notices and bulletins ensures that the information is received by the agency in a timely fashion. A manufacturer only submits these notices and other materials after a defect or noncompliance determination has been made. The agency must know the type of information that any manufacturer is making available to its dealers with respect to the defect or noncompliance. The agency formerly required these notices to be sent to the NHTSA at the same time as they were sent to the dealers and others. The amended rule relaxes the original requirement somewhat to permit notices and bulletins to be sent to the agency within 5 days of that date. The agency determined that this slight relaxation gives a manufacturer more time to comply with the requirement without sacrificing the need for the agency to have the information. However, the agency cannot further delay its receipt of this information.

In consideration of the foregoing, the final rule on Part 573, *Defect and Noncompliance Reports*, of Volume 49 of the Code of Federal Regulations is amended as set forth below.

§ 573.1 [Amended]

1. Section 573.1 is amended by the addition of the word "notified" after the word "owners".

§ 573.5 [Amended]

2. Section 573.5(c)(2)(iii) is amended to read as follows:

(iii) In the case of items of motor vehicle equipment, the identification shall be by the generic name of the component (tires, child seating systems, axles, etc.), part number, size and function if applicable, the inclusive dates (month and year) of manufacture if available and any other information necessary to describe the items.

§ 573.7 [Amended]

3. Section 573.7(c) is amended to read as follows:

(c) For each item of equipment involved in a defect or noncompliance notification campaign initiated after the effective date of this part, each manufacturer of motor vehicle equipment other than tires shall maintain, in a form suitable for inspection, such as computer information storage devices or card files, a list of the names and addresses of each distributor and dealer of such manufacturer, each motor vehicle or motor vehicle equipment manufacturer and most recent purchaser known to the manufacturer to whom a potentially defective or noncomplying item of equipment has been sold and to whom notification is sent, the number of such items sold to each, and the date of shipment. The list shall show as far as is practicable the number of items remedied or returned to the manufacturer and the dates of such remedy or return. Each list shall be retained, beginning with the date on which the defect report required by § 573.5 is initially submitted to the NHTSA for 5 years.

The principal author of this notice is Roger Tilton of the Office of the Chief Counsel.

(Secs. 108, 112, 119, Pub. L. 89-563, 80 Stat. 718) (15 U.S.C. 1397, 1401, 1407); secs. 102, 103, 104, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1397, 1401, 1408, 1411-1420); delegation of authority at 49 CFR 1.50.)

Issued on March 26, 1979.

Joan Claybrook,
Administrator.

[Docket No. 74-7; Notice 5]

[FR Doc. 79-10221 Filed 3-30-79; 8:45 am]

Billing Code 4910-59-M

INTERSTATE COMMERCE COMMISSION**49 CFR Part 1033****Chicago, Milwaukee, St. Paul & Pacific Railroad Co. Authorized To Operate Over Tracks of Chicago & North Western Transportation Co.**

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order Amendment No. 1 to Service Order No. 1341.

SUMMARY: The Chicago and North Western Transportation Company's line between Lake Crystal, Minnesota, and Winnebago, Minnesota, is inoperable because of track conditions and has been placed under embargo. Several shippers located at Winnebago are urgently in need of rail service to ship their products. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company has agreed to operate over tracks of the Chicago and North Western Transportation Company in Winnebago in order to serve those shippers. Service Order No. 1341 authorizes operation by the Chicago, Milwaukee, St. Paul and Pacific Railroad over tracks of the Chicago and North Western at Winnebago, Minnesota. Amendment No. 1 extends this order until modified or vacated by order of this Commission.

DATES: Effective 11:59 p.m., March 31, 1979. Expires when modified or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

Decided March 28, 1979.

Upon further consideration of Service Order No. 1341 (43 FR 45587), and good cause appearing therefor:

It is ordered, That § 1033.1341 Chicago, Milwaukee, St. Paul and Pacific Railroad Company Authorized to Operate over Tracks of Chicago and North Western Transportation Company. Service Order No. 1341 is amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., March 31, 1979.

(49 U.S.C. (10304-10305 and 11121-11126).)

A copy of 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. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. Homme, Jr.,
Secretary.

[Service Order No. 1341, Amdt. No. 1]

[FR Doc. 79-10432 Filed 4-4-79; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033**Illinois Terminal Railroad Co. Authorized To Operate Over Tracks of Illinois Central Gulf Railroad Co.**

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order Amendment No. 1 to Service Order No. 1342.

SUMMARY: The Illinois Terminal Railroad Company (ITC) operates between Peoria, Illinois, and East St. Louis, Illinois, over lines of the Illinois Central Gulf (ICG) between Lincoln, Illinois, and Springfield, Illinois, via Mt. Pulaski, Illinois, and over the ICG between Springfield and Mont, Illinois. Certain of these lines or of the ITC lines connecting with them are unserviceable because of track conditions. Service Order No. 1342 authorizes the ITC to operate over the ICG between Kenney and Mt. Pulaski, Illinois, and over the ICG between Springfield and Wood River, Illinois, via Carlinville, Illinois. This restructuring of the ITC will provide it with a through route between Peoria and St. Louis via ITC tracks between Peoria and Kenney—ICG tracks between Kenney and Springfield—ITC tracks at Springfield—ICG tracks between Springfield and Wood River via Carlinville, thence ITC tracks between Wood River and East St. Louis in place of its present route via ICG tracks between Lincoln and Springfield and between Springfield and Mont, Illinois, via Litchfield, Illinois. The order is printed in full in the Federal Register Volume 43 at page 46850. Amendment No. 1 extends the order until modified or vacated by order of this Commission.

DATES: Effective 11:59 p.m., March 31, 1979. Expires when modified or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT:

J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

Decided March 28, 1979.

Upon further consideration of Service Order No. 1342 (43 FR 46850), and good cause appearing therefor:

It is ordered, That, § 1033.1342 Illinois Terminal Railroad Company Authorized to Operate Over Tracks of Illinois Central Gulf Railroad Company. Service Order No. 1342 is amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., March 31, 1979.

(49 U.S.C. (10304-10305 and 11121-11126).)

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. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. Homme, Jr.,
Secretary.

[Service Order No. 1342, Amdt. No. 1]

[FR Doc. 79-10431 Filed 4-4-79; 8:45 am]

BILLING CODE 7035-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

Burlington Northern, Inc., Authorized To Operate Over Tracks of Union Pacific Railroad Co.

March 29, 1979.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order Service Order No. 1370.

SUMMARY: The State of Washington is constructing a highway overpass near Zillah, Washington. Burlington Northern Inc. (BN), cannot operate over a portion of its tracks during the period of construction. Service Order No. 1370 authorizes BN to operate over Union Pacific tracks in the area during the period of construction.

DATES: Effective 12:01 a.m., April 1, 1979. Expires when modified or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The lines of Burlington Northern Inc. (BN) and Union Pacific Railroad Company (UP) intersect a major highway near Zillah, Washington. To improve public safety and reduce congestion, the State of Washington is constructing a highway overpass over the line of the BN. The railroads have agreed to joint use of the UP tracks at this location. Rerouting of BN trains over these tracks of the UP will eliminate the hazards inherent in the operation of BN trains over its present intersection with this highway without loss or reduction of service to any shipper.

It is the opinion of the Commission that operation by the BN over these tracks of the UP is necessary in the interest of the public. Notice and public procedure are impracticable and contrary to the public interest, and good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1370 Burlington Northern, Inc., authorized to operate over tracks of Union Pacific Railroad Company.

(a) Burlington Northern Inc. (BN) is authorized to operate over tracks of Union Pacific Railroad Company (UP) between UP milepost 77 + 2,934.98 feet and UP milepost 78 + 595.03 feet near Zillah, Washington, a distance of approximately 2,840.05 feet.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Rates applicable.* Inasmuch as this operation by the BN over tracks of the UP is deemed to be due to carrier's disability, the rates applicable to traffic moved by the BN over the tracks of the UP shall be the rates which were applicable on the shipments at the time of shipment as originally routed.

(d) *Effective date.* This order shall become effective at 12:01 a.m., April 1, 1979.

(e) *Expiration.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

(49 U.S.C. (10304-10305 and 11121-11126).)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member Joel E. Burns not participating.

H. G. Homme, Jr.,
Secretary.

[Service Order No. 1370]

[FR Doc. 79-10433 Filed 4-4-79; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

Car Service; Union Pacific Railroad Company Authorized To Operate Over Tracks of Southern Pacific Transportation Company

Decided: March 29, 1979.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order. Service Order No. 1371.

SUMMARY: Union Pacific Railroad Company operates its unit-trains from its San Pedro Branch to facilities in the Long Beach, California, area through its Mead Yard facility and then over a portion of Southern Pacifics Long Beach Branch. Service Order No. 1371 authorizes UP to operate over SP track connection near Long Beach in order to move its unit-trains into Long Beach without routing through Mead Yard.

DATES: Effective 11:59 p.m., March 30, 1979. Expires when modified or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION:

Union Pacific Railroad Company (UP) operates unit-trains from its San Pedro

Branch to its facilities in the Long Beach, California, area. These trains are routed through its Mead Yard and then over a portion of Southern Pacific Transportation Company's (SP) Long Beach Branch. This routing is circuitous and inefficient. Movement of the UP trains over its present route causes train delay and increases congestion in the UP's Mead Yard facility.

The UP and SP have constructed a connecting track near Long Beach, California, to facilitate the movement of trains to the Long Beach area. UP has filed an application with the Commission for permanent authority to operate over these tracks. SP has agreed to use by UP of this connecting track near Long Beach. Use of this connecting track will mean faster deliveries of shipments and will allow unit-train movements without routing the trains through Mead Yard.

It is the opinion of the Commission that an emergency exists requiring operation of UP trains over these tracks of the SP in the interest of the public; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1371 Union Pacific Railroad Company authorized to operate over tracks of Southern Pacific Transportation Company.

(a) The Union Pacific Railroad Company (UP) is authorized to operate unit-trains over tracks of Southern Pacific Transportation Company (SP) between SP milepost 502.32 and SP milepost 502.70 on Long Beach Branch near Long Beach, California, a distance of approximately 2,025 feet.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Rates applicable.* Inasmuch as this operations by the UP over the tracks of the SP is deemed to be due to carrier's disability, the rates applicable to traffic moved by the UP over tracks of the SP shall be the rates which were applicable on the shipments at the time of shipment as originally routed.

(d) Nothing in this order shall be deemed to prejudice the decision of the Commission in the application of the UP seeking permanent authority to operate over these tracks of the SP.

(e) *Effective date.* This order shall become effective at 11:59 p.m., March 30, 1979.

(f) *Expiration.* The provisions of this order shall remain in effect until

modified or vacated by order of this Commission.

(49 U.S.C. (10304-10305 and 11121-11126).)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Member Joel E. Burns not participating.

H. G. Homme, Jr.
Secretary

[Service Order No. 1371]

FR Doc. 79-10435 Filed 4-4-79; 8:45 am]

BILLING CODE 7035-01-M

49 CFR 1033

Car Service; Substitution of Trailers for Boxcars

March 29, 1979.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order. Service Order No. 1369.

SUMMARY: The Atchison, Topeka and Santa Fe Railway Company has a movement of copper articles from Amarillo, Texas, to four destinations on ConRail. Service Order No. 1369 authorizes the ATSF to substitute a maximum of four trailers for each boxcar ordered for these shipments.

DATES: Effective 11:59 p.m., March 30, 1979. Expires when modified or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, Chief, Utilization and Distribution, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION:

An acute shortage of boxcars for transporting shipments of copper coiled rod and other copper articles exists on The Atchison, Topeka and Santa Fe Railway Company (ATSF) at Amarillo, Texas. The ATSF has an available supply of certain trailers that may be substituted for this traffic at the ratio of four trailers for each boxcar, and use of these trailers for the transportation of copper articles is precluded by certain tariff provisions, thus curtailing

shipments of copper articles. There is a need for the use of these trailers to supplement the supplies of plain boxcars for transporting shipments of copper articles. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure herein are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1369 Substitution of trailers for boxcars.

(a) Each common carrier by railroad subject to the Interstate Commerce Act shall observe, enforce, and obey the following rules, regulations and practices with respect to its car service:

(1) *Substitution of cars.* The Atchison, Topeka and Santa Fe Railway Company (ATSF) may substitute a maximum of four trailers for each boxcar ordered for shipments of copper coiled rod and other copper articles from Amarillo, Texas destined to Syracuse, New York; Providence, Rhode Island; Worcester, Massachusetts and Secaucus, New Jersey, and routed ATSF—Consolidated Rail Corporation, subject to the conditions in paragraphs (2) through (6) of this order.

(2) *Concurrence of shipper required.* The concurrence of the shipper must be obtained before trailers are substituted for each boxcar ordered as authorized in paragraph one of this order.

(3) *Minimum weights.* The minimum weight per shipment for which trailers have been substituted for one boxcar, as authorized in paragraph one of this order, shall be that specified in the applicable tariff for the car ordered.

(4) *Endorsement of billing.* Bills of lading and waybills covering movements authorized by this order shall contain a notation that shipment is moving under authority of Service Order No. 1369.

(5) *Damage free equipped trailers.* Damage Free Equipped Trailers may not be used for these shipments.

(6) *Deramping of the trailers.* Shipments to Syracuse will be deramped at Syracuse for ramp site delivery to consignee. Shipments to Providence and Worcester will be deramped to Worcester and made available to consignee at ramp site. Shipments to Secaucus will be deramped at Kearny, New Jersey, and made available to consignee at ramp site.

(b) *Rules and regulations suspended.* The operation of tariffs or other rules and regulations, insofar as they conflict with the provisions of this order, is hereby suspended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 11:59 p.m., March 30, 1979.

(e) *Expiration.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

(49 U.S.C. (10304-10305 and 11121-11126).)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Member Joel E. Burns not participating.

H. G. Homme, Jr.,
Secretary.

[Service Order No. 1369]

[FR Doc. 79-10434 Filed 4-4-79; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Hunting; Opening of the Kodiak National Wildlife Refuge, Alaska

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to hunting of the Kodiak National Wildlife Refuge, Alaska, is compatible with objectives for which this area was established, will utilize a renewable national resource, and will provide additional recreational opportunities to the public. This document establishes special regulations effective for the upcoming hunting season for hunting big game, including Alaska brown bear, mountain goat, reindeer, and Sitka black tail deer.

EFFECTIVE DATES: These regulations are effective from publication date through January 15, 1980.

FOR FURTHER INFORMATION CONTACT: Robert L. Delaney, Refuge Manager, Kodiak National Wildlife Refuge, P.O. Box 825, Kodiak, Alaska 99615, (907) 486-3325.

SUPPLEMENTARY INFORMATION: The primary author of this document is Robert L. Delaney. The Refuge Recreation Act of 1962 (16 U.S.C. 460K) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires: (1) that any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation. The recreational use authorized by these regulations will not interfere with the primary purposes for which the Kodiak National Wildlife Refuge was established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Kodiak National Wildlife Refuge, Alaska

Sport hunting of big game, including brown bear, mountain goat, reindeer, Sitka black tail deer, is permitted on the Kodiak National Wildlife Refuge, Alaska. Sport hunting shall be in accordance with all applicable state and federal regulations, subject to the following special regulations: (1) the use of airboats and jetboats is prohibited on all waters of the Kodiak National Wildlife Refuge; (2) the landing, take off, and operation of fixed wing aircraft under other than emergency conditions is permitted on water areas only; (3) hunters intending to enter lands of the Kodiak National Wildlife Refuge which have been conveyed to individual village corporations under the terms of the Alaska Native Claims Settlement Act should contact the appropriate individual village corporation for permission to enter said lands. Maps of the village lands and corporation

addresses are available from the Refuge Manager, Kodiak National Wildlife Refuge, Box 825, Kodiak, Alaska 99615.

The provisions of this special regulation supplement the regulations governing hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invite to offer suggestions and comments at any time.

Dated: March 30, 1979.

Keith Schreiner,

Alaska Area Director U.S. Fish and Wildlife Service.

[FR Doc. 79-10443 Filed 4-4-79; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Prohibition of Take Incidental to Commercial Fishing Operations—Northern Common Dolphin

AGENCY: National Marine Fisheries Service, Commerce.

ACTION: Notice of prohibition of take of the northern stock of common dolphin incidental to commercial fishing operations.

SUMMARY: A prohibition on taking the northern stock of common dolphin (*Delphinus delphis*) is being implemented because observer records show that the 1979 quota for that stock has been exceeded.

Common dolphin may not be taken incidental to fishing operations north of a line drawn between 18° N 102° 30' W and 8° N 114° W, and then west along 8° N 114° W, pursuant to the general permit issued to the American Tunaboat Association, Category 2; Encircling gear, purse seining involving the intentional taking of marine mammals.

DATES: The effective date of this notice is April 12, 1979.

ADDRESSES: Observer records may be reviewed at the Office of the Director, Southwest Region, 300 South Ferry Street, Terminal Island, California, Telephone (213) 548-2575.

FOR FURTHER INFORMATION CONTACT: William P. Jensen, Marine Mammal Program Manager, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235, Telephone (202) 634-7461.

SUPPLEMENTARY INFORMATION: 50 CFR 216.24(d)(2)(i)(A)(3) and the permit issued to the American Tunaboat Association for 1978 through 1980, impose a limit of one hundred (100)

mortalities of the northern stock of common dolphin in 1979. The Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, has determined that this limit has been exceeded. Therefore, further taking of the northern stock of common dolphin will be prohibited except as provided for in 50 CFR 216.24(d)(2)(i)(C) (accidental take policy), and notice of the effective date of this prohibition is hereby published in accordance with 50 CFR 216.24(d)(2)(i)(B).

Dated: April 2, 1979.

Winfred H. Meibohm,
Executive Director, National Marine Fisheries Service.

[FR Doc. 79-10526 Filed 4-4-79; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 602

Extension of Comment Period

AGENCY: National Oceanic and Atmospheric Administration/National Marine Fisheries Service.

ACTION: Extension of Comment Period.

SUMMARY: The National Marine Fisheries Service (NMFS) is extending the period for comments on "Interim Guidelines for Development of Fishery Management Plans" and several associated items that were identified in the preamble to that document from April 9, 1979, to May 9, 1979 (FR Doc. 79-4244, 44 FR 7708).

DATES: Written comments on the interim regulations and the subjects identified in the preamble of that document must be received on or before May 9, 1979.

ADDRESSES: Comments should be submitted in writing to: Assistant Administrator for Fisheries, National Marine Fisheries Service (F37), Washington, D.C. 20235. Please mark "Joint Venture" on the envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Alfred J. Bilik, Program Support Specialist, National Marine Fisheries Service, Washington, D.C. 20235, (202) 634-7436.

SUPPLEMENTARY INFORMATION: On February 7, 1979, interim final regulations were published at 44 FR 7708, to implement Pub. L. 95-354, the so called "joint venture" amendment of the Fishery Conservation and Management Act of 1976. The interim regulations were effective on publication and

amended 50 CFR Part 602, "Guidelines for the Development of Fishery Management Plans." At the same time, however, NMFS sought to obtain comments on the regulations for the purpose of developing final regulations, and on certain other subjects that were identified in the preamble to that document. A public hearing was held on March 13 and written comments also were sought until April 9.

NMFS has received a written request for a 30-day extension of the deadline for written comments. The request notes that a 30-day extension will enable more meaningful comments to be prepared and submitted without prejudice to the interests of parties concerned with the regulations. NMFS agrees and a 30-day extension for written comments to May 9, 1979, has been granted.

AUTHORITY: 16 U.S.C. 1801 et seq.

Signed at Washington, D.C., this 2nd day of April 1979.

Winfred H. Meibohm,
Executive Director, National Marine Fisheries Service.

[FR Doc. 79-10526 Filed 4-4-79; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 652

Surf Clam and Ocean Quahog Fisheries, Allowable Level of Fishing During Second Quarter of 1979

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Amendment to final regulations.

SUMMARY: This amendment specifies the number of hours per week during which surf clams may be harvested from the fishery conservation zone (FCZ) in the second quarter (April 1 through June 30) of 1979. The Acting Regional Director of the National Marine Fisheries Service has determined, through analysis of recent catch statistics and consultation with representatives of the surf clam industry, that adoption of a 24-hour weekly fishing limitation will permit fishermen to harvest surf clams throughout the entire second quarter without exceeding the quarterly quota.

EFFECTIVE DATE: 0001 hours, April 2, 1979, through 2400 hours, June 30, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Hanks, Acting Regional Director, Northeast Region, National Marine Fisheries Services, 14 Elm Street, Gloucester, Massachusetts 01930, telephone (617) 281-3600.

SUPPLEMENTARY INFORMATION: Pursuant to section 302 of the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 et seq., as amended (Act), a fishery management plan (FMP) for the surf clam and ocean quahog fisheries was prepared by the Mid-Atlantic Fishery Management Council. The FMP was approved in accordance with section 304 of the Act and published on November 25, 1977 (42 FR 60438). Regulations implementing the FMP were published on February 17, 1978 (43 FR 6952) and codified at 50 CFR Part 652.

Section 652.7 of the initial regulations implementing the FMP provides for a 4-day fishing week, Monday through Thursday, subject to adjustment by the Regional Director of the National Marine Fisheries Service, to permit the continued catch of surf clams throughout an entire quarter, and to protect the integrity of the quarterly quotas on the harvest of surf clams. Based upon determinations by the Regional Director § 652.7 was amended on February 21, 1978 (43 FR 7208), March 31, 1978 (43 FR 13581), May 5, 1978 (43 FR 19397), June 26, 1978 (43 FR 27549), October 5, 1978 (43 FR 46033), October 30, 1978 (43 FR 50442), December 20, 1978 (43 FR 59388), and February 27, 1979 (44 FR 11071). These amendments were necessary to prevent the quarterly quota from being exceeded, and to permit the continued harvest of surf clams throughout the entire quarter.

Section 652.7(a)(2) requires the Regional Director, prior to the beginning of each quarter, to determine the level of effort which will permit the continued harvest of surf clams throughout the entire quarter. It is estimated that the harvest of surf clams during the first quarter of 1979 will fall short of the quarterly quota. Catch information received to date indicates that the remainder may be in excess of 5,000 bushels. As provided by § 652.6(a)(1), this shortfall will be added to the quota for the second quarter. However, the revised quota for the second quarter will not be sufficient to support a level of fishing effort greater than 24 hours per week. Therefore, based upon historical catch records and because the adverse weather conditions which resulted in the shortfall during the first quarter are not expected to persist as a factor in slowing catch rates during the second quarter, the Acting Regional Director has determined that fishing for surf clams in the fishery conservation zone during the second quarter of 1979 will be

restricted to 24 hours per week. This level of effort is consistent with the advice of industry representatives that a 24-hour weekly fishing period will permit surf clam fishermen to harvest the quarterly quota while reducing the possibility of a lengthy and disruptive closure.

The Assistant Administrator for Fisheries has determined that this action does not constitute a major federal action significantly affecting the quality of the human environment requiring the preparation of an environmental impact statement, and that the action is not a significant action under Executive Order 12044.

Signed at Washington, D.C. this the 2nd day of April, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

Authority: 16 U.S.C. 1801 *et seq.*

50 CFR 652.7(a)(1) is hereby revised to read as follows:

§ 652.7 Effort restrictions.

(a) *Surf Clams.* (1) Fishing for surf clams shall be permitted during 4 days per week, from 12:01 a.m. (0001 hours) Monday to 12 midnight (2400 hours) Thursday. However, no fishing vessels shall engage in fishing for surf clams for more than 24 hours in any week. For the period from April 2, 1979, through June 30, 1979, inclusive, the authorized fishing periods for surf clams for each vessel shall be periods designated on the letter of authorization from the Regional Director. The letter shall be kept aboard the vessel at all times and will state those periods in which the vessel is authorized to fish for surf clams. Such periods shall be 12 or 24 hours in duration and cumulatively cannot exceed 24 hours total in one week. No changes in authorized fishing periods will be permitted once a quarter has commenced. All requests for changes for subsequent quarters must be received by the Regional Director 15 days prior to the beginning of the next quarter. Fishing for any part of an authorized period will be counted as one period of fishing. In this paragraph "fishing" means the actual or attempted catching of fish, but not activities in preparation for fishing, such as traveling to or from the fishing grounds.

* * * * *

[FR Doc. 79-10530 Filed 4-4-79; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

50 CFR Part 653

Atlantic Herring; Correction

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Correction of omission.

SUMMARY: This document corrects the final regulations for Atlantic herring published on Wednesday, March 21, 1979 (44 FR 17186), FR Doc. 79-8572.

EFFECTIVE DATE: These corrections are effective April 5, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Denton R. Moore, Chief, Regulations Branch, Permits and Regulations Division, National Marine Fisheries Service, Washington, D.C. 20235.

SUPPLEMENTARY INFORMATION: On March 16, 1979, final regulations governing domestic fishing for Atlantic herring were filed with the Federal Register. These regulations became effective on March 19, 1979, and appeared in the Federal Register on March 21, 1979.

Inadvertently, the textual material under § 653.7 *Prohibitions* (44 FR 17189) was omitted, and the textual material under § 653.8 *Enforcement* was incorrectly inserted under *Prohibitions*. The designation "Section 653.8 *Enforcement*" was also omitted.

This document corrects those errors and omissions so that the *Prohibitions* and *Enforcement* sections read as follows:

§ 653.7 Prohibitions.

It is unlawful for any person to:

- (a) Fish for, take, catch, harvest, or land any Atlantic herring in an area closed pursuant to § 653.24 of this Part;
- (b) Discard Atlantic herring at sea;
- (c) Use any vessel for the taking, catching, harvesting, or landing of any Atlantic herring unless said vessel has a valid permit issued pursuant to this Part, and such permit is on board such vessel;
- (d) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel;
- (e) Falsify or fail to make, keep, maintain, or submit any logbook, or other record or report required by this Part;
- (f) Make any false statement, oral or written, to an Authorized Officer, concerning the taking, catching, landing, purchase, sale or transfer of any herring;

(g) Refuse to permit an Authorized Officer, or any employee of the National Marine Fisheries Service designated by the Regional Director to make such inspections, to inspect any logbooks or records relating to the taking, catching, harvesting, landing, purchase or sale of any herring;

(h) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export or land any Atlantic herring taken in violation of the Act, this Part, or any regulation promulgated under the Act;

(i) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this Part, or any regulation promulgated under the Act;

(j) Fail to affix and maintain permanent markings, as required by § 653.6 of this Part;

(k) Forcibly assault, resist, oppose, impede, intimidate, threaten or interfere with any Authorized Officer in the conduct of any search or inspection under the Act;

(l) Resist a lawful arrest for any act prohibited by this Part;

(m) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this Part;

(n) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this Part;

(o) Fail to comply immediately with enforcement and boarding procedures specified in § 653.8 of this Part;

(p) Violate any other provision of this Part, the Act, or any regulation promulgated pursuant thereto.

§ 653.8 Enforcement.

(a) *General.* The operator of any fishing vessel shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, logbook, and catch for purposes of enforcing the Act and this Part.

(b) *Signals.* Upon being approached by a Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Act, the operator of the fishing vessel shall be alert for signals or other communications conveying enforcement instructions. [The following signals extracted from the International Code of Signals are among those which may be used:

(1) "L" meaning "You should stop your vessel instantly,"

(2) "SQ3" meaning "You should stop or heave to; I am going to board you," and

(3) "AA AA AA etc.," which is the call to an unknown station, to which the signaled vessel must respond by illuminating the vessel identification required by section 653.6]

(c) *Boarding.* A vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way so as to permit the Authorized Officer and his/her party to come aboard;

(2) Provide a ladder for the Authorized Officer and his/her party;

(3) When necessary to facilitate the boarding, provide a man rope, safety line and illumination for the ladder; and

(4) Take such other actions as are necessary to ensure the safety of the Authorized Officer and his/her party to facilitate the boarding.

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

Signed at Washington, D.C., this 2nd day of April 1979.

Winfred H. Meibohm,
Executive Director, National Marine Fisheries Service.

[FR Doc. 79-10523 Filed 4-4-79; 8:45 am]

BILLING CODE 3510-22-M

pass prior to the adjournment of the Congress, the Standard was retransmitted on January 15, 1979. Sixty calendar days of continuous session have now passed without a concurrent resolution disapproving the Standard. This notice, therefore confirms the effective date of Standard 416 as July 10, 1979.

ADDRESS: Cost Accounting Standards Board, 441 G Street, NW., Washington, D.C. 20548.

FOR FURTHER INFORMATION CONTACT: Noah Minkin, 202-275-5940.

Dated: March 27, 1979.

Arthur Schoenhaut,
Executive Secretary.

[FR Doc. 79-10315 Filed 4-4-79; 9:38 am]

BILLING CODE 1620-01-M

COST ACCOUNTING STANDARDS BOARD

4 CFR Part 416

Accounting for Insurance Costs; Effective Date of CAS 416

AGENCY: Cost Accounting Standards Board.

ACTION: Final rule.

SUMMARY: On September 20, 1978, a Cost Accounting Standard entitled Accounting for Insurance Costs was published in the *Federal Register* (43 FR 42239 et seq.) having been duly promulgated by the Board. The Standard in § 416.80 established an effective date of July 10, 1979.

Pub. L. 91-379 provides that a Cost Accounting Standard shall not take effect until the expiration of a period of sixty calendar days of continuous session of the Congress following the date on which a copy of the proposed Standard is transmitted to the Congress, provided during such sixty day period there is not passed by the two Houses a concurrent resolution stating the Congress does not favor the proposed Standard.

Standard 416 was originally transmitted to the Congress on September 15, 1978. Since the required sixty days of continuous session did not

Proposed Rules

Federal Register

Vol. 44, No. 67

Thursday, April 5, 1979

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 918]

Fresh Peaches Grown in Georgia; Proposed Amendment of Subpart-Industry Committee Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on a proposal that peaches shipped to adjacent markets in "closed" containers be inspected, and in containers which are appropriately marked.

DATES: Comments must be received on or before April 23, 1979. Proposed effective date: May 1, 1979.

ADDRESSES: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250, where they will be available for public inspection during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Charles R. Brader, (202) 447-6393.

SUPPLEMENTARY INFORMATION: The proposal under consideration was submitted by the Industry Committee, established under Marketing Order No. 918, as amended (7 CFR Part 918), regulating the handling of peaches grown in Georgia, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), as the agency to administer its terms and provisions. The proposed action has not been determined significant under the USDA criteria for implementing Executive Order 12044.

This proposal would modify the rule which pertains to reports and safeguards for peaches shipped to adjacent markets, by requiring that such peaches not meeting the requirements for nonadjacent markets shipped in "closed" containers be inspected, and

that they be in containers marked with handler's name and address, and the words "For Sale in Adjacent Market Only". Currently this rule applies to peaches in "new" containers. This action is necessary to deter the shipment of such peaches destined for adjacent markets from being diverted to nonadjacent markets. Reportedly, last season some peaches were shipped to adjacent markets in a wide assortment of containers, including a few in used "closed" containers, some of which were improperly marked. These inspection and marking requirements would make it easier to not only detect these peaches if shipped to nonadjacent markets, but also to identify the handler of such peaches, and to determine the grade and size of the fruit.

The proposal is to amend 7 CFR Part 918, by revising paragraph (b) of § 918.130, to read as follows:

§ 918.130 Peaches shipped to adjacent markets.

(a) * * *

(b) Each handler who ships, in closed containers, adjacent market peaches which do not meet the current regulations for nonadjacent markets issued pursuant to § 918.60(b) shall (1) stamp or print on the ends or sides of such containers in letters not less than one-half inch in height "For Sale In Adjacent Markets Only", along with the handler's name and address; and (2) have such fruit so shipped inspected as provided in § 918.64.

Dated: March 29, 1979.

D. S. Kuryloski

Acting Deputy Director, Fruit and Vegetable Division,
Agricultural Marketing Service

[FR Doc. 79-10420 Filed 4-4-79; 8:45 am]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Part 211]

Mandatory Petroleum Allocation Regulations; Amendment to Include Gasoline Retailers Within State Set-Aside Program

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Proposed Rulemaking and Public Hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby proposes an amendment to the Mandatory Petroleum Allocation Regulations that would, for the months of April and May 1979, permit a state to direct product subject to the state set-aside program for gasoline to retailers experiencing a supply emergency. The amendment would assist gasoline retailers that are currently experiencing difficulties in obtaining adequate supplies of gasoline due to the adjustments required in the national gasoline distribution system to comply with the newly established gasoline allocation base period of July 1, 1977 to June 30, 1978.

DATES: Written comments to be submitted by May 15, 1979. Hearing Date: April 12, 1979, 9:30 a.m. Requests to speak by April 9, 1979.

ADDRESSES: Hearing Location: Room 2105, 2000 M Street, N.W., Washington, D.C. All comments to: Economic Regulatory Administration, Office of Public Hearing Management, Docket No. ERA-R-79-15, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Robert C. Gillette (Comment Procedures), Economic Regulatory Administration, Room 2222-A, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254-5201.

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 634-2170.

William E. Caldwell (Regulations and Emergency Planning), Economic Regulatory Administration, Room 2304, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254-8034.

Alan T. Lockard (Office of Fuels Regulation), Economic Regulatory Administration, Room 6222, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254-7422.

Ben McRae (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-6739.

SUPPLEMENTARY INFORMATION:

I. Background

II. Proposal

III. Procedural Requirements

A. Section 501 of the DOE Act

B. Section 404 of the DOE Act

C. Section 7 of the FEA Act

D. Executive Order 12044

IV. *Written Comment and Public Hearing Procedures*

A. Written Comments

B. Public Hearing

I. Background

Based on our determination that there was a significant possibility of gasoline shortages, and resulting dislocations in the industry, for the period of March through May 1979, we issued an order (Activation Order No. 1, 44 FR 11202, February 28, 1979) activating for that period the portion of the Standby Petroleum Product Allocation Regulations (44 FR 3928, January 18, 1979) with regard to updating the gasoline base period. The discussion of the current tight gasoline supply and marketing environment contained in the Activation Order remains valid and is incorporated herein by reference. The Activation Order provides that the motor gasoline allocation base period for each month will be the corresponding month during the period July 1977 through June 1978 rather than the corresponding month in 1972 as previously provided under the regulations. The updated base period was considered necessary to prevent significant disruptions in the gasoline distribution system that would result during a shortage situation from the use of an allocation system based on distribution patterns in effect seven years ago.

As to certain factual situations, the Activation Order did not expressly relate the updated base period to the various types of assignment orders, termination orders, adjustment orders and other actions taken by DOE and its predecessor, the Federal Energy Administration, prior to March 1, 1979. Furthermore, the Activation Order did not deal explicitly with the treatment of gasoline marketers that entered business after June 1977.

These uncertainties have, in some instances, made suppliers reluctant to distribute gasoline to purchasers. We sought to reduce these uncertainties through the expeditious issuance of Guidelines to the Activation Order (44 FR 16480, March 19, 1979). These Guidelines, which have the force and effect of a rule, were promulgated in accordance with the procedures for an emergency rulemaking. Nevertheless, we continue to receive many requests for guidance from suppliers who are unsure of the precise extent of their new supply obligations. In addition, many gasoline retailers have requested adjustment orders from the ERA

Regional Offices with respect to the base period volumes that the operation of the Activation Order establishes for them. DOE's Office of Hearings and Appeals (OHA) has also received a large number of requests for relief from firms that are experiencing difficulties in obtaining adequate supplies of gasoline.

Many gasoline retailers are receiving reduced amounts of gasoline. Indeed, some retailers are receiving no supplies. This situation has created severe hardships for such firms. Several States have suggested that the state set-aside program for gasoline could be used to assist these gasoline retailers. Because the state set-aside program is currently restricted to use in meeting the hardship and emergency requirements of wholesale purchaser-consumers and end-users, under the current regulations, it can not be used to assist gasoline retailers that are unable to obtain adequate supplies of gasoline.

II. Proposal

We believe that the state set-aside program can and should provide a quick and effective auxiliary mechanism for assisting those gasoline retailers that the updated base period has adversely affected. Therefore, we are proposing Special Rule No. 8 that would permit a state to include gasoline retailers that are experiencing gasoline supply emergencies among the eligible recipients of gasoline from the state set-aside program during the months of April and May 1979. The Special Rule would require a State to elect whether to include gasoline retailers within the set-aside program for that particular State and notify ERA of its decision. We believe such a provision is necessary to permit a State to determine whether conditions within that State warrant including gasoline retailers within the state set-aside program.

Applications for assignment of set-aside volumes would be made to the appropriate state energy office which would approve or disapprove the application. Since an assignment would only be made in response to emergency situations, an applicant would not be required to make its application in writing. Each applicant would be required, however, to submit a written certification that it is experiencing a gasoline supply emergency within five days of its verbal or written application.

Applications for gasoline to meet hardship and emergency requirements of wholesale purchaser-consumers and end-users would have priority over those of gasoline retailers. We believe that state energy offices would be able to take appropriate steps to insure that

sufficient set-aside volumes exist to meet the priority requirements of wholesale purchaser-consumers and end users throughout the month. To this end, a state energy office would not be permitted to issue an assignment to a gasoline retailer prior to the twentieth day of the month.

We believe that Special Rule No. 8 should be effective for the months of April and May 1979. We also believe that as much opportunity as possible should be provided for comment concerning Special Rule No. 8. Since a State would not be permitted to make an assignment to a gasoline retailer prior to the twentieth day of a month and then only after the hardship and emergency requirements of wholesale purchaser-consumers and end-users has been met, we have scheduled a public hearing for April 12, 1979 and will consider any written comments received through that date prior to making Special Rule No. 8 effective. We will continue to receive comments through May 15, 1979 and are especially interested in your views concerning the extension of Special Rule No. 8 if Activation Order No. 1 is extended.

III. Procedural Requirements

A. *Section 501 of the DOE Act.* Under section 501(e) of the Department of Energy Organization Act (Pub. L. 95-91, DOE Act), we may waive the thirty day comment period requirement of subsection (b) of section 501 upon our finding that strict compliance with this requirement is likely to cause serious harm or injury to the public health, safety or welfare. We believe such a finding can and should be made in this instance. The extremely large number of requests for assistance has made it impossible for ERA and OHA to respond in a timely manner to each request. Use of the state set-aside program during April 1979 can expedite provision of gasoline to those retailers that are unable to obtain adequate supplies. However, in accordance with section 501(e) and in order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are providing an opportunity for both oral and written comments on Special Rule No. 8 prior to the date on which we intend to make Special Rule No. 8 effective.

B. *Section 404 of the DOE Act.* Pursuant to the requirements of Section 404(a) of the DOE Act, we have referred this proposed rule to the Federal Energy Regulatory Commission for a determination whether the proposed rule would significantly affect any

matter within the Commission's jurisdiction.

C. *Section 7 of the FEA Act.* Under section 7(a) of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), the requirements of which remain in effect under section 501(a) of the DOE Act, the delegate of the Secretary of Energy shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency (EPA) may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published together with publication of notice of the proposed action.

Prior review by the EPA Administrator may be waived for a period of fourteen days if there is an emergency situation which necessitates that a proposed action be made effective at a date earlier than that which would permit the EPA Administrator the five working days opportunity for prior comment. Notice of any such waiver shall be given to the EPA Administrator and filed with the Federal Register with the publication of notice of proposed or final agency action and shall include an explanation of the reasons for such waiver, together with supporting data and a description of the factual situation in such detail as is determined will apprise the EPA and the public of the reasons for such waiver.

We have determined that the five working days opportunity for prior comment by the EPA Administrator should be waived. The reasons for the waiver are the same as those which support waiving section 501(b) of the DOE Act.

A copy of Special Rule No. 8 and this preamble has been provided to the EPA.

D. *Executive Order 12044* The sixty-day public comment period required for proposed rulemakings pursuant to Executive Order 12044, entitled "Improving Government Regulations" (43 FR 12661, March 23, 1978) and DOE's implementing procedures, DOE Order 2030.1 (44 FR 1032, January 3, 1979), have been waived by the Deputy Secretary of Energy for the reasons previously stated for waiving section 501(b) of the DOE Act.

IV. Written Comment and Public Hearing Procedures

A. *Written Comments* You are invited to participate in this proceeding by submitting data, views or arguments with respect to any matters relevant to

this notice. Comments should be submitted by 4:30 p.m., May 15, 1979 to the address indicated in the "Addresses" section of this notice and should be identified on the outside envelope and the document with the docket number and the designation: "Amendment to Include Gasoline Retailers Within State Set-Aside Program." Ten copies should be submitted.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of such information or data and to treat it according to our determination.

B. *Public Hearing 1. Procedure for Requests to Make Oral Presentation.* If you have any interest in the matters discussed in this notice, or represent a group or class of persons that has an interest, you may make a written request for an opportunity to make oral presentation by 4:30 p.m., April 9, 1979. You should also provide a phone number where you may be contacted through the day before the hearing.

If you are selected to be heard, you will be so notified before 4:30 p.m., April 10, 1979, and will be required to submit one hundred copies of your statement to the appropriate address indicated in the "Addresses" section of this notice before 4:30 p.m., April 11, 1979.

2. *Conduct of the Hearing.* We reserve the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations. The ERA or, if the question is submitted at a hearing, the presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer. The question will be asked of the witness by the presiding officer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the ERA and made available for inspection at the DOE Freedom of Information Office, Room GA-152, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript of the hearing from the reporter.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185; Department of Energy Organization Act, Pub. L. 95-91; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 211 of Chapter II of Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, D.C., March 30, 1979.
Hazel R. Rollins,
Deputy Administrator, Economic Regulatory Administration.

The Appendix to Subpart A of Part 211 is proposed to be amended by adding Special Rule No. 8 to read as follows:

Appendix to Subpart A of Part 211—Special Rule No. 8

1. *Scope.* This Special Rule provides that during the months of April and May 1979 gasoline retailers will be included among the eligible recipients of assignments of gasoline under the state set-aside program established by § 211.17.

2. *State election to include gasoline retailers.* The inclusion of gasoline retailers among the eligible recipients of assignments of gasoline under the state set-aside program will not be in effect in a particular state prior to notification to the Office of Fuels Regulation, ERA, by the appropriate State Office that such State elects to include gasoline retailers among the eligible recipients.

3. *Eligibility of Gasoline Retailers.* In addition for use to meet hardship and emergency requirements of wholesale purchasers-consumers and end users as provided in paragraph (a) of § 211.17, the state set-aside for gasoline shall be utilized by a State Office during the months of April and May 1979 to meet the supply needs of a gasoline retailer in cases where the retailer has demonstrated that it will experience a gasoline supply emergency; provided that, a State Office shall not issue an assignment to a gasoline retailer with respect to the set-aside volume for a particular month prior to the twentieth day of that month.

4. *Priority of Wholesale Purchaser-Consumers and End-Users.* Assignments to meet hardships and emergency requirements

of wholesale purchaser-consumers and end-users shall receive priority over any assignments made to gasoline retailers from the state set-aside.

5. *Application for assignment.* All applications for assignment under this Special Rule shall be made to the State Office having jurisdiction over the State in which the applicant conducts its business operations, in accordance with the procedures set forth in §§ 205.211-218 of Subpart Q of Part 205 of this chapter with respect to the state set-aside, except as otherwise provided in this Special Rule. Within five (5) days of its application for assignment of gasoline under this Special Rule, an applicant shall submit to the State Office a written certification that it has experienced a gasoline supply emergency.

[Docket No. ERA-R-79-15]

[FR Doc. 79-10529 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

NATIONAL CREDIT UNION ADMINISTRATION

[12 CFR Part 701]

Organizations and Operations of Federal Credit Unions; Advance Notice of Proposed Rulemaking on Debt Collection Practices

AGENCY: National Credit Union Administration (NCUA).

ACTION: Advance Notice of Proposed Rulemaking

SUMMARY: The National Credit Union Administration is requesting comments on the questions of whether, and to what extent, it should regulate the debt collection practices of Federal credit unions. These questions have been raised as a result of two recent developments. First, consumer complaints about collection practices increased during 1978. Second, inquiries from Federal credit union officials suggest that it may be difficult for some Federal credit unions to determine what actions they may take to collect on loans, given the diverse requirements of State and Federal law. NCUA is considering proposing a regulation governing debt collection in order that the restrictions placed on Federal credit unions will be uniform and comprehensive.

DATES: Comments must be received on or before May 15, 1979.

ADDRESS: Send comments to Robert S. Monheit, Senior Attorney, Office of General Counsel, National Credit Union Administration, Room 4202, 2025 M Street, N.W., Washington, D.C., 20456.

FOR FURTHER INFORMATION CONTACT: Joseph F. Myers, Consumer Affairs Specialist, Division of Consumer Affairs,

Office of Examination and Insurance, or John L. Culhane, Jr., Attorney-Advisor, Office of General Counsel, National Credit Union Administration, 2025 M Street, N.W., Washington, D.C. 20456. Telephone numbers: (202) 254-8760 (Mr. Myers), (202) 632-4870 (Mr. Culhane).

SUPPLEMENTARY INFORMATION:

Rise in Complaints

NCUA keeps a record of the consumer complaints it receives. Complaints received are grouped together depending upon the nature of the complaints. The categories include Truth in Lending, The Equal Credit Opportunity Act, Miscellaneous Lending Problems, Insurance, Bylaws, Chartering, Services, and Advertising, among others. Collection complaints now rank as the major category of complaints in the miscellaneous lending problems category. In fact, collection complaints are now the third largest number of complaints received; a total of 59 complaints about collection practices were received during 1978.

Obviously, not all complaints have been substantiated. However, the recent increase in collection complaints has caused some concern since, presumably, the complaints that NCUA receives represent only a small percentage of the problems that actually exist. Moreover, some serious allegations have been made. Complainants have alleged that misleading documents were used, that telephone calls to the debtor either at work or at home were made repeatedly, that messages were left with neighbors that indicated delinquency, and that the Federal credit union-creditors were trying to recover more than the debtors actually owed.

The Statutory Patchwork Quilt

At the same time that collection complaints are rising, the statutory regulation of the debt collection practices employed by Federal credit unions resembles a patchwork quilt. Federal credit union officials must be aware of and comply with state statutes, Federal statutes, and the regulations and policy statements of Federal agencies.

Based on a preliminary review, it appears that at least twelve states have debt collection statutes that might apply to Federal credit unions, either when they are collecting on their own loans or when they are acting as debt collectors for third parties, such as other credit unions. Those states are: California (1), Connecticut (2), Iowa (3), Maine (4), Maryland (5), Massachusetts (6), New Hampshire (7), New York (8), North Carolina (9), Oregon (10), Texas (11), and Wisconsin (12). In addition, the

District of Columbia statute on debt collections (13) may also apply to Federal credit unions, although this is less clear because of the definitions given key terms in the statute.

Since March 20, 1978, Federal credit unions have also been subject to the Federal Fair Debt Collection Practices Act (14). Federal credit unions are covered by it if they regularly collect debts for third parties (as in the case of reciprocal collection agreements) or if they collect on their own loans under a different name (15). In addition, Federal credit unions that use collection agencies have been advised that NCUA will consider the employment of a collection agency which consistently violates the Fair Debt Collection Practices Act to be an unsafe and unsound practice, justifying an administrative cease and desist action against the Federal credit union employing that collection agency (16).

Finally, the Federal Trade Commission (FTC) has issued its own Guides Against Debt Collection Deception (17). The Guides put creditors on notice that the practices listed are considered by the FTC to be unfair and deceptive trade practices. The acts listed are prescribed when a creditor is collecting its own loans and when it is collecting on loans for a third party (18).

Recently, NCUA has been receiving questions from Federal credit union officials which suggest that it may be difficult for some Federal credit union officials to ascertain the provisions of law (both substantive and procedural) which are applicable to them. Even when this can be done, it may still be difficult for the officials to determine what steps may be taken. The statutes and regulations vary in the extent to which they detail the acts that are prohibited.

What Is The Nature and Degree of the Problem?

Public comment is solicited on the following questions, so that NCUA can determine the nature and degree of any problems in this area.

(a) Do the different standards imposed by Federal and State law cause a problem for FCU officials who are making a good faith effort to comply with the law? NCUA would be particularly interested in responses from Federal credit unions who operate their own collection programs, especially Federal credit unions whose members live in different states and Federal credit unions with branch offices in different states.

(b) Does the present system adequately protect the interests of the

consumer/member of a Federal credit union? In this connection, is the consumer generally aware of his or her rights under State law? under Federal law? Does the consumer know what agencies to contact and how to contact them in order to obtain enforcement of his/her rights? Is NCUA, by virtue of its role as regulator and examiner of Federal credit unions, better known to the consumer than other agencies? If so, is NCUA, by virtue of its periodic examination of Federal credit unions, better able to investigate and resolve consumer complaints?

(c) Are the complaints received by NCUA representative? If not, what other problems exist?

(d) Are any of these problems unique to Federal credit unions, due to their smaller size, close relationship to sponsor, et cetera?

What Should NCUA Do?

Public comment is invited on the question of what actions NCUA should take, assuming the existence of problems which warrant further action. The following alternatives are being considered:

(a) Continue the present practice of investigating and attempting to resolve all complaints, while referring to the FTC cases which suggest that unfair or deceptive practices have been employed. As part of its present practice of keeping Federal credit unions advised of applicable consumer laws, NCUA will shortly distribute to all Federal credit unions copies of the Federal Fair Debt Collection Practices Act and of the FTC's Guides Against Debt Collection Deception. In addition, articles will be published in the Administration's publications on both the Act and on the FTC's Guides, including an explanation of the remedies available where either or both is violated.

(b) Publish a statement of policy which would deem certain debt collection practices to be unsafe and unsound practices justifying an administrative cease and desist action. This would put all Federal credit unions on notice of the kinds of practices that would be challenged, while leaving NCUA with the burden of proving that the practices are unsafe and unsound.

(c) Publish a regulation. What is under consideration at this point is a regulation that would make certain substantive provisions of the Federal Fair Debt Collection Practices Act (19) applicable when a Federal credit union is collecting its own loans. This would have the effect of placing the same limitations on a Federal credit union collecting on its own loans as are

presently imposed when it collects loans due a third party. NCUA requests that commenters who favor a regulation outline the provisions that should be in the regulation and address the question of whether such a regulation would result in a major increase in costs or expenses for all, or a significant portion of, those Federal credit unions with assets under \$1 million.

This list is not intended to be exhaustive. Any other alternatives that are suggested will be considered by NCUA in deciding whether to proceed.

March 30, 1979.

Lawrence Connell,
Administrator.

Footnotes

1. Cal. Civ. Code §§ 1788 *et seq.* (West Supp. 1978).
2. Conn. Gen. Stat. Ann. §§ 36-243a *et seq.* (West Supp. 1979).
3. Iowa Code Ann. §§ 537.7101 *et seq.* (West Supp. 1978).
4. Me. Rev. Stat. tit. 9-A, § 5.116 (1978).
5. Md. Com. Law §§ 14-201 *et seq.* (1975).
6. Mass. Gen. Laws Ann. ch. 93, § 49 (1972).
7. N.H. Rev. Stat. Ann. §§ 35-C:1 *et seq.* (1975).
8. N.Y. Gen. Bus. Law §§ 600 *et seq.* (McKinney 1978).
9. N.C. Gen. Stat. §§ 75-50 *et seq.* (Supp. 1977).
10. Or. Rev. Stat. §§ 646.639, 646.641 (1977).
11. Tex. Rev. Civ. Stat. Ann. arts. 5069-11.01 *et seq.* (Vernon 1978).
12. Wis. Stat. Ann. §§ 427.101 *et seq.* (West 1974).
13. D.C. Code Encycl. § 28-3814 (West Supp. 1978).
14. 15 U.S.C.A. §§ 1692 *et seq.* (Supp. 1978).
15. 15 U.S.C.A. § 1692a(b) (Supp. 1978).
16. NCUA, Administrator's Letter, vol. 6, no. 1, at 8 (Feb. 1979).
17. 16 C.F.R. pt. 237 (1978).
18. 16 C.F.R. § 237.0(a) (1978).
19. The following sections are being considered: §§ 1692b, 1692c, 1692d, 1692e, and 1692f.

[FR Doc. 79-10444 Filed 4-4-79; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

Proposed Designation of Transition Area; Neilsville, Wisc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The nature of this federal action is to designate controlled airspace near Neilsville, Wisconsin to accommodate a new non-directional

beacon (NDB) Runway 27 instrument approach into Neilsville Municipal Airport, Neilsville, Wisconsin, established on the basis of a request from the Neilsville Airport officials to provide that facility with instrument approach capability. The intended effect of this action is to insure segregation of the aircraft using this approach procedure in instrument weather conditions and other aircraft operating under visual conditions.

DATES: Comments must be received on or before May 14, 1979.

ADDRESSES: Send comments on the proposal to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 79-GL-3, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT:

Doyle W. Hegland, Airspace and Procedures Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-4500, Extension 456.

SUPPLEMENTARY INFORMATION: The floor of the controlled airspace in this area will be lowered from 1200' above ground to 700' above ground. The development of proposed instrument procedures necessitates the FAA to lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700 foot controlled airspace. In addition, aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Regional Counsel, AGL-7, Great Lakes Region, Rules Docket No. 79-GL-3, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before May 14, 1979, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed

in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

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

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a 700 foot controlled airspace transition area near Neilsville, Wisconsin. Subpart G of Part 71 was republished in the Federal Register on January 2, 1979 (44 FR 442.)

The Proposed Amendment

Accordingly, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations as follows:

In § 71.181 (44 FR 442) the following addition should be made to the existing Neilsville, Wisconsin transition area:

Neilsville, Wisconsin

That airspace extending upward from 700 feet above the surface within a five (5) mile radius of Neilsville Municipal Airport (latitude 44°33'16"N., longitude 90°30'43"W.) and within three (3) miles each side of the 092° bearing from the Neilsville Airport, extending from the five (5) mile radius area to eight (8) miles east of the airport.

This amendment is proposed under the authority of Section 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 8(c), Department of Transportation Act (49 U.S.C. 1655(c)); Section 11.61 of the Federal Aviation Regulations (14 CFR 11.61).

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

Issued in Des Plaines, Illinois, on March 28, 1979.

Wayne J. Barlow
Acting Director, Great Lakes Region.

[Airspace Docket No. 79-GL-3]
[FR Doc. 79-10451 Filed 4-4-79; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for the City of Saraland, Mobile County, Alabama

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Saraland, Mobile County, Alabama. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Clerk's Office, City Hall, 716 U.S. Highway 43 South, Saraland, Alabama 36571. Send comments to: Mayor Richard Prescott or Mr. W. F. Mann, City Hall, 716 U.S. Highway 43 South, Saraland, Alabama 36571.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Saraland, Mobile County, Alabama, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980,

which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|--|--|---|
| Bayou Sara..... | At U.S. Highway 43 | 15 |
| | Approximately 200 feet downstream of Interstate 65. | 22 |
| Bayou Sara Tributary No. 1. | Approximately 150 feet upstream of Forest Avenue. | 39 |
| | Just upstream of Celeste Road. | 20 |
| Hells Swamp Branch .. | Approximately 300 feet upstream of Interstate 65. | 20 |
| Norton Creek | Just downstream of U.S. Highway 43. | 14 |
| | Just upstream of Shelton Beach Road. | 26 |
| Norton Creek Tributary No. 1. | Just downstream of Interstate 65. | 30 |
| | Approximately 100 feet downstream of McKeough Avenue. | 24 |
| Norton Creek Tributary No. 2. | Approximately 200 feet downstream of Interstate 65. | 29 |
| | Just downstream of Interstate 65. | 39 |
| Norton Creek Tributary No. 3. | Southern Corporate limits..... | 11 |
| Chickasaw Creek (Backwater flooding from Black Bayou). | Confluence with Chickasaw Creek Tributary No. 1. | 11 |
| Chickasaw Creek Tributary No. 2. | Just downstream of Industrial Parkway (State Highway 158). | 15 |

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

In accordance with Section 7(o)(4) of the Department of Housing and Urban Development Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review

requirements in order to permit it to take effect on the date indicated.

Issued: March 23, 1979

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-5323]

[FR Doc. 79-9949 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 1917

Proposed Flood Elevation Determinations for the City of Nogales, Santa Cruz County, Arizona; Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 6442 of the Federal Register of February 1, 1979.

EFFECTIVE DATE: February 1, 1979.

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

The following corrections are made:

| Source of flooding | Location | Elevation, feet, national geodetic vertical datum, |
|---|--|--|
| Arroyo Boulevard Channel and Covered Floodway and Overland Flows West of Southern Pacific Railroad. | Southern Pacific Railroad—30 feet ¹ . | 3,823 |
| Falls Wash | Morley Avenue—30 feet ¹ | 3,801 |
| Flood Plain Area West of Arroyo Boulevard between Quarry and Walnut Streets. | Plum Street—at centerline Walnut Street | 3,843 173,844 |
| International Boundary Channel. | Confluence with Arroyo Boulevard Channel—downstream end of Covered Floodway. | 3,872 |
| | Beginning of Covered Floodway. | 3,875 |

¹Upstream from centerline

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

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

Issued: March 23, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-5032]

[FR Doc. 79-9950 Filed 4-4-79; 8:45 am]

BILLING CODE 4219-01-M

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for The Town of Payson, Gila County, Arizona

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Payson, Gila County, Arizona. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Office of the Town Administrator, Town Hall, 303 North Beeline Highway, Payson, Arizona. Send comments to: Mr. Jack Monschein, Town Manager, Town of Payson, Town Hall, 303 North Beeline Highway, Payson, Arizona 85541.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Payson, Arizona, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|--------------------------------------|---|---|
| American Gulch | Sewage Disposal Facility Road—90 feet ¹ . | 4,763 |
| | (2nd Crossing) Sewage Disposal Facility Road—20 feet ¹ . | 4,771 |
| | South Vista Road—50 feet ² . | 4,801 |
| | South Vista Road—100 feet ¹ . | 4,807 |
| | South Verde Drive—40 feet ¹ . | 4,839 |
| | South Molane Road—125 feet ¹ . | 4,877 |
| American Gulch Tributary from North. | Molane Road—30 feet ¹ . | 4,936 |
| | North Double Tree Circle—60 feet ¹ . | 4,941 |
| | West Forest Drive—50 feet ¹ . | 4,945 |

| Source of Flooding | Location | Depth, feet above ground |
|--------------------|---|--------------------------|
| American Gulch | Approximately 200 feet northwest of the intersection of West Doll Baby Road and Sewer Disposal Facility Road. | 3 |

¹Upstream of centerline.

²Downstream of centerline.

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

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

Issued: March 23, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-5324]

[FR Doc. 79-9951 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

[24 CFR Part 1917]**Revision of Proposed Flood Elevation Determinations for the City of Etna, Siskiyou County, California****AGENCY:** Federal Insurance Administration, HUD.**ACTION:** Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Etna, Siskiyou County, California. Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 44 FR 6142 on January 31, 1979, and in *The Pioneer Press* published on or about January 31, 1979, and February 7, 1979, and hence supersedes those previously published rules.

DATE: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 442 Main Street, Etna, California. Send comments to: Honorable Jack C. Stacher, Mayor, City of Etna, P.O. Box 460, Etna, California 96027.

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

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the City of Etna, California, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new

buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

| Source of flooding | Location | Elevation, feet, National Geodetic Vertical Datum |
|---------------------|--|---|
| Johnson Creek | Downstream Corporate Limit | 2,847 |
| | Upstream Corporate Limit | 2,888 |
| Etna Creek | 500 feet southeast of the intersection of Butcher Street and State Highway 3, at both sides of the State Highway 3 road grade. | 2,867 |

| Source of Flooding | Location | Depth, feet Above Ground |
|--------------------|--|--------------------------|
| Etna Creek | 600 feet northwest of the intersection of Callahan Street and Pleasure Park Road. | 2 |
| | 700 feet southeast of the intersection of new Callahan Street and Old Callahan Street. | 2 |
| | New Callahan Street | 1 |

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

Note: In accordance with Section 8(c)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: March 21, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-5009]

[FR Doc. 79-9952 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

[24 CFR Part 1917]**Proposed Flood Elevation Determinations for the City of Morgan Hill, Santa Clara County, California****AGENCY:** Federal Insurance Administration, HUD.**ACTION:** Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in City of Morgan Hill, Santa Clara County, California. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified

for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall Civic Center, Morgan Hill, California. Send comments to: Mr. Charles Tate, City Manager, City of Morgan Hill, City Hall, Civic Center, Morgan Hill, California 95037.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Morgan Hill, California, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|--------------------|--|---|
| Coyote Creek | Boys Ranch Private Drive— 100 feet ¹ | 390 |
| Llagas Creek | 1st Corporate Limits ² | 317 |
| | 2nd Corporate Limits ² | 327 |

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|--|--|---|
| West Little Llagas Creek. | 1st Corporate Limits ² | 310 |
| | Monterey Highway—190 feet ¹ | 316 |
| | Watsonville Road—100 feet ¹ | 318 |
| | Lacrosse Drive—100 feet ¹ | 321 |
| | Edes Court—50 feet ¹ | 329 |
| | Cosmo Avenue—50 feet ¹ | 331 |
| | Fifth Street—70 feet ¹ | 341 |
| | Second Street—50 feet ¹ | 344 |
| | Wright and Hale Avenues—50 feet ¹ | 350 |
| | Llagas Road—100 feet ¹ | 368 |
| (Last) Corporate Limits ² | 384 | |

| Source of flooding | Location | Depth, feet above ground |
|---------------------------|--|--------------------------|
| Little Llagas Creek..... | Approximately 1,000 feet southeast of the intersection of Monterey Highway and Watsonville Road. | 1 |
| West Little Llagas Creek. | Monterey Street between East Durne Avenue and Bisceglia Avenue. | 1 |
| | Approximately 900 feet southwest of intersection of Hale Avenue and Llagas Road. | 1 |
| | Monterey Street between Bisceglia Avenue and San Pedro Avenue. | 2 |

¹ Upstream of centerline
² At centerline

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

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

Issued: March 23, 1979.

Gloria M. Jimenez,

[Docket No. FI-5325]

[FR Doc. 79-9953 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for the Town of Basalt, Eagle County, Colorado

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed

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

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, 214 Midland Avenue, Basalt, Colorado.

Send comments to: Mr. Bill Crank, Town Manager, Town of Basalt, Town Hall, 214 Midland Avenue, Basalt, Colorado 81621.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Basalt, Colorado, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|-------------------------|---|---|
| Roaring Fork River..... | East Cottonwood Drive-35 feet ¹ | 6,595 |
| Fryingpan River..... | (Last) Corporate limits ^{**} | 6,809 |
| | State Highway 82-40 feet ¹ | 6,591 |
| | Swinging Bridge Lane-60 feet ¹ | 6,600 |
| | South Cottonwood Drive-15 feet ¹ | 6,607 |

¹ Upstream from centerline
^{**} At centerline

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

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

Issued: March 23, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[Docket No. FI-5325]

[FR Doc. 79-9954 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for the Town of Eagle, Eagle County, Colorado

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

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

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, 108 West Second Street, Eagle, Colorado. Send comments to: Mr. Paul Bartlett, Town Manager, Town of Eagle, Town Hall, 108 West Second Street, Eagle, Colorado 81631.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Eagle, Colorado, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

| Source of flooding | Location | Elevation, in feet, national geodetic vertical datum |
|--------------------|---|--|
| Brush Creek | Farm Bridge-50 feet upstream from centerline. | 6,531 |
| | Most upstream Corporate Limit-at centerline. | 6,540 |

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

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

Issued: March 21, 1979.
Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-5327]

[FR Doc. 79-9955 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for the Town of Enfield, Hartford County, Connecticut

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Enfield, Hartford County, Connecticut. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, 820 Enfield Street, Enfield, Connecticut. Send comments to: Mr. Robert Ledger, Town Manager, Town of Enfield, Town Hall, 820 Enfield Street, Enfield, Connecticut 06082.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Enfield, Connecticut, in accordance with section 110 of the Flood

Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|--------------------|---|---|
| Connecticut River | Conrail Bridge (near mouth)-150 feet ¹ | 36 |
| | State route 190 ¹ | 51 |
| Freshwater Brook | Conrail Bridge (near Mouth)-150 ¹ | 59 |
| | Freshwater Pond Dam-75 feet ² | 93 |
| | 10 feet ¹ | 105 |
| | Interstate 91 Bridge-100 feet ¹ | 115 |
| | Elm Street Bridge-150 feet ¹ ... | 121 |
| | 75 feet ¹ | 130 |
| | Shaker Road Bridge-10 feet ¹ | 164 |
| | Lake Drive-50 feet ¹ | 193 |
| Beeman's Brook | Parson Road Bridge-65 feet ¹ | 41 |
| | Orlando Road Bridge-100 feet ¹ | 87 |
| | Old King Street Bridge-10 feet ¹ | 106 |
| Buckhorn Brook | Abbe Road Bridge-75 feet ¹ ... | 85 |
| | Town-Farm Road Bndge-100 feet ² | 102 |
| | 75 feet ¹ | 109 |
| Grape Brook | Enfield Street Bridge-50 feet ¹ | 70 |
| | Interstate 91 Bridge-150 feet ¹ | 85 |
| | Tanglewood Lane Bridge-100 feet ² | 114 |
| | 10 feet ¹ | 120 |
| | Betty Road Bridge ³ | 142 |
| Jawbuck Brook | Shaker Road Bndge-10 feet ¹ | 137 |
| | Maple Street Bndge-10 feet ¹ | 175 |
| | Shaker Pond Dam-10 feet ¹ ... | 185 |
| Waterworks Brook | Conrail Bridge ² | 54 |
| | Enfield Street Bridge-65 feet ³ | 71 |
| | 10 feet ¹ | 87 |
| | Bright Meadow Boulevard Bridge ¹ | 91 |
| | Pinedale Road-50 feet ¹ | 115 |
| | 10 feet ¹ | 120 |
| Tributary A | At confluence with Freshwater Brook | 161 |

¹ Upstream from centerline.

² At centerline.

³ Downstream from centerline.

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

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

Issued: March 23, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[Docket No. FI-5328]

[FR Doc. 79-9956 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for the City of Garden City, Ada County, Idaho

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Garden City, Ada County, Idaho. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 201 East 50th, Garden City, Idaho. Send comments to: Honorable Ray Eld, Mayor, City of Garden City, City Hall, 201 East 50th, Garden City, Idaho 83704.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410,

202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for City of Garden City, Idaho, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

| Source of flooding | Location | Elevation in foot, National geodetic vertical datum |
|--------------------|--|---|
| Boise River..... | Road—50 feet ¹ | 2607 |
| | Greenwood Street Bridge—50 feet ¹ | 2612 |
| | Truman Canal—100 feet ¹ | 2665 |
| | Main Street Bridge—50 feet ¹ | 2669 |
| | Fairview Avenue—50 feet ¹ | 2670 |
| | Union Pacific Railroad Bridge—50 feet ¹ | 2671 |
| | Americana Boulevard Bridge—50 feet ¹ | 2672 |
| | | |

¹Upstream of centerline

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

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

Issued: March 23, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[Docket No. FI-5329]

[FR Doc. 79-9957 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

[24 CFR Part 1917]

National Flood Insurance Program; Proposed Flood Elevation Determinations for the City of Boise, Ada County, Idaho

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Boise, Ada County, Idaho. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 150 North Capitol, Boise, Idaho. Send comments to: Honorable Richard Eardley, Mayor, City of Boise, City Hall, 15 North Capitol, Boise, Idaho 83702.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Boise, Idaho, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures

required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|-------------------------------|--|---|
| Boise River..... | At Downstream Corporate Limits..... | 2661 |
| | Fairview Avenue—50 feet ¹ | 2670 |
| | Broadway Avenue—10 feet ¹ | 2698 |
| | At Upstream Corporate Limits..... | 2726 |
| Boise River Side Channel..... | At confluence with Boise River..... | 2702 |
| | At mouth..... | 2692 |
| Stuart Gulch..... | At Upstream Corporate Limits..... | 2718 |
| Crane Gulch..... | Parkhill Drive—20 feet ¹ | 2755 |
| | Ranch Road ² | 2795 |
| | At Upstream Corporate Limits..... | 2870 |
| Cottonwood Creek..... | Mountain Cove Road—120 feet ³ | 2758 |
| | 10 feet ³ | 2764 |
| | At Upstream Corporate Limits..... | 2876 |

¹Upstream of centerline

²At centerline

³Downstream of centerline.

| Source of Flooding | Location | Depth, in feet above ground |
|-----------------------|--|-----------------------------|
| Stuart Gulch..... | Intersection of Hawthorne Drive and Taft Street..... | 1 |
| Crane Gulch..... | Intersection of Irene Street and North 22nd Street..... | 1 |
| Cottonwood Creek..... | Intersection of West Jefferson Street and Avenue B..... | 2 |
| | Intersection of Lewis Street and Straughn Avenue..... | 1 |
| Hulls Gulch..... | Intersection of Ridenbaugh Street and North 11th Street..... | 1 |

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

Note: In accordance with Section 7 (o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order

to permit it to take effect on the date indicated.

Issued: March 23, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-5330]

[FR Doc. 79-9958 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for the City of Eagle, Ada County, Idaho

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Eagle, Ada County, Idaho. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, Eagle, Idaho. Send comments to: Honorable Jerry Deckard, Mayor, City of Eagle, City Hall, P.O. Box 477, Eagle, Idaho 83616.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Eagle, Idaho, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|--------------------|--|---|
| Boise River..... | Confluence with Dry Creek*.... | 2,547 |
| | Eagle Bridges (most upstream)—25 feet**..... | 2,557 |
| | Limit of flooding within the City of Eagle*..... | 2,566 |
| Dry Creek..... | State Highway 44 Bridge—25 feet**..... | 2,559 |
| | Corporate limits*..... | 2,587 |

*At centerline

**Upstream of centerline

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

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

Issued: March 23, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-5331]

[FR Doc. 79-9959 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

[24 CFR Part 1917]

National Flood Insurance Program; Proposed Flood Elevation Determinations for the City of Calumet City, Cook County, Illinois

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

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

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, 204 Puleski Road, Calumet City, Illinois. Send comments to: The Honorable Robert C. Stefaniak, Mayor, City of Calumet, City Hall, 204 Puleski Road, Calumet City, Illinois 60409.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City in Calumet City, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---------------------------|---|---|
| Little Calumet River..... | Corporate limits..... | 596 |
| | Conrail..... | 599 |
| | Burnham Avenue..... | 599 |
| | Wentworth Avenue..... | 599 |
| | 2,400 feet upstream of Wentworth Avenue (corporate limits). | 599 |
| Grand Calumet River .. | Calumet/Burnham corporate limits. | 581 |
| | Chessie System..... | 581 |
| | 1,600 feet upstream of the Chessie System. | 582 |
| | 200 feet upstream of the Indiana Harbor Railroad. | 582 |

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

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

Issued: March 21, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-9960 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for the Village of Libertyville, Lake County, Illinois.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

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

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Village Hall, Office of the Village Clerk, 200 East Cook Avenue, Libertyville, Illinois. Send comments to: Mr. Gilbert W. Stiles, Village President, Village of Libertyville, Village Hall, 200 East Cook Avenue, Libertyville, Illinois 60048.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the village of Libertyville, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|------------------------|---------------------------------|---|
| Des Plaines River..... | Downstream Corporate Limit. | 651 |
| | Just upstream of Rockland Road. | 654 |
| | Just upstream of Park Avenue. | 655 |
| | Upstream Corporate Limit..... | 657 |

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42

U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

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

Issued: March 21, 1979.
Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-5333]
[FR Doc. 79-9961 Filed 4-4-79; 8:45 am]
BILLING CODE 4210-01-M

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for the City of Peoria, Peoria County, Illinois

AGENCY: Federal Insurance Administration, HUD.
ACTION: Proposed rule.

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

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Office of the City Clerk. Send comments to: The Honorable Richard E. Carver, Mayor, City of Peoria, City Hall, 419 Fulton Street, Peoria, Illinois 61602.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line (800) 424-8872 Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Peoria, in accordance with section 110 of the Flood Disaster

Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|--|--|---|
| Illinois River..... | Downstream County Boundary. | 459 |
| | Upstream County Boundary..... | 460 |
| Big Hollow Creek..... | At Chicago and North Western Railroad. | 580 |
| | About 660 feet upstream of Chicago and North Western Railroad. | 588 |
| | About 75 feet downstream of U.S. Route 150. | 610 |
| | About 100 feet upstream of U.S. Route 150. | 617 |
| | Just upstream of Northmoor Road. | 636 |
| | At confluence of North Fork Tributary Big Hollow Creek. | 668 |
| | About 150 feet downstream of University Street. | 688 |
| | About 100 feet upstream of University Street. | 694 |
| | About 1,600 feet upstream of University Street. | 701 |
| | About 280 feet downstream of Chicago Rock Island and Pacific Railroad. | 724 |
| | About 530 feet upstream of Chicago Rock Island and Pacific Railroad. | 739 |
| | About 100 feet downstream of Mount Hawley Road. | 745 |
| | About 150 feet upstream of Mount Hawley Road. | 751 |
| | Just upstream of Collingwood Circle (about 320 feet downstream of Hillrose Place). | 764 |
| North Fork Tributary Big Hollow Creek. | At corporate limits..... | 731 |
| | About 0.3 mile upstream of corporate limits. | 752 |
| | About 240 feet downstream of Park Road. | 509 |
| Dry Run Creek..... | About 100 feet downstream of Park Entrance Road. | 514 |
| | Just upstream of Park Entrance Road. | 520 |
| | Just downstream of Interstate 74. | 533 |

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|-----------------------|--|---|
| | About 240 feet upstream of Interstate 74 (about 1,750 feet upstream of West Nebraska Avenue. | 539 |
| | Just downstream of drop structure (about 0.28 mile downstream of confluence of Dry Run Creek C). | 566 |
| | Just upstream of drop structure. | 581 |
| | Downstream of confluence of Dry Run Creek C. | 585 |
| | Upstream of confluence of Dry Run Creek C. | 590 |
| | About 200 feet downstream of Interstate 74 (about 1,770 feet downstream of War Memorial Drive). | 603 |
| | About 220 feet upstream of Interstate 74 (about 1,300 feet downstream of War Memorial Drive). | 616 |
| | About 210 feet downstream of War Memorial Drive. | 616 |
| | About 350 feet upstream of War Memorial Drive. | 632 |
| | About 140 feet downstream of Glen Avenue. | 643 |
| | About 150 feet upstream of Glen Avenue. | 655 |
| | About 0.57 mile upstream of Glen Avenue. | 672 |
| | About 210 feet downstream of University Street. | 707 |
| | Just upstream of University Street. | 727 |
| | About 1,160 feet upstream of University Street. | 732 |
| | About 140 feet downstream of Briarwood Lane. | 747 |
| | Just upstream of Briarwood Lane. | 761 |
| | About 480 feet upstream of Briarwood Lane. | 764 |
| Poppet Hollow Creek.. | At downstream corporate limits. | 525 |
| | At upstream corporate limits.. | 559 |
| Dry Run Creek A..... | At confluence with East Branch Dry Run. | 543 |
| | About 185 feet downstream of Interstate 74 Ramp (about 0.41 mile downstream of Nebraska Avenue). | 551 |
| | Just upstream of Interstate 74 Ramp (about 0.37 mile downstream of Nebraska Avenue). | 556 |
| | About 135 feet downstream of Interstate 74 Ramp (about 0.27 mile downstream of Nebraska Avenue). | 557 |
| | Just upstream of Interstate 74 Ramp (about 0.24 mile downstream of Nebraska Avenue). | 565 |
| | About 160 feet downstream of Nebraska Avenue. | 570 |
| | Just upstream of Nebraska Avenue. | 579 |
| | Just upstream of Gale Avenue. | 585 |
| | About 100 feet downstream of Nowland Avenue. | 594 |
| | Just upstream of Nowland Avenue. | 599 |
| | About 130 feet downstream of Parish Avenue. | 623 |
| | Just upstream of Parish Avenue. | 630 |
| | Just upstream of Hudson Street. | 636 |
| Dry Run Creek C..... | At confluence with Dry Run ... | 590 |
| | About 475 feet downstream of War Memorial Drive. | 597 |
| | About 160 feet upstream of War Memorial Drive. | 609 |
| | About 100 feet downstream of West Aire Avenue. | 617 |

| Source of flooding | Location | Elevation in feet, national, geodetic vertical datum |
|--|--|--|
| East Branch Dry Run Creek. | About 185 feet upstream of West Aire Avenue. | 630 |
| | Just downstream of Kenwick Lane. | 631 |
| | About 100 feet upstream of University Street. | 651 |
| | Just downstream of Glen Avenue. | 687 |
| | Just upstream of Sheridan Avenue. | 698 |
| | About 200 feet downstream of Hidden Lane. | 711 |
| | About 200 feet upstream of Hidden Lane. | 720 |
| | At confluence with Dry Run Creek. | 520 |
| | Just downstream of Wier in Stilling Basin. | 528 |
| | Just upstream of Wier in Stilling Basin. | 534 |
| | At confluence of Dry Run Creek A. | 543 |
| | About 105 feet downstream of Sheridan Road. | 563 |
| | About 50 feet upstream of Sheridan Road. | 573 |
| | About 75 feet upstream of Nebraska Avenue. | 582 |
| | About 80 feet downstream of McClure Avenue. | 602 |
| | About 80 feet upstream of McClure Avenue. | 607 |
| | About 70 feet downstream of Forrest Hill Avenue. | 615 |
| | About 75 feet upstream of Forrest Hill Avenue. | 621 |
| | Just downstream of Merle Lane. | 633 |
| | Just upstream of Merle Lane. | 640 |
| Just downstream of Private Drive (about 0.22 mile downstream of Hines Avenue). | 647 | |
| Springdale Creek..... | Just upstream of Private Drive (about 0.21 mile downstream of Hines Avenue). | 655 |
| | Just downstream of Hines Avenue. | 655 |
| | Just upstream of Hines Avenue. | 669 |
| | Just upstream of Oak Cliff Court. | 674 |
| | Just upstream of Lynndale Road. | 681 |
| | About 100 feet downstream of Glen Avenue. | 698 |
| | About 100 feet upstream of Glen Avenue. | 704 |
| | Just downstream of Northridge Lane. | 707 |
| | Just upstream of Northridge Lane. | 714 |
| | Just upstream of Frances Avenue. | 737 |
| Boyd's Hollow Creek ... | At mouth..... | 480 |
| | Just downstream of Jefferson Avenue. | 464 |
| | Just upstream of Jefferson Avenue. | 472 |
| | About 110 feet downstream of Chicago Rock Island and Pacific Railroad. | 474 |
| | About 100 feet upstream of Chicago Rock Island and Pacific Railroad. | 496 |
| | About 800 feet downstream of Perry Avenue. | 499 |
| | About 800 feet upstream of Perry Avenue. | 523 |
| | About 0.33 mile downstream of War Memorial Drive. | 573 |
| | About 370 feet upstream of War Memorial Drive. | 606 |
| | About 0.84 mile upstream of War Memorial Drive. | 682 |
| Boyd's Hollow Creek ... | Just upstream of Single Track Road. | 544 |
| | About 0.38 mile upstream of Single Track Road. | 560 |

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

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

Issued: March 23, 1979.
Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-5334]
[FR Doc. 79-9902 Filed 4-4-79; 8:45 am]
BILLING CODE 4210-01-M

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for the City of Rock Island, Rock Island County, Illinois

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

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

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, 1528 3rd Avenue, Rock Island, Illinois. Send comments to: The Honorable James Davis, Mayor, City of Rock Island, City Hall, 1528 3rd Avenue, Rock Island, Illinois 61201.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410,

202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Rock Island, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---------------------------|---|---|
| Mississippi River..... | Confluence of Rock River..... | 563 |
| | Upstream side of Chicago, Milwaukee, St. Paul and Pacific Railroad. | 564 |
| | Just upstream of Centennial Bridge. | 564 |
| Sylvan Slough..... | At confluence with Mississippi River. | 564 |
| Rock River | Northeastern corporate limits | 564 |
| | Upstream side of State Highway 199. | 563 |
| North Channel Rock River. | Upstream side of Chicago, Rock Island, and Pacific Railroad. | 564 |
| | Eastern corporate limits..... | 567 |
| | Confluence with Rock River... Upstream side of U.S. Route 67. | 563 565 |
| Kyte Creek | 1.93 miles upstream of U.S. Route 67. | 567 |
| | Downstream corporate limits | 563 |
| Eckhart Creek..... | Just downstream of Chaneya Lane. | 570 |
| | Upstream side of Andalusia road. | 575 |
| | 900 feet upstream of Andalusia Road. | 580 |

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

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

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

Issued: March 21, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-5335]

[FR Doc. 79-9963 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for the Town of Cicero, Hamilton County, Indiana

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

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

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Clerk's Office, Town Hall, 70 Byron Street, Cicero, Indiana. Send comments to: Mr. Raymond Coy, Town Board President or Ms. Rosemary Kaiser, Town Clerk, Town Hall, 70 Byron Street, Cicero, Indiana 46034.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Cicero, Hamilton County,

Indiana, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|---------------------------|---|---|
| Morse Reservoir..... | Just downstream of the Jackson Street Bridge (East 236th Street). | 813 |
| | Just downstream of State Route 19. | 814 |
| West Arm Morse Reservoir. | Confluence with Little Cicero Creek. | 814 |
| Cicero Creek..... | East 249th Street (Extended) | 816 |
| | East 258th Street (Extended) | 822 |
| Little Cicero Creek..... | East 249th Street (Extended) | 817 |
| | Just downstream of East 256th Street. | 828 |
| Hinkle Creek..... | Approximately 300 feet upstream of 225th Street. | 849 |
| | Approximately 100 feet downstream of Deming Road. | 858 |

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

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

Issued: March 21, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator

[Docket No. FI-5336]

[FR Doc. 79-9964 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for the Town of Lowell, Lake County, Ind., Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 44 FR 5467 of the Federal Register of January 26, 1979.

EFFECTIVE DATE: January 26, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-5581 or Toll Free Line 800-424-8872

The following corrections:

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|------------------------------|---|---|
| Cedar Creek..... | 100 feet downstream of Oakley Avenue. | 659 |
| Should be corrected to read: | | |
| Cedar Creek..... | 1,000 feet downstream of Oakley Avenue. | 659 |

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

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

Issued: March 23, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-4999]

[FR Doc. 79-9965 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for The City of Hudson, Black Hawk County, Iowa**AGENCY:** Federal Insurance Administration, HUD.**ACTION:** Proposed rule.

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

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, Hudson, Iowa. Send comments to: The Honorable Eugene Taylor, Mayor, City of Hudson, City Hall, Hudson, Iowa 50643.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Hudson in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or

pursuant to policies established by other Federal, State, or regional entities.

These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|------------------------|---|---|
| Black Hawk Creeek..... | About 3.9 miles downstream of State Highway 58. | 872 |
| | Downstream (eastern) corporate limits. | 874 |
| | 6,000 feet downstream of State Highway 58. | 880 |
| | 600 feet upstream of State Highway 58. | 884 |
| | Upstream (southwestern) corporate limits. | 886 |

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

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

Issued: March 21, 1979.
Gloria M. Jimenez,
Federal Insurance Administrator.

[Docket No. FI-5337]

[FR Doc. 79-9966 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

[24 CFR Part 1917]

Proposed Flood Elevation Determinations for The City of Marengo, Iowa County, Iowa**AGENCY:** Federal Insurance Administration, HUD.**ACTION:** Proposed rule.

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

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, 153 East Main Street, Marengo, Iowa. Send comments to: The Honorable Otto Maas, Mayor, City Hall, 153 East Main Street Marengo, Iowa 52301.

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

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Marengo, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

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

| Source of flooding | Location | Elevation in feet, national geodetic vertical datum |
|--------------------|--------------------------------------|---|
| Iowa River | Entire area within corporate limits. | 741 |

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

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

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

Issued: March 23, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[Docket No. FI-5338]

[FR Doc. 79-9067 Filed 4-4-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

49 CFR Parts 171, 172, 173, 174, 176, 177, 178, 179

Cryogenic Liquids; Corrections and Additions.

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, Department of Transportation.

ACTION: Notice of Proposed Rulemaking; Corrections and Additions.

SUMMARY: This document makes corrections and additional changes to a notice of proposed rulemaking, Docket HM-115, Notice 79-3 (44 FR 12826), published on March 8, 1979, which proposed to amend the Hazardous Materials Regulations (49 CFR Parts 170-189) by establishing requirements for the transportation of certain cryogenic liquids.

FOR FURTHER INFORMATION CONTACT: Paul H. Seay, Jr., Office of Hazardous Materials Regulation, 2100 Second Street, S.W., Washington, D.C. 20590, (202) 755-4906.

SUPPLEMENTARY INFORMATION: In Docket No. HM-115, Notice 79-3, published on March 8, 1979 (44 FR 12826), is corrected and modified as follows:

1. On page 12830, in the first column, in the line of the preamble to § 173.304, "Atmospheric" is changed to "atmospheric" and immediately preceding it the words "The requirements pertaining to cryogenic hydrogen and" are added.

2. On page 12830, in the third column, in line 4 of the preamble to § 174.204, the words "hydrogen chloride, anhydrous," are added immediately before "liquefied".

3. On page 12831, in the first column, in line 7 of the preamble to § 178.57-13,

"41 specification" is corrected to read "4L specification".

4. On page 12832, under the proposed amendment to § 171.7, in the second line of the third column, the reference "(viii)" is corrected to read "(ix)".

5. On page 12837, in the third column, in line 10 of the explanatory text to § 173.304, the words "the introductory text of" are deleted; in the first column, proposed paragraph (b) is revised as follows:

(b) *Filling limits.* Except for carbon dioxide and nitrous oxide, the liquid portion of a liquefied gas must not completely fill the packaging at any temperature up to and including 130°F. However, the liquid portion of vinyl fluoride, inhibited, may completely fill the cylinder at 130°F, provided the pressure at the critical temperature does not exceed one and one-fourth times the service pressure.

6. On page 12838, in the first column, in line 7 of Note 11 to proposed § 173.315, "herein" is corrected to read "therein".

7. On page 12839, in the second column, in line 4 of proposed § 173.318(b)(1)(vi), "values" is corrected to read "valves".

8. On page 12841, in the first column, in the table in proposed § 173.319(d)(2) under the column heading "Ethylene", the first entry "6.6" is deleted and placed as the first entry under the column heading "Hydrogen".

9. On page 12841, in the second column, in line 4 of proposed § 174.204(a)(2), the words "Hydrogen chloride, anhydrous," are added immediately before "liquefied".

10. On page 12843, in the third column, the formula in proposed § 178.338-1(f)(1) is corrected to read:

$$P_c = 2.6E(t/D)^{2.5} / [(L/D) - 0.45(t/D)^{0.5}]$$

On page 12845, in the first column, in the next to the last line of proposed § 178.338-7(b), "§§ 178.338-b" is corrected to read "§§ 178.338-8(b)".

12. On page 12845, in the second column, in the second line of proposed § 178.338-8(b)(1), "§§ 178.33(f)" is corrected to read "§§ 173.33(f)".

13. On page 12845, in the third column, the formulae in proposed § 178.338-9(c) are corrected to read:

$$1. \text{OWTT} = \frac{\text{MRHT} - 24}{2} \text{ for tanks with}$$

an MRHT equal to 72 hours or less.

2. $\text{OWTT} = \text{MRHT} - 48$ for tanks with an MRHT greater than 72 hours.

14. On page 12846, in the first column, in the second line of proposed § 178.338-11(b), "shu-off" is corrected to read "shut-off".

15. On page 12846, at the end of line 6 of the third column, in proposed § 178.338-13(d), "per-" is corrected to read "pre-".

16. On page 12850, in the first column, the formula in proposed § 178.400-7(c) is corrected to read:

$$t = PL(3 + \sqrt{L/r})/8SE$$

17. On page 12850, in the first column, the formula in proposed § 178.400-7(d) is corrected to read:

$$P_c = 2.6E(t/D)^{2.5} / [(L/D) - 0.45(t/D)^{0.5}]$$

18. On page 12850, in the second column, the eighth and following lines of the definition of the term "L" in proposed § 178.400-7(e)(3) are revised as follows: of the vessel, in inches. A line of support is:

(i) A stiffening ring which meets the requirements of this paragraph, or

(ii) A circumferential line of a head at one-third the depth of the head from the tangent line;

Authority: (49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53; 49 CFR Part 1, App. A. and 49 CFR Part 106, App. A., paragraph (a)(4)).

Note.—The Materials Transportation Bureau has determined that the proposals in this notice if implemented would not result in a major economic impact under the terms of Executive Order 12044 and DOT implementing procedures (43 FR 9583). A regulatory evaluation is available in the public docket.

Issued in Washington, D.C. on March 29, 1979.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[Docket No. HM-115; Notice No. 79-3]

[FR Doc. 79-1030 Filed 4-4-79; 8:45 am]

BILLING CODE 4910-60-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 408]

Canned and Preserved Seafood Processing Point Source Category; Reasonableness of Existing Effluent Limitations Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rules.

SUMMARY: EPA has reviewed the existing best available technology economically achievable (BAT) effluent guidelines in thirteen industries and published the results in the August 23, 1978, Federal Register (43 FR 37570-37607). These guidelines were reviewed to determine if they are not only economically achievable, but are also reasonable. A segment of these BAT

effluent guidelines for the canned and preserved seafood processing point source category was not reviewed at that time due to a lack of sufficient data. The guidelines were proposed to be unreasonable and withdrawn until sufficient data became available. The determinations of reasonableness in this point source category are being re-proposed based on existing information located since publication of the original proposal.

DATE: Comments must be received on or before May 7, 1979.

ADDRESS: Send Comments on this proposal to: Emily Hartnell, Water Economics Branch (WH-586), U.S. EPA, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Emily Hartnell, Water Economics Branch (WH-586), U.S. EPA, 401 M St., SW., Washington, D.C. 20460, phone: 202-755-2484.

SUPPLEMENTARY INFORMATION: Section 73 of the Clean Water Act of 1977 directs the Agency to review, immediately, all existing final or interim final BAT effluent guidelines for conventional pollutants in those industries not covered in the Consent Agreement (*NRDC v. Train*, 8 ERC 2120 (D.D.C. 1976)). These industries are often referred to as "secondary industries".

On August 23, 1978, the Agency published proposed rules under best conventional pollutant control technology (BCT) in thirteen industrial categories (43 FR 37570-37607). The BCT guidelines proposed at that time are the guidelines for conventional pollutants previously promulgated under best available technology economically achievable (BAT). Guidelines which passed a test of reasonableness, described in the August 23, 1978, *Federal Register* notice, were proposed to become BCT while those guidelines which did not pass the reasonableness test were withdrawn or suspended.

Review

A complete review of the BAT conventional pollutant guidelines for several Seafood industry subcategories was not possible at the time of proposal.

The data needed for the cost test was not available in the *Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Catfish, Shrimp and Tuna Segment of the Canned and Preserved Seafood Processing Point Source Category, June 1974, EPA-440/1-74020-a (Development Document)* which was the basis for calculation. This source provided information on production, treatment system operating costs and pollutant removals on a daily basis. The BCT cost test is based on annual data. To derive the annual measures of cost and pollutant removal necessary to perform the cost test, the number of operating days per year is needed. This information was not found in the *Development Document*. Therefore, the evaluation of the reasonableness of these guidelines could not be performed and the regulations were proposed to be withdrawn pending further study.

Since that time, the data used to develop the regulations has been evaluated. The number of operating days per year was located in the record supporting the original regulation development. The operating days for the model plants in each subcategory are listed in Table 1. Using this data to supplement that already available in the *Development Document*, the evaluation of the reasonableness of the original regulations has been performed.

Table 1

| Subcategory | Annual number of operating days |
|---|---------------------------------|
| Farm Raised Catfish..... | 160 |
| Conventional Blue Crab..... | 125 |
| Mechanized Blue Crab..... | 125 |
| Non-Remote Alaskan Crab..... | 80 |
| Remote Alaskan Crab..... | 80 |
| Non-Remote Alaskan Whole Crab and Crab Section..... | 80 |
| Remote Alaskan Whole Crab and Crab Section..... | 80 |
| Dungeness and Tanner Crab..... | 125 |
| Non-Remote Alaskan Shrimp..... | 160 |
| Remote Alaskan Shrimp..... | 160 |
| Northern Shrimp..... | 125 |
| Southern Non-Breaded Shrimp..... | 160 |
| Breaded Shrimp..... | 160 |
| Tuna..... | 260 |

Results

Each of the subcategories was analyzed using model plant data for small, medium and large size plants. An incremental cost per pound of conventional pollutant removal was determined for each model plant. The results are presented in Table 2. This table is a revision of the applicable portion of Table D1 of the August 23, 1978, *Federal Register* notice (43 FR 37602).

Determinations

In two subcategories, Non-Remote Alaskan Crab Meat Processing and Non-Remote Alaskan Whole Crab and Crab Section Processing, all of the model plants exhibit costs which exceed the comparable size POTW cost, and therefore are unreasonable. The regulations for these subcategories are therefore proposed to be withdrawn.

In the Dungeness and Tanner Crab Processing in the Contiguous States subcategory the small and medium size model plant costs are unreasonable. However, the large model plant costs are reasonable. Therefore, the Agency is proposing that the BAT conventional pollutant regulations in this subcategory be withdrawn for small and medium size plants, but retained for large plants processing 15 tons per day or more of seafood. Comments are invited on this size cut-off.

The remaining subcategories have reasonable costs for all model plant sizes. The Agency is, therefore, proposing that their BAT conventional pollutant regulations be equated to BCT.

In consideration of the foregoing, 40 CFR Part 408 is hereby proposed to be amended as follows.

Dated: March 27, 1979.

Douglas M. Costle,
Administrator.

1. Table D1 to Appendix D of this Part as prepared on August 23, 1978 is amended by changing items 27 through 40 to read as set forth below.

BILLING CODE 6560-01-M

Table D1.--Summary of Data

| COLUMN | | <u>1</u> | <u>2</u> | <u>3</u> | <u>4</u> | | | <u>5</u> | | |
|---|---|---------------------------------|--------------------------|------------------------------|--|-----|-----------|---------------------------------|-----|-----------|
| | | Model Plant Flow (MGD) | Model Plant \$/Lb. | Comparable POTW \$/Lb. | BAT Model Plant Concentration (mg/l) | | | POTW Concentration (mg/l) | | |
| INDUSTRY Subcategory | | | | | BOD | TSS | O&G P COD | BOD | TSS | O&G P COD |
| 27. Farm Raised Catfish | s | .02 | 1.36 | 1.68 | 100 | 248 | 20 | | | |
| | m | .03 | 1.12 | 1.64 | 100 | 248 | 20 | | | |
| | l | .06 | .84 | 1.54 | 100 | 248 | 20 | | | |
| 28. Conventional Blue Crab | s | .01 | .21 | 1.72 | 126 | 378 | 55 | | | |
| | m | .01 | .16 | 1.72 | 126 | 378 | 55 | | | |
| | l | .01 | .13 | 1.72 | 126 | 378 | 55 | | | |
| 29. Mechanized Blue Crab | s | .05 | .07 | 1.58 | 68 | 171 | 35 | | | |
| | m | .11 | .06 | 1.35 | 68 | 171 | 35 | | | |
| | l | .21 | .04 | 1.01 | 68 | 171 | 35 | | | |
| 30. Non-Remote Alaskan Crab | s | .06 | 15.17 | 1.54 | 61 | 16 | 3 | 30 | 60 | |
| | m | .09 | 12.92 | 1.43 | 61 | 16 | 3 | 30 | 60 | |
| | l | .14 | 10.98 | 1.25 | 61 | 16 | 3 | 30 | 60 | |
| 31. Remote-Alaskan Crab | s | .06 | .07 | 1.54 | 162 | 16 | | | | |
| | m | .09 | .04 | 1.43 | 162 | 16 | | | | |
| | l | .14 | .05 | 1.25 | 162 | 16 | | | | |
| 32. Non-Remote Alaskan Whole Crab | s | .02 | 19.78 | 1.68 | 77 | 20 | 3 | | | |
| | m | .04 | 14.43 | 1.60 | 77 | 20 | 3 | | | |
| | l | .10 | 10.39 | 1.39 | 77 | 20 | 3 | | | |
| Alaskan Whole Crab | m | .04 | .10 | 1.60 | 195 | 21 | | 30 | 60 | |
| | l | .10 | .07 | 1.39 | 195 | 21 | | 30 | 60 | |
| | | | | | | | | | | |
| 34. Dungeness and Tanner Crab | s | .01 | 3.23 | 1.72 | 89 | 12 | 4 | 30 | 60 | |
| | m | .03 | 2.10 | 1.64 | 89 | 12 | 4 | 30 | 60 | |
| | l | .07 | 1.47 | 1.51 | 89 | 12 | 4 | 30 | 60 | |
| 35. Non-Remote Alaskan Shrimp | s | .33 | .33 | .79 | 203 | 130 | 11 | | | |
| | m | .66 | .25 | .53 | 203 | 130 | 11 | | | |
| | l | 1.45 | .18 | .89 | 203 | 130 | 11 | | | |
| 36. Remote Alaskan Shrimp | s | .33 | .05 | .79 | 1304 | 109 | | | | |
| | m | .66 | .04 | .53 | 1304 | 109 | | | | |
| | l | 1.45 | .03 | .89 | 1304 | 109 | | | | |
| 37. Northern Shrimp | s | .29 | .05 | .84 | 450 | 82 | 63 | | | |
| | m | .50 | .04 | .61 | 450 | 82 | 63 | | | |
| | l | 1.01 | .03 | .91 | 450 | 82 | 63 | | | |
| 38. Southern Non- Breaded Shrimp | s | .28 | .07 | .86 | 212 | 72 | 23 | | | |
| | m | .57 | .05 | .58 | 212 | 72 | 23 | | | |
| | l | 1.13 | .04 | .90 | 212 | 72 | 23 | | | |
| 39. Breaded Shrimp | s | .06 | .30 | 1.54 | 147 | 64 | 9 | | | |
| | m | .22 | .17 | .98 | 147 | 64 | 9 | | | |
| | l | .61 | .11 | .56 | 147 | 64 | 9 | | | |
| 40. Tuna | s | .21 | .55 | 1.01 | 28 | 28 | 3 | | | |
| | m | .80 | .28 | .46 | 28 | 28 | 3 | | | |
| | l | 2.40 | .21 | .87 | 28 | 28 | 3 | | | |

1. The sections listed below are proposed to be withdrawn, and the section numbers reserved for future use.

| Subcategory | Section designation (40 CFR) |
|--|------------------------------|
| Non-Remote Alaskan Crab Meat Processing..... | 408.43 |
| Non-Remote Alaskan Whole Crab and Crab Section Processing..... | 408.63 |
| Dungeness and Tanner Crab Processing in the Contiguous States..... | 408.83 |

2. New §§ 408.47 and 408.67 are proposed to be added to read as follows:

§ 408.47 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology.

The following limitations establish the quantity or quality of pollutants or pollutant properties controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best conventional pollutant control technology.

| Effluent characteristic | Effluent limitations |
|-------------------------|------------------------------|
| pH..... | Within the range 6.0 to 9.0. |

§ 408.67 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology.

The following limitations establish the quantity or quality of pollutants or pollutant properties controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best conventional pollutant control technology.

| Effluent characteristic | Effluent limitations |
|-------------------------|------------------------------|
| pH..... | Within the range 6.0 to 9.0. |

3. A new § 408.87 is proposed to be added for the Dungeness and Tanner Crab Processing in the Contiguous States subcategory to read as follows:

§ 408.87 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology.

(a) The following limitations apply to plants processing 15 tons per day or more of seafood and establish the quantity or quality of pollutants or pollutant properties, which may be discharged by a point source subject to the provisions of this subpart after

application of the best conventional pollutant control technology.

| Effluent characteristic | Effluent limitations | |
|---------------------------------------|-----------------------------|---|
| | Maximum for any one day | Average of daily values for thirty consecutive days shall not exceed— |
| (Metric units) kg/kkg of seafood | | |
| BOD5..... | 4.3..... | 1.7 |
| TSS..... | 0.58..... | 0.23 |
| Oil and Grease..... | 0.18..... | 0.07 |
| pH..... | Within the range 6.0 to 9.0 | |
| (English units) lb/1000 lb of seafood | | |
| BOD5..... | 4.3..... | 1.7 |
| TSS..... | 0.58..... | 0.23 |
| Oil and Greas..... | 0.18..... | 0.07 |
| pH..... | Within the range 6.0 to 9.0 | |

(b) [Reserved]

4. (a) The sections listed below are redesignated as follows and the original section numbers reserved for future use.

| Subcategory | Old section designation (40 CFR) | New section designation (40 CFR) |
|--|----------------------------------|----------------------------------|
| Farm Raised Catfish Processing..... | 408.13 | 408.17 |
| Conventional Blue Crab Processing..... | 408.23 | 408.27 |
| Mechanized Blue Crab Processing..... | 408.33 | 408.37 |
| Remote Alaskan Crab Meat Processing..... | 408.53 | 408.57 |
| Remote Alaskan Whole Crab and Crab Section Processing..... | 408.73 | 408.77 |
| Non-Remote Alaskan Shrimp Processing..... | 408.93 | 408.97 |
| Remote Alaskan Shrimp Processing..... | 408.103 | 408.107 |
| Northern Shrimp Processing in the Contiguous States..... | 408.113 | 408.117 |
| Southern Non-Breaded Shrimp Processing in the Contiguous States..... | 408.123 | 408.127 |
| Breaded Shrimp Processing in the Contiguous States..... | 408.133 | 408.137 |
| Tuna Processing..... | 408.143 | 408.147 |

(b) The title and first paragraph of the sections redesignated above are proposed to be amended as follows:

Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology.

The following limitations establish the quantity or quality of pollutants or pollutant properties controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best conventional pollutant control technology.

* * * * *

[FRL 1085-7]
[FR Doc. 79-10370 Filed 4-4-79; 8:45 am]
BILLING CODE 6560-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 3400]

Federal Coal Management Program; Public Hearings on Proposed Coal Management Rulemaking

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcing Public Hearings—Correction.

SUMMARY: The first two sentences under this heading in the announcement of public hearings on the proposed 43 CFR Part 3400 coal management rulemaking published at 44 FR 18537 Wednesday, March 28, 1979, are hereby corrected and replaced by the following: The Bureau of Land Management announces public hearings on its proposed coal management rulemaking published at 44 FR 16800, Part III, March 19, 1979, which also opened a 60-day comment period. This rulemaking followed a notice of intent to propose rulemaking published at 43 FR 58776, December 15, 1978, requesting comments on the example rulemaking in Appendix A of the draft coal management environmental statement and a later clarification notice published at 44 FR 10518 February 21, 1979, which made it clear that any comments received prior to publication of the proposed rulemaking would be considered.

The first sentence of the heading "SUPPLEMENTARY INFORMATION" of the same announcement is hereby corrected and replaced by the following: Hearings will be daytime sessions only and will begin at 1:00 p.m. at each location. All other information in the original announcement published at 44 FR 18537, Wednesday, March 28, 1979, remains the same.

FOR FURTHER INFORMATION CONTACT: Robert C. Bruce (202) 343-8735.

Arnold E. Petty,
Acting Associate Director, Bureau of Land Management
April 2, 1979.

[FR Doc. 79-10504 Filed 4-4-79; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS**COMMISSION****[47 CFR PART 73]****Clean Channel Broadcasting in the Standard Broadcast Band; Order Extending Time for Filing Comments and Reply Comments****AGENCY:** Federal Communications Commission.**ACTION:** Order.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in a proceeding involving Clear Channel Broadcasting in the Standard Broadcast Band. Petitioners, Association for Broadcast Engineering Standards, Inc., and Clear Channel Broadcasting Service, state that the additional time is needed so that they can complete their preparation of comments and engineering studies for filing in this proceeding.

DATES: Comments must be filed on or before July 10, 1979, and reply comments on or before August 13, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Louis C. Stephens, Broadcast Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

In the matter of Clear Channel Broadcasting in the Standard Broadcast Band; Order Extending Time for Filing Comments and Reply Comments.

Adopted: March 22, 1979.

Released: March 28, 1979.

By the Chief, Broadcast Bureau:

1. The Commission has before it two timely-filed Motions requesting an extension of time for filing comments and reply comments regarding the *Further Notice of Proposed Rule Making*, 44 Fed. Reg. 4502, in the above-entitled proceeding. The dates for filing comments and reply comments are April 9, and May 9, 1979, respectively.

2. The requests were filed by the Association for Broadcast Engineering Standards, Inc. ("ABES"), and the Clear Channel Broadcasting Service ("CCBS"). ABES requests that the filing dates be extended for comments and reply comments to and including July 9, and August 13, 1979, respectively, and CCBS requests that they be extended to July 10, and August 10, 1979. ABES states that it is actively studying the numerous issues raised in the *Notice*. It notes that its Executive Committee met at San Diego in early February to consider this and other proposals looking toward the possible restructuring of the AM broadcast service. ABES adds that final

action by its Board of Directors adopting policy recommendations to be presented in comments will be taken at the Annual Meetings at Dallas, Texas, on March 25, 1979. It asserts that preparations (including engineering studies) cannot be completed in time to meet the filing deadline date. CCBS states that more time is needed so that its attorneys and consulting engineers and its member stations may complete complex studies in response to the questions raised in the *Notice*. CCBS states further that it will be filing a Freedom of Information Act request seeking factual information from the Commission concerning issues in this proceeding. As advised by its consulting engineer, CCBS adds that additional time, from the release of the material requested, will be needed to complete engineering studies.

3. On the basis of the reasons indicated in the above-mentioned motions, we believe that the additional time requested is warranted and would help to assure development of a sound and comprehensive record on which to base a decision in this proceeding. However, because we are here granting a substantial extension, we wish to alert parties that we do not contemplate granting any further requests for additional time for the filing of comments and reply comments.

4. Accordingly, *it is ordered*, that the dates for filing comments and reply comments in Docket No. 20642 are extended to and including July 10, and August 13, 1979, respectively.

5. This action is taken pursuant to authority contained in Sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules.

Federal Communications Commission.

Wallace E. Johnson,
Chief, Broadcast Bureau.

[Docket No. 20642]

[FR Doc. 79-10429 Filed 4-4-79; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION**[47 CFR Parts 73, 95 and 97]****Rebroadcast of CB and Amateur Transmissions of Emergency Information****AGENCY:** Federal Communications Commission.**ACTION:** Memorandum Opinion and Order and Notice of Inquiry.

SUMMARY: The FCC started an Inquiry into whether it should permit broadcast stations to rebroadcast directly transmissions by CB stations of traffic and weather emergency information and the like, as an exception to its rules which prohibit rebroadcast of CB transmissions. It denied a request for a similar rule change for Amateur radio as being inconsistent with the purpose of Amateur radio and the way it functions.

DATES: Comments must be filed on or before May 30, 1979, and reply comments on or before June 29, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Carol P. Foelak, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of rebroadcast of CB and amateur transmissions of emergency information; Memorandum opinion and order and notice of inquiry.

Adopted: March 15, 1979.

Released: March 30, 1979.

By the Commission:

1. We have before us a petition for rule making filed by the National Association of Broadcasters ("NAB")¹ asking us to amend Sections 73.1207(c) and Note 2(d), 95.83(a)(4),² 97.113 and 97.114(c) of the Rules, to permit broadcast stations to rebroadcast Citizens Band ("CB") and Amateur Radio Service transmissions consisting of emergency information, traffic, road or weather condition reports and similar information for public safety and convenience. Comments supporting the proposal were filed by the American Broadcasting Companies, Inc. ("ABC"), the National Radio Broadcasters Association ("NRBA"), and the National Federation of Citizens Band Radio Operators ("NFCBRO"). Comments opposing the proposal were filed by the National Capital REACT, Inc. ("NCRI"), the American Radio Relay League, and Jerold R. Johnson.

The NAB does not dispute the appropriateness of a general prohibition against the rebroadcasting of CB or amateur transmissions. However, it does argue that the public interest would be served by permitting a narrow exception to the current restrictions to permit rebroadcast of such transmissions where they concern emergency weather and road conditions and the like. Under

¹Public Notice was given on February 14, 1977 (Report No. 1029).

²The Commission has since adopted a "plain English" revision of the CB rules, effective August 1, 1978, and the rule corresponding to former Section 95.83(a)(4) is now Section 95.401 CB Rule 23(a), 43 Fed Reg. 13976 (April 3, 1978), 67 F.C.C. 2d 977 (1978).

its proposal a broadcast station would have to obtain the CB or amateur operator's permission for the rebroadcast. The NAB acknowledges that the rules now permit a broadcast station to report information supplied by CB operators as long as the CB transmission is not actually rebroadcast. However, it reasons that its proposal would enable reports of emergency conditions to be more timely, an important consideration since time is of the essence in conveying emergency road, traffic, and weather conditions to the public. Under the existing rule, stations must transcribe and rewrite the CB report, which the NAB asserts consumes time. Also, it believes that its proposal would enable more stations to use CB reports since the burden of transcribing and rewriting them discourages small stations with one or two persons on duty from using them.

3. NAB also believes that the public will benefit from access to amateur transmissions. It notes that although the amateur rules (Section 97.113) apparently allow rebroadcasting with the consent of the radio operator, the scope of permissible activity is clouded by the amateur rule [Section 97.114(c)] prohibiting transmission of third party business communications and the broadcast rule [Section 73.1207(c)] requiring Commission consent for rebroadcast of a non-broadcast transmission.

4. The proposal was supported generally by NFCBRO, NBRA and ABC. NFCBRO pointed to the role of REACT teams³ to illustrate the contribution CB operators make to public safety and cited an example of a CB who scooped the Weather Service in transmitting a tornado warning. NRBA asserted that although the stated purpose of CB is personal communications, the FCC has reserved Channel 9 in the CB band for emergency communications, thus in effect endorsing the use of CB for transmissions of messages in the interest of public safety.

5. The American Radio Relay League commented on the proposal as it applies to the Amateur Service and expressed the view that the petition did not seem to be based on an understanding of how amateur stations operated. Because the usefulness of traffic and weather and other emergency information is restricted to the area in which a broadcast station is located, the League reasons that the NAB proposal must be directed primarily to mobile amateur

stations operating on VHF or low UHF frequencies, as local communications between mobile stations operating on medium frequency (MF) and high frequency (HF) amateur bands are relatively limited. It states that most VHF and UHF mobile stations communicate through repeaters operating on discrete frequencies by common agreement of interested amateurs,⁴ and that useful information cannot be provided merely by intercepting and retransmitting communications between two or more amateur stations. Rather, an employee at the broadcast station would have to ask questions to elicit useful information, or, indeed, to obtain permission for rebroadcast. To be able to do so, the broadcast station would have to have an amateur station under the control of its employee, and the League questions whether such a station would qualify as an amateur station under the rules of the FCC and the provisions of international regulations for amateur stations. Further, they assert, with reference to the broadcast employee's communicating with the amateur operator, there is no way in which the use of an open repeater can be restricted to specify the amateurs, and reliance by a broadcast station on a closed repeater would again raise questions as to whether the repeater were an amateur station.

6. NCRI is a (REACT) organization of CB licensees which monitors the Channel 9 emergency frequency to provide emergency communications and assistance to motorists. It states that there are many other similar groups in the country, an allegation supported by NFCBRO's assertion that there are about 1,200 REACT teams throughout the country. NCRI states that it and other REACT groups make traffic and other public safety information available in usable summary form to broadcast stations for wider dissemination, and that such information provide by REACT groups is reliable. It notes that there is no such guarantee by REACT groups is reliable. It notes that there is no such guarantee of reliability of random CB or amateur transmissions. To the contrary, it contends that CB transmissions can be false or misleading even though they may appear valid. The use of a false call

³A repeater station automatically retransmits on one frequency the signals of amateur stations transmitted on another frequency for the purpose of extending their range. There are "open" repeaters through which any qualified amateur may operate merely by transmitting on the repeater input frequency. There are also "closed" repeaters, use of which is restricted to those who know and transmit a code to gain access.

sign or failure to identify by call sign could make such a transmission anonymous, it continues, and time pressures on broadcast station personnel and the desire to scoop other stations may cause such false and misleading information to be broadcast, possibly causing danger to the public. These difficulties, we are told, do not occur when information is provided by REACT groups, which use personnel trained in validation techniques.

7. NCRI also argues that it is inconsistent to say that broadcast stations are too understaffed to transcribe and rewrite CB reports but have enough personnel to monitor the program material and delete objectionable material before it is broadcast.

8. NCRI questions NAB's motives, noting that it did not request a comparable amendment for Part 89 of the Rules (Public Safety Radio Services), although transmissions of police and fire departments and ambulance services would be much more reliable. It theorizes that, although NAB denies this, it is proposing CB and amateur radio as an extension to the Remote Broadcast Pickup Service, thereby seeking to employ legitimate users without pay to gather information. CB and amateur radio, it notes, are personal communications services, not an information gathering service for business purposes.⁵

9. Finally, NCRI says that the spectrum available for both services is crowded and adding a new use would make it more crowded, since the petition envisions the broadcast station as not just passively listening but asking questions of the CB or amateur operator making the transmission.

10. We will deny NAB's proposal to permit rebroadcast of amateur transmissions, as it has not shown us any public interest need to counterbalance the derogation of our rules protecting the integrity of the Amateur Service.⁶ Moreover, such rebroadcasts would not be consistent with the purpose of the Amateur Service and the way it functions. As we have explained in the past, the rules on prohibited communications in the Safety and Special Radio Services are an

⁵This distinction is made clear in Section 95.401 of the Rules which provides, "The CB Radio Service is a private, two-way short-distance voice communications service for personal or business activities" as contrasted with Section 97.3(b) which defines "Amateur radiocommunications" as "Non-commercial radio communications by or among amateur radio stations solely with a personal aim and without pecuniary or business interest."

⁶This does not foreclose our consideration of the entirely different question of state EBS plans which include amateur radio.

³A REACT team is an organization of CB licensees which monitors the Channel 9 emergency frequency to provide emergency communications and assistance to motorists.

essential part of our management of the frequencies used by these services. Unlike the broadcast services where a single licensee is assigned exclusive use of a discrete frequency in a given area, in the Safety and Special Radio Services channels are assigned on the basis of shared use by individual licensees. Therefore, in order to accommodate the optimum number and type of users in these services in fulfilling our statutory obligation under Section 303(g) of the Communications Act, generally to encourage the larger and more effective use of radio in the public interest, it has been necessary "to establish priorities, limit eligibility to hold radio station licenses, and restrict the use of stations in these services to specified purposes and types of communications which will be the most beneficial to the public and assure the most effective uses of this very limited frequency space." *Citizens Radio Service Rules*, 38 F.C.C. 1238, 1241 (1965). Thus the restriction on rebroadcasting amateur transmissions can be judged in light of the purpose of this service, noted *supra* in note 5, and the fact that the frequencies used by it are quite congested.

11. Finally, the points raised by the American Radio Relay League concerning the nature of the Amateur Service make it clear that the proposal is unsuitable as it applies to amateur radio. A broadcast station is not eligible for an amateur license. An amateur licensed employee of a station who uses his radio for the station's benefit would violate Section 97.114(b) and (c) of the Rules prohibiting third party traffic involving material compensation or business communications. The Commission sees no need to open the door to pecuniary or business interests in this service. Amateur radio is intended to be a noncommercial service among persons interested in radio technique for purely personal aims.

12. However, as to CB, we wish to explore the desirability of permitting such rebroadcasts as requested by NAB. Although there are arguments against permitting such rebroadcasts, we feel that we should not foreclose consideration of whether the public interest in promoting highway safety could be furthered by use of CB rebroadcasts. Since many cars are equipped with CB transceivers as well as broadcast receivers, the value of CB rebroadcast cannot be rejected out of hand. On the other hand, we wish to make it clear that it is not our intent to consider permitting retransmissions which would be broadcast for their entertainment or other non-emergency value.

13. We invite comments on any aspect of the desirability of permitting rebroadcasts of CB transmissions of emergency information.

14. Also, we are concerned about the possibility of rebroadcast of erroneous or misleading information, which could be especially harmful when it pertains to emergency situations. We realize that erroneous information may be transmitted on CB at times, and if it were rebroadcast, it would then have a wider audience and also seem more credible to the broadcast audience than it might to CB users who heard the transmission directly. Thus, rebroadcasts could be counterproductive for public safety. One argument made by NAB, which is relevant to this problem, is that permitting rebroadcasts would enable small stations which lack the staff or time to transcribe or rewrite CB transmissions to use the transmissions directly. Yet this would imply that the stations do not have enough staff to attempt to validate the transmissions or otherwise handle them in a responsible manner. Presentation of material without adequate verification does not accord with the broadcast licensee's responsibility for what is broadcast, which as we have often stressed, is an essential part of our public interest licensing approach. Moreover, as we have previously stated, a broadcast station's ability to report news instantaneously gives it a special responsibility to ensure that its news bulletins do not compromise public safety. *Monitoring by Broadcast Stations*, 1 R.R. 2d 291, 292 (1963). Thus, we need to consider how broadcast licensees could best meet their responsibility if permitted to rebroadcast CB transmissions.

15. Authority for the institution of this proceeding and adoption of rules concerning the matters involved in contained in Sections 4 (i), and (j) and 303 of the Communications Act of 1934, as amended.

16. Pursuant to applicable procedures set out in Section 1.4, 1.415 and 1.419 of the Commission's Rules and Regulations, interested parties may file comments on or before May 30, 1979, and reply comments on or before June 29, 1979. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments or other appropriate pleadings. All relevant and timely comments will be considered by the Commission before final action is taken.

17. In accordance with the provisions of Section 1.419 of the Rules, an original

and five copies of all comments, replies, pleadings, briefs, and other documents shall be furnished to the Commission. Members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying the docket number, including the entire designation (BC Docket No. 79-47). All filings in this proceeding will be available for public inspection by interested persons during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

18. *It is ordered*, That the petition for rule making filed by NAB is denied insofar as it concerns rebroadcast of amateur transmissions, as discussed *supra*.

19. For further information concerning this proceeding contact Carol P. Foelak, Broadcast Bureau, (202) 632-7792.

Federal Communications Commission.

William J. Tricarico,
Secretary.

[BC Docket No. 79-47; RM 2830; FCC 79-168]

[FR Doc. 79-10428 Filed 4-4-79; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 652]

Atlantic Surf Clam and Ocean Quahog Fisheries; Public Hearing

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Proposed Rulemaking, Announcement of Public Hearing.

SUMMARY: Public hearings will be held by the National Marine Fisheries Service (NMFS) to solicit comments on proposed changes to the present regulations which would: (1) allow free transfer of surf clam vessel permits upon change in vessel ownership; (2) establish fixed ending times for designated surf clam fishing periods; (3) create a presumption concerning fishing gear which remains in the water after the end of those periods; and (4) prohibit harvesting ocean quahogs and surf clams on the same trip.

DATES: Comments are invited until April 30, 1979. Public hearings will be held on April 12, 13, and 16, 1979.

ADDRESSES: The hearings will be held at the locations which are listed below in Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Dr. Robert W. Hanks, Acting Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930, Telephone (617) 281-3600.

SUPPLEMENTARY INFORMATION: Pursuant to section 302 of the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 *et seq.*, as amended (Act), a fishery management plan (FMP) for the surf clam and ocean quahog fisheries was prepared by the Mid-Atlantic Fishery Management Council (Council). The FMP was approved in accordance with section 304 of the Act and published on November 25, 1977 (42 FR 60438). Regulations implementing the FMP were published on February 17, 1978 (43 FR 6952) and codified at 50 CFR 652.

Section 652.10 of those regulations requires that a vessel's permit to harvest surf clams shall expire when the ownership of the vessel changes, except that the Assistant Administrator for Fisheries may authorize continuation of a vessel's permit upon change in ownership of the vessel if he determines that expiration of a vessel's permit would cause substantial economic hardship to a person who had participated in the surf clam fishery for at least one year immediately prior to November 17, 1977.

As a result of activities within the surf clam fishery since the FMP was implemented by final regulations, the Council believes that this restraint on the transferability of surf clam vessel permits does not serve to further its original intent to maintain the status quo in the fishery. Free transferability of permits will not result in an increase in the number of vessels presently operating in the fishery. It is also consistent with the purpose of the FMP to prevent further overcapitalization, stabilize economic return to other surf clammers, prevent overfishing of the surf clam stock, and spread surf clamming over the entire year. The Council anticipated that some vessels would leave the fishery due to reduced catches, idle days, or financial problems. However, it was not their intent to force such individuals to remain in the fishery because they would be unable to sell their vessels without a permit or would receive substantially less for them.

Section 652.7 of the final regulations implementing the FMP originally established a 4-day work week for vessels harvesting surf clams in the fishery conservation zone (FCZ). That

section also gave the Regional Director of the National Marine Fisheries Service the authority to reduce the number of fishing days to allow clamming throughout an entire quarter. Each vessel operator selected the days during which he desired to fish. A fishing day was considered to be a 24-hour day, beginning at (0001 hours) and ending at (2400 hours). Considerable protest was received from those in the industry stating that the day thus established was inflexible and forced them to navigate in darkness. On March 31, 1978, section 652.7 was amended to allow vessel operators to select for themselves the beginning and ending times for their fishing period (43 FR 13581), which could be multiples of 12 hours, depending upon the level of effort allowed that quarter.

A number of individuals have commented that the conditions established by the March 31, 1978 amendment have impaired law enforcement efforts and that a widespread pattern of fishing beyond designated fishing periods exists. Vessels with fishing periods ending after daylight cannot be effectively monitored to assure that they cease fishing activities at the end of their designated fishing periods. A proposal has been advanced by the Council to establish fixed ending times for fishing periods which will allow for daylight monitoring of vessels at the end of their designated fishing periods. This proposal would facilitate enforcement against those who fish beyond their designated periods, would also spread the quarterly quota more equitably among all participants in the fishery and over longer periods of time, and would further the objectives of the FMP. The proposal would require all fishing periods to end in daylight hours. Designated fishing periods would end at 1700 hours during that part of the year in which Eastern Standard Time is in effect. In that part of the year in which Daylight Savings Time is in effect, all fishing periods would end at 1800 hours. Other provisions of the effort restriction regulations would remain unchanged.

Prohibitions on harvesting surf clams and ocean quahogs on the same trip (dock to dock) are being considered. Because fishing for ocean quahogs is allowed 7 days per week, while fishing for clams is restricted, it may be reasonable to require fishermen to limit their trip efforts to one or the other species.

In addition, a presumption would be established that a vessel whose fishing gear remained in the water longer than reasonably necessary (i.e. one-half hour) to extract it after the end of the vessel's

designated fishing period would be considered to be fishing in violation of the regulations. This would place the burden on the vessel operator to prove that the vessel's gear remained in the water after the designated period for purposes other than fishing. Because of boarding conditions at sea (i.e. from helicopters) enforcement officers sometimes are unable to board vessels safely to determine the facts surrounding an apparent violation of the designated fishing period. Therefore, such a change in the regulations is believed to be necessary.

Notice is hereby given that public hearings will be held to consider the above amendments to the final regulations. The locations, dates, and time of these hearings are as follows:

Holiday Inn, Wildwood Crest, New Jersey, April 12, 1979—7 p.m.

Sheraton Fountainbleau Inn, Ocean City, Maryland, April 13, 1979—7 p.m.

Skipper Motor Inn, Fairhaven, Massachusetts, April 16, 1979—7 p.m.

Comments on the proposed changes to the regulations will be received at the hearing. Written comments may be sent to the Acting Regional Director at the address shown above on or before April 30, 1979.

The Assistant Administrator has determined that this proposed rulemaking is not significant within the meaning contemplated by Executive Order 12044. The appropriate environmental impact statement has been filed with the Environmental Protection Agency. An economic impact statement was prepared in connection with the final rulemaking cited above (50 CFR Part 652).

Signed at Washington, D.C. this 2nd day of April, 1979.

Winfred H. Melbohm,

Executive Director, National Marine Fisheries Service.

Authority: 16 U.S.C. 1801 *et seq.*

It is proposed to amend 50 CFR Part 652 as follows:

(1) Delete § 652.10(i) (1) and (2) and substitute a new § 652.10(i) as follows:

§ 652.10 Vessel permits.

* * * * *

(i) A permit shall expire when the owner or operator retires the vessel from the fishery (it shall be a rebuttable presumption that failure to land any surf clams or ocean quahogs for 52 consecutive weeks constitutes retirement from the fishery).

(2) Insert between § 652.7 (a)(1) and (a)(2) a new subparagraph (a)(1)(i) as follows:

§ 652.7 Effort restriction.

(a) * * *

(1) * * *(i) Designated fishing periods shall end at 5 p.m. (1700 hours) during that part of the year in which Eastern Standard Time is in effect. Designated fishing periods shall end at 6 p.m. (1800 hours) during that part of the year in which Daylight Savings Time is in effect.

(3) Add to § 652.4 new paragraphs (b) (3) and (4) as follows:

§ 652.4 Restrictions.

* * * * *

(b) * * *

(3) The presence of a vessel's fishing gear in the water one-half hour after the end of the vessel's designated fishing period shall be prima facie evidence that the vessel is fishing in violation of these regulations.

* * * * *

(4) No person shall harvest both surf clams and ocean quahogs on the same trip (i.e. dock to dock).

* * * * *

[FR Doc. 79-10524 Filed 4-4-79; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 44, No. 67

Thursday, April 5, 1979

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.

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra National Forest, Fresno, Madera, and Mariposa Counties, Calif.; Intent To Prepare an Environmental Impact Statement for Land and Resource Management Plan

The Department of Agriculture-Forest Service will prepare an environmental impact statement for the Forest Plan for the Sierra National Forest.

This plan will provide policy and program direction for all National Forest system lands under the administration of the Forest Supervisor.

The Forest Plan will:

- (a) Briefly describe major public issues and management concerns,
- (b) Briefly describe the lands and resources of the Sierra National Forest,
- (c) Identify the goals and objectives of management,
- (d) Describe the expected types and amounts of good, services, or uses by decades,
- (e) Identify the proposed vicinity, timing, standards, and guidelines for proposed and probable activities,
- (f) Identify monitoring and evaluation requirements,
- (g) Refer to information used in the plan development, and
- (h) Identify the persons who participated in the plan development with a summary of their qualifications.

The Forest Plan will be selected from a range of alternatives which will include at least:

- (a) A "no-change" alternative which represents continuation of present levels of activity,
- (b) One or more alternatives which represent levels of activity that will result in elimination of all backlogs of needed treatment for restoration of renewable resources and insure that a major portion of planned intensive multiple-use and sustained yield management procedures are operating on an environmentally sound basis, and

(c) One or more alternatives formulated to resolve the identified major public issues and management concerns.

As an early step in the planning, Federal, State and local agencies, organizations, and individuals who may be interested in, or be affected by the decision will be invited to participate in:

- (a) Identification of the issues to be addressed,
- (b) Identification of the issues to be analyzed in depth, and
- (c) Elimination from detailed study those issued which are not significant, or which have been covered by prior environmental review.

To accomplish, this, two public meetings will be held in Fresno, California on April 16 and 17, 1979. The first meeting will be held in Room 3002 of the Federal Building, 1130 O Street, Fresno. It will begin at 2 p.m. The second meeting will be held at 7 p.m. in the Sarah McCardle Room, 2nd floor, Fresno County Library, Mariposa and N Streets, Fresno.

For further information about the planning process or the environmental impact statement, contact: John Kruse, Forest Planner, Sierra National Forest, 1130 O Street, Fresno, California 93721, (209) 487-5170.

The estimated date for filing the draft environmental impact statement is February 1980; for filing the final environmental impact statement is November 1980.

March 27, 1979.

Zane G. Smith, Jr.,
Regional Forester, Pacific Southwest Region.

[FR Doc. 79-10422 Filed 4-4-79; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

1978 Corn Crop; Determinations Regarding the Proclamation of National Program Acreage

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Revision of National Program Acreage for the 1978 Crop of Corn.

SUMMARY: This notice is to announce a revised national program acreage for the 1978 crop of corn in order to determine the program allocation factor for this

commodity. This action is taken in accordance with applicable provisions of the Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977. The provisions of the 1949 Act, as amended, authorize the Secretary of Agriculture, based on latest information, to revise the national program acreage which he initially proclaims by November 15 of each calendar year for the crop harvested in the next succeeding calendar year. The national program acreage for the 1978 crop of corn was initially announced at 67.6 million acres excluding silage acreage (74.7 including silage acreage).

EFFECTIVE DATE: April 4, 1979.

ADDRESS: Production Adjustment Division, ASCS-USDA, 3630 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Orville I. Overboe (ASCS), 202-447-7987.

SUPPLEMENTARY INFORMATION: The need for this notice is to revise the 1978 corn crop national program acreage first proclaimed for the purpose of determining the national allocation factor for such commodity as authorized in Section 105A(d)(1) of the Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977 (hereinafter referred to as the "Act"). These provisions authorized the Secretary to revise the national program acreage which he initially proclaimed for any crop year for the commodity for the purpose of determining the allocation factor if he determines that such revision is necessary based upon the latest available information. The Secretary has determined that the 1978 corn crop national program acreage shall be revised based on the latest available information. Therefore, it is essential that this decision be made effective as soon as possible since the proclamation of the revised national program acreage is required as soon as such decision is made. This decision directly affects other decisions to be made by the Secretary on March 30, 1979 with respect to making deficiency payments for the 1978 corn crop. Therefore, it is impracticable and contrary to the public interest to comply with the public rulemaking requirements of 5 U.S.C. 553 and the 60-day public comment period requirement of Executive Order 12044. This notice of

determination shall become effective upon filing with the Director, Office of the Federal Register. Accordingly, the final national program acreage for the 1978 corn crop is determined to be the following:

Notice of Determinations

1. Revised National Program Acreage for 1978 Corn Crop. It is hereby proclaimed that the final national program acreage for the 1978 crop of corn shall be 76.2 million acres. The revised national program acreage is based on the following data:

| | |
|--|-------|
| (a) Estimated domestic consumption, 1978-79 (million bushels)..... ¹ | 5,213 |
| (b) Plus estimated exports, 1978-79 (million bushels)..... | 1,950 |
| (c) Minus estimated imports, 1978-79 (million bushels)..... | 1 |
| (d) Minus adjustment to decrease stocks to desired level (million bushels)..... ² | 0 |
| (e) Divided by national weighted average farm program yield (bushels/acre)..... | 94.0 |
| (f) Equals: 1978 national program acreage (million acres)..... ³ | 76.2 |

¹Includes estimated production and use of 116 million tons of corn silage (638 million bushels grain equivalent).

²Desired carryover of U.S. feed grain stocks is equal to 5.7 percent of world consumption of coarse grains. Such consumption during the 1977-78 marketing year is estimated to be 688.8 million metric tons (MMT) ($688.8 \times 0.057 = 39.3$ MMT (desired level of U.S. feed grain carryover stocks)). The corn component of the feed grain total has been determined to be 1.150 million bushels (29.2 MMT $\times 39.368$ (bushel conversion factor). 1977-78 carryover corn stocks were 1.104 million bushels resulting in a zero stock adjustment.

³Includes silage acreage.

Note: It has been determined that this document does contain a major proposal requiring preparation of an Impact Analysis Statement. The Impact Analysis Statement will be available from Orville I. Overboe (ASCS), 202-447-7987 after April 15, 1979.

Note: The ASCS, in meeting the requirements of the National Environmental Policy Act (Pub. L. 91-190, 45 U.S.C. 4321 et seq.) has determined that the impact on the human environment is not significantly different from the impact discussed in an Environmental Impact Statement filed for the initial announcement of the 1978 program, and therefore no additional statement is necessary.

Signed at Washington, D.C., on March 30, 1979.

Bob Bergland,
Secretary.

[FR Doc. 79-10421 Filed 4-4-79; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Executive Orders 11988 "Floodplain Management" and 11990 "Protection of Wetlands"; Agency Implementation Program

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice of availability for public comment of EDA procedures to implement Executive Orders 11988 "Floodplain Management" and 11990 "Protection of Wetlands".

SUMMARY: EDA is making available for public comment the procedures it will use, in addition to Department of Commerce Administrative Order 216-11 (43 FR 45284, Sept. 29, 1978), to comply with the subject executive orders in its programs and activities. EDA Directive 17.04 became effective on March 6, 1979. However, EDA will accept comments on it for thirty days after its publication in the Federal Register and will consider revision of the Directive based on comments received.

DATE: Comments must be received by May 7, 1979.

FOR FURTHER INFORMATION CONTACT: John Hansel, Special Assistant for the Environment, U.S. Department of Commerce, Room 7217, Washington, D.C. 20230, (202) 377-4208.

EDA Program To Implement Executive Orders 11988, "Floodplain Management", and 11990, "Protection of Wetlands"

Sections

- I. Introduction.
- II. Definitions.
- III. Policy.
- IV. Role of the Special Assistant for the Environment.
- V. Role of the Regional Environmentalist.
- VI. Processing Procedures.
- VII. Findings.
- VIII. Reporting Requirements.
- IX. Planning Related Programs.
- X. Applicability to Projects.
- XI. Effect on Other Directives.
- Appendix A—Executive Orders 11988 and 11990.
- Appendix B—Procedures for Determining Floodplain Location.
- Appendix C—Procedures for Determining a Wetland Location.
- Appendix D—Selected References, by Topic.
- Exhibit A—Form Letter.

I. Introduction

A. Purpose

This Directive establishes the Economic Development Administration policy and procedures for implementing Executive Orders 11988 and 11990.

B. Scope

On May 24, 1977, the President issued Executive Orders 11988, "Floodplain Management" and 11990, "Protection of Wetlands," (attached as Appendix A). These Orders direct Federal Agencies to avoid, to the extent possible, all actions associated with the modification or destruction of floodplains and wetlands or actions that may increase the risk of loss of life or property resulting from flood or storm damage.

C. Natural Values and Functions of Floodplains and Wetlands

EDA recognizes floodplains wetlands as unique and vital natural resources. Both ecological systems, or ecosystems, possess many natural values and carry on numerous functions that are of great benefit to man. Because wetlands frequently lie within the margins of the floodplain, the two ecosystems share many of these natural values and functions.

Floodplains and wetlands provide valuable protective barriers against flooding and storm damage by acting as buffers which dissipate the energy of flood waters, wave attack and storm surge and lessen the effects of storm-related erosion along streambanks and shorelines. Both areas possess natural capabilities to temporarily store and hold flood and storm waters and serve to lessen the magnitude and intensity of flood and storm events. Wetlands, and to a somewhat lesser degree, floodplains contribute to improved water quality by virtue of their abilities to remove and trap suspended solids and absorb organic and mineral pollutants from the water column. Both areas can constitute important aquifer recharge areas and as such may be substantial contributors to the replenishment of ground water supplies.

Floodplains and wetlands furnish a significant portion of the habitat requirements for such diverse species of wildlife as reptiles, amphibians and mammals, including many game species (e.g., deer, moose and bear). Additionally, many threatened and endangered species depend upon these areas for habitat and/or cover. Both areas provide open space and constitute valuable recreational and aesthetic resources. Frequently, these areas are of archeologic, historic and cultural

significance as a result of their early and continued habitation and utilization by man. In addition to the natural values and functions shared by both ecosystems there are several that are unique to wetlands.

Wetlands occupy the transition zone between open water or aquatic ecosystems and upland or terrestrial ecosystems. This unique position provides a continuum of environments which furnish essential food supplies and provide crucial habitats for numerous, diverse organisms. As a result, wetlands rank among the most productive of ecosystems. Intertidal wetlands, for example, can be up to seven times more productive than the best prime agricultural lands. These wetlands are vital spawning, nursery and feeding areas for many of the economically important species of coastal and marine fin and shell fishes. Freshwater wetlands provide spawning areas and habitat for large numbers of non-marine fish, many of which are important commercial or game species. In addition to fish and shellfish, wetlands produce a wide variety of cash crops, some of which are important to local and regional economies. Products such as timber, cranberries, fur and wild rice are examples. Additionally, wetlands are the major providers of nesting, migrating and winter habitat for most species of waterfowl. A variety of birds other than waterfowl are also closely dependent upon wetlands for nesting and breeding sites and cover.

D. Degradation of Natural Values and Functions

The degradation of floodplain and wetland natural values and functions contributes greatly to the pollution of the Nation's rivers, lakes, bays and coasts; diminishes the abundance and diversity of wildlife and vegetation; increases the costs and hazards associated with flooding and coastal storms; accelerates erosion along stream banks and shorelines and increases the loss of lands productive to the economy and important to the well-being of the people. Man's continued alteration of and presence within the floodplain result in property damages in excess of three billion dollars annually. The accompanying costs of disaster relief and rehabilitation often exceed one billion dollars annually. These damages continue to occur despite substantial expenditures on structural flood control methods. Activities which debase floodplain and wetland values and functions result in increased costs to consumers, increased tax burdens on the public and a generally lowered

quality of life for the American people. Wetlands, in addition to being highly productive and efficient ecosystems, are extremely fragile and easily perturbed. The critical balance maintained in nature between the water and the land and the import and export of materials is far too often upset or destroyed by the activities of man. Usually, those activities which (1) alter the water budgets of wetlands, (2) cause quantities of sediment or other pollutants to be discharged into wetlands in sufficient quantities to choke or kill the filtering mechanisms, (3) remove materials by dredging or (4) add materials by filling result in the destruction of many of the important wetland values and functions. Estimates indicate that over 40 percent of the wetland ecosystems originally present within the contiguous 48 States have been destroyed as a result of man's past activities. Today, only about 3½ percent of the total land area of the continental United States remains as wetlands.

II. Definitions

Flood or Flooding

A general and temporary condition of partial or complete inundation of land areas from the overflow of inland and/or tidal waters, and/or the rapid accumulation or runoff of surface waters from any source.

1 percent chance flood or base flood. A flood of a magnitude that occurs once every one hundred years on the average. Within any one year period there is one chance in one hundred of the occurrence of such a flood. Most importantly, however, the cumulative risk of flooding increases with time. Statistically, there is about one chance in five that a flood of this magnitude will occur within a 20 year period, the length of time commonly defined as the useful life of a facility. Over a 30 year period, the life of a typical mortgage, the probability of such a flood occurring increases to greater than one chance in four.

0.2 percent chance flood. A flood of a magnitude that occurs once every five hundred years on the average. (Within any one year period there is one chance in 500 of the occurrence of such a flood.) As with the one percent chance flood, the cumulative risk of this flood occurring also increases with time.

Floodway

The channel of a river or other watercourse and adjacent land areas that must be reserved in an open manner, i.e., unconfined or unobstructed either horizontally or vertically, to

provide for the discharge of the base flood.

Flood Fringe

That portion of the floodplain outside the floodway (often referred to as "floodway fringe").

Floodplains

Floodplains are lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands. At a minimum, floodplains consist of those areas subject to a one percent or greater chance of flooding in any given year. The term floodplain shall be taken to mean the *base floodplain* unless the action involves a critical action in which case the *critical action floodplain* is the minimum floodplain of concern.

1. Base Floodplain (or 100-year Floodplain)

The area subject to inundation from a flood of a magnitude that occurs once every one hundred years on the average (the flood having a 1 percent chance of being equalled or exceeded in any given year).

2. Critical Action Floodplain (or 500 year Floodplain)

The area subject to inundation from a flood of a magnitude that occurs once every five hundred years on the average (the flood having a 0.2 percent chance of being equalled or exceeded in any given year).

Wetlands

Wetlands are those areas which are inundated or saturated by surface or ground water with a frequency sufficient to support, or that under normal hydrologic conditions does or would support, a prevalence of vegetation or aquatic life typically adapted for life in saturated or seasonally saturated soil conditions. Examples of wetlands include, but are not limited to, swamps, fresh and salt water marshes, estuaries, bogs, beaches, wet meadows, sloughs, potholes, mud flats, river overflows, and other similar areas. This definition includes those wetland areas separated from their natural supply of water as a result of activities such as the construction of structural flood protection methods or solid-fill road beds, mineral extraction and navigation improvements, and is intended to be consistent with the definition utilized by the U.S. Fish and Wildlife Service in the publication entitled *Classification of Wetlands and Deep Water Habitats of the United States* (Cowardin, et al., 1977).

Coastal High Hazard Area

A coastal high hazard area is any low-lying, relatively unprotected coastal area subject to flooding by wind-driven tides, coastal storms, or tsunamis. Examples of such areas include, but are not limited to, barrier islands, beaches, beach dunes, overwash areas and tidal wetlands.

Action

An action is any form of EDA financial assistance including, but not limited to, grants, loans, contracts and guarantees and all amendments to such forms of financial assistance that involve a change in project design, scope or location or a change in participating private parties.

Critical Action

A critical action is an action which, if located or carried out within a floodplain, poses a greater than normal risk for flood-caused loss of life or property. The minimum floodplain of concern for critical actions is the 500-year floodplain, i.e., critical action floodplain. Critical actions include, but are not limited to, actions which create or extend the useful life of facilities:

- a. which produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;
- b. such as schools, hospitals and nursing homes, which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events; and
- c. such as emergency operation centers, or data storage centers, which contain records or services that may become lost or inoperative during flood and storm events.

Related Activities

Related activities are those undertakings that are interdependent parts of a Federal action. Such undertakings are considered interdependent parts whenever they either make possible or support an action, or are themselves induced or supported by an action or related activities. Related activities may or may not be Federally permitted or assisted.

Impacts

Impacts are changes in floodplain or wetland values and functions caused or induced by an action or related activity. Impacts are *caused* whenever these natural values and functions are affected as a direct result of an action. An action which would result in the discharge of polluted storm waters into a floodplain or a wetland, for example,

would directly affect their natural values and functions. Construction-related activities, such as dredging and filling operations within the floodplain or a wetland, would be another example of impacts caused by an action.

Impacts may also occur as an indirect result of an action whenever the action *induces* or makes possible related activities which affect the natural values and functions of floodplains or wetlands. Such impacts, frequently referred to as indirect or secondary effects, occur whenever these values and functions are potentially affected, either in the short or long term, as a result of undertaking an action.

The following example illustrates this concept. The EDA-assisted construction of water or sewer line (the "action") *not* located within the floodplain or a wetland would impact a nearby floodplain or wetland in several ways. First, as a result of ground disturbing activities, the action could directly affect natural values and functions through siltation from soil erosion at the construction site. Second, the action could induce or support development within the floodplain or wetland. Third, the action could induce or make possible related activities located outside the floodplain or wetland that would impact these areas. In either of the latter two cases, the indirect result of the EDA action is to produce an effective on the natural values and functions of a floodplain or a wetland.

Alternatives

Alternatives are all substitutes to the proposed action. Alternatives consist of:

- a. locating the action at a site that either eliminates or minimizes the impact on floodplain and wetland values and functions (alternative sites);
- b. utilizing other actions, plans, designs or concepts with similar economic development objectives that either eliminate or minimize the impact on floodplain and wetland values and functions (alternative actions);
- c. taking no action (no action alternative).

The following example illustrates these concepts. Alternatives to the expansion of a port facility into a wetland area could be (1) relocation of the proposed expansion outside the wetland, (2) redesign of or scaling down the proposed expansion to eliminate that portion or portions which impact the wetlands, (3) redesign or reorientation of the existing facility to accommodate more berthing space without requiring any expansion, or (4) rehabilitation or modernization of the new equipment to handle containerized

cargo and eliminate the need for expansion. Additionally, dissimilar actions with similar economic development objectives such as the construction of an industrial park or a downtown convention center are alternatives. Finally, the possibility of taking no action is also an alternative.

Minimize

Minimize means to reduce to the smallest amount or degree practicable.

Mitigation Measures

Mitigation measures are all steps necessary to minimize the impacts of the proposed action on a floodplain or wetland, including those steps necessary to preserve and, wherever practicable, restore natural values and functions. Examples of mitigation measures include, but are not limited to, (a) requiring an adequate soil erosion/sedimentation plan to control runoff during land disturbing activities associated with an action, (b) the collection and treatment of runoff resulting from an action prior to its discharge into the floodplain or a wetland, (c) the establishment of vegetative buffer zones between the site of a proposed action and adjacent floodplains or wetlands, (d) the dedication of sites as permanent natural areas, or (e) floodplain or wetland habitat restoration.

Practicable

Practicable means capable of attainment within the confines of relevant constraints. The test of practicability, therefore, depends upon the particulars of the situation under consideration and those constraints imposed by environmental, economic, legal and technological parameters. This test, however, is *not* limited by the temporary unavailability of sufficient financial resources to implement either alternatives to a proposed action or those mitigation measures necessary to minimize its impacts. That is, alternatives or mitigation measures shall not be rejected as "impracticable" solely on the basis of increased costs associated with an undertaking. Rather, the Agency recognizes that the preservation and protection of floodplains and wetlands will make some actions more expensive. EDA shall make every effort to assist potential applicants in their search for the additional resources necessary to eliminate or minimize impacts on floodplains and wetlands.

The following example illustrates the concept embodied in the term "practicable." The proposed action in

this example is the construction of a combination port facility and industrial park located in a coastal community which would, if constructed as proposed, impact both floodplain and wetland values and functions. Some possible alternatives to this proposal are: (1) renovate and modernize and existing nearby port facility; (2) locate the docking and cargo handling facility in the floodplain but position the warehousing and industrial park facilities on an upland site. The facilities would be linked together by a transportation corridor elevated on stilts across the floodplain; (3) construct the facility within the floodplain but elevate it on stilts above the level of the base or critical action floodplain, as appropriate, and protect the wetland areas by establishing wide buffer areas adjacent to the facility and placing the wetlands in public ownership as a nature preserve; (4) locate the entire facility offshore as a "floating" industrial park linked to a terminal facility on an upland site by a transportation corridor elevated on stilts across the floodplain; (5) build a different type of economic development project that will not impact floodplain or wetland values and functions; and (6) take no action.

In all cases, the alternatives listed above are technologically feasible. For the sake of this example, let us establish that title to the lands required to establish suitable buffer areas and the nature preserve necessary to carry out alternative 3 have been in litigation for several years and that no resolution of the issues is expected in the foreseeable future. Also, let us assume the cost of constructing alternative 4 is on the order of 10 times that of the next most expensive alternative and the economic analysis indicates that such a facility could not operate profitably at rates competitive with other similar facilities in that area. Further, let us suppose that there is a great deal of public opposition to the proposed action on environmental grounds, and EDA's initial assessment indicates that serious environmental problems exist with respect to the proposal. We shall also assume that alternative 1 is more costly to implement than alternative 2 but that both alternatives could be constructed and operated profitably at rates competitive with other similar facilities. Finally, assume that it has been established that there is no clear overriding economic benefit of this proposal relative to other dissimilar proposals which do not impact floodplain or wetland values and functions.

In this example, then, we can choose the practicable alternatives based on the assumed constraints given above. Alternative 4 can clearly be rejected on economic grounds since it is both very expensive to construct and would not generate sufficient revenue to be profitable. Similarly, alternative 3 can be rejected due to legal constraints that render it unattainable within any reasonable time frame. Since there are no constraints imposed by environmental, economic, legal or technological factors on alternatives 1, 2, 5, or 6, these are the practicable alternatives to the proposed action. The proposed action in this example would be rejected from consideration since environmental constraints render it undesirable and practicable alternatives to the proposal exist.

It is important to note that neither alternative 1 nor 2 can be rejected as a practicable alternative on the basis that the initial cost exceeds that of the proposed action. Since either facility could operate profitably, the increased cost is not a relevant consideration and is insufficient grounds for the rejection of either from consideration. Similarly, the fact that the cost associated with alternative 1 exceed that of alternative 2 is irrelevant to its consideration as a practicable alternative.

Structural Flood Protection Methods

Structural flood protection methods are those physical measures utilized to modify the natural hydrologic response of a waterbody to flood and storm events. Such measures are employed to protect human life and property and to enhance the value of the floodplain for human use and habitation. Structural methods are intended to: (a) confine flood waters to the waterbody and to inhibit their entry into adjacent low-lying areas; (b) speed up or redirect the discharge of flood and storm waters; or (c) drain and fill in low-lying areas. Examples of structural flood protection methods include, but are not limited to, damming, diking, leveeing, dredging, channelizing, constructing sea walls, draining and/or filling low-lying areas, elevating structures in flood prone areas on fill, and constructing conduits to rapidly remove storm waters.

Non-Structural Flood Protection Methods

Non-structural flood protection methods are those measures that either eliminate or reduce the need for structural alteration of waterbodies or their associated floodplains and wetlands. Non-structural methods are intended to preserve, restore or imitate

natural hydrologic conditions. Such methods may be either physical or managerial in character. Non-structural flood protection methods are measures which:

- a. control the uses and occupancy of floodplains and wetlands, e.g., floodplain zoning, subdivision regulation;
- b. preserve floodplain and wetland values and functions through public ownership, e.g., fee title, easements, development rights;
- c. restore the natural values and functions of floodplains and wetlands, e.g., move existing structures out of the floodplains;
- d. delay or reduce the amount of runoff from paved surfaces and roofed structures discharged into a floodway, e.g., construction of detention basins, use of flow restricting barriers on roofs;
- e. maintain natural rates of infiltration in developed or developing areas, e.g., construction of seepage or recharge basins, minimizations of paved areas;
- f. protect streambanks and shorelines with vegetative and other natural cover, e.g., use of aquatic and water loving woody plants;
- g. restore and preserve floodplain and wetland values and functions and protect life and property through regulation, e.g., flood-proofing building codes which require all structures and installations to be elevated on stilts above the level of the base flood.
- h. control soil erosion and sedimentation, e.g., construction of sediment basins, stabilization of exposed soils with sod, minimization of exposed soil.

Emergency Flood Protection Methods

Emergency flood protection methods are those measures employed to protect human life and, to a limited extent, portable property during flood and storm events. Such measures are normally applied to existing facilities located in flood prone areas as a means of protection for the occupants. Flood forecasting, flood warning systems, temporary flood evacuation and other emergency planning activities are examples.

Preserve

Preserve means to prevent alterations to natural conditions and to maintain the values and functions which operate on floodplains or wetlands in their natural states.

Restore

Restore means to re-establish a setting or environment in which the

natural values and functions of the floodplain or wetland can operate.

III. Policy

Effective immediately, it shall be the policy of EDA to:

Avoid, to the extent practicable, the long and short term impacts associated with the modification and occupancy of floodplains and wetlands;

Avoid, to the extent practicable, direct and indirect impacts on floodplain and wetland values and functions;

Promote the use of non-structural flood protection methods to reduce the risk of flood loss;

Minimize the impact of floods on human health, safety and welfare;

Restore and preserve the natural and beneficial values and functions of floodplains and wetlands;

Provide the public with early and continued opportunity for involvement in the decision making process concerning flood plains and wetlands; and

Incorporate the Unified National Program for Floodplain Management into its decision-making process.

In carrying out this policy, EDA shall not participate, either partially or wholly, in any action that would impact a floodplain or wetland unless the Agency determines that no practicable alternative exists to the action. In its search for practicable alternatives, the Agency shall give primary emphasis to locating actions outside the floodplain or a wetland. The Agency shall explicitly consider the no action alternative before arriving at a decision that no practicable alternative exists to impacting a floodplain or a wetland. Where the no action alternative is rejected and no practicable alternative exists, EDA shall require the formulation and consideration of non-structural flood protection methods as mitigation measures.

Prior to authorizing any application for assistance, EDA shall insure that the proposed action is the practicable alternative which minimizes impacts on the natural values and functions of floodplains and wetlands and that all practicable mitigation measures are incorporated into the action which (a) minimize the risk of loss of life and property due to flood and storm damage and (b) minimize the impacts on floodplain and wetland values and functions.

Whenever EDA participates in an action that impacts floodplain or wetland values and functions, it shall continuously monitor the action to ensure that the action and its mitigation measures are carried out in accordance

with the Agency's findings and recommendations. Any action which fails to adhere to the design, scope, location and purpose of the action and to the requirements of the mitigation measures shall be subject to termination for cause.

Whenever an action cannot be practically located except in proximity to a water body, EDA shall require the potential applicant to locate the proposed action within the floodplain in such a manner so as to not impact a wetland. That is, it shall be EDA's policy to remove such proposed actions from within wetland areas, whenever practicable, and place them within the floodplain.

Prior to the authorization of any application for assistance to which the procedures contained herein apply, EDA shall make a separate set of findings for both floodplains and wetlands as contained in Section VII of these procedures. The Regional Director shall ensure that no application for assistance is authorized until these procedures have been fully carried out and he or she has made the required formal findings.

The selection of practicable alternatives by EDA shall take into account environmental, technical, economic and legal considerations and shall be a continuous process. That is, as alternatives are identified in carrying out the procedures contained herein, EDA shall identify each as practicable or impracticable. In conducting its analysis of the economic considerations related to the various alternatives that may be proposed, EDA shall follow the guidance provided by the Water Resources Council's Principles and Standards. The lack of sufficient financial resources shall not preclude the identification of alternatives or mitigation measures. Further, the temporary unavailability of sufficient financial resources shall not limit the consideration or implementation of either practicable alternatives to a proposed action or those practicable mitigation measures necessary to minimize impacts of the proposed action. Rather, in such instances, the Agency shall make every effort to assist potential applicants in their search for the required financial resources. If the necessary resources are unavailable, the proposed action shall be restructured to fit the existing resources and to avoid, to the extent practicable, impacts on wetland and floodplain values and functions. If such a restructuring is not possible, EDA shall consider the proposal not "ripe" for assistance and

return the proposal to the prospective applicant.

Since many actions affecting either floodplains or wetlands have demonstrated significant effects on the quality of the human environment, consideration of such proposed actions will often necessitate the preparation of an Environmental Impact Statement under Section 102(2)(C) of NEPA.

IV. Role of the Special Assistant for the Environment

The general responsibilities of the Special Assistant for the Environment, hereafter called the Special Assistant shall be to:

A. Serve as the principal advisor to the Assistant Secretary in implementing the duties and responsibilities required by Executive Orders 11988 and 11990.

B. Develop Agency procedures for compliance with Executive Orders 11988 and 11990.

C. Review, as necessary, the Agency's activities and program involvements with respect to Executive Orders 11988 and 11990.

D. Mediate all disputes, those within the Agency as well as those arising from outside sources, concerning findings made under Executive Orders 11988 and 11990.

E. Provide policy guidance and training for the Regional Office staff in carrying out its responsibilities under the procedures contained herein.

F. Provide, whenever requested, technical assistance on a project by project basis to the Regional Environmentalist in order to adequately implement these procedures.

G. Monitor and audit the Agency's actions to ensure that the requirements of the Executive Orders are met.

H. Coordinate the Agency's implementation of this Directive with other Federal agencies having jurisdiction over or expertise in this area, as well as with the environmental programs of local, State and Federal agencies which become involved with EDA projects.

I. Recommend approval, disapproval, or modification by the Assistant Secretary for centralized projects.

V. Role of the Regional Environmentalist

The general responsibilities of the Regional Environmentalist shall be to:

A. Implement and carry out the duties and procedures required under the Authority of Executive Orders 11988 and 11990.

B. Solicit, whenever necessary, the expert advice and assistance of other professional staff members within the

Regional Office in order to adequately implement these procedures.

C. Provide training to Regional Office staff, including EDRs on the requirements imposed by those procedures.

D. Monitor those actions approved by the Regional office for compliance with this Directive and the Executive Orders 11988 and 11990.

VI. Processing Procedures

The processing procedures contained in subsections A through D shall apply to all Public Works grants and loans and Title IX Implementation grants.

Additionally, these procedures shall apply to all Title IX Development grants, Technical Assistance and Research grants and contracts that have the potential to produce physical effects and to all Business Development actions *except* financial assistance provided solely for the purpose of (a) working capital or (b) purchasing machinery, equipment, furniture or fixtures that will be utilized totally within the confines of existing structures *and* that does not, or will not, create a change in either the types or amounts of waste produced by the facility (e.g., changing the nature of the product produced or the production process often creates a corresponding change in waste production). This exception *does not apply* to those proposed actions that involve improvements which exceed 50 percent of the pre-improvement market value of the structure or facility.

The processing procedures contained in subsections A through C and subsection E shall apply to those excepted Business Development actions. Procedures pertaining to all other forms of EDA assistance, such as Planning grants, are contained in Section IX of this Directive.

A. General Applicability to EDA Actions

The following procedures shall be effective immediately and apply to all proposed actions as specified in Section X. There is, however, one exemption provided for by Executive Order 11990, "Protection of Wetlands." This exemption is not provided for in Executive Order 11988, "Floodplain Management" and, consequently, the exemption applies only to actions affecting wetlands not located with floodplains. Since there are few wetlands in this category, this exemption is extremely limited.

The following proposed actions that impact wetlands not located within the floodplain are exempt from these procedures: (a) Federally assisted or

permitted projects under construction prior to the effective date of this policy, or (b) projects for which a Federal draft or final Environmental Impact Statement (EIS) which adequately analyzes the EDA action has been filed prior to October 1, 1977. Those actions impacting a wetland where the EIS only generally covers the proposed action, is devoted largely to related activities, or that treat the project area or program without specific analysis of the proposed action are *not* exempt from this policy. Adequate documentation (e.g., a copy of the EIS) shall be included in the official project file and as part of the Environmental File for every action declared exempt from this policy under these criteria.

B. Responsibilities of Economic Development Representatives (EDRs)

The EDR shall be responsible for informing all prospective applicants of EDA's policy with respect to actions affecting floodplain and wetland values and functions. EDRs shall encourage prospective applicants to avoid all actions which could potentially affect these natural values and functions. The EDR shall direct all prospective applicants to determine the location of the floodplain in relation to the proposed action and its area of impact using the Water Resources Council "Guidance for Determining a Floodplain Location" (see 42 FR 190, p. 52590-52598, Sept. 30, 1977 and Appendix B). Whenever a prospective applicant is unsure of the potential of the proposed action to impact a wetland, the EDR shall additionally direct the prospective applicant to contact the Regional Environmentalist for assistance.

If this information indicates that the prospective applicant has under consideration an action which has the potential to impact either a floodplain or a wetland area, or if the prospective applicant or EDR is unsure as to whether either of these areas could be impacted by the proposed action, the EDR shall inform the Regional Environmentalist of the proposal as soon as possible. The EDR shall also direct the prospective applicant to submit the materials listed in the first paragraph of subsection C (below) as early in the planning process as possible, but in any case no later than the submission of the Early Information Systems Profile, Form 1100T, or any other pre-application materials submitted for Agency consideration. It shall be the responsibility of the EDR to inform all prospective applicants that the procedures contained herein must be

completed prior to the authorization of their application for EDA assistance.

The EDR shall note, also, the effect of the proposed action on floodplains and wetlands in the EDR Assessment and relay this Assessment to the Regional Environmentalist as early as possible, but in no case later than the submission of the EDA Profile or other pre-application materials.

C. Responsibilities of the Prospective Applicant

EDA expects each prospective applicant to avoid, whenever practicable, all actions that have the potential to impact floodplain or wetland values and functions. For every proposed action submitted, the prospective applicant will be required to provide the following information directly to EDA: (1) all appropriate floodplain maps and related data in accordance with the Water Resources Council's "Guidance for Floodplain Management" (42 FR 190, p. 52590-52598); (2) a 15 minute series (7½ minute series if available) USGS topographic map with the project area clearly delineated; (3) site photographs; and (4) whenever possible, aerial photographs of the site and surrounding areas.

In addition, for all proposed actions that could impact a floodplain or wetland, upon request by the Regional Office, the prospective applicant shall provide the following information directly to the Agency's Regional Environmentalist.

1. Identification of the economic development objectives to be derived from the proposed action.
2. Identification of the alternative actions, plans, concepts, designs and locations to the proposed action which have been considered in meeting the objective in (1) above and the reasons for rejecting each alternative.
3. Complete information on the proposed action and surrounding area. This shall include, at a minimum, any previous environmental analysis done for the proposed site of the proposed action, a copy of the land use documents (zoning maps, master plans, etc.) which relate to the area, the engineering plans for the proposed action and a specific, detailed project description.

Prospective applicants shall ensure that all required materials are adequate and complete and are submitted directly to the Regional Environmentalist as soon as possible. Incomplete materials or delayed submittals may seriously jeopardize consideration of a proposed action by EDA.

Projects which would impact floodplain or wetland values and

functions shall require completion of the environmental analysis of the proposal and its alternatives prior to the authorization of the application for EDA assistance. To ensure that this process is completed quickly and efficiently, the applicant shall be required to cooperate fully in the submission of the material noted above and other related information as required by the Agency in carrying out these procedures. Applicants shall be required to also provide public notification and fully cooperate in holding public information meetings as described herein.

D. Responsibilities of the Regional Office

As part of the Agency's initial review of all proposed actions to which the procedures contained herein apply, the Regional Environmentalist shall be provided a copy of all related pre-application materials. It shall be the responsibility of the program office to ensure that the Regional Environmentalist receives a copy of these materials along with the appropriate floodplain maps and associated data, topographic maps and photographs as specified in the first paragraph of subsection C (above).

1. Examination of Pre-application Materials

The Regional Environmentalist shall examine every proposed action to determine whether the appropriate floodplain maps and associated data, topographic maps and photographs as specified previously have been included in pre-application materials and are sufficient for making a determination of the potential to impact floodplain and wetland values and functions. If the Regional Environmentalist determines that the information presented by the prospective applicant is insufficient for a preliminary review of the proposed action, he shall note the deficiencies and return the pre-application materials to the program office. In addition, for all proposed actions that have the potential to impact a floodplain or wetland or where the impact on such areas is uncertain and the proposed action appears to have sufficient economic development benefits to warrant further Agency consideration, the program office shall notify the prospective applicant to submit the information specified in the second paragraph of subsection C above. It shall be the responsibility of the program office to ensure that the necessary materials are obtained. Only when the Regional Environmentalist determines that the materials supplied by the prospective

applicant are sufficient and complete shall he/she undertake a review of the proposed action in order to assess its potential to impact floodplain or wetland natural values and functions.

2. Assessment of Floodplain Impact

a. Determine if it is a critical action. If the proposed action is a critical action, the minimum area of concern becomes the critical floodplain; if not, the base floodplain is the minimum area of concern.

b. Determine if any portion of the proposed action or related activities lies within the floodplain. In making this determination, the Regional Environmentalist shall consult with the EDA Engineering staff and the following two pamphlets: HUD-FIA-149, "How to Read Flood Hazard Boundary Maps" and HUD-FIA-252, "How to Read a Flood Insurance Rate Map". In those instances where HUD maps have not been published, the Regional Environmentalist shall follow the procedures established by the WRC (see also Appendix A).

c. Determine the potential to impact floodplain values and functions or if, on the basis of the HUD maps or the information gathered by following the procedures established by the WRC, any portion of the proposed action or related will impact a floodplain and the procedures established by this Directive shall apply.

If no portion of the proposed action or related activities lies within the floodplain, the proposal and any related activities shall be examined for the potential to impact floodplain values and functions. Some key questions in making this determination are:

(i) Will the proposed action or related activities discharge, or cause to be discharged, any substances or materials into the floodplain?

(ii) Will hydrologic flow rates within the floodplain be affected? That is, will there be increases or decreases in flow velocities; elimination of peak hydrologic flows; or alterations in the normal seasonal patterns of flow resulting from the proposed action or related activity?

(iii) Will the water level within the floodplain be affected? That is, will the water level increase or decrease; or will the normal seasonal pattern of water level functions be altered as a result of the action or related activities?

(iv) Does the proposed action or related activity have the potential to make possible future developments which could impact floodplain values and functions?

(v) Will the proposed action affect an aquifer recharge area? That is, will the proposed action reduce the rate of infiltration (e.g., by covering the area with impervious surfaces) or create the potential for contamination of the aquifer (e.g., discharge of polluted runoff from parking lots into an aquifer recharge area).

(vi) Will potentially hazardous materials or substances be stored in or near the floodplain that could effect the natural values and functions should an accidental release occur?

3. Assessment of Wetland Impact

In order to adequately determine the potential to impact the natural values and functions of a wetland, the Regional Environmentalist shall review the data, maps and photographs submitted by the prospective applicant in order to determine the proposed action's potential to impact wetlands. Were this information insufficient for this review, the Regional Environmentalist shall return these materials to the program office and stop his review until this information has been submitted directly to him by the prospective applicant.

Additionally, the Regional Environmentalist shall consult the publication *Existing State and Local Wetlands Surveys 1965-1975* and the appropriate Regional Coordinator, National Wetlands Inventory, U.S. Fish and Wildlife Service (USFWS) to determine if a wetlands survey for the project area has been conducted (see Appendix C for further guidance). If a survey has been conducted for the project area, the Regional Environmentalist shall obtain a copy of the survey for use in determining the impact of the proposed action on wetland values and functions.

As the National Wetlands Inventory is completed by the USFWS, the Special Assistant shall obtain and make available copies of the Inventory for the Regional Environmentalist's use.

a. No potential exists of impacting floodplain values and functions

Where the preceding review indicates that there is no potential to impact floodplains this will, in many cases, indicate that there will be no potential to impact wetlands, since most wetlands are located within the floodplain. The Regional Environmentalist is cautioned, however, that instances may arise where a floodplain will not be impacted but a proposed action or related activity could impact a wetland. For those cases where a wetland is likely to be impacted despite the fact that no floodplain is involved (e.g., mountain meadows,

potholes, etc.), the Regional Environmentalist shall follow the steps outlined in (c) below.

b. Potential of Impacts to Floodplain Values and Functions

Where the previous review indicates that there is a potential to impact floodplains, the Regional Environmentalist shall review the materials cited in subsection D.3. above in order to determine the potential to impact wetlands.

c. Determine the Potential to Impact Wetland Values and Functions

If on the basis of the Regional Environmentalist's examination of materials supplied by the prospective applicant or as a result of information contained in a National, State or local wetlands survey or inventory, any portion of the proposed activity or related activities lies within a wetland, the proposal will impact a wetland and the procedures established by this Directive shall apply.

If no portion of the proposed action or related activities lies within a wetland, the proposal and all related activities shall be examined for their potential to impact a wetland. The same key questions indicated in D2c, i-vi of this Directive shall be examined in making this determination.

4. Potential to Impact Natural Values and Functions Determination

a. No Potential to Impact Either Floodplain or Wetland Values and Functions

Whenever a proposed action is judged by the Regional Environmentalist to have no potential to impact either a floodplain or a wetland, he shall inform the Regional Director that his review under these procedures is complete and recommend that the appropriate findings contained in Section VII be made. Once these findings have been made by the Regional Director and documented for the Environmental file, the requirements imposed by this Directive are complete.

b. Potential to Impact Floodplains (or Wetlands) Values and Functions

In those cases where a determination has been made that there is a potential to impact either floodplain or wetland values and functions, the Regional Environmentalist shall:

(i) Inform the Regional Director of this determination and the necessity to comply with the directives established by Executive Orders 11988 and 11990 and this Directive.

(ii) Reemphasize to the potential applicant EDA's policy and procedures regarding projects which impact floodplains and/or wetlands and the

prospective applicant's responsibilities thereunder.

(iii) Consult with all Federal, State and local Agencies with environmental expertise in or jurisdiction over the proposed action or its impacts. In order to fully accomplish this consultation process, insure that the prospective applicant has provided copies of all pre-application materials to the State and Area-wide Clearinghouses for their review.

(iv) Consult with all public and private parties with an environmental interest in the proposed action or its effects on floodplains or wetlands.

The purpose of the consultation specified in (iii) and (iv) are to assist the Regional Environmentalist in learning more about the magnitude of the potential impacts to floodplain and wetland values and functions and the nature of the resource involved, as well as possible alternatives to the proposed action. Such consultations shall be documented and become part of the Environmental File.

c. Regional Director Does Not Concur With Determination Made Under This Section

The Regional Director shall be responsible for making the final decision on whether or not a project has the potential to impact a floodplain or wetland. It is expected that where there is substantial controversy, the Regional Director will consult with the Deputy Assistant Secretary for Economic Development.

5. Floodplain and/or Wetland Impact: Initial Review

a. Pre-application Conference

For every proposed action that the Regional Environmentalist determines has the potential to impact either floodplain or wetland values and functions and that the Agency wishes to consider further, the Regional Office shall hold a pre-application conference, but only after the Regional Environmentalist has completed the preceding procedures.

One major purpose of the pre-application conference is to initiate the Agency's process of identifying and evaluating practicable alternatives to impacting a floodplain or wetland (or both). Alternatives to be considered include, but are not limited to: carrying out the proposed action at a location that would not impact a floodplain or wetland (alternative sites); other means or methods which accomplish a similar economic development objective (alternative actions); and not undertaking an action (no action alternative).

For all proposed actions that will be physically located within a floodplain or a wetland, special emphasis will be given to the search for alternative sites that would remove the proposal from the areas.

b. Review and Materials

If, as a result of the pre-application conference, one or more practicable alternatives to the proposed action with lesser impacts are identified, the pre-application materials shall be returned to the prospective applicant for restructuring. However, if the proposal's objectives and the prospective applicant's examination of alternatives appear reasonable; the prospective applicant demonstrates adequate consideration of EDA's policy as established by this Directive; and the Regional Environmentalist has identified no other practicable alternatives to the proposal, the Regional Office may continue its review in accordance with this Directive. If the proposal fails any of these tests, the pre-application materials shall be returned to the prospective applicant.

c. Finding of No Impacts on Wetlands or Floodplains Values and Functions

Where, either as a result of the pre-application conference or as a result of the restructuring of the proposed action and the receipt of pre-application materials modified accordingly, the Regional Environmentalist determines that the proposed action has no potential to impact either floodplains or wetlands, he shall inform the Regional Director that his review under these procedures is complete. He shall also recommend to the Regional Director that the appropriate findings as specified in Section VIII should be made. Once these findings have been made and documented for the Environmental file, the requirements imposed by this Directive and Executive Orders 11988 and 11990 are complete.

d. Finding of Impacts on Either Floodplains or Wetlands

Where, as a result of the pre-application conference, the Agency believes that the proposed action may be the practical alternative which minimizes impacts to floodplains and wetlands, the Regional Office shall:

(i) inform the prospective applicant that until the procedures contained herein are complete and the findings required by the Executive Orders are made, the Agency cannot authorize an application.

(ii) notify the Special Assistant, in writing, of the intent of the Regional Office to continue its review of the proposed action.

(iii) carry out the remaining procedures contained in this Directive.

6. Floodplain and/or Wetland Impact: Analysis of Impacts

a. Public Notification Requirement

The Regional Environmentalist shall require the prospective applicant to publish a notice to the effect that EDA is considering assistance for the proposed action. This notice shall be published in the newspaper of greatest circulation in the vicinity of the proposed action and in any local or community-oriented newspapers within the proposed action's area of impact. This notice shall appear for at least three consecutive days and shall include a physical description of the location of the proposed action and the surrounding area (to include a map when necessary for clarification), the nature and extent of proposed action and the name, address, and phone number of the Regional Environmentalist. The prospective applicant shall send a copy of this notice to the appropriate State and Areawide Clearinghouses and to all parties expressing an interest in the proposed action or those parties that the Regional Environmentalist has identified to be so notified. The prospective applicant shall provide EDA with a copy of this notice, the dates the notice was published and a list of all parties receiving an individual notice. EDA shall allow at least 30 days from the last date of publication for receipt of comments.

b. Private Party Notification Requirements

For all Business Development actions or amendments to such actions in which a change in the participating private party or parties is involved, it shall be the responsibility of the Regional Director or, in the case of centralized projects, the Director of Business Development in coordination with the Special Assistant, to inform all private parties participating in the transaction (e.g., financial institutions) of the hazards of conducting activities within the floodplain (see Exhibit A for example letter).

c. Assessment of Impacts

The Regional Environmentalist shall analyze the probable impacts of the proposed action and its alternatives on the natural values and functions of floodplains and/or wetlands. This analysis shall include an examination of impacts on the:

(i) public health and safety; including the effects of the proposed action on: water supplies, both the quantitative and qualitative aspects; ground water recharge capability, water pollution,

including siltation and sedimentation effects; and flooding and storm hazards. In evaluating the effects of the proposal on flooding and storm hazards the following factors shall be considered:

Is the proposed action located in the floodway portion of a riverine floodplain, or a coastal high hazard area?

Is the proposed action in a flood-fringe area such as the backwater areas of a coastal floodplain?

Is the flood hazard aggravated by the presence of, or potential for, destructive velocity flows, flood-related erosion, subsidence or sinkholes, or other special problems?

Is there a combination of flood sources present which may flood simultaneously in the area (e.g., river and ocean, or shallow overland runoff and river, etc.)?

(ii) preservation of natural systems; including the effect of the proposed action on: maintenance of species and habitat diversity and stability; maintenance of long term ecosystem productivity; and protection of flora and fauna indigenous to floodplains and wetlands. In conducting this assessment, the Regional Environmentalist shall, at a minimum, consider whether the proposed action or related activities could result in:

Direct removal of vegetation;

Direct removal of topsoil;

Habitat destruction by dumping or filling, i.e., landfill from construction activities, dumping of dredge spoil, leveeing, etc.;

Habitat destruction by digging; i.e., ditching, mining, etc.;

Habitat modification through alternation of water levels; i.e., modification of the water edge habitat by raising or lowering water levels or alteration of normal seasonal patterns of water level fluctuation; modification of flow rates either by increasing or decreasing velocity of flow or by alteration of normal seasonal pattern of flow, or modification of the soil water table;

Habitat modification resulting from: erosion and loss of nutrients; chemical modification through leaching, spillage, motor vehicle or industrial sources; or introduction of exotic vegetation;

Limitation on species mobility, i.e., inhibiting upstream migration or downstream drift;

(iii) public welfare : including the effects on historic and cultural resources; land use patterns; aesthetics; and existing or future uses in the public interest such as recreation, education and scientific uses and the extent that

the proposed action interferes with such uses or potential uses;

(iv) cultivated resource values; the effects on agriculture, aquaculture and forestry; and

(v) cumulative impacts resulting from other actions or related activities under consideration, planned or underway.

In conducting this assessment, the Regional Environmentalist should consult the reference works cited in Appendix D.

7. Floodplain or Wetland Impact: EIS Requirement

a. Determination of Significant Actions

One purpose of the analysis undertaken in the preceding subsection is to determine the significance of the proposed action and any identified practicable alternatives relative to Section 102(2)(C) of the National Environmental Policy Act (NEPA). Because several floodplain and wetland values and functions are of critical importance to man and since these areas are often extremely sensitive to man-induced disturbances, an Environmental Impact Statement (EIS) shall be prepared for a proposed action whenever:

(i) The public health and safety are identifiably affected. That is, whenever the proposed action may potentially result in a change in stream classification or affect any standards promulgated under the Safe Drinking Water Act (42 USC 300 f-j-9), the proposed action shall be considered significant and an EIS prepared. Additionally, should the proposed action or related activity present flood and storm hazards that could endanger life or property, an EIS shall be prepared for the proposal.

(ii) the preservation of natural systems are identifiably affected. Any proposed action or related activities that have the potential to create or induce changes in the existing habitat that may affect species diversity and stability (both for flora and fauna and over the short and long term) or affect ecosystem productivity over the long term, are significant actions.

(iii) The proposed action involves any construction within a wetland.

(iv) The proposed action involves the construction of a critical action within the boundaries of the critical action floodplain.

(v) The cumulative effects on floodplain or wetland values and functions of the proposed action and related activities are of sufficient intensity to be declared a significant

action under NEPA (see EDA Directive 17.02-2, Appendix B).

(vi) The proposed action is controversial for environmental reasons.

b. Proposed Action Not Significant

Regional Environmentalist shall, in addition to the requirements of this Directive, complete the normal environmental review process as specified in Appendix D of EDA Directive 17.02-2, *Regional Office Assessment*.

c. Proposed Action Significant

(i) Where an EIS is necessary, the remainder of these procedures shall be carried out in conjunction with the EIS process as outlined in Appendix E of EDA Directive 17.02-2, *Guidelines for Preparation of Environmental Impact Statements*.

(ii) Where the proposed action falls into one of the categories of significant actions listed under subsection 7a and the Regional Environmentalist believes that, despite the nature of the proposed action, it is not a significant action affecting the quality of the human environment, he/she shall demonstrate this fact to the satisfaction of the Special Assistant. The Special Assistant shall be provided with a copy of the Regional Office file (including the Environmental File and copies of correspondence), the pre-application materials submitted for the proposed action, and a copy of the Regional Environmentalist's justification for not conducting an EIS. The Special Assistant shall review these materials and determine the significance of the action.

8. Floodplain or Wetland Impact: Solicitation and Review of Comments

a. Comments From Other governmental Agencies

The Regional Environmentalist shall request, in writing, the comments of other Federal, State or local agencies having jurisdiction over or expertise in actions involving floodplains and/or wetlands concerning the proposed action and alternatives. This shall include, but not be limited to, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, Environmental Protection Agency, U.S. Soil Conservation Service, National Oceanic and Atmospheric Administration's Office of Coastal Zone Management, and State and local agencies with jurisdiction over wetland areas or activities affecting wetlands, (such as State fish and game bureaus, environmental protection divisions). If the Regional Environmentalist considers the potential impact to be very minimal, comments from the above agencies may be obtained verbally and documented for the Environmental file. If these

verbal consultations indicate the environmental potential for more than minimal impact, the requirement for written comments shall apply.

b. Public Information Meeting Requirement

Upon receipt of a written request, or where EDA independently makes such a determination, require the prospective applicant to arrange a public information meeting to be chaired by the EDA Regional Environmentalist. The applicant shall precede such meetings with at least two notices published in the newspaper having the greatest circulation in the vicinity of the proposed action and in any local or community oriented newspapers within the proposed action's area of impact. The first of the required notices shall be from 15 to 20 days prior to the meeting date, and the second notice 2 to 4 days before the meeting. Such notice shall include the location, date and time of the meeting, a map depicting the location of the proposed action, physical description of the proposal's location and the surrounding area, a brief description of the proposed action under consideration, the EDA Regional Environmentalist's name, address and phone number and whether an EIS will be prepared. In addition, the potential applicant shall mail copies of the notices to appropriate local, State and Federal Agencies, including the State and Area-wide Clearinghouses, public interest groups or individuals which have expressed an interest in the matter or who may be specified by EDA. If such a meeting is held concerning a proposal for which an EIS will be prepared, it shall not be held until at least 30 days has elapsed since the publication of the draft EIS. The potential applicant shall record the meeting, prepare a complete written transcript and supply a copy of these materials to EDA as soon as possible.

c. Review Comments Received

The Regional Environmentalist shall review any comments from the public concerning the proposed action and its alternatives, as well as responses to those comments solicited under (a) above. One purpose of this review is to determine the degree of controversy surrounding the proposed action.

The degree of controversy will be an important consideration in determining the need for an EIS. Comments shall also be reviewed for their substantive content and will be considered in the evaluation process where appropriate. Copies of all comments received shall be attached to the Environmental File or EIS prepared for the proposed action.

9. Floodplain or Wetland Impact: Examination of Alternatives

a. Review of all Materials

(i) The Regional Environmentalist shall review all pre-application materials submitted by the prospective applicant, the comments received by other Federal, State and local agencies and those of concerned citizens and the Environmental File in light of the requirements imposed by this Directive and the requirements of Executive Orders 11988 and 11990 in order to determine if the proposed action is the practicable alternative which minimizes the impact on floodplains or wetlands. If, based on this evaluation, the Regional Environmentalist determines that the proposed action is not the practicable alternative which minimizes the impacts on floodplains or wetlands, he/she shall inform the Regional Director. The Regional Director shall return the pre-application materials to the prospective applicant for restructuring before considering the proposed action further. Should the Regional Director disagree with the need for restructuring, he/she may exercise the responsibilities contained in item 11.d below.

(ii) Upon receipt of a restructured proposal, the Regional Environmentalist shall review the pre-application material to ensure that it contains the identified practicable alternative with the lesser impact on the floodplains or wetlands. Should the prospective applicant have improperly restructured the proposal, it shall be returned with the deficiencies noted. Before the proposal may be again considered by EDA these deficiencies must be corrected.

b. Site Changes

If the practicable alternative with lesser impacts involves a site change, i.e., a site removed from the previous site and the new site still impacts floodplains and wetlands, then these procedures starting with subsection 6 shall be repeated, unless the new site has been fully considered in the EIS and publicly presented for review and comment.

10. Floodplain or Wetland Impact: Mitigation Measures

Where the Regional Environmentalist determines that the proposed action is the practicable alternative which minimizes impacts on floodplain and wetland values and functions, he/she shall:

Formalize practicable mitigation measures to the proposed action through consultation with the prospective applicant and those parties that have expressed an interest in the proposed

action. Practicable mitigation measures shall include measures to restore and preserve natural values and functions. A listing of some possible measures is contained in Appendix E and further guidance are provided in the references section (Appendix D).

Whenever a meeting is held as part of this process, all concerned parties shall be invited to attend. Such a meeting will be chaired by the Regional Environmentalist and a record shall be kept of all mitigation measures proposed. This record shall become part of the Environmental File.

11. Final Reviews

a. Reevaluate Practicable Alternative

The Regional Environmentalist shall, upon formulation of mitigation measures, reevaluate the alternative under consideration to ensure that it is still the practicable alternative that minimizes the impacts on floodplain and wetlands values and functions. If this reevaluation indicates that another practicable alternative exists to the proposed action with a smaller degree of impact than the preferred alternative, the appropriate procedures contained in this Directive shall be reinstated and the new alternative(s) examined.

b. Examination for Significant Action

Throughout the review process of a proposed action for which an EIS has not been prepared, the Regional Environmentalist shall periodically examine the proposed action in order to determine whether, in light of additional information or as the result of modifications to the proposed action, the action is significant. This examination is especially important at this stage since the practical alternative has been selected and mitigation measures formulated. Should a proposed action be determined significant, all further processing shall stop and a decision made as to the need to prepare an EIS in accordance with DAO 216-6.

c. Publish Final Notice

Where all practicable mitigation measures have been identified and agreed to by the prospective applicant and, if applicable, the EIS process completed, the prospective applicant shall be required to publish final notice of the proposed action. This notice shall be published in the newspaper of greatest circulation in the vicinity of the proposed action and in any local or community oriented newspaper within the proposed action's area of impact for at least three consecutive days and shall include a physical description of the location of the proposed action and the surrounding area (to include a map when necessary for clarification), a

detailed description of the proposal including the nature and extent of the proposed action, the mechanisms utilized to mitigate the impacts of the proposal, projected date of project start and completion and the EDA Regional Environmentalist's name, address and phone number.

This notice shall additionally contain the following information:

A statement of why the proposed action must be located in a floodplain or a wetland;

A description of all significant facts considered in making this determination;

A statement indicating whether the actions conform to applicable state or local floodplain protection standards;

A statement indicating how the action affects the natural values of floodplains and/or wetlands;

A statement listing other involved agencies and individuals.

The prospective applicant shall send a copy of this notice to the appropriate State and Areawide Clearinghouses and to all parties expressing an interest in the proposed action or those parties that the Regional Environmentalist has identified to be so notified. The prospective applicant shall provide EDA with a copy of this notice, the dates the notice was published and a list of all parties receiving an individual notice.

Subsequent to the final notice, EDA shall wait at least 15 days for comments before accepting an application. Where the response to the notification raises environmental concerns not previously considered, EDA shall reinstate the appropriate portions of this Directive. For example, the applicant may be required to organize a public information meeting where one was not held during the previous review of the proposed action.

d. Regional Environmentalist's Findings

Upon completion of the environmental review process and the requirements of this Directive, the Regional Environmentalist shall make a determination as to whether or not the proposal is both the practicable alternative with the least impact on floodplains or wetlands, and whether the proposal incorporates all practicable mitigation measures necessary to (a) minimize the risk of loss of life and property due to flood and storm damage and (b) minimize the impact on floodplain and wetland values and functions. If the Regional Environmentalist finds that these criteria have been met, he/she shall inform the Regional Director that the application may be authorized should

the Agency concur in his/her finding with respect to the project's impact on floodplains or wetlands. Should the Regional Environmentalist find that the proposal fails any of the above tests, he/she shall inform the Regional Director of these findings. The Regional Director shall be responsible for making the final decision on the findings required by Executive Orders 11988 and 11990, and the application shall not be authorized until he/she makes such findings. It is expected that where there is substantial controversy, the Regional Director will consult with the Deputy Assistant Secretary for Economic Development.

e. Responsibilities of the Regional Office; Special Classes of Business Development Actions

Because of the special nature of certain Business Development actions which provide financial assistance solely for the purpose of working capital or to purchase machinery, equipment, furniture or fixtures for utilization totally within the confines of existing structures and which do not involve construction or demolition of any portion of these structures nor any change in the types or quantities of waste produced by the facility, EDA has devised a more streamlined approach to their review under the directives imposed by Executive Orders 11988 and 11990. The Agency believes that both the purpose and intent of these Executive Orders can be better served by the substitution of the following procedure for those contained in subsection D of this section.

Working capital loans and guarantees are provided to businesses in need of cash to meet their day-to-day operational needs. Typically, this form of assistance is provided to meet a business' current obligations; wages and salaries, rents, taxes, utility charges, interest on debts, short-term debt principal, and the purchase of raw materials. The alternatives to providing a working capital loan or guarantee will almost always be limited to the no action alternative. Further, the analysis of mitigation measures for such actions is not a relevant consideration unless the action includes the purchase of raw material inventories. The case of raw material inventories is discussed below.

Similarly, alternatives to actions involving the purchase of equipment or machinery that involve no construction or demolition of structures or no change in the waste produced by a facility will generally be limited to the no action alternative. Only in those instances where the value of the improvements to a structure or facility exceeds 50 percent of the pre-improvement market value of

the structure or facility will other alternatives come into play. Consequently, the abbreviated review process does not apply where this is true. Unlike most actions involving working capital loans or guarantees, however, mitigation will often be a relevant consideration in the review process of a fixed asset loan or guarantee for the purposes cited above.

1. Examination of the Proposed Action

The Regional Environmentalist shall carry out the procedures contained in subsection D. 1 and 2 in conducting his/her review of the proposal. In addition, the Regional Environmentalist shall ensure that a listing of the types and amounts of raw materials and the location of their storage is included in the pre-approval documents for all working capital loans and guarantees. Further, for those actions involving the purchase of equipment, machinery, furniture or fixtures, the Regional Environmentalist shall ensure that the pre-improvement market value of the structure or facility and the total cost of the improvements are included in the pre-approval documents. Where such information is absent or insufficient, the Regional Environmentalist shall note the deficiencies and return the documents to the Office of Business Development for correction.

2. Determine the Location of the Proposed Action Relative to Floodplains and Wetlands

If, on the basis of the HUD floodplain maps or information gathered following the guidance provided by the WRC; the materials submitted by the prospective applicant as required in subsection C; or any National, State or local wetland survey that may have been prepared, any portion of the business activity lies within a floodplain or a wetland (including the storage of inventories of raw materials), the proposal will impact a floodplain or a wetland and the procedures contained in this subsection shall apply.

If the examination of the aforementioned materials do not indicate that any portion of the business activity lies within a floodplain or a wetland, the Regional Environmentalist shall inform the Regional Director that the proposed action will not impact floodplain or wetland values and functions and recommend that the appropriate findings as specified in Section VII of this Directive should be made. Once the Regional Director has made these findings, the requirements imposed by this Directive and the

requirements of Executive Orders 11988 and 11990 are complete.

3. Floodplain and/or Wetland Impact

a. Working Capital Loans and Guarantees

For all such proposed actions located within a floodplain or a wetland, the Agency shall examine the no action alternative. If the no action alternative is not practicable and the proposal involves the purchase of raw material inventories, the Regional Environmentalist shall examine the nature and proposed method of storage of these materials. Generally, mitigation will be necessary if the proposal involves the storage of raw material inventories within the boundaries of a floodplain or a wetland.

Materials that are subject to damage should they become wet must be stored above the level of the base flood, if practicable. Materials, such as water reactive substances, that fall within the definition of critical actions must, if practicable, be stored above the level of the 500 year flood. In all such cases, the Agency shall give special emphasis to the storage of such raw material inventories outside of wetlands and outside the appropriate floodplain of concern. Additionally, where this cannot be practicably accomplished for critical actions located within the critical action floodplain, the Regional Environmentalist shall examine the proposal under the guidance provided in subsection D.7. The purpose of the examination is to determine whether the proposed action has significant environmental impacts within the meaning of Section 102(2)(C) of NEPA.

Upon the establishment of the practicable mitigation measure(s) that minimizes the impact on floodplain and wetland values and functions, or in those cases where the proposed action does not involve the purchase of raw materials, the Regional Environmentalist shall inform the Regional Director of the results of this review and recommend that the appropriate findings as specified in Section VII should be made. The Regional Director or, in the case of centralized proposals, the Director of OBD in consultation with the Special Assistant shall inform all private parties participating in the transaction (e.g., a bank) of the hazards associated with the location of facilities in floodplains or wetland areas. The form letter contained in Exhibit A shall be used for this purpose.

Additionally, for all amendments to such forms of assistance that involve a change in the private party participation in the action, the Regional Director or

Director of OBD shall notify all such private parties via the form letter contained in Exhibit A.

b. Purchase of Equipment, Machinery, Furniture or Fixtures

For all proposed actions located in a floodplain or wetland, the Regional Environmentalist shall examine the pre-application materials to ascertain the ratio of the costs associated with the improvements to the structure of facility and its pre-market value. If this ratio exceeds 50 percent, the proposed action is subject to the full review procedures contained in subsection D of this Section and shall not be reviewed under this subsection.

The review of proposals having a ratio below the 50 percent level, including mitigation measures, generally follows those steps outlined in 3(a) above. Amendments to such actions that involved a change in participating private parties also shall be subject to the notification requirements outlined in 3(a) above.

VII. Findings

As part of the Regional Office Environmental File, the Regional Director shall make a finding for both floodplains and wetlands prior to authorization of any application:

The Agency's policy with respect to Executive Order 11990 (Protection of Wetlands) has been met since:

The proposed action will not impact wetland values and functions.

There is no practicable alternative to the proposed action which avoids impacting a wetlands; however, (a) the proposed action is the practicable alternative which minimizes the impact on wetlands and (b) all practicable mitigation measures which minimize the impact on wetland natural values and functions and minimize the risk of loss of life and property due to flood and storm damage have been incorporated in the proposed action.

The Agency's policy with respect to Executive Order 11988 (Floodplain Management) has been met since:

The proposed action will not impact floodplain values and functions.

There is no practicable alternative to the proposed action which avoids impacting a floodplain; however, (a) the proposed action is the practicable alternative which minimizes the impact on floodplains and (b) all practicable mitigation measures which minimize the impacts on floodplain natural values and functions and minimize the risk of loss of life and property due to flood and storm damage have been incorporated in the proposed action.

VIII. Reporting Requirements

1. It shall be the responsibility of the Regional Office to keep complete and accurate records on all proposed actions to which the procedures contained herein apply. These records shall be kept current and record the following information.

a. For every action or related activity that was determined to have the potential to impact either floodplain or wetland values and functions:

(i) the location and nature of the action;

(ii) the number of acres of floodplains and/or wetlands impacted by the proposed action;

(iii) the number of acres of floodplains and/or wetlands impacted by related activities; and

(iv) a general description of impacts.

b. A listing of those actions, where as a result of these procedures the impacts were successfully eliminated and a description of how these impacts were eliminated.

c. A list of actions, where as a result of these procedures practicable alternatives which minimized the impact on floodplains and/or wetlands were substituted for the original proposal.

d. A listing of those actions, where as a result of these procedures, no practicable alternative to impacting a floodplain and/or a wetland could be found and the Agency chose the no action alternative.

2. A copy of these reports shall be supplied to the Special Assistant for the preparation of EDA's annual report to the Council on Environmental Quality. The date of the required submission of these reports shall be specified by the Special Assistant.

IX. Planning Related Programs

The following procedures shall apply to all Planning, Technical Assistance and Title IX adjustment strategy programs.

A. Planning.

It shall be the responsibility of the appropriate planning division to inform its grantees of the intent of Executive Orders 11988 and 11990 and EDA's policy as stated within this Directive.

B. Technical Assistance and Title IX adjustment strategy.

It shall be the responsibility of the appropriate program office to inform its grantees of EDA's policy with respect to Executive Orders 11988 and 11990.

C. All programs.

EDA shall encourage each Grantee receiving assistance under these programs to initiate a process to identify floodplains and wetlands within its

planning jurisdiction or study area. For all new assistance granted subsequent to the effective date of the Directive, the program office shall condition the grant to require all grantees to identify the location and extent of floodplains and wetlands within the planning area based on published data in order to initiate a data base and to consider the impacts of the plan on floodplain and wetland values and functions. For any study undertaken which indicates that a floodplain or a wetland could be impacted, a thorough examination of alternatives shall be incorporated in the study and justification given for rejecting those alternatives not selected.

Planning appraisals shall address the grantee's ability to incorporate the considerations addressed in this Directive into local plans. These reviews shall also consider the impact of the economic goals and activities espoused by the grantee on the natural values and functions of floodplains and wetlands. Should potential impacts to floodplain or wetland values and functions be identified during the appraisal, the Regional Environmentalist shall be notified.

X. Applicability to Projects

This Directive is effective upon signing for all Title I projects for which a profile (ED-101P or Early Information System Profile 1100T) has not been filed. It is effective upon signing for all other covered actions for which an application has not been authorized.

All Title I actions which have progressed beyond the filing of a profile and all other covered actions which have progressed beyond the authorization of an application must meet the requirements of the Executive Orders through implementation, by the Regional Offices, of the provisions of Department Administrative Order 216-11, "Floodplain Management and Protection of Wetlands."

XI. Effect on Other Directives

This Directive supersedes those portions of EDA Directive 10.03-5, "Requirements for Projects Involving Flood Hazards," applicable to Executive Order 11296.

Dated March 29, 1979.

Robert T. Hall,
Assistant Secretary for Economic Development.

Appendix A—Executive Orders 11988 and 11990

Exhibit A—Form Letter for Notifying Private Parties Participating in an EDA Action

Private parties which participate in EDA Business Development actions impacting either floodplain or wetland values and functions shall be notified in writing of the hazards associated with activities so located. The form letter provided below should be used for this purpose.

(Date)

(Name and Address of Private Party)

Dear (Name of Responsible Official):

As a party involved in providing financial assistance to (Name of Applicant), it is our responsibility under Executive Orders 11988, "Floodplain Management" and 11990, "Protection of Wetlands," to inform the (Name of Private Party) that (Name of Applicant) located at (Location or Locations of Facilities or Structures Involved) are located within a floodplain and/or a wetland.

Also, it is our responsibility to inform you of the hazards associated with conducting activities within a floodplain and/or a wetland.

These include:

- a. Increased occurrence of flooding;
- b. Increased severity of flooding;
- c. Increased risk to public health and safety; and
- d. Increased risk of property losses.

If you have any questions or desire further information on this matter, please do not hesitate to contact us.

Sincerely,

(Name) Regional Director (or OBD Director if a Headquarters Project)

Appendix B—Procedures for Determining Floodplain Location

This Appendix summarizes information contained in the Water Resources Council's "Guidance for Floodplain Management" as published on Friday, September 30, 1977, in the Federal Register (42 FR 190, p. 52591-52598). This information is presented to aid persons familiar with the published "Guidance" in making determinations of floodplain location. This Appendix is not intended to substitute for the materials contained in the "Guidance for Floodplain Management."

Guidance for Determining Whether a Proposed Action Is Located in a Floodplain

Summary of Search Procedure for Obtaining Necessary Information

(Proceed through steps only as far as needed).

Given the Location of a Proposed Action

In Areas of Predominantly Federal Land Ownership or In Areas of Predominantly Private Land Ownership.

Step 1: Seek flood insurance rate map and/or flood insurance study report (provides detailed information adequate for making determination).

Step 2: Seek flood hazard boundary map (Provides approximate information and may require technical assistance for making determination).

Step 3: Seek technical assistance from a Federal or State agency (May provide detailed information and interpretation or develop new information as needed to make determination).

Step 4: Seek technical assistance from an experienced consulting engineer (Data should be of comparable quality to that required for Flood Insurance Study Report).

Areas of Predominantly Private Land Ownership

If a decision involves a publicly or privately-owned site within an area of predominantly private ownership, a map showing the flood hazard areas will usually be available from the National Flood Insurance Program administered by the Federal Insurance Administration (FIA), HUD. Detailed maps showing the elevations and boundaries of the "100-Year" (Zones A and V) and "500-year" (Zone B) floodplains are known as "Flood Insurance Rate Maps" (FIRM).

Many of the communities which have a FIRM also have a Flood Insurance Study (FIS) Report containing detailed flood information. Some 13,000 less detailed maps showing the approximate area of the 100-year (Zone A) floodplain are available for most of the communities for which FIRMs have not been completed. These are called "Flood Hazard Boundary Maps" (FHBM).

The search for information shall follow the sequence outlined below (Refer to the preceding summary diagram). The detailed map (FIRM) of the Flood Insurance Study (FIS) should be consulted first.

If a detailed map (FIRM) is not available—obtain an approximate boundary map (FHBM). If the proposed site is at or near the 100-year flood boundary, or if data on flood elevations are needed, or if the map does not delineate the flood hazard boundaries in the vicinity of the proposed site—seek detailed information and assistance from the agencies listed. (There are additional agencies with professional competence not listed which can

perform their own floodplain studies when needed.)

If an approximate boundary map (FHBM) is not available or if the map does not delineate the flood hazard boundaries in the vicinity of the proposed site—seek detailed information and assistance from the agencies listed below.

If the agencies listed do not have or know of detailed information and are unable to assist in determining the location of the floodplain—seek the services of a licensed consulting engineer experienced in this type of work. The quality of information obtained from the consulting engineer must be comparable to that required of flood insurance study contractors for the FIA.

Two cautions must be recognized in utilizing flood insurance maps: (1) Flood insurance maps generally do not delineate portions of the floodplain less than 200 feet wide and (2) possible adverse consequences from future development are difficult to infer from the maps. Thus, technical assistance may be desirable for interpreting flood insurance maps.

Specific and detailed information concerning FIRMs is contained in the FIA publication, "How to Read a Flood Insurance Rate Map." Similarly, the publication, "How to Read a Flood Hazard Boundary Map" contains information concerning FHBM's.

Areas of Predominantly Federal and State Land Holdings

If a decision involves an area or location within extensive Federal or State holdings, it is unlikely that FIS reports and FIRM or FHBM maps would be available. In this event, information should be sought from the land administering agency before information and/or assistance is sought from the agencies listed below. If none of these agencies have information or can provide assistance, the services of an experienced consulting engineer shall be sought as described above.

Agencies Offering Floodplain Services

| Information and Service | Floodplain (maps and profiles) | | Technical Assistance Services |
|---|--------------------------------|---------|-------------------------------|
| | Riverine | Coastal | |
| Dept. of Agriculture: Soil Conservation Service..... | X | | X |
| Dept. of the Army: Corps of Engineers ... | X | X | X |
| Dept. of Commerce: National Oceanic and Atmospheric Administration..... | | | X |

Agencies Offering Floodplain Services—Continued

| Information and Service | Floodplain (maps and profiles) | | Technical Assistance Services |
|---|--------------------------------|---------|-------------------------------|
| | Riverine | Coastal | |
| Dept. of Housing and Urban Development: Federal Housing Administration..... | | | X |
| Federal Insurance Administration..... | X | X | X |
| Dept. of Interior: Geological Survey..... | X | X | X |
| Bureau of Land Mgmt..... | X | X | X |
| Bureau of Reclamation..... | X | | X |
| Tennessee Valley Authority..... | X | | X |
| Delaware River Basin Commission..... | X | | X |
| Susquehanna River Basin Commission..... | X | | X |
| States and regional agencies..... | (*) | (*) | (*) |

* Varies from State to States.

Appendix C—Procedures for Determining a Wetland Location

The procedures contained herein shall be used in determining the location of a wetland.

Guidance for Determining Whether a Proposed Action is Located in a Wetland

Summary of Search Procedure for Obtaining the Necessary Information.

Given the Location of a Proposed Action

Step 1: Examine applicant supplied materials (Topographic Map, Site and Aerial Photographs) for Evidence of Wetland Areas.

Step 2: Consult local, state or Federal wetland survey or inventory.

Step 3: Seek technical assistance from federal or state agencies.

Review of Topographic Maps, Site and Aerial Photographs

These materials shall be examined for evidence of wetland areas. Topographic maps prepared by the USGS often depict the general existence of wetlands within a given area. Photographic documentation must be examined for evidence of vegetation typically associated with wetland areas within the proposal's area of potential impact.

Consult Local, State or Federal Wetland Surveys or Inventories

The Publication, *Existing State and Local Wetland Surveys* (USFWS, 1976) shall be used to identify the existence of surveys in the area of the proposed action. If a survey has been conducted for the area, the Regional

Environmentalists shall obtain a copy for use in making this determination.

As the National Wetlands Inventory is completed, copies will be supplied for the use of the Regional Environmentalist. In areas where the Inventory is complete, the Agency may use this information instead of the *Existing State and Local Wetlands Surveys* publication in making the determination of whether a wetland exists within the proposed action's area of impact.

Assistance from State and Federal Agencies

Many State agencies can provide information concerning the existence of wetlands within a project area. Most agencies involved in such activities can be identified by consulting the aforementioned publication, *Existing State and Local Wetlands Surveys*.

Several Federal agencies can also provide information concerning the existence of wetlands surveys or the location of wetland areas within a given area. These are listed below.

Department of Interior, Fish and Wildlife Service

The U.S. Fish and Wildlife Service is presently preparing the National Wetlands Inventory. Each Regional Office of the USFWS has, as a member of the staff, a Wetland Coordinator. These individuals can provide updated information concerning existing State and local wetland surveys and Federal inventories. These individuals are listed below by USFWS Regional Office and area of responsibility.

USFWS Region I

Regional Director (ARDE), Region I, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Mautnomah Street, Portland, OR 97232; FTS 429-6154, Telecopier 429-6116, Commercial 503-231-6116.

Attn: *Dennis Peters*, Regional Wetland Coordinator.

Areas covered: California, Idaho, Oregon, Hawaii, Nevada, Washington, U.S. Pacific Trust, Territories and Possessions.

USFWS Region II

Regional Director (ARDE), Region II, U.S. Fish & Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103; FTS 474-2914, Telecopier 474-2289, Commercial (505) 766-2914.

Attn: *Warren Hagenbuck*, Regional Wetland Coordinator.

Areas Covered: Arizona, Oklahoma, New Mexico, Texas.

USFWS Region III

Regional Director (ARDE), Region III, U.S. Fish & Wildlife Service, Fed. Bldg., Ft. Snelling (AS/BSP), Twin Cities, MN 55111; FTS 725-3593, Telecopier 725-3508, Commercial (612) 725-3510.

Attn: *Ron Erickson*, Regional Wetland Coordinator.

Areas Covered: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

USFWS Region IV

Regional Director (ARDE), Region IV, U.S. Fish & Wildlife Service, P.O. Box 95067, Atlanta, GA 30347; FTS 257-4781, Telecopier 257-4249, Commercial (404) 881-4781.

Attn: *John Hefner*, Regional Wetland Coordinator.

Areas Covered: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Panama Canal Zone, Puerto Rico, South Carolina, Tennessee, Virgin Islands.

USFWS Region V

Regional Director (ARDE), Region V, U.S. Fish & Wildlife Service, 1 Gateway Center, Suite 700, Newton Corner, MA 02158; FTS 829-9217, Telecopier, Commercial (617) 965-5100, Ext. 217.

Attn: *Ralph Tiner*, Regional Wetland Coordinator.

Areas Covered: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.

USFWS Region VI

Regional Director (ARDE), Region VI, U.S. Fish & Wildlife Service, P.O. Box 2548 Denver Federal Center, Denver, CO 80225; FTS 234-5586, Telecopier 234-4607, Commercial (303) 234-5586.

Attn: *Eugene Hansmann*, Regional Wetlands Coordinator.

Areas Covered: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming.

Alaska Area Office

Regional Director (ARDE), Alaska Area Office of U.S. Fish & Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503; FTS 8-300-0150 and ask for 907-276-3800, Ext. 412.

Attn: *Art Laperriere*, Regional Wetlands Coordinator.

National Wetlands Inventory

Project Leader, National Wetland Inventory Project, U.S. Fish and Wildlife Service, Suite 217, Dade Building, 9620 Executive Center Drive, St. Petersburg,

FL 33702; FTS 8-826-3624, Commercial (813) 893-3624.

Department of Agriculture Soil Conservation Service (SCS)

If the State or field office address is not known, contact:

Chief, Floodplain Management and Special Projects Branch, River Basins Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013; Telephone: 202/447-7697.

Department of the Army, Corps of Engineers (COE)

If field office address is not known contact:

Chief, Floodplain Management Services, U.S. Army and Independence Avenue, SW, Washington, DC 20314; Telephone 202-693-1691.

Department of Commerce, Office of Coastal Zone Management (OCZM)

Assistance may be obtained regarding individual State Coastal Zone Management Plans by contacting:

Chief, Environmental Assessment and Sanctuaries Staff, OCZM, 3300 Whitehaven Street, NW, Washington, DC 20235; Telephone 202-632-5231.

APPENDIX D

Selected References, by Topic

I. Materials Which Aid in Identifying Floodplains and Wetlands

The following listed materials should be consulted throughout the required "Determination of Floodplain or Wetland Impact" sections of this Directive. These sources generally expand on the guidance provided in the Directive. These materials will be most helpful in those situations where the potential to impact floodplains or wetlands is uncertain or unknown.

Cowardin, L. M., et. al. 1977. *Classification of Wetlands and Deepwater Habitats of the United States*. Washington, DC: U.S. Department of Interior, Fish and Wildlife Service.

Federal Insurance Administration. 1977. "How to Read Flood Hazard Boundary Maps." Washington, DC: U.S. Department of Housing and Urban Development. Publication Number: HUD-FIA-149.

Federal Insurance Administration. 1977. "How to Read a Flood Insurance Rate Map." Washington, DC: U.S. Department of Housing and Urban Development. Publication Number HUD-FIA-252.

Office of Biological Services. 1976. *Existing State and Local Wetland Surveys 1965-1975*. St. Petersburg, FL:

U.S. Department of Interior, Fish and Wildlife Service. NTIS Code: PB-278427.

II. Materials Describing Natural Values and Functions

Clark, John. 1977. *Coastal Ecosystems*. Washington, DC: the Conservation Foundation.

Jaworski, E. and Raphael, C. N. 1978. *Fish, Wildlife and Recreational Values of Michigan's Coastal Wetlands*. Ypsilanti, Michigan: Eastern Michigan University, Department of Geography—Geology.

Jaworski, E., et al. 1977. *General Functions and Values of Freshwater Wetlands in the Glaciated Midwest*. Ypsilanti, Michigan: Eastern Michigan University, Department of Geography—Geology.

Larson, J. S. 1973. *A Guide to Important Characteristics and Values of Freshwater Wetlands in the Northeast*. Water Resources Research Publication No. 31. Amherst, MA: University of Massachusetts.

Odum, H. T., et al., eds. 1974. *Coastal Ecological Systems of the U.S.* Washington, DC: The Conservation Foundation

Soil Conservation Service. *Gulf Coast Wetlands Handbook*. Alexandria, LA: U.S. Department of Agriculture.

III. Assessment of Impact, Development of Mitigation Measures and Non-Structural Flood Protection Methods

The following list of references provided an excellent source of general information concerning floodplains and wetlands and the impacts that can be expected from undertaking various activities. These works should be consulted frequently in carrying out any analysis called for in this Directive.

Darnell, Rezneat M., et al. 1976. *Impacts of Construction Activities in Wetlands of the United States*. Corvallis, WA: U.S. EPA, Office of Research and Development. Publication Number: EPA-600/3/76-045.

This work deals not only with wetland impacts but also with floodplain and water bottom impacts of construction activities. It is an excellent document and should always be consulted in carrying out review and assessments under this Directive.

Engineering Division, Soil Conservation Service, 1975. *Urban Hydrology for Small Watersheds*. Washington, DC: U.S. Department of Agriculture Technical Release No. 55.

Tourbier, Joachim and Richard Westmacott. 1974. *Water Resources Protection Measures in Land Development—A Handbook*, Final Report Prepared for U.S. DOI, Office of

Water Resources Research. Newark, DE: Water Resources Center, University of Delaware.

This work is especially useful as a guide for the development of mitigation measures and non-structural flood protection methods.

Office of Biological Services. 1977. *Habitat and Population Improvement Measures Accompanying Water Resource Development Projects*. Washington, DC: U.S. Department of Interior, Fish and Wildlife Service. Publication Number FWS/OBS-77/30.

IV. Miscellaneous

The following list of references provide more detailed information on specific impacts or generalized information that supplement the information contained in the works cited in III above.

Amy, Gary et al. 1974. *Water Quality Management Planning for Urban Runoff*. Washington, DC: U.S. EPA, EPA Publication No. EPA 440/9-75-004.

Bhutani, J., et al., 1975. *Impact of Hydrologic Modifications on Water Quality*. McLean, VA: Mitre Corporation, Mitre Tech. Report NTR-6887.

Carstea, D., et al. 1975. *Guidelines for the Analysis of Cumulative Environmental Effects of Small Projects in Navigable Waters*. McLean, VA: Mitre Corporation, Mitre Technical Report MTR-6939.

Good, R. E., et al., eds. 1978. *Freshwater Wetlands*. New York: Academic Press.

Office of Air and Water Programs, 1973. *Methods for Identifying and Evaluating the Nature and Extent of Nonpoint Sources of Pollutants*. Washington, DC: U.S. EPA, Publication No. EPA-430/9-73-014.

Office of Water and Hazardous Materials, 1976. *A manual of Laws, Regulations and Institutions for Control of Ground Water Pollution*. Washington, DC: U.S. EPA.

Office of Water Planning and Standards, 1976. *Methods to Control - Fine-Grained Sediments Resulting from Construction Activity*. Washington, DC: U.S. EPA.

Ortolano, Leonard, ed. 1973. *Analyzing the Environmental Impacts of Water Projects*, A report submitted to the U.S. Army Engineer Institute for Water Resources, Stanford, CA: Stanford University, Department of Civil Engineering, AD-766 286.

U.S. EPA, 1973. *The Control of Pollution from Hydrographic Modifications*. Washington, DC.

U.S. EPA. *Inter-relations of Land Use Planning and Control to Water Quality*

Management Planning. Washington, D.C. Environments for Tomorrow, Contract No. 68-01-0750.

APPENDIX E

Methods to Minimize, Restore and Preserve

A wide range of methods have been developed over time to minimize harm to lives and property from flood hazards. In the recent past, other methods directed toward minimizing harm to natural and beneficial environmental values, including those associated with the floodplain, have also been developed. The technology and methodologies for achieving restoration and preservation are not well documented nor understood, but currently are receiving increased attention. The tools and approaches, which are directed toward attaining these three goals of the Order, shall be considered and applied at all stages of a proposed action, as appropriate, e.g., during the planning, design, construction, operation and maintenance of a proposed project. References concerning specific implementation of these measures are contained in Appendix D.

Natural Moderation of Floods

- Minimize floodplain fills and actions that require fills such as construction of dwellings, factories, highways, etc.
- Require that structures and facilities constructed in floodplains and wetlands provide for adequate hydrologic flow and circulation.
- Use minimum grading requirements and avoid compaction of soils on the site to the extent possible.
- Relocate nonconforming structures and facilities out of floodplains or wetlands.
- Return site to natural contours.
- Preserve free and natural drainage when designing and constructing bridges, roads, and pipeline crossings.
- Prevent intrusion on and destruction of beach and estuarine ecosystems and restore damaged dunes and vegetation.
- Revegetate the site with native floodplain or wetland plant species.

Water Quality

- Maintain wetland and floodplain vegetation buffers to reduce sedimentation and pollution of the water body.
- Control agricultural activities to minimize nutrient inflow into water bodies.

- Control urban runoff, other storm water, and point and nonpoint discharges.

- Control methods used for grading, filling, soil removal and replacement, etc., to minimize erosion and sedimentation during construction.

- Prohibit the location of potential pathogenic and toxic sources on the floodplain, such as sanitary land fills and septic tank, etc.

Groundwater Recharge

- Require the use of pervious surfaces wherever practicable.

- Design construction projects for runoff detention, both during the construction and operational phase.

- Dispose of spoils and waste materials so as not to contaminate ground or surface water or change land contours.

Living Resources

- Identify and protect wildlife habitat and other vital ecologically sensitive areas from disruption.

- Require topsoil protection programs during construction.

- Avoid wetland drainage, channelization, and water withdrawal.

- Reestablish damaged floodplain ecosystems.

- Minimize tree cutting and other vegetation removal.

- Design floodgates and seawalls to allow natural tidal activity and estuarine flow.

Cultural Resources

- Provide public access to and along the waterfront for recreation, scientific study, educational instruction, etc.

- Locate and preserve from harm historical cultural resources; consult with appropriate governmental agency or private group.

Agricultural Resources

- Minimize soil erosion on cropped areas within floodplains.

- Control use of pesticides, herbicides, and fertilizer.

- Limit the size of fields, promote fence rows, shelter belts and strip-cropping.

- Strengthen water bank and soil bank type programs to be consistent with alternate demands for the use of agricultural land.

- Minimize irrigation return flows and excessive applications of water.

Aquacultural Resources

- Construct impoundments to minimize any alteration in natural drainage and flood flow. Existing natural impoundments such as oxbow

lakes and sloughs could be utilized under proper management.

- Limit the use of exotic species, both plant and animal, to those organisms already common to the area or those known not to compete unfavorably with existing natural populations.

- Discourage mechanized operations. Machinery such as dredges, weeders, and large-scale harvesting equipment may lead to environmental problems such as sediment loading in adjacent watercourses.

Forestry Resources

- Control the practice of clear-cutting, depending upon the species harvested, topography, and location.

- Complement State law governing other aspects of harvest operations; proximity to watercourses, limits on roadbuilding, equipment intrusions, etc.

- Require erosion control plans on all, roads and skidways.

[EDA Directive 17.04]

[FR Doc. 79-10405 Filed 4-4-79; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF COMMERCE

Economic Development Administration

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

Petitions have been accepted for filing from ten firms: (1) Max Feldt Manufacturing Company, 727 Highway 72 East, Corinth, Mississippi 38834, a producer of men's and women's shirts and men's jackets (accepted March 22, 1979); (2) Southern Sportswear, Inc., 503 Polk Street, Corinth, Mississippi 38834, a producer of men's and boys' jackets (accepted March 22, 1979); (3) Weber Knitting Mills, Inc., 45 Carey Avenue, Butler, New Jersey 07405, a producer of sweaters for men, women and children (accepted March 23, 1979); (4) Washington Stove Works, 3402 Smith Street, P.O. Box 687, Everett, Washington 98206, a producer of stoves and fireplace units (accepted March 23, 1979); (5) Juma Fashions, Inc., 12 West 21st Street, New York, New York 10010, a producer of women's dresses, jackets, coats, scarves, hats and shawls (accepted March 27, 1979); (6) Arvin Outerwear, Inc., 600 Palisade Avenue, Union City, New Jersey 07087, a producer of women's coats (accepted March 28, 1979); (7) Midwest Footwear Company, Inc., 320 Manion Street, P.O. Box 10, Sullivan, Missouri 63080, a producer of women's footwear (accepted March 28, 1979); (8) Bomar

Crystal Company, 201 Blackford Avenue, Middlesex, New Jersey 08846, a producer of quartz crystal oscillators (accepted March 30, 1979); (9) Saywood Sportswear, Inc., 30 West 21st Street, New York, New York 10010, a producer of women's dresses and jackets (accepted March 30, 1979); and (10) Northwyn Sales, Inc., 6319 Seaview, N.W., Seattle, Washington 98107, a producer of boat sails (accepted March 30, 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 on April 15, 1979.

Jack W. Osburn, Jr.,

Chief, Trade Act Certification Division, Office of Eligibility and Industry Studies.

[FR Doc. 79-10460 Filed 4-4-79; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Resolution and Order Approving Application of the Papago-Tucson Foreign-Trade Zone Corporation for a Foreign-Trade Zone in Pima County, Arizona.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Papago-Tucson Foreign-Trade Zone Corp., a private non-profit Arizona corporation, filed with the Foreign-Trade

Zones Board (the Board) on November 3, 1978, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone on the Papago Indian Reservation in Pima County, Arizona, adjacent to the Nogales, Arizona, Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves an industrial park type zone that envisages the possible construction of buildings by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Foreign-Trade Zones Board, Washington, D.C. Grant

To Establish, Operate and Maintain a Foreign-Trade Zone in Pima County, Ariz.

WHEREAS, by an Act of Congress approved June 18, 1934, and Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

WHEREAS, the Papago-Tucson Foreign-Trade Zone Corporation (the Grantee) has made application (filed November 3, 1978), in due and proper form to the Board, requesting the establishment, operation and maintenance of a foreign-trade zone on the Papago Indian Reservation in Pima County, Arizona, adjacent to the Nogales, Arizona, Customs port of entry;

WHEREAS, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

WHEREAS, the Board has found that the requirements of the Act and the Board's Regulations (15 CFR Part 400) are satisfied;

Now, THEREFORE, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 48, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, said grant being subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

IN WITNESS WHEREOF, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 28th day of March 1979, pursuant to Order of the Board.

Foreign-Trade Zones Board.

C. L. Haslam
Acting Chairman and Executive Officer.

Attest:
John J. DaPonte,

[FR Doc. 79-10408 Filed 4-4-79; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council's Anchovy/Jack Mackerel Subpanel; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Pacific Fishery Management Council was established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94-265), and the Council has established an Anchovy/Jack Mackerel Subpanel which will meet to discuss the third draft of the Jack Mackerel Fishery Management Plan.

DATES: The meeting will convene on Tuesday, May 1, 1979, at 10:00 a.m., and will adjourn at approximately 5:00 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at the California Fish and Game Office, 350 South Golden Shores, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Pacific Fishery Management Council, 526 S.W. Mill Street, Second Floor, Portland, Oregon 97201, telephone: (503) 221-6352.

Dated: April 2, 1979.

Winfred H. Meibohm,

Executive Director National Marine Fisheries Service.

[FR Doc. 79-10520 Filed 4-4-79; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council and Groundfish/Sablefish Subpanel; Public Meeting With Partially Closed Session

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Pacific Fishery Management Council and its Groundfish/Sablefish Subpanel will conduct a series of meetings.

DATES: May 9-11, 1979.

ADDRESS: The meetings will take place at the Pony Village Lodge, North Bend, Oregon.

FOR FURTHER INFORMATION CONTACT: Pacific Fishery Management Council, 526 S.W. Mill Street, Second Floor, Portland, Oregon 97201, telephone: (503) 221-6352.

SUPPLEMENTARY INFORMATION: The Pacific Fishery Management Council was established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94-265), and the Council has established a Groundfish/Sablefish Subpanel to assist in carrying out its responsibilities.

Meeting Agendas follow:

Groundfish/Sablefish Subpanel (open meeting) May 9-10, 1979, (1 p.m. to 5 p.m. on May 9; 8 a.m. to 5 p.m. on May 10).

Agenda: Discussion of the draft Groundfish Fishery Management Plan.

Council (open meeting) May 10-11, 1979, (10 a.m. to 5 p.m. on May 10; 8 a.m. to 5 p.m. on May 11).

Agenda: Open Session—Review of FMP's; conduct a public comment period beginning at 4 p.m. on May 10, and conduct other fishery management business.

Council (partially closed meeting) May 10. (8 a.m. to 10 a.m.).

Agenda: Closed Session—Discuss classified material on the status of current maritime boundary and resource negotiations between the U.S. and Canada and to discuss personnel matters concerning appointments to vacancies on subpanels and teams. Only those Council members and related staff having security clearance will be allowed to attend this closed session.

The Assistant Secretary for Administration of the Department of Commerce with the concurrence of its General Counsel, formally determined on February 23, 1979, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the agenda items covered in the closed session may be exempt from the provisions of the Act relating to open meetings and public participation therein because items will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(1) and (6), as information which is properly classified pursuant to Executive Order. (A copy of the determination is available for public inspection and copying in the Public Reading Room, Central Reference and Record Inspection Facility, Room 5317, Department of Commerce).

Dated: April 2, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-10521 Filed 4-4-79; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Notice of Intent To prepare a Draft Environmental Statement (DES) For a Proposed Flood Control Project on Perry Creek in Sioux City, Iowa.

AGENCY: U.S. Army Corps of Engineers, Omaha District.

ACTION: Notice of Intent to Prepare a DES.

SUMMARY: 1. The proposed Federal action is to provide flood control along Perry Creek in Sioux City, Iowa.

2. Reasonable structural alternatives for Perry Creek flood control are a 16,000 c.f.s. and a 9,000 c.f.s. grasslined channel. A reasonable nonstructural alternative is to remove all buildings in the 100-year floodway over an extended period of time.

3. To date, public involvement has included meetings and discussions with public entities, local planning agencies, and concerned citizen groups. A public meeting will be held in the fall of 1979. No significant issues have yet to be identified. The project will also comply with the requirements of the Historic Preservation Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, Section 404 of the 1977 Clean Water Act, Executive Order 11988 on flood plains, and Executive Order 11990 on wetlands.

4. A scoping meeting for the DES will be held on Thursday, 26 April 1979, at 9 a.m. (CDT) in the Iowa Department of Transportation basement meeting room at 2800 Gordon Drive in Sioux City, Iowa. The participation of the public and all interested Government agencies is invited.

5. The Omaha District estimates that the DES will be released for public review in October 1979.

ADDRESS: Questions about the proposed action, DES, or scoping meeting should be directed to Richard Gorton; Chief, Environmental Analysis Branch; Omaha District, CE; 6014 U.S. Post Office and Courthouse; Omaha, Nebraska 68102. Phone: (402) 221-4605.

Dated: March 30, 1979.

John E. Velehradsky,
Chief, Planning Division.

[FR Doc. 79-10453 Filed 4-4-79; 8:45 am]

BILLING CODE 3710-62-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Arkansas Louisiana Gas Co.;
Certification of Settlement

March 29, 1979.

Take notice that on March 14, 1979, Presiding Administrative Law Judge Issac D. Benkin certified to the Commission a proposed settlement in these dockets. The settlement agreement, if approved by the Commission, will resolve price-squeeze and purchased gas adjustment issues.

Any person desiring to be heard or to protest said settlement agreement

should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before April 6, 1979. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket Nos. RP77-54, RP77-55, RP76-10, (PGA77-5), RP74061, (PGA77-5), RP74-61 (PGA78-3) and RP76-10 (PGA78-3)]

[FR Doc. 79-10472 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

Appalachian Power Co.; Agreement

March 30, 1979.

Take notice that American Electric Power Service Corporation (AEP) on March 27, 1979 tendered for filing on behalf of its affiliate, Appalachian Power Company (Company), Supplement No. 5 to the Interconnection Agreement dated October 14, 1968 between Appalachian Power Company and Tennessee Valley Authority (TVA), designated Appalachian's Rate Schedule FERC No. 52.

AEP states that this Supplement No. 5 provides that, for the purpose of conserving energy resources during extended fuel shortages Appalachian Power Company or TVA may arrange to obtain Emergency Conservation Energy from the other. When supplied, the charge for Emergency Conservation Energy generated on the supplying party's will be 110% of the out-of-pocket replacement cost of generating the energy, plus 5.00 mills per kilowatt-hour. The new Supplement No. 5 also provides for a transmission service change of 1.7 mills per kilowatt-hour for deliveries of Emergency Conservation Energy from systems interconnected with Appalachian Power Company or TVA. The parties may also have the option to return equivalent energy (no cash) under terms mutually agreeable.

Because the current uncertainty of fuel supplies and the possibility that transactions will be required immediately under the proposed Supplement No. 5, the parties have requested that the Commission waive its notice requirements and that the proposed Schedule become effective as soon as possible.

Copies of the filing were served upon Tennessee Valley Authority.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the

Federal Energy regulatory Commission, 825 North Capitol Street, N.E., Washington, D. C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 20, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ER79-269]

[FR Doc. 79-10471 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

Bruce Calder, Inc., et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates¹

March 27, 1979.

Take notice that each of the Applicants listed herein has filed an

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

application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before April 10, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a

party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

Kenneth F. Plumb,
Secretary.

| Docket No. and date filed | Applicant | Purchaser and location | Price per Mcf | Pressure base |
|------------------------------------|--|---|---------------|---------------|
| CI79-264, 2/22/79, B..... | Bruce Calder, Inc., 1200 Hartford Bldg., Dallas, Texas 75201. | Panhandle Eastern Pipe Line Company, Flank Field, Baca County, Colorado. | (1) | |
| CI79-265, (CI65-1030), B, 2/22/79. | Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Okla. 73125. | Baca Gas Gathering System, Inc., ² Flank Field, Baca County, Colorado. | (2) | |
| CI79-266, B, 2/22/79..... | Murfin-1975 Joint Venture, 612 Union Center, Wichita, Kansas 67202. | Panhandle Eastern Pipeline Company, Flank Field, Baca County, Colorado. | (1) | |
| CI79-267, B, 2/22/79..... | PanCanadian Petroleum Company, 2000 One Palisier Square, Calgary, Alberta, Canada. | Panhandle Eastern Pipe Line Company, Flank Field, Baca County, Colorado. | (1) | |
| CI79-268, B, 2/22/79..... | The Termo Company, P.O. Box 2767, Long Beach, California 90801. | Panhandle Eastern Pipe Line Company, Flank Field, Baca County, Colorado. | (1) | |
| CI79-269, B, 2/22/79..... | Texas Oil & Gas Corp., 2700 Fidelity Union Tower, Dallas, Texas 75201. | Panhandle Eastern Pipe Line Company, Flank Field, Baca County, Colorado. | (1) | |

¹To convert this property to a gas storage field as proposed in Docket No. CP79-128.

²In Docket No. CP77-91, Panhandle Eastern Pipe Line Company purchased Baca Gas Gathering System, Inc.

³In the application in Docket No. CP79-128, Colorado Interstate Gas Company has proposed the Flank Field to be used as a Storage field.

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

[Docket Nos. CI79-264, et al.]

[FR Doc. 79-10473 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

California Department of Water Resources; Application for Transmission Line License

March 28, 1979.

Take notice that an application for a transmission line license—Project No. 2876—was filed on October 19, 1978, by the California Department of Water Resources (Applicant). The proposed transmission line would be located in Fresno County, California.

Correspondence concerning the application should be sent to: Ronald B. Robie, Director, California Department of Water Resources, P.O. Box 388, Sacramento, California 95802.

Applicant proposes to construct a 0.8-mile-long, 230-kV, three-phase single-circuit transmission line, including three towers, from the proposed Pine Flat Powerhouse Switchyard to be constructed by Kings River Conservation District (Applicant for the Pine Flat Project No. 2741). The proposed transmission line would

transmit power from the Pine Flat Powerhouse to Pacific Gas and Electric Company's (PG&E) existing Balch #2-McCall 230-kV transmission line. The transmission line would be a primary line as defined by Section 3(11) of the Federal Power Act, (16 U.S.C. 796(11)), and would be licensed as a project work under Section 4(e) of that Act, 16 U.S.C. 797(e). The three towers proposed are self-supporting square base lattice steel structures, varying in heights from approximately 79 to 112 feet. The required right-of-way would be 120 feet

in width, and would occupy a total of 12.33 acres of land. The closest existing transmission right-of-way is PG&E's transmission line corridor south of the U.S. Corps of Engineers' Pine Flat Dam.

The energy transmitted over the transmission lines would be used to operate the pumping plants of the state water project.

Anyone desiring to be heard or to make any protest about this application should file a protest or a petition to intervene with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure ("Rules"), 18 C.F.R. § 1.10 or § 1.8 (1978). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before May 28, 1979. The Commission's address is: 825 N. Capitol Street, N.E., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,
Secretary.

[Project No. 2876]

[FR Doc. 79-10474 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

Carolina Power & Light Co.; Filing

March 30, 1979.

Take notice that Carolina Power & Light Company (CP&L) on March 14, 1979, tendered for filing 3rd Revised Sheet Nos. 5-7 to the company's FERC Electric Tariff, Volume No. 1. CP&L states that these tariff sheets, which contain CP&L's Rate Schedule RS-12A for resale service to municipalities and rural electric cooperatives, are submitted pursuant to a stipulation entered into on March 16, 1978, by the company, the Electricities of North Carolina and the Cities of Camden and Bennettsville, South Carolina, and North Carolina Electric Membership Corporation and Four County Electric Membership Corporation and the Commission Staff.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the

Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All protests should be filed on or before April 13, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ER77-485]

[FR Doc. 79-10475 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

Colorado Interstate Gas Co.; Settlement Conference

March 28, 1979.

Take notice that an informal settlement conference will be held in the subject gas pipeline rate proceedings on April 19, 1979, in Room 3200, 941 North Capitol Street, N.E., Washington, D.C. 20426 at 11:30 a.m.

Customers and other interested persons will be permitted to attend the above-mentioned informal conference, but if such persons have not previously been permitted to intervene, attendance at the conference will not be deemed to authorized intervention as a party in the proceeding.

Kenneth F. Plumb,
Secretary.

[Docket Nos. RP78-51 and RP79-1]

[FR Doc. 79-10476 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

Empire District Electric Co.; Filing

March 30, 1979.

Take notice that the Empire District Electric Company on March 26, 1979, tendered for filing a Letter of Agreement executed with the Southwestern Power Administration (SWPA) which proposes to permit interchange of energy such that SWPA will furnish available hydroelectric energy in excess of its own requirements to Empire District, and Empire will furnish an equivalent quantity of energy at a later date to SWPA.

Empire District requests waiver of the Commission's notice requirements to allow for an effective date of April 1, 1979.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests

should be filed on or before April 20, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ER 79-270]

[FR Doc. 79-10477 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

Florida Power & Light Co., Filing

March 30, 1979.

Take notice that on March 22, 1979 Florida Power & Light Company (FP&L) tendered for filing four (4) Exhibits A which provide for the contract demands for the City of Starke, the New Smyrna Beach Utilities Commission, the Fort Pierce Utilities Commission and Florida Keys Electric Cooperative, Inc.

FP&L states that the proposed effective date for the contract demands for Starke, New Smyrna Beach and Florida Keys is March 1, 1979; and the proposed effective date for contract demand for Fort Pierce is April 1, 1979, and waiver is therefore requested of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 16, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ER79-266]

[FR Doc. 79-10478 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

Indiana & Michigan Electric Co.; Proposed Changes in Rates and Charges

March 30, 1979.

Take notice that American Electric Power Service Corporation (AEP) on March 23, 1979 tendered for filing on

behalf of its affiliate Indiana & Michigan Electric Company (Indiana Company) Modification No. 11 dated January 1, 1979 to the Interconnection Agreement dated July 20, 1956 between Commonwealth Edison Company and Indiana & Michigan Electric Company, Indiana's Rate Schedule FERC No. 20.

AEP states that Sections 1 and 3 of Modification No. 11 provide for an increase in the demand charge for Short Term Power and Limited Term Power from \$0.40 to \$0.070 per kilowatt per week and \$2.15 to \$3.75 per kilowatt per month respectively. Sections 2 and 4 provide for an increase in the Short Term Power and Limited Term Power transmission charges from \$0.125 to \$0.175 per kilowatt per week and \$0.55 to \$0.75 per kilowatt per month respectively, both schedules proposed to become effective January 29, 1979. Applicant states that since the use of Short Term and Limited Term Power cannot be accurately estimated, it is impossible to estimate the increase in revenues resulting from the Modification. There were no Short Term or Limited Term Power transactions between the parties in the past twelve months.

Copies of the filing were served upon Commonwealth Edison Company, the Public Service Commission of Indiana and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 18, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ER79-272]
[FR Doc. 79-10479 Filed 4-4-79; 8:45 am]
BILLING CODE 6450-01-M

Kaiser-Francis Special Account C; Petition for Declaratory Order

March 28, 1979

Take notice that on February 23, 1979, Kaiser-Francis Special Account C

(Kaiser-Francis) filed a petition for a declaratory order pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure in Docket No. RI79-28. Kaiser-Francis requests that the Commission issue a declaratory order stating that Opinion No. 586 authorizes payment for natural gas at a rate which includes a proportional BTU adjustment under the terms of its contract.

In support of its petition, Kaiser-Francis states that it is a successor in interest to a contract between Wessely Petroleum, Ltd. (Seller) and Michigan Wisconsin (Buyer) for the purchase and sale of natural gas from certain leaseholds in the Laverne Field, Harper County, Oklahoma (Harper-Owens Gas Units). This contract is dated June 16, 1969 and includes an area rate clause. Kaiser-Francis contends that this area rate clause serves to incorporate a proportional BTU adjustment clause into the contract for sales made from the Harper-Owens Gas Units for the period from October 1, 1970 to December 31, 1975.

Kaiser-Francis reasons that since Opinion No. 586 authorized whatever BTU adjustment provision was provided for under the terms of the contracts dated prior to November 1, 1969, that Kaiser-Francis is entitled, on the basis of the area rate clause contained in its contract, to an upward adjustment based upon BTU content.

Any person desiring to be heard or to make any protest with reference to said petition should on or before April 19, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[Docket No. RI79-28]
[FR Doc. 79-10480 Filed 4-4-79; 8:45 am]
BILLING CODE 6450-01-M

Kansas City Power & Light Co.; Proposed Change in Rate Schedule

March 30, 1979.

Take notice that on March 26, 1979, Kansas City Power & Light Company

(KCPL) tendered for filing a proposed change in the General Participation Agreement in order to include St. Joseph Light & Power Company (SJLP) as an additional Participant.

KCPL states that the following are presently Participants under the General Participation Agreement with the following FPC Rate Schedule Numbers:

Kansas City Power & Light Company—Rate Schedule FPC No. 32.
Missouri Public Service Company—Rate Schedule FPC No. 8.
The Empire District Electric Company—Rate Schedule FPC No. 73.
Kansas Gas and Electric Company—Rate Schedule FPC No. 94.
The Kansas Power and Light Company—Rate Schedule FPC No. 7.
Central Telephone & Utilities Corp.—Rate Schedule FPC No. 53.
Central Kansas Power Company, Inc.—Rate Schedule FPC No. 2.
Sunflower Electric Cooperative, Inc.

KCPL requests an effective date of January 1, 1979, for the proposed change.

KCPL states that the other Present Participants, except Sunflower Electric Cooperative, Inc., and the New Participant, SJLP, under the General Participation Agreement have filed certificates of concurrence to the proposed change with KCPL's submittal.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 20, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ER79-271]
[FR Doc. 79-10481 Filed 4-4-79; 8:45 am]
BILLING CODE 6450-01-M

Lawrenceburg Gas Transmission Corp.; Proposed Change in FERC Gas Tariff

March 28, 1979.

Take notice that on February 23, 1978 Lawrenceburg Gas Transmission Corporation (Lawrenceburg) tendered for filing two (2) substitute revised gas tariff sheets to its FERC Gas Tariff. First

Revised Volume No. 1, both of which are dated as issued on February 21, 1979, proposed to become effective February 1, 1979, and identified as follows:

Substitute Seventeenth Revised Sheet No. 4, and Substitute Sixteenth Revised Sheet No. 18.

Lawrenceburg states that on January 3, 1979 it filed two revised gas tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 in order to effect its semiannual purchased gas cost adjustment. Those tariff sheets, identified as Seventeenth Revised Sheet No. 4 and Sixteenth Revised Sheet No. 18, were subsequently accepted for filing by Commission order issued February 9, 1979, subject to modification to reflect any changes in the pipeline supplier rates being tracked.

Thereafter on or about February 16, 1979, Lawrenceburg's supplier, Texas Gas Transmission Corporation, filed to modify its proposed February 1, 1979 tariff rates, prompting the revision in Lawrenceburg's proposed February 1, 1979 rates noticed herein.

Lawrenceburg has requested waiver of the Commission's Regulations in order that its substitute tariff sheets may become effective February 1, 1979, and states that copies of this filing have been served upon its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 6, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. RP73-23, PGA 79-2(a)]

[FR Doc. 79-10482 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

Midwestern Gas Transmission Co.; Petition To Amend

March 28, 1979.

Take notice that on March 13, 1979, Midwestern Gas Transmission Company (Midwestern), filed in Docket Nos. CP66-110, *et al.* (CP66-121) a

petition to amend the Commission's order issued June 20, 1967, in CP66-121 pursuant to Section 3 of the Natural Gas Act so as to authorize Midwestern to import the additional estimated 114,000,000 Mcf of natural gas as provided by the amending agreement between Midwestern and TransCanada Pipelines Limited (TransCanada), all as more fully set forth in the petition to amend, which is on file with the Commission and open to public inspection.¹

Midwestern seeks authorization from the Commission to import an additional total quantity of an estimated 114,000,000 Mcf of gas up to and including October 31, 1980. Midwestern states that such quantity of gas would be generated from a total quantity of gas previously authorized to be imported but which quantity could not be imported due to daily and annual restrictions in TransCanada's export license and in Midwestern's import authorization. It is asserted that the importation of this additional gas would utilize existing facilities and would be at a point on the U.S.-Canadian boundary near Emerson, Manitoba, where the Northern Division of Midwestern's pipeline system interconnects with the facilities of TransCanada. It is further stated that such additional volumes would be purchased from TransCanada and would be resold to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), Northern Natural Gas Company (Northern Natural) and Natural Gas Pipe Line Company of America (Natural) pursuant to Midwestern's request for authorization of such sales being filed concurrently herewith.

Midwestern states that the amended agreement between it and TransCanada, dated November 16, 1978, wherein it was agreed to amend the presently effective June 30, 1967, gas purchase agreement between them, provides for the sale by TransCanada to Midwestern of the above-mentioned estimated 114,000,000 Mcf of natural gas. Midwestern indicates that TransCanada had advised that the available gas supply and deliverability currently exceeds TransCanada's requirements: It is due to this development that TransCanada desires to amend the gas purchase agreement with Midwestern to provide for the sale of additional gas to Midwestern for resale to Tennessee, Northern Natural, and Natural, it is asserted.

¹ This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

Any person desiring to be heard or to make any protest with reference to said petition should on or before April 19, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[Docket No. CP66-121.]

[FR Doc. 79-10483 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

Mitchell Energy Corp.; Order Providing for Comments on Procedure After Remand

March 28, 1979.

This proceeding has been remanded by the Court of Appeals for the Fifth Circuit¹ and the question before the Commission² is now as to the appropriate procedure that should be followed in reaching a determination in accordance with the Court's opinion. Mitchell Energy Corporation had applied for special relief from the area rate but entered into a settlement with its customer, Natural Gas Pipeline Company of America, under which it would receive 30.25 cents per Mcf, for both new and old gas. The Commission approved the settlement in Opinion No. 649,³ effective as of February 21, 1973, but this was reversed on the challenge of Congressmen MacDonald and Yates,⁴ and the case was remanded for additional evidence as to Mitchell's costs and profits.

A hearing was held in the remanded proceeding, but after certification and before Commission decision Mitchell moved to withdraw its petition for special relief and filed an amendment to its rate schedule which would enable it

¹ *Mitchell Energy Corp. v. F.E.R.C.*, F.2d (CA5—September 20, 1978).

² This proceeding was commenced before the Federal Power Commission (FPC). By the joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the FERC. The term "Commission", when used in the context of action taken prior to October 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC.

³ 49 FPC 424 (1973).

⁴ *MacDonald v. F.P.C.*, 505 F.2d 355 (CA DC—1974), cert. denied, 421 U.S. 912 (1975).

to charge the higher nationwide rates. The Commission on May 20, 1976, accepted Mitchell's application to withdraw, and, after a further hearing, held in Opinion No. 649-B⁵ that Mitchell should make refunds amounting to \$9,182,556 representing the difference between the special relief rate approved in Opinion No. 649 and the applicable area rate applied to all sales volumes, less adjustments for national rates in effect.⁶

On appeal the Fifth Circuit said that the Commission has incorrectly applied the standards for special relief in *MacDonald* to the question whether Mitchell should make a refund. This interpretation of *MacDonald*, the Court said, led the Commission to depart from the evidentiary standards by which just and reasonable rates and refund obligations ordinarily are determined. The Court did not reach the question whether the Commission had abused its discretion in concluding that the equities do not support a waiver of Mitchell's refund obligation. The Court summarizes the objectives of this proceeding as follows:

The present proceeding is to determine whether Mitchell collected amounts in excess of just and reasonable rates, and if so how much, and whether Mitchell should be required to refund any or all of any excess.

The Court, however, does not make clear what standards should be used in determining what the refund should be, if any.

In these circumstances it becomes difficult for the Commission to prescribe procedure by which the case can be presented again for a determination that would be in accord with the Court's views. We shall therefore ask the parties, including the staff, to comment on the legal and factual situation now appearing and make recommendations as to whether another hearing should be held or whether, without a hearing, the issues can be resolved.

The Commission orders:

On or before April 12, 1979, Mitchell, Natural Gas Pipeline Company of America and the Staff shall file, and any other party who wishes, may file, comments on the appropriate steps to be taken by the Commission in the light of the opinion of the Fifth Circuit, this order and the status of the record with a view to a determination of a refund, if any, to be paid by Mitchell to Natural Gas Pipeline Company of America applicable to the period that its settlement rate discussed above was in

effect. Answering comments may be filed on or before May 1, 1979. Comments and answering comments shall be served on all parties to the proceeding.

By the Commission.

Kenneth F. Plumb,
Secretary.

[Docket No. R173-60 (Phase IV)]
[FR Doc. 79-10468 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

**Northern States Power Co.;
Supplement No. 6, to the Integrated
Transmission Agreement with
Cooperative Power Association**

March 30, 1979.

Take notice that Northern States Power Company, on March 22, 1979, tendered for filing supplement No. 6, dated March 7, 1979, to the Integrated Transmission Agreement, dated August 25, 1967, with Cooperative Power Association.

Supplement No. 6 revises the Exhibits to the Agreement to incorporate changes in the electric systems of the parties. Supplement No. 6 terminates Supplements No. 1 through 5 of the Agreement.

Any party desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions and protests should be filed on or before April 18, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ER79-273]
[FR Doc. 79-10484 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

**Trailblazer Pipeline Company, et al.;
Intent To Prepare Draft environmental
Impact Statement**

April 2, 1979.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) has determined that approval of the project proposed in Docket No. CP79-80 would constitute a

major Federal action significantly affecting the quality of the human environment. Therefore, pursuant to Section 2.82(b) of the Commission's Rules of Practice and Procedure (18 CFR 2.82(b)), a draft environmental impact statement (DEIS) will be prepared. The DEIS will deal with the application by Trailblazer Pipeline Company, Overthrust Pipeline Company, and Colorado Interstate Gas Company (Applicants) for a certificate of public convenience and necessity authorizing, pursuant to Section 7(c) of the Natural Gas Act, the construction and operation of pipeline facilities to be known as the "Trailblazer System." Natural gas would be purchased from gas fields currently being developed in the Rocky Mountain area of Utah, Idaho, Wyoming, and Colorado, transported or exchanged through the Trailblazer System to existing pipeline, and sold to customers of the applicants or their affiliates.

The Trailblazer System would consist of 842.5 miles of 16-, 30-, and 36-inch diameter pipeline extending from Summit County, Utah, to Gage County, Nebraska. As proposed, it would include three segments which are, from west to east, Overthrust, CIG, and Trailblazer. The Overthrust and Trailblazer segments, 107.5 and 445 miles of pipeline, respectively, would require entirely new rights-of-way. The 290-mile long CIG segment would, for the most part, be within or adjacent to existing rights-of-way and would extend from the vicinity of Green River, Wyoming, to near Cheyenne, Wyoming.

Alternatives to be considered in the DEIS include Mountain Fuel Supply Company's alternative to the Overthrust segment, proposed in FERC Docket No. CP79-176; an alternative alignment of the Trailblazer segment along existing rights-of-way from near Cheyenne, Wyoming, to Barton County, Kansas; and the alternative of utilizing existing pipelines.

The FERC will be the lead agency in preparing the DEIS; however, it will seek the participation of the Department of the Interior's Bureau of Land Management. Other state or Federal agencies are encouraged to contribute to the DEIS by contacting Mr. John S. Leiss, Federal Energy Regulatory Commission, Room 3317A, 825 North Capitol Street, Washington, D.C. 20426; telephone: (202) 275-4548.

Kenneth F. Plumb,
Secretary.

[Docket No. CP79-80]
[FR Doc. 79-10489 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

⁵—FPC—, July 19, 1977.

⁶ Rehearing was denied by order of September 15, 1977.

**Trans Delta Oil & Gas Co. Inc., et al.;
Determination by a Jurisdictional
Agency Under the Natural Gas Policy
Act of 1978**

March 22, 1979.

On March 16, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

New Mexico Oil Conservation Division

FERC Control Number: JD79-747

API Well Number: None

Section of NGPA: 108

Operator: Trans Delta Oil & Gas Co. Inc.

Well Name: H. B. Browning B33 24N 1W

Field: So. Blanco

County: Rio Arriba

Purchaser: El Paso Natural Gas Company

Volume: 7153 MMcf.

FERC Control Number: JD79-760

API Well Number: None

Section of NGPA: 108

Operator: Trans Delta Oil & Gas Co. Inc.

Well Name: H. B. Browning #3 L4 23N 1W

Field: So. Blanco

County: Rio Arriba

Purchaser: El Paso Natural Gas Company

Volume: 4236 MMcf.

FERC Control Number: JD79-761

API Well Number: None

Section of NGPA: 108

Operator: Trans Delta Oil & Gas Co. Inc.

Well Name: Florence Millenbaugh #1 D18

23N 1W

Field: So. Blanco

County: Rio Arriba

Purchaser: El Paso Natural Gas Company

Volume: 2330 MMcf.

FERC Control Number: JD79-762

API Well Number: None

Section of NGPA: 108

Operator: Trans Delta Oil & Gas Co. Inc.

Well Name: E. J. Hooten #1 D12 24N 1W

Field: So. Blanco

County: Rio Arriba

Purchaser: El Paso Natural Gas Company

Volume: 5076 MMcf.

FERC Control Number: JD79-763

API Well Number: None

Section of NGPA: 108

Operator: Trans Delta Oil & Gas Co. Inc.

Well Name: Emma McDaniel N22 24N 1W

Field: So. Blanco

County: Rio Arriba

Purchaser: El Paso Natural Gas Company

Volume: 4443 MMcf.

FERC Control Number: JD79-764

API Well Number: None

Section of NGPA: 108

Operator: Trans Delta Oil & Gas Co. Inc.

Well Name: Martha Morelock L7 23N 1W

Field: So. Blanco

County: Rio Arriba

Purchaser: El Paso Natural Gas Company

Volume: 5847

FERC Control Number: JD79-765

API Well Number: None

Section of NGPA: 108

Operator: Trans Delta Oil & Gas Co. Inc.

Well Name: Morelock Unit 2

Field: So. Blanco

County: Rio Arriba

Purchaser: El Paso Natural Gas Company

Volume: 22,000 MMcf.

FERC Control Number: JD79-766

API Well Number: None

Section of NGPA: 108

Operator: Manana Gas, Inc.

Well Name: Sullivan #1

Field: Farmington Undesignated

County: San Juan

Purchaser: El Paso Natural Gas Company

Volume: 16 MMcf.

FERC Control Number: JD79-767

API Well Number: 2004522857

Section of NGPA: 108

Operator: Manana Gas Inc.

Well Name: Gigi #1

Field: Aztec Fruitland

County: San Juan

Purchaser: El Paso Natural Gas Company

Volume: 19 MMcf.

FERC Control Number: JD79-768

API Well Number: None

Section of NGPA: 108

Operator: Manana Gas, Inc.

Well Name: Finch #1

Field: Aztec Fruitland

County: San Juan

Purchaser: El Paso Natural Gas Company

Volume: 16 MMcf.

FERC Control Number: JD79-769

API Well Number: 30039062220000

Section of NGPA: 108

Operator: El Paso Natural Gas Company

Well Name: Johnston A #4

Field: Blanco, South-Pictured Cliffs Gas

County: Rio Arriba

Purchaser: El Paso Natural Gas Company

Volume: 16.1 MMcf.

FERC Control Number: JD79-770

API Well Number: 30039072030000

Section of NGPA: 108

Operator: El Paso Natural Gas Company

Well Name: SJ 27-4 Unit 7

Field: Blanco-Mesaverde Gas

County: Rio Arriba

Purchaser: El Paso Natural Gas Company

Volume: 12.0 MMcf.

FERC Control Number: JD79-771

API Well Number: 30045044310000

Section of NGPA: 108

Operator: El Paso Natural Gas Company

Well Name: Hamilton Com E #9

Field: Ballard-Pictured Cliffs Gas

County: San Juan

Purchaser: El Paso Natural Gas Company

Volume: 5.5 MMcf.

FERC Control Number: JD79-772

API Well Number: 30039056980000

Section of NGPA: 108

Operator: El Paso Natural Gas Company

Well Name: Canyon Largo Unit #57

Field: Ballard-Pictured Cliffs Gas

County: Rio Arriba

Purchaser: El Paso Natural Gas Company

Volume: 3.0 MMcf.

FERC Control Number: JD79-773

API Well Number: 30045060710000

Section of NGPA: 108

Operator: El Paso Natural Gas Company

Well Name: Huerfanito Unit #16

Field: Ballard-Pictured Cliffs Gas

County: San Juan

Purchaser: El Paso Natural Gas Company

Volume: 11.7 MMcf.

FERC Control Number: JD79-774

API Well Number: 30045060040000

Section of NGPA: 108

Operator: El Paso Natural Gas Company

Well Name: Huerfanito Unit #17

Field: Ballard-Pictured Cliffs Gas

County: San Juan

Purchaser: El Paso Natural Gas Company

Volume: 11.0 MMcf.

FERC Control Number: JD79-775

API Well Number: 30045121940000

Section of NGPA: 108

Operator: El Paso Natural Gas Company

Well Name: Seymour Com A #2

Field: Aztec-Pictured Cliffs Gas

County: San Juan

Purchaser: El Paso Natural Gas Company

Volume: 10.0 MMcf.

FERC Control Number: JD79-776

API Well Number: 30045205570000

Section of NGPA: 108

Operator: El Paso Natural Gas Company

Well Name: Gonsales Com #3

Field: Basin-Dakota Gas

County: San Juan

Purchaser: El Paso Natural Gas Company

Volume: 4.0 MMcf.

FERC Control Number: JD79-777

API Well Number: 300450826

Section of NGPA: 108

Operator: El Paso Natural Gas Company

Well Name: Texas Pacific Com #1

Field: Aztec-Pictured Cliffs Gas

County: San Juan

Purchaser: El Paso Natural Gas Company

Volume: 5.1 MMcf.

FERC Control Number: JD79-778

API Well Number: 30045082210000

Section of NGPA: 108

Operator: El Paso Natural Gas Company

Well Name: Wood #1

Field: Aztec-Fruitland Gas

County: San Juan

Purchaser: El Paso Natural Gas Company

Volume: 7.0 MMcf.

FERC Control Number: JD79-779

API Well Number: 30045090580000

Section of NGPA: 108

Operator: El Paso Natural Gas Company

Well Name: Seymour Com #1

Field: Aztec-Pictured Cliffs Gas

County: San Juan

Purchaser: El Paso Natural Gas Company

Volume: 3.7 MMcf.

FERC Control Number: JD79-780

API Well Number: 30039072310000

Section of NGPA: 108

Operator: El Paso Natural Gas Company

Well Name: SJ28-5 Unit #15

Field: Blanco-Mesaverde Gas

County: Rio Arriba

Purchaser: El Paso Natural Gas Company

Volume: 13.5 MMcf.

FERC Control Number: JD79-781

API Well Number: 30045056050000

Section of NGPA: 108

Operator: El Paso Natural Gas Company

Well Name: State A #1

Field: Ballard-Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 4.0 MMcf.

FERC Control Number: JD79-782
API Well Number: 30039600440000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #47
Field: Ballard-Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 11.3 MMcf.

FERC Control Number: JD79-783
API Well Number: 30039070540000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Rincon Unit #103
Field: Blanco, South-Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 14.6 MMcf.

FERC Control Number: JD79-784
API Well Number: 30039069780000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Rincon Unit #53
Field: Blanco, South-Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 16.1 MMcf.

FERC Control Number: JD79-785
API Well Number: 30039067780000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Rincon Unit #45
Field: Blanco, South-Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 12.0 MMcf.

FERC Control Number: JD79-786
API Well Number: 30039067780000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Rincon Unit #45
Field: Blanco, South-Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 12.0 MMcf.

FERC Control Number: JD79-7863
API Well Number: 3004507430000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Wright A Com #1
Field: Aztec-Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 17.5 MMcf.

FERC Control Number: JD79-787
API Well Number: 30045056280000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: State A Com #2
Field: Ballard-Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 12.8 MMcf.

FERC Control Number: JD79-788
API Well Number: 30045083890000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Schultz Com A #5
Field: Aztec-Picture Cliffs Gas

County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 9.1 MMcf.

FERC Control Number: JD79-789
API Well Number: 300456080000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Turner B Com F #11
Field: Ballard-Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 6.6 MMcf.

FERC Control Number: JD79-790
API Well Number: 30039056330000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Evans #1
Field: Blanco, South-Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 6.0 MMcf.

FERC Control Number: JD79-791
API Well Number: 30039078580000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ30-6 Unit #41
Field: Blanco-Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 14.2 MMcf.

FERC Control Number: JD79-792
API Well Number: 30039068420000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Johnstun A Com D #10
Field: Blanco, South-Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 6.9 MMcf.

FERC Control Number: JD79-793
API Well Number: 30045100000000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Moncrief Com A #2
Field: Basin-Dakota Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 15.3 MMcf.

FERC Control Number: JD79-794
API Well Number: 30045114660000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: San Juan 32-9 Unit #58
Field: Blanco-Mesaverde Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 8.0 MMcf.

FERC Control Number: JD79-795
API Well Number: 30039067680000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Rincon Unit 5
Field: Blanco, South-Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 13.1 MMcf.

FERC Control Number: JD79-796
API Well Number: 30039206580000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Rincon Unit 198
Field: Blanco, South-Pictured Cliffs Gas
County: Rio Arriba

Purchaser: El Paso Natural Gas Company
Volume: 19.0 MMcf.

FERC Control Number: JD79-797
API Well Number: 30039070630000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Rincon Unit #104
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 15.7 MMcf.

FERC Control Number: JD79-798
API Well Number: 30039068460000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Harvey A #1
Field: Blanco, South Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 20.1 MMcf.

FERC Control Number: JD79-799
API Well Number: 30045093550000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Fuller #2
Field: Aztec-Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 1.0 MMcf.

FERC Control Number: JD79-800
API Well Number: 30045081160000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Jordan #1
Field: Aztec-Fruitland Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 10.6 MMcf.

FERC Control Number: JD79-801.
API Well Number: 30039208670000.
Section of NGPA: 108
Operator: El Paso Natural Gas Company.
Well Name: SJ 28-6 Unit 191.
Field: Blanco, South Pictured Cliffs Gas.
County: Rio Arriba.
Purchaser: El Paso Natural Gas Company.
Volume: 18.6 MMcf.

FERC Control Number: JD79-802
API Well Number: 300450055380000
Section of NGPA: 108
Operator: El Paso Natural Gas Company.
Well Name: Manrose #1.
Field: Ballard-Pictured Cliffs Gas.
County: San Juan.
Purchaser: El Paso Natural Gas Company.
Volume: 3.0 MMcf.

FERC Control Number: JD79-803.
API Well Number: 30045082280000.
Section of NGPA: 108.
Operator: El Paso Natural Gas Company.
Well Name: Schultz Com B #6.
Field: Aztec-Pictured Cliffs Gas.
County: San Juan.
Purchaser: El Paso Natural Gas Company.
Volume: 15.7 MMcf.

FERC Control Number: JD79-804:
API Well Number: 300390677700000.
Section of NGPA: 108
Operator: El Paso Natural Gas Company.
Well Name: Rincon Unit 10.
Field: Blanco, South Pictured Cliffs Gas.
County: Rio Arriba.
Purchaser: El Paso Natural Gas Company.

Volume: 11.0 MMcf.

FERC Control Number: JD79-805.
API Well Number: 3004510770000.
Section of NGPA: 108.

Operator: El Paso Natural Gas Company.
Well Name: Bookhaven Com G #9.
Field: Baskin-Dakota Gas.
County: San Juan.
Purchaser: El Paso Natural Gas Company.
Volume: 13.1 MMcf.

FERC Control Number: JD79-806.
API Well Number: 30039209240000.
Section of NGPA: 108

Operator: El Paso Natural Gas Company.
Well Name: SJ 28-6 Unit 195.
Field: Blanco, South-Pictured Cliffs Gas.
County: Rio Arriba.
Purchaser: El Paso Natural Gas Company.
Volume: 6.9 MMcf.

FERC Control Number: JD79-807.
API Well Number: 30045111770000.
Section of NGPA: 108.

Operator: El Paso Natural Gas Company.
Well Name: SJ 32-9 Unit #63.
Field: Blanco-Mesaverde Gas.
County: San Juan.
Purchaser: El Paso Natural Gas Company.
Volume: 6.0 MMcf.

FERC Control Number: JD79-808.
API Well Number: 30045111280000.
Section of NGPA: 108.

Operator: El Paso Natural Gas Company.
Well Name: SJ 32-9 Unit #61.
Field: Blanco-Mesaverde Gas.
County: San Juan.
Purchaser: El Paso Natural Gas Company.
Volume: 11.0 MMcf.

FERC Control Number: JD79-809.
API Well Number: 30039066780000.
Section of NGPA: 108.

Operator: El Paso Natural Gas Company.
Well Name: Rincon Unit 56.
Field: Blanco, South-Pictured Cliffs Gas.
County: Rio Arriba.
Purchaser: El Paso Natural Gas Company.
Volume: 5.0 MMcf.

FERC Control Number: JD79-810.
API Well Number: 30039067410000.
Section of NGPA: 108.

Operator: El Paso Natural Gas Company.
Well Name: Rincon Unit 55.
Field: Blanco, South-Pictured Cliffs Gas.
County: Rio Arriba.
Purchaser: El Paso Natural Gas Company.
Volume: 3.7 MMcf.

FERC Control Number: JD79-811.
API Well Number: 30045110590000.
Section of NGPA: 108.

Operator: El Paso Natural Gas Company.
Well Name: SJ 32-9 Unit #57.
Field: Blanco-Mesaverde Gas.
County: San Juan.
Purchaser: El Paso Natural Gas Company.
Volume: 13.0 MMcf.

FERC Control Number: JD79-812.
API Well Number: 30039074800000.
Section of NGPA: 108.

Operator: El Paso Natural Gas Company.
Well Name: San Juan 29-7 Unit #32.
Field: Blanco-Mesaverde Gas.
County: Rio Arriba.
Purchaser: El Paso Natural Gas Company.
Volume: 14.0 MMcf.

FERC Control Number: JD79-813.
API Well Number: 30039067360000.

Section of NGPA: 108.
Operator: El Paso Natural Gas Company.
Well Name: Rincon Unit 17.
Field: Blanco, South-Pictured Cliffs Gas.
County: Rio Arriba.
Purchaser: El Paso Natural Gas Company.
Volume: 7.7 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE, Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the commission on or before April 20, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-10470 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

New England Power Co., Notice of Filing

March 29, 1979.

Take notice that New England Power Company (NEP) on March 21, 1979, tendered for filing proposed amendments to presently effective Service Agreements between NEP and the Towns of Danvers and Middleton and the City of Peabody. NEP states that the proposed amendments reflect changed delivery circumstances as a result of the acquisition by the municipal entities of certain transmission facilities.

NEP requests an effective date of September 1, 1977 for Danvers and Middleton and January 1, 1979 for the City of Peabody, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR

1.8, 1.10). All such petitions or protests should be filed on or before April 16, 1979. Protests will be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ER79-257]

[FR Doc. 79-10465 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

Oklahoma Gas and Electric Co., Rate Schedule Filing

March 29, 1979.

Take notice that Oklahoma Gas and Electric Company (OG&E) tendered for filing on March 20, 1979, as an Initial Rate Schedule, a Letter Agreement dated January 29, 1979, between OG&E and Gulf States Utilities Company (GSU) for the sale of 150 mW of Contract Capacity from OG&E to GSU for the year 1979.

OG&E proposes an effective date of January 1, 1979, and therefore requests waiver of the Commission's notice requirements. OG&E states that copies of the filing were served upon Gulf States Utilities Company, Arkansas Power & Light Company, Louisiana Power & Light Company, Central Louisiana Electric Company, the Corporation Commission of the State of Oklahoma, and the Arkansas Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 16, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ER79-280]

[FR Doc. 79-10486 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

Pennsylvania-New Jersey-Maryland Interconnection (PJM) Agreement, Supplement to Interconnection Agreement

March 29, 1979.

Take notice that on March 19, 1979, the parties to the Pennsylvania-New Jersey-Maryland Interconnection (PJM) Agreement tendered for filing proposed Schedule 4.01 Revision No. 2 and proposed Schedule 9.01, Revision No. 1 to the original agreement between them as heretofore amended and supplemented, which is filed with the Commission under the following Rate Schedule designations:

Rate Schedule and FPC No.

| | |
|--|----|
| Public Service Electric and Gas Company..... | 23 |
| Philadelphia Electric Company..... | 21 |
| Pennsylvania Power & Light Company..... | 21 |
| Baltimore Gas and Electric Company..... | 9 |
| Jersey Central Power & Light Company..... | 7 |
| Metropolitan Edison Company..... | 7 |
| Pennsylvania Electric Company..... | 24 |
| Potomac Electric Power Company..... | 19 |

The PJM parties state that proposed Schedule 4.01 sets forth the rate for capacity deficiency transactions under the PJM Agreement for the 12-month Planning Period beginning June 1, 1979.

The PJM parties also state that proposed Schedule 9.01 modifies the procedure for allocating among the parties the cost and expenses of the Office of the Interconnection.

The PJM parties further state that no new facilities will be installed nor will existing facilities be modified in connection with the proposed schedule. It is requested that both proposed schedules become effective on June 1, 1979.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D. C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 16, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.
[Docket No. ER79-264]

[FR Doc. 79-10487 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

Sea Robin Pipeline Co. Settlement Conference

March 29 1979.

Take notice that an informal settlement conference will be held in the subject gas pipeline rate proceedings on May 7, 1979, in Room 8402, 825 North Capitol Street, N.E., Washington, D.C. 20426 at 10:00 a.m.

Customers and other interested persons will be permitted to attend the above-mentioned informal conference, but if such persons have not previously been permitted to intervene, attendance at the conference will not be deemed to authorize intervention as a party in the proceeding.

Kenneth F. Plumb,
Secretary.
[Docket Nos. RP73-39 & RP77-6]
[FR Doc. 79-10488 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

Transcontinental Gas Pipe Line Corp., Texas Gas Transmission Corp. Petition To Amend

March 28, 1979.

Take notice that on March 12, 1978, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77001, and Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42301 (Petitioners), filed in Docket No. CP72-182 a petition to amend the order of June 27, 1972,¹ as amended, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize an additional exchange point, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Pursuant to the order of June 27, 1972, as amended, in the instant docket, Transco and Texas Gas were authorized to construct and operate certain facilities and to exchange gas at various exchange points.

The application states that Transco and Texas Gas have contracted with Transco Exploration Company and Texas Gas has contracted with Edwin L. Cox, Michael T. Halbouty and Hexod Oil Company—1977-B to purchase volumes of natural gas from the

¹ This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

Peterman No. 1 Well in South Bayou Pigeon Field, Iberia Parish, Louisiana, which well is located near Texas Gas's Bayou Postillion 8-inch pipeline. Consequently, pursuant to a letter agreement dated January 3, 1979, which amends Transco's and Texas Gas's exchange agreement dated July 27, 1973, as amended, Petitioners propose to add an additional point of delivery at the intersection of Texas Gas's Bayou Postillion 8-inch pipeline and a 4-inch pipeline to be constructed and jointly owned by Texas Gas and Transco in Iberia Parish where Transco would cause volumes of natural gas to be delivered to Texas Gas. Texas Gas would redeliver an equivalent volume of gas to Transco at one or more of the existing authorized delivery points.

Petitioners assert that the proposed additional exchange point would permit Transco to receive additional volumes of natural gas into its system at the lowest possible cost.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before April 19, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[Docket No. CP72-182]

[FR Doc. 79-10489 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

Union Electric Co., Notice of Cancellation

March 30, 1979

Take notice that on March 26, 1979, Union Electric Company (Union) tendered for filing a Notice of Cancellation for the Interchange Service Contract dated July 18, 1967 between the City of Columbia, Missouri and Union.

Union states that the parties have long recognized the need to modify such Interchange Service Contract and to that end, by separate filing. Union further

states that it is filing a new interconnection agreement.

Union proposes an effective date of May 27, 1979.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 20, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ER79-267]

[FR Doc. 79-10490 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

Union Electric Co., Notice of Filing

March 30, 1979.

Take notice that on March 22, 1979, Union Electric Company (Union) tendered for filing a proposed Interconnection Contract between Union and the City of Columbia, Missouri.

Union states that the Interconnection Agreement, among other things, establishes the rights and obligations of the parties, the points of interconnections, the types of power and energy to be exchanged and the rates therefor.

Union hereby requests that the Agreement be accepted for filing by the Commission and that it become effective May 27, 1979.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 16, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ER79-268]

[FR Doc. 79-10491 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

Utah Power and Light Co., Application for New Major License

March 28, 1979

Public Notice is hereby given that an application for new major license was filed June 27, 1977, and revised August 30, 1978, under the Federal Power Act (16 U.S.C. 791a-825r) by Utah Power and Light Company (Applicant) for the Beaver Project, FERC Project No. 814. The project is located on the Beaver River, in Beaver County, Utah, near the municipalities of Beaver, Minersville, and Milford. The project affects lands of the United States within the Fishlake National Forest. Correspondence regarding the application should be sent to: Mr. S. G. Baucom and Mr. S. F. Chamberlain, Utah Power and Light Company, Post Office Box 899, Salt Lake City, Utah 84110.

The energy produced by the project would be used by the Applicant for public utility purposes.

The Beaver Project consists of: (1) a timber crib, rock-filled dam (Merchant Valley Dam), 160 feet long by 29 feet high on the Beaver River; (2) the East Fork, Dry Hollow Creek, and South Fork diversion works; (3) a 4,933-foot long penstock 20 to 30 inches in diameter; (4) a 28,769-foot long steel pipeline which branches to convey water from the East Fork, South Fork, and main stem of the Beaver River and from Dry Hollow Creek. The pipeline includes the Spring Line conduit which feeds into the South Fork conduit; (5) the LaBaron Dam and Reservoir (an agreement in force between the Applicant and the Utah Department of Wildlife Resources gives to the latter total control of the LaBaron Reservoir); (6) a powerhouse which contains two 1,200 kW turbine-generator units operating under a static head of 1,058 feet; (7) 44 kV transmission facilities; (8) appurtenant facilities; and (9) the Lower Beaver development of the project.

The Lower Beaver development included in the original license for Project 814 consists of: (1) an approximately 20-foot high and 115-foot wide timber-cribbed and rock-filled diversion structure; (2) a reservoir originally having an area of 4.65 acres and impounding a volume of 60 acre-feet. The dam impounds a cone of

sediment, rock and gravel extending 200 feet upstream with a width of 70 feet; (3) 12,760 feet of wood and steel pipe; (4) 764 feet of riveted steel pressure pipe; (5) a powerhouse containing two units having a total installed capacity of 600 kW; and (6) appurtenant facilities.

The Applicant proposes that the Lower Beaver development be dismantled and excluded from any new license for Project No. 814.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1978). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before May 29, 1979. The Commission's address is: 825 N. Capitol Street, N.E., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,
Secretary.

[Project No. 814]

[FR Doc. 79-10492 Filed 4-4-79; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

KLOC Broadcasting Co., Inc., and Leejon Broadcasting Co.; Memorandum Opinion and Order

Adopted: February 14, 1979.

Released: March 12, 1979.

By the Commission: Commissioner Quello absent.

For a Construction Permit For a New Television Broadcast Station On Channel 35.

1. The Commission has under consideration the above-captioned mutually exclusive applications for authority to construct a new commercial television broadcast station on channel 35, Salinas, California, and a petition to specify issues filed by KLOC Broadcasting Company, Inc. (KLOC). Neither a petition to specify issues nor a responsive pleading was filed by Leonard Kesselman, J. Robert Dempster

and Benjamin F. Dawson d/b/a Leejon Broadcasting Company (Leejon).

2. **THE KLOC APPLICATION.** KLOC is the licensee of a television station licensed to serve Modesto, California, and an AM station licensed to serve Ceres, California. The proximity of these stations' communities of license to each other and to Salinas, California, is such that grant of a construction permit allowing KLOC to build a television station in Salinas would contravene the policy underlying our regional concentration of control rule, Section 73.636(a)(2) of the Rules. In an amendment to its application, filed September 29, 1978, KLOC represents that it will dispose of its AM station. Any construction permit which may be granted to KLOC will be conditioned on its eliminating the regional concentration of control problem by divesting either station KLOC-TV or station KLOC(AM) prior to the grant of operating authority to the proposed Salinas television station.

3. **THE LEEJON APPLICATION.** In a Commission letter dated July 24, 1978, Leejon was advised of several deficiencies in its application. Leejon was given until September 29, 1978, to file amendments to its application in response to the July 24 letter. It failed to make any response to this letter. Accordingly, several unanswered questions remain concerning Leejon's application.

4. It appears that grant of Leejon's application would contravene the policies underlying the Commission's one-to-a-market rule (Section 73.636(a)(1) of the Rules). The predicted Grade A contour of Leejon's proposed television station would completely encompass Seaside, California, the community of license of FM Station KZEN. Leonard Kesselman, one of Leejon's general partners, is the president, director and ninety-two and-a-half percent shareholder of the licensee of station KZEN. Accordingly, an issue will be specified to determine whether common ownership, operation or control of station KZEN and Leejon's proposed television station would be consistent with the public interest.

5. In Section III of its application, Leejon has failed to supply a basis for a number of its first-year operating costs as required in FCC Form 301. Further, Leejon has failed to supply information showing the availability of the funds it relies upon to finance its proposed television station. Accordingly, an appropriate financial issue will be specified.

6. It is not clear from the documentation of Leejon's

ascertainment efforts that its general public survey was conducted in accordance with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC2d 650, 21 RR2d 1507 (1971). Specifically, it is not clear whether the persons conducting the general public survey were principals, employees, or prospective employees of the proposed station, or a professional research organization. A limited ascertainment issue will be specified.

7. Section 73.680 of the Rules requires stations to establish "a positive continuing program of specific practices designated to assure equal opportunity in every aspect of station employment policy and practice." (Emphasis added). In preparing the programs required by Section 73.680, applicants are to refer to the guidelines set out in the *Commission's Report and Order, Nondiscrimination in the Employment Policies and Practices of Broadcast Licensees*, 60 FCC 2d 226 (1976). These guidelines are in the form of a "Model Equal Employment Opportunity Program" which, among other things, contains information identifying the individual responsible for implementing the applicant's EEO program and specifying the recruitment sources the applicant will use to obtain a pool of minority and female job applicants. Leejon's EEO program neither identifies the individual responsible for its implementation nor specifies minority and female recruitment sources. An issue will be specified to determine the effect of noncompliance with the Commission's EEO guidelines on Leejon's comparative qualifications to be a Commission licensee.

8. Except as indicated in the issues specified below, we find KLOC and Leejon legally, financially, technically and otherwise qualified to operate as proposed. Since these applications are mutually exclusive, we are unable to make the statutory finding that grant of these applications will serve the public interest, convenience and necessity. These applications must, therefore, be designed for hearing in a consolidated proceeding on the issues set out below.

9. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications of KLOC Broadcasting Company, Inc., and Leonard Kesselman, J. Robert Dempster and Benjamin F. Dawson d/b/a Leejon Broadcasting Company are designated for hearing in a consolidated proceeding to be held before an administrative law judge at a time and place to be specified in a

subsequent Order upon the following issues:

1. To determine whether common ownership, operation or control of station KZEN(FM) and Leejon Broadcasting Company's proposed television station would be in the public interest.

2. To determine whether Leejon Broadcasting Company is financially qualified to construct and operate the proposed station.

3. To determine with respect to Leejon Broadcasting Company, whether the survey of the general public contained in its application was conducted in accordance with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, supra, and, if not, the effect thereof on the applicant's basic and comparative qualifications to be a Commission licensee.

4. To determine the effect of noncompliance with the Commission's EEO guidelines on Leejon Broadcasting Company's comparative qualifications to be a Commission licensee.

5. To determine which of the proposals would, on a comparative basis, better serve the public interest.

6. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

10. It is further ordered, That any construction permit authorizing KLOC Broadcasting Company, Inc., to construct a new television broadcast station on channel 35, Salinas, California, shall contain a condition requiring KLOC Broadcasting Company, Inc., and its principals to divest themselves of all interest in the ownership, operation or control of either Station KLOC(AM) or Station KLOC-TV prior to grant of operating authority.

11. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, shall, within 20 days of mailing this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

12. It is further ordered, That the applicants herein, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's Rules, shall give notice of the hearing within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the Rules.

13. It is further ordered, That KLOC Broadcasting Company, Inc.'s, Petition To Specify Issues is granted to the

extent indicated herein and is denied in all other respects.

Federal Communications Commission.

William J. Tricarico,
Secretary.

[BC Docket No. 79-20; File No. BPCT-4982; FCC 79-113]

[BC Docket No. 79-21; File No. BPCT-5021]

[FR Doc. 79-10397 Filed 4-4-79; 8:45 am]

BILLING CODE 6712-01-M

Petition for Modification of Prescribed Rate of Return

March 26, 1979.

Re: Petition For Determination of Fair Rate of Return filed by the American Telephone and Telegraph Co.

On March 8, 1979, the American Telephone and Telegraph Company (ATT), on behalf of itself and the Bell System Operating Companies, petitioned the Federal Communications Commission to: (1) immediately determine, on an interim basis, that a rate of return on its interstate and foreign operations of 10.38% is not "unreasonable"; and (2) determine that "the range of the current fair rate of return" for its interstate and foreign operations is "at least 11 to 12 percent." In its petition, ATT cited the current rate of inflation, inflationary expectations, increased interest rates on new debt issues, the possibility of an economic recession during the third and fourth quarters of 1979, increased business risks, and higher "return requirements" for equity investors as factors which support its requests for increases in the allowed rates of return for interstate and foreign services. It should be noted that the Commission prescribed, on February 4, 1976, a fair rate of return of 9.5% and provided that an additional 0.5% above the prescribed rate of return could be earned as an incentive to increase productivity and efficiency. 57 F.C.C. 2d at 973 (1976).

Persons interested in examining the above captioned petition may do so in the Docket Reference Room of the Commission's offices at 1919 M Street, N.W., Washington, D.C. Parties interested in filing formal comments should do so pursuant to Sections 1.51(b) and 1.405 of the Commission's Rules and Regulations (47 C.F.R. 151(b), 1405). Members of the general public who wish to express their interest by participating informally may do so by submitting one copy of their comments, without regard to form, to the Secretary of the Federal Communications Commission, provided that CC Docket No. 79-63 is specified in the heading. Informal comments should be submitted within thirty (30) days of the date of this notice, and informal reply comments

should be submitted within forty-five (45) days of the date of this notice.

Federal Communications Commission.

William J. Tricarico,
Secretary.

[FR 79-10399 Filed 4-4-79; 8:45 am]

BILLING CODE 6712-01-M

Poet's Seat Broadcasting, Inc. and Green Valley Broadcasting Co.; Memorandum Opinion and Order

Adopted: March 22, 1979.

Released: March 29, 1979.

For Construction Permit for New FM Broadcast Station (95.3 MHz, Channel No. 237).

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it for consideration the above-captioned mutually exclusive applications for a new FM broadcast station at Greenfield, Massachusetts, a petition to specify issues against Poet's Seat Broadcasting, Inc., filed by Green Valley Broadcasting Company and an opposition thereto.

2. We agree with Green Valley that a Section 1.65 issue is warranted. Thus, while the Poet's Seat application clearly indicates the existence of an application for a new AM station at Greenfield, this information was not updated in a timely fashion to reflect the application's grant, a matter which is clearly of potential decisional significance.¹ In view of the obvious lack of a motive to conceal under these circumstances, though, we will specify a comparative issue only.

3. As Green Valley correctly maintains, it proposes independent programming while Poet's Seat proposes to duplicate some of the programming of its AM station. Therefore, evidence regarding program duplication will be admissible under the standard comparative issue. When duplicated programming is proposed, the showing permitted is limited to evidence concerning the benefits to be derived from the proposed duplication which would offset its inherent inefficiency. *Jones T. Sudbury*, 8 FCC 2d 360, 10 RR 2d 114 (1967).²

4. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive FM service of

¹ Granted applications, but not pending applications, are taken into consideration in resolving the standard comparative issue.

² Green Valley's request for an ascertainment issue is premised on the erroneous belief that Poet's Seat did not respond to the Commission's deficiency letter. The request is thus moot.

1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, to determine whether a comparative preference should accrue to either of the applicants.

5. As indicated above, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine with respect to Poet's Seat Broadcasting, Inc., the effect of its failure to timely report the grant of its application for a new AM broadcast station at Greenfield, Massachusetts on its comparative qualifications to be a Commission licensee.

(2) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, That the petition to specify issues filed by Green Valley Broadcasting Company is granted to the extent indicated herein and is denied in all other respects.

8. It is further ordered, that the petitions for leave to amend filed by both applicants are granted, and the corresponding amendments are accepted.

9. It is further ordered, That, to avail themselves, of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

10. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 1.594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the

publication of such notice as required by Section 1.594(g) of the Rules.

Federal Communications Commission.
Wallace E. Johnson,
Chief, Broadcast Bureau.

[BC Docket No. 79-54; File No. BPH-10440]

[BC Docket No. 79-55; File No. BPH-10660]

[FR 79-10396 Filed 4-4-79; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

Designating Applications for Consolidated Hearing on Stated Issues

Bruce E. Hudson; Order To Show Cause and Designation Order

Adopted: March 27, 1979.

Released: March 30, 1979.

In the matter of revocation of license of Bruce E. Hudson, 245 East 29th Street, E4, Topeka, Kansas 66605, PR Docket No. 79-44, licensee of station KGX-7884 in the citizens band radio service; application of Bruce E. Hudson, 245 East 29th Street, E4, Topeka, Kansas 66605, PR Docket No. 79-45, for renewal of amateur radio station license and novice class operator's license WB0ZDK.

The Chief, Private Radio Bureau, has under consideration the Citizens Band radio station license KGX-7884 of Bruce E. Hudson, which was granted for a five year term to end on June 4, 1979. Also under consideration is an application by Hudson to renew his Amateur radio station license WB0ZDK and Novice Class Operator's license dated December 28, 1978. Hudson's Amateur licenses were scheduled to expire on January 14, 1979.

1. Information before the Commission indicates that on March 29, 1978, Hudson operated radio transmitting equipment on the frequencies 27.450 MHz, 27.575 MHz and 27.600 MHz. These frequencies have been allocated for use in the Industrial Radio Service and by United States Government stations. Hudson did not possess a license authorizing the use of any of these frequencies. Thus, the operation was apparently in violation of Section 301 of the Communications Act of 1934, as amended.

2. If the apparent operation of March 29, 1978, was under the color of authority of Hudson's Amateur license WB0ZDK, the operation was in violation of the following Amateur rules: 97.7(e) (prohibits radio telephony by Amateur Novice Class); 97.61(a) (authorized frequencies); and 97.87(a) (station identification).

3. If the apparent operation of March 29, 1978 was under the color of authority

of Hudson's Citizens Band license KGX-7884, the operation was in violation of the following Citizens Band rules: 95.455(a) (authorized frequencies); 95.469(b) (length of communication and silent period); 95.471(c) (station identification); 95.501(a)(3) (prohibits communication with foreign stations); 95.501(b) (prohibits communication over a distance greater than 150 miles); and/or 95.613(b) (excess power).¹

4. This conduct was the subject of Official Notices of Violation which were mailed to Hudson on May 19, 1978 at his address of record. The conduct described above calls into question whether Hudson possesses the requisite qualifications to remain a licensee in either the Amateur or Citizens Band Radio Service.

5. Section 312(a)(4) of the Communications Act of 1934, as amended, provides that a station license may be revoked for wilful or repeated violation of the Commission's rules. In addition, based on the above, the Commission cannot conclude that a grant of Hudson's application would serve the public interest, convenience, and necessity.

6. Accordingly, it is ordered, pursuant to Sections 312(a)(4) and (c) of the Communications Act of 1934, as amended, and § 0.331 of the Commission's rules, that Bruce E. Hudson show cause why the license for station KGX-7884 should not be revoked. It is further ordered, pursuant to Section 309(e) of the Communications Act of 1934, as amended, and § 1.973(b) and 0.331 of the Commission's rules, that Hudson's renewal application for an Amateur radio station license and for a Novice Class Operator license is designated for hearing.

7. It is further ordered, that if Hudson wants a hearing on the revocation or application he must file a written request for a hearing within 30 days.² If a hearing is requested, the time, place and Presiding Judge will be specified by subsequent order.

8. It is further ordered, That the matters in this proceeding will be resolved upon the following issues:

(a) To determine whether the transmissions on March 29, 1978, were in violation of Section 301 of the Communications Act of 1934, as

¹ Certain Sections of Part 95 of the Commission's rules have been renumbered and revised, effective August 1, 1978. The Sections referred to herein are those in effect on the date of the operation.

² The form attached to this Order should be detached and used in connection with the procedure set forth on the reverse side thereof and mailed to FEDERAL COMMUNICATIONS COMMISSION, Washington, D.C. 20554, in the enclosed addressed envelope, within 30 days.

³ Any contrary provisions of § 1.221(c) of the rules are waived.

amended, or §§ 95.455(a); 95.469(b); 95.471(c); 95.501(a)(3); 95.501(b); 95.613(b); 97.7(e); 97.61(a); and/or 97.87(a) of the Commission's rules.

(b) To determine whether Bruce E. Hudson possesses the requisite qualifications to remain a Commission licensee.

(c) To determine whether granting Bruce E. Hudson's Amateur Novice application would be in the public's interest, convenience and necessity.

9. It is further ordered, pursuant to the provisions of § 1.227 of the Commission's rules, that the revocation and application proceedings are consolidated for hearing.

10. It is further ordered, That a copy of this Order shall be sent by Certified Mail—Return Receipt Requested and by Regular Mail to the licensee at his address of record as shown in the caption.

Private Radio Bureau.

Gerald M. Zuckerman,
Chief, Compliance Division.

[FR Docket Nos. 79-44, 79-45]

[FR Doc. 79-10396 Filed 4-4-79; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 48 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before April 16, 1979. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Agreement No. 10366.

Filing Party: Charles F. Warren, Esquire, Warren & Associates, P.C., 1100 Connecticut Avenue, N.W., Washington, D.C. 20036.

Summary: Agreement No. 10366, between Korea Marine Transport Company, Limited (KMTC), Nippon Yusen Kaisha (NYK) and Showa Line, Ltd. (Showa), is a space charter agreement whereby KMTC and NYK agree to subcharter to Showa space on vessels they are authorized to operate in the trade between Korea and the Pacific Coast of the United States, including Hawaii and Alaska. The amount of space to be subchartered is 164 TEU's on the vessel PACIFIC TRADER and 136 TEU's on the vessel PACIFIC EXPRESS.

By Order of the Federal Maritime Commission.

Dated: April 1, 1979.

Francis C. Hurney,
Secretary.

[FR Doc. 79-10505 Filed 4-4-79; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MARITIME COMMISSION

Deli/New York Rate Agreement; Disapproval of Agreement for Failure to Include Provisions for Adequate Self-Policing as Required by General Order 7, Order To Show Cause

Section 15 of the Shipping Act of 1916 (46 U.S.C. 814) requires that the Commission disapprove a section 15 agreement, ". . . after notice and hearing, on a finding of inadequate policing of the obligations under it . . ."

On September 14, 1978, the Commission published final revised rules on self-policing systems, effective January 1, 1979 (General Order 7: Docket No. 73-64, Self-Policing Systems). General Order 7 establishes "the minimum standards for judging the adequacy of self-policing activities" under section 15 of the Shipping Act of 1916, and requires that conference and other rate-fixing agreements include provisions describing a system for self-policing its members through an independent policing authority, and include other specified provisions and requirements with respect to self-policing as set forth in that order.

The parties to subject agreement have failed to conform that agreement to the minimum requirements for adequate policing, as required by General Order 7.

Because subject agreement fails to meet the minimum requirements for adequate policing as established by the Commission in General Order 7, it is presumed not to meet the standards of adequate policing of the obligations under the agreement as required by section 15 and the agreement should therefore be disapproved.

Now therefore, *It is ordered*, That pursuant to sections 15 and 22 of the Shipping Act of 1916, and in accordance with Rule 66 of the Commission's Rules of Practice and Procedure (46 CFR 502.66) the Respondents listed in Appendix A are ordered to show cause why subject agreement should not be disapproved for failure to be adequately policed under the requirements of section 15 of the Shipping Act, 1916;

It is further ordered, That this proceeding be limited to the submission of affidavits of fact and memoranda of law. Should any party feel that an evidentiary hearing is required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, a description of the evidence which would be adduced to prove those facts, and why such proof cannot be submitted through affidavit. Requests for hearing shall be filed no later than July 9, 1979;

It is further ordered, That notice of this Show Cause Order be published in the Federal Register and that a copy thereof be served upon each of the Respondents listed in Appendix A;

It is further ordered, That Respondents shall file affidavits of fact and memoranda of law in accordance with the second ordering paragraph hereof, no later than May 16, 1976, with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, in an original and 15 copies;

It is further ordered, That the Commission's Bureau of Hearing Counsel be made a party to this proceeding. Reply affidavits and a memorandum of law shall be filed by Hearing Counsel no later than June 15, 1979, with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, in an original and 15 copies;

It is further ordered, That a rebuttal memorandum and affidavits responding to the memorandum and affidavits filed by Hearing Counsel shall be filed by Respondents listed in Appendix A no later than June 30, 1979, with the Secretary, Federal Maritime Commission, 1100 L Street, N.W.,

Washington, D.C. 20573, in an original and 15 copies.

By the Commission.

Francis C. Hurney,
Secretary.

Appendix

Deli/New York Rate Agreement, Henry Noon & Co., Secretaries, P.O. Box 247, Singapore 1. Arya National Shipping Lines, c/o Norton, Lilly & Co., Inc., 90 West Street, New York, New York 10006.
Barber Blue Sea Line, c/o Barber Steamship Lines, Inc., General Agents, 17 Battery Place, New York, New York 10004.
Djakarta Lloyd, c/o Tillston Roberts Corp., 17 Battery Place, New York, New York 10004.
Hoegh Lines, c/o Nedlloyd Inc., Suite 617, Northeast Plaza Bldg., Five World Trade Center, New York, New York 10048.
Lykes Bros. Steamship Co., Inc., 17 Battery Place, New York, New York 10004.
A. P. Moller-Maersk Line, One World Trade Center, Suite 3527, New York, New York 10048.
Nedlloyd, Suite 617, Northeast Plaza Bldg., Five World Trade Center, New York, New York 10048.
Orient Overseas Line, Wall Street Plaza, New York, New York 10005.
Shipping Corporation of India, c/o Norton, Lilly & Co., Inc., 90 West Street, New York, New York 10006.

[Docket No. 79-21, Agreement No. 7190]

[FR Doc. 79-10512 Filed 4-4-79; 8:45 am]

BILLING CODE 6730-01-M

Deli/Pacific Rate Agreement; Disapproval of Agreement for Failure to Include Provisions for Adequate Self-Policing as Required by General Order 7; Order To Show Cause

Section 15 of the Shipping Act of 1916 (46 U.S.C. 814) requires that the Commission disapprove a section 15 agreement, ". . . after notice and hearing, on a finding of inadequate policing of the obligations under it . . ."

On September 14, 1978, the Commission published final revised rules on self-policing systems, effective January 1, 1979 (General Order 7: Docket No. 73-64, Self-Policing Systems). General Order 7 establishes "the minimum standards for judging the adequacy of self-policing activities" under section 15 of the Shipping Act of 1916, and requires that conference and other rate-fixing agreements include provisions describing a system for self-policing its members through an independent policing authority, and include other specified provisions and requirements with respect to self-policing as set forth in that order.

The parties to subject agreement have failed to conform that agreement to the minimum requirements for adequate policing, as required by General Order 7.

Because subject agreement fails to meet the minimum requirements for adequate policing as established by the Commission in General Order 7, it is presumed not to meet the standards of adequate policing of the obligations under the agreement as required by section 15 and the agreement should therefore be disapproved.

Now therefore, *it is ordered*, That pursuant to sections 15 and 22 of the Shipping Act of 1916, and in accordance with Rule 66 of the Commission's Rules of Practice and Procedure (46 CFR 502.66) the Respondents listed in Appendix A are ordered to show cause why subject agreement should not be disapproved for failure to be adequately policed under the requirements of section 15 of the Shipping Act, 1916;

It is further ordered, That this proceeding be limited to the submission of affidavits of fact and memoranda of law. Should any party feel that an evidentiary hearing is required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, a description of the evidence which would be adduced to prove those facts, and why such proof cannot be submitted through affidavit. Requests for hearing shall be filed no later than July 9, 1979;

It is further ordered, That notice of this Show Cause Order be published in the Federal Register and that a copy thereof be served upon each of the Respondents listed in Appendix A;

It is further ordered, That Respondents shall file affidavits of fact and memoranda of law in accordance with the second ordering paragraph hereof, no later than May 16, 1976, with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, in an original and 15 copies;

It is further ordered, That the Commission's Bureau of Hearing Counsel be made a party to this proceeding. Reply affidavits and a memorandum of law shall be filed by Hearing Counsel no later than June 15, 1979, with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, in an original and 15 copies;

It is further ordered, That a rebuttal memorandum and affidavits responding to the memorandum and affidavits filed by Hearing Counsel shall be filed by Respondents listed in Appendix A no later than June 30, 1979, with the Secretary, Federal Maritime Commission, 1100 L Street, N.W.,

Washington, D.C. 20573, in an original and 15 copies.

By the Commission.

Francis C. Hurney,
Secretary.

Appendix

Deli/Pacific Rate Agreement, Henry Noon & Co., Secretaries, P.O. Box 247, Singapore 1. American President Lines, Ltd., 1950 Franklin Street, Oakland, California 94612.

Barber Blue Sea Line, c/o Overseas Shipping Co., One California Street, San Francisco, California 94106.

The East Asiatic Co., Ltd., c/o Overseas Shipping Co., One California Street, San Francisco, California 94106.

Hoegh Lines, 425 California Street, San Francisco, California 94104.

A. P. Moller-Maersk Line, One Maritime Plaza, San Francisco, California 94105.

Nedlloyd, c/o Transpacific Transport Co., 650 California Street, San Francisco, California 94108.

Showa Line Ltd., c/o Norton Lilly & Co., Inc., 425 California Street, San Francisco, California 94104.

[Docket No. 79-21, Agreement No. 182]

[FR Doc. 79-10507 Filed 4-4-79; 8:45 am]

BILLING CODE 6730-01-M

Eastern Forwarding International, Inc.—Independent Ocean Freight Forwarder Application—Possible Violations, Section 44, Shipping Act, 1916; Order of Investigation and Hearing

Eastern Forwarding International, Inc. (Eastern) filed an application with the Commission for a license as an independent ocean freight forwarder in July, 1978. A similar application was filed for Eastern in June, 1977. During the course of the investigation of Eastern's application of June, 1977, it was disclosed that Eastern had been carrying on the business of forwarding without benefit of a license as an independent ocean freight forwarder and some 440 shipments were handled by Eastern subsequent to the revocation of its license FMC 1353 in May, 1976. A letter of intent to deny was issued to Eastern and on April 18, 1978, a letter of denial was issued by the Commission because of Eastern's failure to request a hearing on the issues presented.

In the instant application, filed in July, 1978, Eastern stated that it was continuing to perform documentation (forwarding) services on behalf of others and a letter of intent to deny that application was served upon Eastern on November 24, 1978.

Information before the Commission indicates that:

(1) Eastern Forwarding International, Inc., engaged in forwarding activities, subsequent

to revocation of its license on May 13, 1977, in violation of section 44(a), Shipping Act, 1916. This information also discloses that Eastern received payment of compensation from oceangoing common carriers in violation of section 44(e), Shipping Act, 1916, and § 510.24(e), of the Commission's General Order 4.

(2) Eastern Forwarding International, Inc., continues to engage in unlawful forwarding activities under the guise of "port agent" on behalf of non-vessel operating common carriers by water, and possibly others, in violation of section 44, Shipping Act, 1916.

In view of the above, Eastern Forwarding International, Inc., would appear to lack the fitness properly to carry on the business of forwarding and to conform to the provisions of the Shipping Act, 1916, and the rules and regulations issued pursuant to section 44, Shipping Act, 1916.

By letter dated January 10, 1979, Eastern Forwarding International, Inc., requests the opportunity to show at a hearing that denial of its application is unwarranted.

Now, therefore, *It is ordered*, That pursuant to sections 22 and sections 44, (46 U.S.C. 821,841b), of the Shipping Act, 1916, and § 510.24(e) of the Commission's General Order 4, (46 CFR 510.24(e)) a proceeding is hereby instituted to determine:

1. Whether Eastern Forwarding International, Inc. has violated section 44(a) and section 44(e), Shipping Act, 1916, by engaging in forwarding activities subsequent to revocation of its license on May 13, 1977, and by receiving payment of compensation from oceangoing common carriers in violation of section 44(e), Shipping Act, 1916, and § 510.24(e), Commission General Order 4.

2. Whether Eastern Forwarding International, Inc. continues to engage in unlawful forwarding activities under the guise of "port agent" on behalf of nonvessel operating common carriers by water, and possibly others, in violation of section 44, Shipping Act, 1916.

3. Whether, in light of the evidence adduced pursuant to the foregoing issues, together with any other evidence adduced, Eastern Forwarding International, Inc. and its corporate officers, possess the requisite fitness, within the meaning of section 44(b), Shipping Act, 1916, properly to carry on the business of forwarding and to conform to the provisions of the Shipping Act, 1916, and the requirements, rules and regulations of the Commission issued thereunder.

It is further ordered, That Eastern Forwarding International, Inc. be made respondent in this proceeding and that the matter be assigned for public hearing before an Administrative Law Judge at a date and place to be determined by the Administrative Law Judge presiding, but in no event, later than October 2, 1979. The hearing shall include oral testimony and cross-

examination in the discretion of the presiding officer only upon a showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions or other documents, or that the nature of the matters in issue is such that an oral hearing and cross-examination are otherwise necessary for the development of an adequate record;

It is further ordered, That this Order be published in the **Federal Register** and a copy thereof be served upon the Respondent:

It is further ordered, That any person other than the Respondent and the Commission's Bureau of Hearing Counsel, having an interest and desiring to participate in this proceeding, may do so by filing a timely petition for leave to intervene pursuant to section 502.72 of the Commission's Rules;

It is further ordered, That all future notices issued by or on behalf of the Commission, including notice of time and place of hearing or of prehearing conference, shall be mailed directly to all parties of record.

By the Commission.

Francis C. Hurney,
Secretary.

[Docket No. 79-27]

[FR Doc. 79-10506 Filed 4-4-79; 8:45 am]

BILLING CODE 6730-01-M

Java/New York Rate Agreement; Disapproval of Agreement for Failure To Include Provisions for Adequate Self-Policing as Required by General Order 7; Order To Show Cause

Section 15 of the Shipping Act of 1916 (46 U.S.C. 814) requires that the Commission disapprove a section 15 agreement, ". . . after notice and hearing, on a finding of inadequate policing of the obligations under it. . . ."

On September 14, 1978, the Commission published final revised rules on self-policing systems, effective January 1, 1979 (General Order 7; Docket No. 73-64, Self-Policing Systems). General Order 7 establishes "the minimum standards for judging the adequacy of self-policing activities" under section 15 of the Shipping Act of 1916, and requires that conference and other rate-fixing agreements include provisions describing a system for self-policing its member through an independent policing authority, and include other specified provisions and requirements with respect to self-policing as set forth in that order.

The parties to subject agreement have failed to conform that agreement to the

minimum requirements for adequate policing, as required by General Order 7.

Because subject agreement fails to meet the minimum requirements for adequate policing as established by the Commission in General Order 7, it is presumed not to meet the standards of adequate policing of the obligations under the agreement as required by section 15 and the agreement should therefore be disapproved.

Now therefore, *it is ordered*, That pursuant to sections 15 and 22 of the Shipping Act of 1916, and in accordance with Rule 66 of the Commission's Rules of Practice and Procedure (46 CFR 502.66) the Respondents listed in Appendix A are ordered to show cause why subject agreement should not be disapproved for failure to be adequately policed under the requirements of section 15 of the Shipping Act, 1916;

It is further ordered, That this proceeding be limited to the submission of affidavits of fact and memoranda of law. Should any party feel that an evidentiary hearing is required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, a description of the evidence which would be adduced to prove those facts, and why such proof cannot be submitted through affidavit. Requests for hearing shall be filed no later than July 9, 1979;

It is further ordered, That notice of this Show Cause Order be published in the **Federal Register** and that a copy thereof be served upon each of the Respondents listed in Appendix A;

It is further ordered, That Respondents shall file affidavits of fact and memoranda of law in accordance with the second ordering paragraph hereof, no later than May 16, 1976, with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, in an original and 15 copies;

It is further ordered, That the Commission's Bureau of Hearing Counsel be made a party to this proceeding. Reply affidavits and a memorandum of law shall be filed by Hearing Counsel no later than June 15, 1979, with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, in an original and 15 copies;

It is further ordered, That a rebuttal memorandum and affidavits responding to the memorandum and affidavits filed by Hearing Counsel shall be filed by Respondents listed in Appendix A no later than June 30, 1979, with the Secretary, Federal Maritime

Commission, 1100 L Street, N.W., Washington, D.C. 20573, in an original and 15 copies.

By the Commission.

Francis C. Hurney,
Secretary.

Appendix

Java/New York Rate Agreement, Henry Noon & Co., Secretaries, P.O. Box 247, Singapore 1. Barber Blue Sea Line, 17 Battery Place, New York, New York 10004.

Djakarta Lloyd, c/o Tillston Roberts Corp., 17 Battery Place, New York, New York 10004.

Hoegh Lines, c/o Nedlloyd Inc., Suite 617, Northeast Plaza Bldg., Five World Trade Center, New York, New York 10048.

Lykes Bros. Steamship Co., Inc., 17 Battery Place, New York, New York 10004.

Mitsui O.S.K. Lines, Ltd., One World Trade Center, Suite 2211, New York, New York 10048.

A. P. Moller-Maersk Line, One World Trade Center, Suite 3527, New York, New York 10048.

Nedlloyd, Suite 617, Northeast Plaza Bldg., Five World Trade Center, New York, New York 10048.

Orient Overseas Line, Wall Street Plaza, New York, New York 10005

[Docket No. 79-25, Agreement No. 90]

[FR Doc. 79-10508 Filed 4-4-79; 8:45 am]

BILLING CODE 6730-01-M

Java/Pacific Rate Agreement, Disapproval of Agreement for Failure To Include Provisions for Adequate Self-Policing as Required by General Order 7, Order To Show Cause

Section 15 of the Shipping Act of 1916 (46 U.S.C. 814) requires that the Commission disapprove a section 15 agreement, " * * * after notice and hearing, on a finding of inadequate policing of the obligations under it * * * ."

On September 14, 1978, the Commission published final revised rules on self-policing systems, effective January 1, 1979 (General Order 7; Docket No. 73-64, Self-Policing Systems). General Order 7 establishes "the minimum standards for judging the adequacy of self-policing activities" under section 15 of the Shipping Act of 1916, and requires that conference and other rate-fixing agreements include provisions describing a system for self-policing its members through an independent policing authority, and include other specified provisions and requirements with respect to self-policing as set forth in that order.

The parties to subject agreement have failed to conform that agreement to the minimum requirements for adequate policing, as required by General Order 7.

Because subject agreement fails to meet the minimum requirements for adequate policing as established by the Commission in General Order 7, it is presumed not to meet the standards of adequate policing of the obligations under the agreement as required by section 15 and the agreement should therefore be disapproved.

Now therefore, *it is ordered*, That pursuant to sections 15 and 22 of the Shipping Act of 1916, and in accordance with Rule 66 of the Commission's Rules of Practice and Procedure (46 CFR 502.66) the Respondents listed in Appendix A are ordered to show cause why subject agreement should not be disapproved for failure to be adequately policed under the requirements of section 15 of the Shipping Act, 1916;

It is further ordered, That this proceeding be limited to the submission of affidavits of fact and memoranda of law. Should any party feel that an evidentiary hearing is required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, a description of the evidence which would be adduced to prove those facts, and why such proof cannot be submitted through affidavit. Requests for hearing shall be filed no later than July 9, 1979;

It is further ordered, That notice of this Show Cause Order be published in the Federal Register and that a copy thereof be served upon each of the Respondents listed in Appendix A;

It is further ordered, That Respondents shall file affidavits of fact and memoranda of law in accordance with the second ordering paragraph hereof, no later than May 16, 1976, with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, in an original and 15 copies;

It is further ordered, That the Commission's Bureau of Hearing Counsel be made a party to this proceeding. Reply affidavits and a memorandum of law shall be filed by Hearing Counsel no later than June 15, 1979, with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, in an original and 15 copies;

It is further ordered, That a rebuttal memorandum and affidavits responding to the memorandum and affidavits filed by Hearing Counsel shall be filed by Respondents listed in Appendix A no later than June 30, 1979, with the Secretary, Federal Maritime Commission, 1100 L Street, N.W.,

Washington, D.C. 20573, in an original and 15 copies.

By the Commission.

Francis C. Hurney,
Secretary.

Appendix

Java/Pacific Rate Agreement, Henry Noon & Co., Secretaries, P.O. Box 247, Singapore 1.
American President Lines, Ltd., 601 California Street, San Francisco, California 94108.
Barber Blue Sea Line, c/o Overseas Shipping Co., 700 S. Flower Street, Los Angeles, California 90017.
The East Asiatic Co., Ltd., c/o Overseas Shipping Co., One California Street, San Francisco, California 94106.
A. P. Moller-Maersk Line, One Maritime Plaza, San Francisco, California 94105.
Nedlloyd, c/o Transpacific Transportation Co., 650 California Street, San Francisco, California 94108.
Showa Line Ltd., c/o Norton, Lilly & Co., Inc., 425 California Street, San Francisco, California 94104.

[Docket No. 79-24; Agreement No. 191]

[FR Doc. 79-10509 Filed 4-4-79; 8:45 am]

BILLING CODE 6790-01-M

Philippines/North America Conference; Disapproval of Agreement for Failure to Include Provisions for Adequate Self-Policing as Required by General Order 7; Order to Show Cause

Section 15 of the Shipping Act of 1916 (46 U.S.C. 814) requires that the Commission disapprove a section 15 agreement, " * * * after notice and hearing, on a finding of inadequate policing of the obligations under it * * * ."

On September 14, 1978, the Commission published final revised rules on self-policing systems, effective January 1, 1979 (General Order 7; Docket No. 73-64, Self-Policing Systems). General Order 7 establishes "the minimum standards for judging the adequacy of self-policing activities" under section 15 of the Shipping Act of 1916, and requires that conference and other rate-fixing agreements include provisions describing a system for self-policing its members through an independent policing authority, and include other specified provisions and requirements with respect to self-policing as set forth in that order.

The parties to subject agreement have failed to conform that agreement to the minimum requirements for adequate policing, as required by General Order 7.

Because subject agreement fails to meet the minimum requirements for adequate policing as established by the Commission in General Order 7, it is presumed not to meet the standards of

adequate policing of the obligations under the agreement as required by section 15 and the agreement should therefore be disapproved.

Now therefore, *It is ordered*, That pursuant to sections 15 and 22 of the Shipping Act of 1916, and in accordance with Rule 66 of the Commission's Rules of Practice and Procedure (46 CFR 502.66) the Respondents listed in Appendix A are ordered to show cause why subject agreement should not be disapproved for failure to be adequately policed under the requirements of section 15 of the Shipping Act, 1916;

It is further ordered, That this proceeding be limited to the submission of affidavits of fact and memoranda of law. Should any party feel that an evidentiary hearing is required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, a description of the evidence which would be adduced to prove those facts, and why such proof cannot be submitted through affidavit. Requests for hearing shall be filed no later than July 9, 1979;

It is further ordered, That notice of this Show Cause Order be published in the Federal Register and that a copy thereof be served upon each of the Respondents listed in Appendix A;

It is further ordered, That respondents shall file affidavits of fact and memoranda of law in accordance with the second ordering paragraph hereof, no later than May 16, 1976, with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, in an original and 15 copies;

It is further ordered, That the Commission's Bureau of Hearing Counsel be made a party to this proceeding. Reply affidavits and a memorandum of law shall be filed by Hearing Counsel no later than June 15, 1979, with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D. C. 20573, in an original and 15 copies;

It is further ordered, That a rebuttal memorandum and affidavits responding to the memorandum and affidavits filed by Hearing Counsel shall be filed by Respondents listed in Appendix A no later than June 30, 1979, with the Secretary Federal Maritime Commission, 1100 L Street, N.W., Washington, D. C. 20573, in an original and 15 copies.

By the Commission.

Francis C. Hurney,
Secretary.

Appendix

Philippines/North America Conference, E. H. Bosch, Secretary/Manager, P.O. Box 1376, Manila, Philippines.
Barber Blue Sea Line, 17 Battery Place, New York, New York 10004
Galleon Shipping Corporation, c/o Nedlloyd, Inc., 5 World Trade Center, Suite 617, New York, New York 10048.
Hapag Lloyd A/G, 17 Battery Place, New York, New York 10004.
Kawasaki Kisen Kaisha, Ltd., One Market Plaza, Suite 2400, San Francisco, California 94105.
Maritime Company of the Philippines, Inc., c/o North America Maritime Agencies, Agents, 17 Battery Place, New York, New York 10004.
Mitsui O.S.K. Lines, Ltd., One World Trade Center, Suite 2211, New York, New York 10048.
A. P. Moller-Maersk Line, One World Trade Center, Suite 3527, New York, New York 10048.
Nippon Yusen Kaisha, One World Trade Center, Suite 5031, New York, New York 10048.
Orient Overseas Container Line, c/o Eckert Overseas Agency Inc., Wall Street Plaza, New York, New York 10005.
Sea-Land Service, Inc., One World Trade Center, Suite 2711, New York, New York 10048.
Showa Line Ltd., c/o Norton, Lilly & Co., Inc., 90 West Street, New York, New York 10006.
United States Lines, Inc., One Broadway, New York, New York 10004.
Waterman Steamship Corporation, 120 Wall Street, New York, New York 10005.
Yamashita-Shimminoh Steamship Co., Ltd., c/o Texas Transport & Terminal, 71 Broadway, New York, New York 10006.
Zim Israel Navigation Co., Ltd., One World Trade Center, Suite 2969N, New York, New York 10048.

[Docket No. 79-23; Agreement No. 5600]

[FR Doc. 79-10510 Filed 4-4-79; 8:45 am]

BILLING CODE 6730-01-M

Straits/New York Conference; Disapproval of Agreement for Failure To Include Provisions for Adequate Self-Policing as Required by General Order 7; Order To Show Cause

Section 15 of the Shipping Act of 1916 (46 U.S.C. 814) requires that the Commission disapprove a section 15 agreement, " * * * after notice and hearing, on a finding of inadequate policing of the obligations under it * * * "

On September 14, 1978, the Commission published final revised rules on self-policing systems, effective January 1, 1979 (General Order 7; Docket No. 73-64, Self-Policing Systems). General Order 7 establishes "the minimum standards for judging the

adequacy of self-policing activities" under section 15 of the Shipping Act of 1916, and requires that conference and other rate-fixing agreements include provisions describing a system for self-policing its members through an independent policing authority, and include other specified provisions and requirements with respect to self-policing as set forth in that order.

The parties to subject agreement have failed to conform that agreement to the minimum requirements for adequate policing, as required by General Order 7.

Because subject agreement fails to meet the minimum requirements for adequate policing as established by the Commission in General Order 7, it is presumed not to meet the standards of adequate policing of the obligations under the agreement as required by section 15 and the agreement should therefore be disapproved.

Now therefore, *It is ordered*, That pursuant to sections 15 and 22 of the Shipping Act of 1916, and in accordance with Rule 66 of the Commission's Rules of Practice and Procedure (46 CFR 502.66) the Respondents listed in Appendix A are ordered to show cause why subject agreement should not be disapproved for failure to be adequately policed under the requirements of section 15 of the Shipping Act, 1916;

It is further ordered, That this proceeding be limited to the submission of affidavits of fact and memoranda of law. Should any party feel that an evidentiary hearing is required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, a description of the evidence which would be adduced to prove those facts, and why such proof cannot be submitted through affidavit. Requests for hearing shall be filed no later than July 9, 1979;

It is further ordered, That notice of this Show Cause Order be published in the Federal Register and that a copy thereof be served upon each of the Respondents listed in Appendix A;

It is further ordered, That Respondents shall file affidavits of fact and memoranda of law in accordance with the second ordering paragraph hereof, no later than May 16, 1976, with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, in an original and 15 copies;

It is further ordered, That the Commission's Bureau of Hearing Counsel be made a party to this proceeding. Reply affidavits and a memorandum of law shall be filed by

Hearing Counsel no later than June 15, 1979, with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, in an original and 15 copies;

It is further ordered, That a rebuttal memorandum and affidavits responding to the memorandum and affidavits filed by Hearing Counsel shall be filed by Respondents listed in Appendix A no later than June 30, 1979, with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, in an original and 15 copies.

By the Commission.

Francis C. Hurney,
Secretary.

Appendix

Straits/New York Conference, Henry Noon & Co., Secretaries, P.O. Box 247, Singapore 1.
Bangladesh Shipping Corporation, c/o Peralta Shipping Corp., 25 Broadway, New York, New York 10004.
Barber Blue Sea Line, c/o Barber Steamship Lines, Inc., General Agents, 17 Battery Place, New York, New York 10004.
Djakarta Lloyd, c/o Tillston Roberts Corp., 17 Battery Place, New York, New York 10004.
Lykes Bros. Steamship Co., Inc., 17 Battery Place, New York, New York 10004.
Mitsui O.S.K. Lines, One World Trade Center, Suite 2211, New York, New York 10048.
A. P. Moller-Maersk Line, One World Trade Center, Suite 3527, New York, New York 10048.
Nippon Yusen Kaisha, One World Trade Center, Suite 5031, New York, New York 10048.
Sea-Land Service, Inc., One World Trade Center, Suite 2711, New York, New York 10048.
Shipping Corp. of India, c/o Norton, Lilly & Co., Inc., 90 West Street, New York, New York 10006.
United States Lines, Inc., One Broadway, New York, New York 10004.

[Docket No. 79-22; Agreement No. 6010]

[FR Doc. 79-10511 Filed 4-4-79; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Regional Public Advisory Panel on Architectural and Engineering Services; Meeting

March 29, 1979.

Pursuant to Pub. L. 92-463, notice is hereby given to a meeting of the Regional Public Advisory Panel on Architectural and Engineering Services, Region 3, on April 24, 1979, from 9:30 a.m., to 4:15 p.m., in Room 2636 of the GSA Regional Office Building, Seventh and D Streets, SW, Washington, DC. The meeting will be devoted to the initial stage of the process for screening

and evaluating prospective architect-engineer firms to furnish professional services required in connection with development of Design Services for Restoration and Renovation of the U.S. Post Office and Courthouse, Huntington, West Virginia, (GS-03B-88304/89049). The meeting will be open to the public.

Dated: March 29, 1979.

Walter V. Kallaur,
Regional Administrator.

[FR Doc. 79-10427 Filed 4-4-79; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National advisory body scheduled to assemble during the month of April 1979:

Mental Health Small Grant Review Committee (formerly Mental Health Small Grant Committee)

April 5-7; 10:30 a.m., the Terrace Room and Room 127, Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20014.

Open—April 5; 10:30-11:30 a.m.

Closed—Otherwise.

Contact: Mary E. Enyart, Room 10C-14, Parklawn Building, 5600 Fishers Lane,

Rockville, Maryland 20857, 301-443-4337.

Purpose: The Committee is charged with the initial review of small grant applications for Federal assistance in all disciplines relevant to the National Institute of Mental Health and for small grant projects submitted for support to the other Institutes of the Alcohol, Drug Abuse, and Mental Health Administration, and makes recommendations to the National Advisory Councils of the respective Institutes for final review.

Agenda: From 10:30-11:30 a.m., April 5, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Section 52b(c)(6), Title 5 U.S. Code and Section 10(d) of Public Law 92-463 (5 U.S.C. Appendix I).

Substantive program information may be obtained from the contact person listed above. The NIMH Information Officer who will furnish upon request summaries of the meeting and rosters of the committee members is Mr. Paul Sirovbatka, Acting Chief, Public Information Branch, Division of Scientific and Public Information, NIMH, Room 15-105, Parklawn Building, 5600 Fishers

Lane, Rockville, Maryland 20857, 301-443-4536.

Dated: April 2, 1979.

Michele W. Harvey,

Extramural Programs Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 79-10596 Filed 4-4-79; 8:45 am]

BILLING CODE 4110-88-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

March 28, 1979.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 230 DM 2.

Pursuant to 25 CFR 54.8(a) notice is hereby given that the Kern Valley Indian Community, c/o Ms. Patti Wermuth, General Delivery, Weldon, California 93283, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on February 27, 1979. The petition was forwarded and signed by Patti Wermuth, Clyde L. Ralemasin, Ray Ellerman, and Ethel Kolb-Pinnell, members of the petitioning group.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be by mail to the petitioner and other interested parties at the appropriate time.

Under § 54.8(d) of the Federal regulations, interested parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs files.

The petition may be examined by appointment in the Division of Tribal Government Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Street, N.W., Washington, D.C. 20242.

Rick Lavis,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 79-10424 Filed 4-4-79; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Arizona Strip District Advisory Board Meeting

Notice is hereby given that the Arizona Strip District Grazing Advisory Board will meet at 10:00 a.m. on Monday May 2, 1979, at the Four Seasons Motor Inn and Convention Center, Suite No. 8, 747 East St. George Boulevard, St. George, Utah.

The purpose of the meeting is to discuss District Allotment Management Plans, as related to Grazing Environmental Statement Preparation and Management Programs on the Arizona Strip.

The meeting will be open to the public. Any interested persons wishing to make a presentation to the board, or submit a written statement should contact the official listed below at least five (5) days prior to the meeting.

Further information concerning this meeting may be obtained from the District Manager, Bureau of Land Management, 196 East Tabernacle, St. George, Utah 84770 (801-673-3545).

Billy R. Templeton,
District Manager.

March 29, 1979.

[FR Doc. 79-10423 Filed 4-4-79; 8:45 am]

BILLING CODE 4310-84-M

Nevada—Recommended Wilderness Study Areas

The Las Vegas and Ely District Offices of the Bureau of Land Management have identified a total of nine areas that are recommended for wilderness study area status. The special wilderness inventory conducted in portions of these two districts was authorized by the Director, BLM, for the proposed Intermountain Power Project (IPP). Out of a total of 78 areas inventoried, these nine areas are hereby recommended for WSA status:

Ely District: Parsnip Peak NV-040-206, Fortifications NV-040-177, Far South Egans NV-040-172, South Egans NV-040-168, and Mt. Crafton NV-040-169; Las Vegas District: Portions of the Muddy Mountains NV-050-0229, Delamar Mountains NV-050-0177, portions of the McCulloch Mountains NV-050-0435, and portions of the Arrow Canyon Range NV-050-0215.

A 90-day public comment period has been held for all 78 areas. The 69 areas initially recommended as not having wilderness values are hereby declared to be removed from the wilderness

inventory process. A 30-day period has now begun prior to implementation of this decision.

As a result of public comments and adherence to BLM's established wilderness procedures, boundary adjustments have been made to the nine areas recommended for wilderness study area status. Therefore an additional 30-day public review period for those recommended WSAs is hereby announced.

Public comment will be accepted on these WSA recommendations until May 1, 1979. On May 10, based on wilderness inventory findings, past public comment received, and additional public comments, one of three decisions will be made: Classify the areas as WSAs; exclude the areas from WSA status; or classify portions of the areas as WSAs. That decision will be published in the Federal Register and will be followed by a 30-day period prior to implementation.

Maps of the areas and summaries of the initial findings have been mailed to interested individuals and groups. In addition information materials on the boundary adjustments is also being mailed to interested individuals and groups. Others, who do not receive such mailings, may obtain the information by contacting the Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada (P.O. Box 5400) 89102, the Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301, or the Nevada State Office, 300 Booth Street, Room 3008, Reno, Nevada 89509.

Comments should be addressed to the Nevada State Office.

To facilitate additional public comment, open houses will be conducted on April 18, 1979, from 1 to 4 p.m. and from 7 to 9 p.m. at the Las Vegas District Office and from 5 to 8 p.m. at the White Pine County Library in Ely on April 20, 1979.

Date signed: March 28, 1979.

E. I. Rowland,
State Director, Nevada.

[FR Doc. 79-10454 Filed 4-4-79; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit; Notice of Receipt of Application

Applicant: Michael A. Coffey, Navajo Nation, Navajo Fish and Wildlife Branch, P.O. Box 1480, Window Rock, Arizona 86515.

The applicant requests a permit to take (collect, salvage and disturb) bald

eagles (*Haliaeetus leucocephalus*), American peregrine falcons (*Falco peregrinus anatum*), and black-footed ferrets (*Mustela nigripes*), addled or broken eggs and dead or injured specimens, and to enter nests or burrows for collecting data for scientific purpose.

Documents and other information submitted with this application are available to this public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-4006. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before May 7, 1979. Please refer to the file number when submitting comments.

Dated: March 28, 1979.

Donald G. Donahoe,
Chief, Permit Branch, Federal Wildlife Permit Office,
Fish and Wildlife Service.

[FR Doc. 79-10408 Filed 4-4-79; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Notice of Receipt of Application

Applicant: Francis J. Gramlich, State Supervisor, Division of Wildlife Services, U.S. Fish and Wildlife Service, P.O. Box 800, Augusta, Maine 04330.

The applicant requests a permit to take (collect and disturb) failed eagle (*Haliaeetus leucocephalus*) eggs from active nests and replace them with viable eggs for scientific purposes.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-4011. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before May 7, 1979. Please refer to the file number when submitting comments.

Dated: March 28, 1979.

Donald G. Donahoe,
Chief, Permit Branch, Federal Wildlife Permit Office, Fish
and Wildlife Service.

[FR Doc. 79-10409 Filed 4-4-79; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Notice of Receipt of Application

Applicant: C. J. Ralph, U.S. Forest Service, Institute of Pacific Islands Forestry, 1151 Punchbowl St., Honolulu, Hawaii 96813.

The applicant requests a permit to take (capture and harass) Hawaiian crows (*Corvus tropicus*) for observation and photography and to remove one half the eggs from two active nests for captive incubation and propagation or release to the wild.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-4002. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before May 7, 1979. Please refer to the file number when submitting comments.

Dated: March 27, 1979.

Donald G. Donahoe,
Chief, Permit Branch, Federal Wildlife Permit Office, Fish
and Wildlife Service.

[FR Doc. 79-10411 Filed 4-4-79; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Notice of Receipt of Application

Applicant: San Diego Wild Animal Park, Route 1, Box 725-E, Escondido, California 92025.

The applicant requests a permit to import two male and two female Sumatran tigers (*Panthera tigris sumatrae*) from the Tierpark Zoo, Berlin, German Democratic Republic, for exhibition and enhancement of propagation.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and

Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-3873. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before May 7, 1979. Please refer to the file number when submitting comments.

Dated: March 27, 1979.

Donald G. Donohoe,
Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 10413 Filed 4-4-79; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Notice of Receipt of Application

Applicant: Region 6, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

The applicant requests a permit to take (capture) 25 each of Colorado squawfish (*Ptychocheilus lucius*) and humpback chub (*Gila cypha*) in Arizona, Colorado and Utah for scientific purposes to determine biological and ecological requirements through metal and radio tagging and release, and laboratory work including sacrifice of not more than 10 of each species and adding the remaining 15 of each species to stocks on hand for propagation research and management.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-4030. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before May 7, 1979. Please refer to the file number when submitting comments.

Dated: March 28, 1979

Donald G. Donohoe,
Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 79-10414 Filed 4-4-79; 8:45 am]

BILLING CODE 4310-55-M

Threatened Species Permit; Notice of Receipt of Application

The permit holders listed below wish to renew their Captive Self-Sustaining Population permits authorizing the purchase and sale in interstate

commerce, for the purpose of propagation, those indicated species listed in Section 17.11 as T(C/P). Humane shipment and care in transit is assured.

These permit files and supporting documents are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, USFWS, WPO, Washington, D.C. 20240. Interested persons may comment on these applications on or before May 7, 1979 by submitting written data, views, or arguments to the Director at the above address.

Applicant: International Animal Exchange, 1489 E. Nine Mile Road, Ferndale, Michigan 48220. PRT 2-539. Species: all T(C/P) wildlife.

Applicant: F. M. Driscoll, Lexington Pheasantry, 219 Cowlitz Drive, Delso, Washington 98626. PRT 2-607. Species: all T(C/P) pheasants.

Please refer to the individual applicants and the appropriately assigned PRT 2-file number when submitting comments.

Dated: March 30, 1979.

Donald G. Donohoe,
Chief, Permit Branch,
Federal Wildlife Permit Office,
Fish and Wildlife Service.

[FR Doc. 79-10407 Filed 4-4-79; 8:45 am]

BILLING CODE 4310-55-M

Threatened Species Permit; Notice of Receipt of Application

The applicants listed below wish to apply for Captive-Self Sustaining Population permits authorizing the purchase and sale in interstate commerce, for the purpose of propagation, those species of mammals listed in Section 17.11 as T(C/P). Humane shipment and care in transit is assured.

These applications and supporting documents are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, USFWS, WPO, Washington, D.C. 20240. Interested persons may comment on these applications on or before May 7, 1979 by submitting written data, views, or arguments to the Director at the above address.

Applicant: Harold Ray Newsom, 13015 Kaltenbrun, Houston, Texas 7086. PRT 2-3715. Species: jaguar *Panthera onca*.

Applicant: William H. Meadons, 19637 Marriposa, Perris, California 92370. PRT 2-3842. Species: leopard *Panthera pardus*.

Please refer to the individual applicants and the appropriately

assigned PRT 2-file number when submitting comments.

Dated: March 27, 1979.

Donald G. Donohoe,
Chief, Permit Branch,
Federal Wildlife Permit Office,
Fish and Wildlife Service.

[FR Doc. 79-10410 Filed 4-4-79; 8:45 am]

BILLING CODE 4310-55-M

Threatened Species Permit; Correction

On Friday, March 23, 1979, a Notice of Receipt of Application for Captive-Self Sustaining Population permits was published in the Federal Register, Volume 42, Number 58, page 17807. The following correction should be made. One of the applicants, Gary L. Reynolds, 7447 Post Road, North Kingstown, Rhode Island, was incorrectly listed as having permit file number PRT 2-3842. The correct file number PRT 2-3876.

Dated: March 27, 1979.

Donald G. Donohoe,
Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 79-10412 Filed 4-4-79; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Registration

Notice is hereby given that on January 31, 1978, Sigma Chemical Company, 3500 DeKalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of tetrahydrocannabinols (7370), a basic class of controlled substance in schedule I, which, if imported, will be supplied exclusively for authorized research or as chemical analysis standards.

There being no domestic manufacturers of tetrahydrocannabinols (7370) in the United States and a legitimate scientific need, pursuant to Section 1008(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, the above firm is granted a registration as an importer of this basic class of controlled substance.

Dated: March 28, 1979.

Peter B. Bensinger,
Administrator, Drug Enforcement Administration.

[FR Doc. 79-10442 Filed 4-4-79; 8:45 am]

BILLING CODE 4110-09-M

DEPARTMENT OF JUSTICE

Law Enforcement assistance
AdministrationResponse to Public Comment and
Notice of Issuance

AGENCY: Law Enforcement Assistance Administration, Department of Justice.

ACTION: Response to public comment and notice of issuance.

SUMMARY: The Law Enforcement Assistance Administration (LEAA) published in the *Federal Register* on January 26, 1979 a draft change to the Fiscal Year 1979 Guide to Discretionary Grant Programs (M 4500.1G). This notice sets forth the comments received, the changes made, and the final issuance distribution, the availability of the Presentence Investigation Report Program.

COMMENTS RECEIVED: Eight public responses were received within the 60 day period. For the most part these letters offered support for the presentence investigation program as described. Minor revisions were made to the draft to correct grammatical errors and to clarify certain requirements for submission. In addition, the match requirement was increased slightly and the due date for submission of concept papers was extended to May 15, 1979.

ISSUANCE AND DISTRIBUTION: Guideline Manual M 4500.1G provides information about major categorical programs of the Law Enforcement Assistance Administration, authorized by the Crime Control and Safe Streets Act of 1968, as amended, and the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. The manual includes information about discretionary grant programs, selected program field tests, technical assistance, and training. Information about how to apply for assistance and who to contact for additional information is also provided.

This manual is of interest to State and local criminal justice agencies, institutions and organizations who work with criminal justice agencies, State Planning Agencies, regional and local planning units, and LEAA personnel. Copies may be obtained by writing LEAA, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

EXPLANATION OF FINAL CHANGE: This change to M 4500.1G makes the following changes from the draft change which appeared on January 26, 1979:

1. Information was added to Section (3) Dollar Range and Number of Grants which allows the total amount of the

award to be increased if the program is undertaken on a statewide basis.

2. Section C Program Strategy Dollar Range and Number of Grants (3) increases the cash match from 12 percent to 12 to 14 percent of the federal portion of the project.

3. The due date for applications was extended from May 1, 1979 to May 15, 1979 in Section C, Program Strategy, (5) Application Procedures and Deadline.

PRESENTENCE INVESTIGATION REPORT

PROGRAM: The complete text of the change to the Fiscal Year 1979 Guide to Discretionary Grant Programs entitled, "Presentence Investigation Report Program" appears as follows:

PROGRAM DESCRIPTION: PRESENTENCE INVESTIGATION REPORT PROGRAM

a. *Program Objective:* Increase the effectiveness and efficiency of the presentence investigation report as a decision-making tool.

b. *Program Description:* This program concentrates LEAAs past research and training efforts related to presentence reporting into a cohesive package that can be utilized by jurisdictions reexamining the utility of presentence investigations as a decision-making tool.

(1) Problems Addressed

(a) During the past 35 years, a variety of organizations have established guidelines for presentence report investigations. Most recently, the 1967 President's Commission Reports on Law Enforcement and the Administration of Justice; the 1970 American Bar Association's standards on presentence reports; the 1972 National Council on Crime and Delinquency revision of the Model Sentencing Act; the 1973 publications of the National Advisory Commission on Criminal Justice Standards and Goals; and the 1977 American Correctional Association's Standards for Adult Probation all agree on several important standards.

There is consensus among these groups that presentence reports must be directly related to decision-making and that the presentence report must serve the needs of a diversity of decision-makers within the criminal justice system. These decision-makers include sentencing judges, supervising probation officers, institution classification personnel, the paroling authority, parole officers, and researchers. However, it is also agreed that the primary purpose of the presentence report is to provide the court with relevant and accurate data so that the judge may select the most appropriate sentencing alternative.

(b) Although the presentence report is often the only source of information about the offender available to the judge at the time of sentencing, a 1978 GAO Report entitled *State and County Probation: Systems in Crisis* which evaluated four counties in the nation found that in only 54 percent of the cases were presentence reports actually prepared. Further, the inclusion of a recommendation for sentencing by the probation officer seems to be as varied as the requirement for the

report despite the results of numerous studies which suggest that in the majority of cases (correlation is often as high as 90 percent) the sentencing judge follows the recommendations contained in the presentence investigation report.

(c) Responding to these issues, in January 1978, the NILECJ published a Prescriptive Package which focused on the presentence investigation and report. The package is based on a comprehensive state-of-the-art survey which included a complete review of the literature and a review of the operational procedures and presentence formats used by 735 state and local probation agencies. As a result of their survey, the authors found that during the 100 year history of the presentence report there has been an increasing emphasis on the quantity of data collected and presented to the courts. However, the effectiveness of the information in terms of its relevance to the sentencing decision has seldom been questioned. For the most part there has been a continuity of the "longer" rather than "shorter" presentence report format although there is extensive research evidence to show that judges make their decisions on a limited number of factors (i.e., current offense, prior criminal history, stability indicators).

(d) The principal product of the Prescriptive Package research effort is a series of 64 recommendations designed to assist the courts and probation administrators in developing a more systematic and effective approach to presentence report design and utilization. The recommendations are identical to the standards promulgated by the American Correctional Association's Commission on Accreditation in its Manual of Standards for Adult Probation.

(e) Increasing demands for probation services without the allocation of additional resources have required examination of these traditional approaches and some experimentation with new approaches. The 1978 LEAA survey report entitled *State and Local Probation and Parole Systems* indicates that approximately one million presentence investigation reports are prepared annually by more than 2500 agencies. More than one-third of these agencies reported that between one-fourth to one-half of probation officers' time was spent preparing presentence investigation reports. This imposes a tremendous cost effectiveness problem for probation departments. This program addresses the need for increased staff time without reducing the quality of decisions or case handling.

(2) Assumptions

(a) The information contained in the presentence report is often the only information that the judge has about the defendant and the crime at the time of sentencing.

(b) The primary purpose of the presentence report is to provide data which meets judicial needs for decision-making.

(c) Other potential uses for decision-making may influence the content and format of the report.

(d) The data requirements for criminal justice decision-making are best determined by the decision-makers themselves.

(e) Presentence report design, both format and content, should be localized to meet the needs of the individual criminal justice system.

(f) The modular construction of reports—starting with a simple format and very basic data to which is appended other data as individual offense and/or offender warrant—represents the best utilization of scarce resources.

(3) Results Sought

(a) Jurisdictions participating in this program will develop and implement a presentence investigation report strategy which demonstrates the recommendations outlined in the *Presentence Report Handbook*.

(b) The presentence report program will increase the efficiency and effectiveness of the probation office and improve the quality of the information presented.

(c) Judges in the participating jurisdiction will make increased use of the presentence investigation report in their decision-making and sentences will be increasingly consistent and fair.

(d) The presentence investigation report will be a useful tool to the other decision-makers in the criminal justice system.

c. *Program Strategy:* This program will provide funding support to jurisdictions over a three phased approach including (1) planning and analysis, (2) development of the PSI Report, and (3) implementation and evaluation of the results of (1) and (2). LEAA will provide technical assistance and coordination through a grant to a National Program Coordinator. The role of the National Program Coordinator and the activities anticipated during the three-phases of the program are discussed below:

(1) National PSI Program Coordinator

(a) *The National PSI Program Coordinator will be the grantee for this program. Funding for the jurisdiction selected to participate in this program will be subgrants from the National Program Coordinator. The National Program Coordinator will assist in screening of potential sites; however, participating sites will be selected by LEAA.*

(b) The National PSI Program Coordinator will provide assistance in the following ways:
Assist finalist sites in the development of their programs;

Collect and analyze data elements needed for decision-making at each site [use of computer if needed];

Help identify training and technical assistance needs within the jurisdiction;

Assist with local problem-solving during the life of the subgrants;

Schedule, coordinate, and provide cluster training and technical assistance for all participating sites.

(c) During the implementation phase of the projects the National Program Coordinator will provide an evaluation of the local sites to assess the results of the program and particularly to provide feedback to those participating sites.

(2) Phased Approach

(a) Phase I—Planning and analysis. During this phase, it is anticipated that the probation office will review the current presentence investigation report practices and assess their utility for decision-making. Meetings among criminal justice decision-makers in the jurisdiction—particularly judges—should take place to sort out needed data elements and allow officials to articulate that information needed for decision-making. This will vary considerably in those jurisdictions where sentencing guidelines and/or mandatory minimum sentences are operating. This phase should take approximately four months.

(b) Phase II—Development of the PSI Report. Based on Phase I, special staff should develop a revised PSI Report for use in the jurisdiction. Pilot efforts could be introduced for certain types of offenders or with individual judges. One option could also include the establishment of a presentence report unit. It is anticipated that this phase will require three months.

(c) Phase III—Implementation and evaluation. During this final phase which should commence around month eight of the grant and continue for the remainder of the grant period, actual demonstration takes place. The new presentence investigation report becomes operational and its use is evaluated. Results will be measured, at a minimum, in terms of (1) time saved, (2) satisfaction of the judges, (3) cost effectiveness; and (4) impact on sentencing decisions.

d. *Selection Process.* (1) Local jurisdictions will be selected by LEAA according to the following criteria:

(a) The extent to which there is current use of the presentence investigation report at a minimum by the court and potential expanded uses for pretrial release, diversion, the corrections department, etc.

(b) It is essential that there is evidence of Probation Department, Judicial, and Corrections leadership, sponsorship, and participation. Letters from all appropriate officials should be included as part of the submission.

(c) The extent to which this program offers the likelihood of addressing current problems facing the jurisdiction.

(d) The documented willingness to apply local existing staff commitment to this overall effort.

(e) The extent to which the jurisdiction as available baseline data for pre-post comparisons and an information capability (manual or automated) to support project management and offender tracking.

(f) It is essential that there is a willingness to experiment with the presentence investigation report outlined in the NILECJ Prescriptive Package or variations including the use of a short form PSI which has, at a minimum, some commentary in the following data areas:

- *Description of the offense.
- *Prior criminal record.
- *Personal history.
- *Evaluation.
- *Recommendation.

(g) Pending or past legislation, including sentencing guidelines, which facilitates or promotes the use of the short form PSI.

(2) Priority consideration will be given to jurisdictions participating in one or more of the following national LEAA programs if use of the PSI can be shown to significantly contribute to the success of those programs:

(a) Reduction of Jail Overcrowding Program.

(b) Court Delay reduction Program.

(c) Restitution or Community Service Program.

(d) Treatment Alternatives to Street Crime (TASC).

(e) Sentencing Guidelines Program.

Further, additional consideration will be given to those proposals which allow for the maximum impact of this program; that is, state-wide probation systems vs. individual local offices. A mix of large and small probation departments is desired.

(3) *Dollar Range and Number of Grants.* Up to ten separate sub-grants will be awarded with a dollar range from \$50,000-\$75,000. Where an applicant is seeking to implement the project on a state-wide basis, the total amount of the award will be increased. Grant duration will be for 18 months. A cash match of from 12-14 percent of the federal portion of the project will be required. Additional year funding is anticipated only where project will expand program.

(4) *Eligibility.* Applicants are likely to be departments of adult probation or court offices which are responsible for the preparation of PSI Reports. Applicants must meet Part E criteria in the program areas as defined in the Omnibus Crime Control and Safe Streets Act of 1968, as amended. Applicants must have the endorsement of state and local planning units. Letters of cooperation from the Chief Probation Officer, Department of Corrections, and the Chief Judge must accompany the application.

(5) *Application Procedures and Deadline.* Applicants should submit to the Corrections Division, OCJP, LEAA, a concept paper addressing the following:

(a) Interest in the program.

(b) A copy of the current presentence investigation report format and description of procedures and problems. Include information on any existing statutes which impose requirements on the presentence investigation report.

(c) Proposed alternatives to current system to be investigated under Phase I.

(d) Evidence of an understanding of the requirements of this program and willingness to comply.

(e) Support from key court, county, prosecution, defense, and corrections officials.

(f) Responses to all other items listed in Section d.(1) of this announcement.

These concept papers will be accepted by LEAA through May 15, 1979. Applicants will then be contacted for additional information needed for selection purposes. If necessary, site visits will be arranged by the National Coordinator to assist in preliminary data collection and program development.

e. *Evaluation Requirements.* (1) A national cluster evaluation of this program is planned

to be undertaken by the National Program Coordinator selected by the Office of Criminal Justice Programs, LEAA. The evaluator and LEAA will select sites for inclusion in the national level cluster evaluation.

(2) In addition to the self-assessment and monitoring requirements of Appendix 4, Paragraph 3 and 4, and Appendix 5 of the *Guide for Discretionary Grant Programs* (M 4500.1G), applicants may propose an evaluation plan for their project containing the evaluation plan elements detailed in Appendix 4, Paragraph 6 of the *Guide for Discretionary Grant Programs* (M 4500.1G).

(3) Grant recipients may be required to modify their proposed evaluation plans in order to be integrated into the national level cluster evaluation design to be developed by the national evaluator.

(4) All grantees must indicate in advance their willingness to cooperate fully with the national evaluator, in providing needed data elements.

f. *Special Requirements.* Applicants are advised to be thoroughly familiar with the NILIC Prescriptive Package entitled *Presentence Report Handbook, January 1978* (available from the National Criminal Justice Reference Service or the Government Printing Office, Washington, D.C. 20402).

g. For further information, contact the Corrections Division, Office of Criminal Justice Programs, LEAA, Washington, D.C. 20531, 202/376-3824.

h. For a copy of the Part E criteria in this program area contact Marlene Beckman at the above address.

For further information contact: Marlene Beckman, Office of Criminal Justice Programs, Law Enforcement Assistance Administration, U.S. Department of Justice, 633 Indiana Avenue NW., Washington, D.C. 20531, 202/376-3824.

Henry S. Dogin,
Administrator.

March 30, 1979.

[FR Doc. 79-10426 Filed 4-4-79; 8:45 am]

BILLING CODE SAC-44-1018-M

LEGAL SERVICES CORPORATION

Grants and Contracts

March 30, 1979.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355 88 Stat. 378, 42 U.S.C. 2996-2996f, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant applications submitted by:

1. Land of Lincoln Legal Assistance Foundation, Inc. in Alton, Illinois to serve Schuyler, Mason, Cass, Menard, Logan, DeWitt, Ford, Edgar, Greene, Macoupin, Fayette, Effingham, Jasper, Clay, Richland, Wayne, Gallatin, Saline, Hardin, Pope and Johnson Counties.

2. Prairie State Legal Services in Rockford, Illinois to serve Whiteside, Rock Island, Jo Daviess, Carroll and McHenry Counties.

3. West Central Illinois Legal Assistance in Galesburg, Illinois to serve Knox, Henderson, Warren, McDonough and Fulton Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above applications to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Chicago Regional Office, 310 South Michigan Avenue, 24th Fl., Chicago, Illinois 60604.

Thomas Ehrlich,
President.

[FR Doc. 79-10401 Filed 4-4-79; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Physics Subcommittee to Review NSF-Supported Nuclear Physics Laboratories

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee to Review NSF-Supported Nuclear Physics Laboratories.

Date and time:

April 17, 1979, 9 am-11 pm.

April 18, 1979, 9 am-5 pm.

Place: Conference Room 321, National Science Foundation Washington, D.C.
Telephone 202/632-4318.

Type of meeting:

April 17, 1979, closed.

April 18, 1979, closed.

Contact person: Dr. Howel G. Pugh, Head, Nuclear Science Section Room 341, National Science Foundation, Washington, D.C., telephone 202/632-4318.

Summary minutes: May be obtained from the Committee Management Coordination Staff, Division of Financial and Administrative Management, National Science Foundation, Washington, D.C. 20550.

Purpose of committee: To examine the programs of those nuclear physics accelerator laboratories which are supported by NSF primarily for research by resident faculty and associated personnel, and to recommend on their support for the period 1980-1985 within each of two funding guidelines provided by NSF.

The laboratories to be considered are at: California Institute of Technology; Florida State University; University of

Maryland; University of Notre Dame; University of Pennsylvania; University of Pittsburgh; Princeton University; Rutgers University; Stanford University; State University of New York at Stony Brook; University of Rochester.

Agenda:

April 17, 1979. Closed session (9 am-11 pm). Discussion of projects under consideration for funding.

April 18, 1979. Closed session (9 am-5 pm). Discussion of projects under consideration for funding.

Reason for closing: The projects being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer, pursuant to provisions of Section 10(d) of P.L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

A waiver is requested of the notice normally required for announcement, we were unable to set dates earlier due to difficulties encountered in scheduling attendance of the members. The meeting cannot be postponed because an opportunity is needed for extensive discussion of projects prior to the development of funding recommendations which will form the basis of a report to be finalized at a meeting of the Subcommittee on April 26, 27, 1979 and presented to the NSF Advisory Committee for Physics at its May 10-12, 1979 meeting.

April 2, 1979.

M. Rebecca Winkler,
Committee Management Coordinator.

[FR Doc. 79-10449 Filed 4-4-79; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Texas Utilities Generating Co., et al.; Receipt of Additional Antitrust Information: Time for Submission of Views on Antitrust Matter

Texas Utilities Generating Company, pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, has filed information requested by the Attorney General for Antitrust Review as required by 10 CFR Part 50, Appendix L. This information concerns two proposed additional ownership participants, Texas Municipal Power Agency and Brazos Electric Power Cooperative, Inc. for the Comanche Peak Steam Electric Station, Units 1 and 2. The current holders of the construction

permits are Texas Utilities Generating Company, Dallas Power & Light Company, Texas Electric Service Company, and Texas Power & Light Company.

The information was filed in connection with the Texas Utilities Generating Company's application for construction permits and operating licenses for two pressurized water reactors. Construction was authorized on December 19, 1974 at the Comanche Peak site located in Somervell County, Texas.

The original antitrust portion of the application was docketed on July 20, 1973, and the Notice of Receipt of Application for Construction Permits and Facility Licenses and Availability of Applicant's Environmental Report; Time for Submission of Views on Antitrust Matters was published in the *Federal Register* on August 1, 1973 (38 FR 20494). The Notice of Hearing was published in the *Federal Register* on August 2, 1973 (38 FR 20635); and the Notice of Consideration of Issuance of Facility Operating Licenses and Notice of Opportunity for Hearing was published in the *Federal Register* on February 5, 1979 (44 FR 6995).

A copy of the above documents is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Somervell County Public Library, On the Square, P.O. Box 417, Glen Rose, Texas 76043.

Persons who wish to have their views on the antitrust matters with respect to Texas Municipal Power Agency and Brazos Electric Power Cooperative presented to the Attorney General for consideration or who desire additional information regarding the matter covered by this notice, should submit such views or requests for additional information to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation, on or before June 4, 1979.

Dated at Bethesda, Maryland, this 23d day of March, 1979.

For the Nuclear Regulatory Commission.

Robert L. Baer, Chief,
Light Water Reactors, Branch No. 2, Division of Project Management.

[Docket Nos. 50-445A and 50-446A]
[FR Doc. 79-10186 Filed 4-4-79; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Fifteenth Abnormal Occurrence Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of Section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission has published and issued the fifteenth periodic report to Congress on abnormal occurrences (NUREG-0090, Vol. 1, No. 4). The release date is March 29, 1979.

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the *Federal Register* (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

The fifteenth report to Congress is for the fourth quarter of 1978. The report identifies the occurrences or events that the Commission determined were significant and the remedial action that was undertaken. The report indicates that the following incidents or events were determined by the Commission to be significant and reportable:

- (a) There was one abnormal occurrence at the 70 nuclear power plants licensed to operate. The event involved a loss of containment integrity at two pressurized water reactors.
- (b) There were no abnormal occurrences at fuel cycle facilities (other than nuclear power plants).
- (c) There were no abnormal occurrences at other licensee facilities.
- (d) There were two abnormal occurrences reported by the Agreement States. One event involved a radiation overexposure of a radiographer's assistant. The other involved transportation of a package with radiation levels in excess of limits.

The incidents involved temporary reductions in margins of safety normally provided.

The fifteenth report to the Congress also contains updating information on abnormal occurrences reported in previous reports.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street, N.W., Washington, D.C. or at any of the 130 local Public Document Rooms throughout the

country. The report, designated NUREG-0090, Vol. 1, No. 4, may be purchased from the National Technical Information Service, Springfield, Virginia 22161, at \$4.50 a copy on or about April 12, 1979.

Dated at Washington, D.C. this 29th day of March, 1979.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

[FR Doc. 79-10445 Filed 4-4-79; 8:45 am]

BILLING CODE 7590-01-M

Commonwealth Edison Co. (Dresden Station, Units 2 and 3); Hearing

On August 3, 1978, the U.S. Nuclear Regulatory Commission (the Commission) issued a notice of "Proposed Issuance of Amendments to Operating Licenses" relating to the above identified facilities (43 FR 35763, August 11, 1978). The proposed amendments would permit an increase in the storage capacity of the spent fuel pool at the Dresden Station.

The State of Illinois has submitted a petition to intervene, dated September 8, 1978, pursuant to both §§ 2.714 and 2.715(c) of the Commission's Rules of Practice. The petition is clearly sufficient to meet the requirements of both of those regulations. Particularly with respect to intervention as a party pursuant to § 2.714, the following adequately stated contention supports intervention:

24. The application and supporting documentation inadequately discuss the ramifications of changing the rack configurations in a pool wherein damaged fuel is stored.

A. There has been insufficient consideration of potential occupational hazards to workers installing racks.
B. There is no discussion of the need to package defective fuel prior to removing and replacing it in pool.

C. There is no discussion of the effects of damaged fuel on a pool containing additional fuel elements in compacted racks.

D. There is no discussion of possible hazards and credible accidents involving release of additional radiation, chemicals and/or solid objects such as sections of cladding and fuel rods from the defective fuel stored in the pool.

Thus, the petition is granted.

Please take notice that a hearing on the proposed license amendments will be held at a time and place to be fixed by the Atomic Safety and Licensing Board. The members of the Board designated by the Commission to conduct the aforementioned hearing are Dr. Linda W. Little, Dr. Forrest J. Remick, and Mr. Edward Luton.

Members of the public may request permission to make a limited appearance pursuant to § 2.715(a) of the Commission's Rules of Practice, 10 CFR Part 2. Persons desiring to make limited appearances are requested to inform the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A person making a limited appearance does not become a party but may state his position on the issues and may raise relevant questions which he wishes to have answered by the parties. Limited appearances will be received at prehearing conferences and at the evidentiary hearing at the discretion of the Board within such limits and on such condition as may be fixed by the Board.

So ordered.

Dated at Bethesda, Maryland this 29th day of March 1979.

The Atomic Safety and Licensing Board.

Edward Luton,
Chairman.

[Docket Nos. 50-237; 50-249]

[FR Doc. 79-10446 Filed 4-4-79; 8:45 am]

BILLING CODE 7590-01-M

Commonwealth Edison Co. (Zion Station, Units 1 and 2); Order

In the first line of the Notice of Hearing issued by this Board on March 23, 1979 [44 FR 19078 published on March 30, 1979], change the date "May 7, 1978" to "July 7, 1978".

So ordered.

Dated at Bethesda, Maryland this 29th day of March 1979.

The Atomic Safety and Licensing Board

Edward Luton,
Chairman.

[Docket Nos. 50-295, 50-304]

[FR Doc. 79-10447 Filed 4-4-79; 8:45 am]

BILLING CODE 7590-01-M

Duquesne Light Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 17 to Facility Operating License No. DPR-66, issued to Duquesne Light Company, Ohio Edison Company, and Pennsylvania Power Company (the licensees), which revised Technical Specifications for operation of the Beaver Valley Power Station, Unit No. 1 (the facility) located in Beaver County, Pennsylvania. This amendment is effective as of the date of its issuance, except for Technical Specification change relating to the one-time extension in outage time for the 1A Low

Head Safety Injection Pump which was effective on March 20, 1978.

The amendment corrects an error in the pressurizer heatup rate modifies limits on accumulator water level and gas pressure, adds requirements for a radiation protection manager, revises the list of hydraulic snubbers, deletes part length rods requirements, deletes reference to the completed augmented startup program, and deletes a residual reference to a system, APDMS, dropped in Amendment No. 9. The amendment also provides the safety evaluation for an emergency authorization granted on March 20, 1978, which allowed a one-time extension in outage time for the 1A Low Head Safety Injection Pump.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated October 10, 1977, December 22, 1977, March 20, 1978, May 23, 1978, May 2, 1977, October 27, 1978 and December 14, 1978, (2) Amendment No. 17 to License No. DPR-66, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Beaver Area Memorial Library, 100 College Avenue, Beaver, Pennsylvania. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 27th day of March 1979.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Operating Reactors Branch #1, Division of Operating Reactors.

[Docket No. 50-334]

[FR Doc. 79-10448 Filed 4-4-79; 8:45 am]

BILLING CODE 7590-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Safety Effectiveness Evaluations: Responses to Safety Recommendations; Availability

On March 27 the National Transportation Safety Board made public two safety effectiveness evaluations relating to activities of the National Highway Traffic Safety Administration, one concerning the National Accident Sampling System (NASS) and the other concerning the Passive Restraint Evaluation Program.

The NASS evaluation, No. NTSB-SEE-79-1, comprises Part II of the Safety Board's study made at the request of the Subcommittee on Transportation and Related Agencies of the Senate Appropriations Committee, which urged specifically that the Safety Board evaluate NASS to determine whether a sufficient amount of reliable data would be collected in order to accurately determine accident trends and to assess the impact of vehicle safety standards. The first report on the evaluation was made public April 11, 1978, and, based on the evaluation, the Safety Board on May 3 issued six safety recommendations (Nos. H-78-21 through 26) to NHTSA and one recommendation (No. H-78-20) to the Federal Highway Administration. (See 43 FR 20284, May 11, 1978.)

Major findings of the Safety Board in its 1978 report (NTSB-SEE-78-1) upon which the recommendations were predicated were:

1. Nationally representative highway accident data are needed.
2. If attained, NASS' publicly stated objectives will provide valuable information to the nation's highway safety program.
3. The NASS plan for the near future emphasizes motor vehicle crashworthiness and primarily supports NHTSA's mission.
4. The NASS program alone will provide limited capability for evaluating many countermeasures.
5. The implementation of NASS has proceeded beyond the level of planning.
6. Through improved planning and broader perspective NASS could become an important part of the national highway safety program.

Part II comprises the Safety Board's evaluation of NHTSA's efforts in implementing the recommendations, as

indicated in the agency's response of last August 14 (43 FR 42827, September 21, 1978), as well as an evaluation of FHWA's response dated January 12 (44 FR 5216, January 25, 1979).

The Safety Board has closely monitored the development of NASS and the actions taken in response to the recommendations. As noted in Part II, of the evaluation, conclusions reached are:

1. The Safety Board is encouraged by the progress made by NHTSA since its original evaluation.
2. NHTSA and FHWA are working together so that NASS can support the data needs of both agencies.
3. The planning for NASS has substantially improved.
4. Of the seven Safety Board recommendations contained in the original NASS evaluation, one has been "closed, with acceptable action," while six remain "open, with acceptable action."
5. Although certain concerns still exist, the Safety Board is not aware of any major reasons why NASS should not be expanded to 20 sites. The advantages of expansion outweigh any disadvantages.

As reported at 44 FR 18749, March 29, 1979, the Safety Board has completed its safety effectiveness evaluation of NHTSA's "Passive Restraint Evaluation Program." This evaluation was requested by the Senate Appropriations Committee and was performed under the specific authority of the Independent Safety Board Act of 1974. Based on results of the evaluation, the Safety Board on March 20 recommended that NHTSA develop and publish a formal evaluation program plan to effectively manage activities related to the passive restraint standard (FMVSS 208 as amended July 5, 1977) and publish the proposed program plan for public comment by October 1, 1979. The Safety Board's official evaluation is report No. NTSB-SEE-79-3.

Responses to Safety Recommendations Aviation

A-72-60.—The Federal Aviation Administration on March 22 responded to the Safety Board's inquiry of December 28 as to this recommendation, issued following investigation of the Capitol International Airways' Douglas DC-8 accident at Anchorage International Airport, November 27, 1970. The recommendation sought FAA's cooperation with aircraft manufacturers and National Aeronautics and Space Administration in developing and implementing major improvements in the design of transport aircraft interiors.

FAA reports issuance of regulations in 1967 and 1972 resulting in significant

crashworthiness improvements, including more stringent cabin materials requirements. Also, FAA has issued advance notice of proposed rulemaking 74-38, "Compartment Interior Materials Toxic Gas Emission," which directed a general inquiry regarding the cabin materials toxic gas emission problem, and NPRM 75-3, "Smoke Emission From Compartment Interior Materials," which proposed new cabin materials smoke emission rules. FAA notes that 12 of 120 proposals contained in NPRM 75-31, "Airworthiness Review Program, Notice No. 8, dealt with cabin safety and directly affected the safety of flight attendants. These 12 proposals have been removed from Notice No. 8 and are being acted upon independently for expedited final action in March 1979.

A "Cabin Safety Program" has also been established by FAA, the purpose of which is to provide a single focal point for the management, coordination and control of all FAA cabin safety activities. Activities of the Special Aviation Fire and Explosion Reduction (SAFER) Advisory Committee have been included in the Cabin Safety Program. The SAFER committee, established by notice issued May 26, 1978, is composed of Government and industry representatives and will guide and monitor research and development efforts and recommend ways to improve survivability in the postcrash environment. The first meeting is tentatively scheduled for April or May of this year. Goal of the committee is to develop a report to FAA by June 1980 concerning actions to be taken to further minimize postcrash injuries by implementing actions to direct or redirect new or existing research and to undertake rulemaking as appropriate.

A-73-67 through 70.—FAA's letter of March 14 is in response to the Safety Board's letter of January 11 concerning the status of these recommendations, which called for measures for the prevention and early detection of lavatory fires on turbine-powered transport aircraft. The Board stated that on receipt of FAA's response dated May 2, 1974, and the issuance of Airworthiness Directives (1) 74-08-09, Transport Category Aircraft: Amendment 39-1818, (2) 74-21-03 Boeing: Amendment 39-2376, (3) 75-02-05 McDonnell Douglas: Amendment 39-2070, safety recommendation A-73-69 was evaluated and its status classified as "closed, acceptable action." The Board asked to be informed on the progress of the other recommendations.

With reference to A-73-67, FAA notes that Air Carrier Operations Bulletin 1976-17, In-Flight Lavatory Fires, issued

September 18, 1973, instructed principal operations inspectors to encourage their assigned air carriers to place "No Smoking" signs on the cabin side of the lavatory doors, to include a statement in the flight attendant briefing announcements that smoking is not permitted in the lavatories, and to include in the flight attendants' procedures visual inspections of lavatories prior to takeoffs and periodically in flight. Also, principal operations inspectors were instructed to review their assigned carriers' training programs to assure that crewmembers receive practical training in firefighting techniques. Directives relating to all transport category aircraft and to specific models of Boeing, General Dynamics, and McDonnell Douglas airplanes were issued in 1974 and 1975. They direct certain general inspections, applicable to all transport category aircraft, of lavatory linen or paper receptacles, installation of "No Smoking" signs, installation of lavatory "No Cigarette Disposal" signs, installation of removable ashtrays near lavatory doors, and specific inspections and lavatory modifications to certain models of Boeing, General Dynamics, and McDonnell Douglas airplanes. Further, FAA notes that proposals 8-42 and 8-118, "Airworthiness Review Program Notice No. 8," propose to revise §§ 25.853 and 121.312, Federal Aviation Regulations, to require lavatory waste receptacles to be fully enclosed, constructed of fireproof materials and to contain fires likely to occur in the receptacle under normal use. "No Smoking in Lavatory" placards and ashtrays would be required. These proposals are in process and final action is expected in June 1979.

Concerning A-73-68, FAA reports a revision to § 25.1439(a) was adopted under Amendment 25-38 issued December 13, 1976, and effective February 1, 1977. Airworthiness Review Program, NPRM 75-10, Proposal 2-91, which proposed to amend § 25.1439(b)(2)(ii) concerning standards for masks and eye coverings, was withdrawn as premature in view of testing being conducted on this type of equipment. New standards are being considered for a later rulemaking project.

In answer to A-73-70, FAA says a Government/industry committee was established under the National Academy of Sciences. Their efforts resulted in Reports NMAB 318-6, "Aircraft, Civil and Military, Volume 6," 1977, and NMAB 318-3, "Smoke and Toxicity, Volume 3," 1978. FAA states that these reports contain valuable

information but do not cover the entire spectrum of problems on improving fire and noxious gas protection in aircraft cabins. Comments on several proposals relating to cabin interior materials and testimony given in a public hearing and inquiry, "Compartment Interior Materials in Transport Category Airplanes," November 14-18, 1977, indicated that further study and technical development were necessary.

A-77-26 through 29.—Letter of March 14 from FAA informs the Safety Board of completion of FAA action on these recommendations which were issued following investigation of the November 16, 1976, accident involving a Texas International Airlines, Inc., DC-9 at Denver, Colo. The recommendations concerned crewmember emergency evacuation training, tail cone exit designation, passenger information cards, and tail cone emergency lighting.

With reference to A-77-26, FAA reports that Operations Review Program Amendment No. 5 effective June 26, 1978, was issued on May 15, 1978, and that § 121.417(c)(1) of the regulations contains the revised requirements for crewmember initial and recurrent training in the operation of emergency exits. Operations Review Program Amendment No. 6 issued September 28, amended § 121.417(c) effective September 29, 1978, to clarify initial and recurrent training and actual operation of emergency equipment requirements. These amendments apply to all makes and models of airplanes and require crewmembers to operate each type of emergency exit, including the DC-9 tail cone exit in normal and emergency modes during initial training and at least 24 months thereafter.

As referenced in FAA's August 19, 1977, letter concerning A-77-27, a proposed requirement for reviewing accident information in training programs, NPRM 77-12, was adopted effective September 29, 1978. FAR § 121.417(b)(4) requires review and discussion of previous accidents and incidents pertaining to actual emergency situations.

In answer to A-77-29, FAA reports that in order to more readily identify the location and operation of the tail cone emergency exit release handle, Airworthiness Directive 78-01-11 effective February 13, 1978, requiring compliance with McDonnell Douglas Service Bulletin 53-134 dated December 16, 1977, was issued.

Based on an earlier response from FAA, the Safety Board on January 5, 1978, classified recommendation A-77-28 as "closed, acceptable alternate action."

A-78-45 and 46.—FAA's letter of March 14 is in response to the Safety Board's comments of December 18 on FAA's response of last October 11 (43 FR 51152, November 2, 1978). These recommendations concerned the more effective movement of crash/fire/rescue (CFR) vehicles on airports.

The Board's letter of December 18 with reference to A-78-45 notes that the Federal Aviation Act provides broad authority for FAA IN REGARD TO CFR vehicle movements and that this recommendation can be incorporated into 14 CFR Part 139. Regarding A-78-46, the Board said that it did not seek the construction of perimeter/access roads at all airports serving certificated air carriers, but does believe that the *existing* road system on an airport is integral to its overall safety posture and that CFR vehicles should be able to traverse the existing roads if that constitutes the most direct route to an accident scene. The Board said it could not understand FAA's reasoning when it states on the one hand that it agrees with and is willing to participate in the development of roads into safety areas designated by the National Fire Protection Association (NFPA) but that, on the other hand, it cannot justify a safety requirement for constructing and maintaining *existing* access roads on airports. The Board wanted to know whether FAA would specify construction criteria for these NFPA recommended roads and when built, whether these roads would be inspected under the annual airport inspection requirement of 14 CFR Part 139.

FAA's letter of March 14 states that as a result of a recent meeting with Safety Board staff, FAA has been able to clear up mutual misunderstandings of the interpretation of recommendation A-78-46 and its response thereto. FAA agrees that any portion of the airport road system that is to be used by firefighting vehicles should be included in the operations manual and be constructed in a manner adequate for the use of such vehicles. FAA will, therefore, incorporate in the appropriate advisory circulars suggested minimum standards for this type of road to accommodate emergency equipment located at a particular airport. FAA states that in the future, roads so designated will be examined by field certification specialists as part of FAA's periodic certification inspection. If the roads are found to be deficient, a recommendation will be made to the airport owners that they be upgraded to recommended minimum standards.

A-78-51 and 52.—On December 19 the Safety Board replied to FAA's October

12 response (43 FR 51152, November 2, 1978) concerning recommendations which emanated from the Continental Airlines, Boeing 727 takeoff accident at Tucson, Ariz., June 3, 1977. The Safety Board advised that recommendation A-78-51 has been classified "open, acceptable action." With regard to A-78-52, the Board expressed regret that FAA does not concur, since this recommendation was made in the belief that a threshold marker would better serve to prevent an accident of the type at Tucson, particularly under adverse conditions when the full attention of pilots is given to cockpit procedures and visual cues. The Board requested reconsideration or adoption of some alternate action such as having the local controller advise the pilot of the availability of a runway threshold for takeoff use, and noted that the recommendation would be held in "open, unacceptable action" status pending further communication.

FAA under date of March 14 provided two separate letters in response to the Board's December 19 letter. Concerning A-78-51, FAA advised that action has been completed; Air Carrier Operations Bulletin No. 8-78-2, Use of Runways with Displaced Thresholds, was issued on December 11, 1978. This bulletin requests principal operations inspectors to assure that their assigned certificate holders provide their pilots and dispatchers with airport analysis data that identifies those runways with displaced thresholds.

The FAA response regarding A-78-52 states that, upon reconsideration, FAA still maintains its previous position that airport data available for air carrier operations is adequate without further on-field marking. FAA notes that various Part 121 subsections of the Federal Aviation Regulations cover manual and operating specification requirements for each air carrier and the airports from which they operate, and, further, they require that flight crews and dispatchers comply with the contents of such documents. FAA says that a very important part of the regulatory requirement for the development of a carrier's manual is the "Procedures for determining the usability of landing and takeoff areas, and for disseminating pertinent information thereon to the operational personnel."

Further, as a result of the Tucson accident, FAA reports issuance of a bulletin which instructs principal operations inspectors to assure that their assigned carriers provide pilots and dispatchers with airport analysis data which identifies runways with

displaced thresholds. Also, another bulletin was issued after the midair collision accident in San Diego, emphasizing the importance of crewmember awareness of the operating environment external to the cockpit. FAA states, "We cannot concur with the establishment of a routine procedure whereby a controller would advise pilots of the availability or location of a runway threshold. However, the controllers upon request are able to assist in providing relevant current airport information to pilots."

Highway

H-78-15 and 16.—Letter of March 12 from the National Highway Traffic Safety Administration is in response to the Safety Board's inquiry of December 13 regarding the current status of recommendations issued following investigation of the collision of a motor home and an automobile near McAlester, Okla., on July 14, 1977. The recommendations proposed a revision of procedures for testing door-latch performance. The Safety Board noted from NHTSA's initial response of last May 9 (43 FR 25890, June 15, 1978) that the Society of Automotive Engineers (SAE) was studying the problem of door-latch assemblies and was planning to test these devices before installing them in automobiles for market.

In response, NHTSA reports that proposed rulemaking action on Federal Motor Vehicle Safety Standard (FMVSS) No. 206, Door Locks and Door Retention Components, does not contemplate changing the static test procedure that is currently specified in the standard; the standard uses, as a basis for compliance, the Recommended Test Procedures J839 and J934 of SAE. NHTSA states that hopes to publish the proposal on FMVSS No. 206 this year, aiming to clarify several items in the procedure, but the static test will be maintained. The dynamic test procedure recommended in H-78-15 is being considered during the development of an amendment to FMVSS No. 214, Side Impact Protection, which is described in NHTSA's Five Year Rulemaking Plan.

NHTSA reports that the SAE Human and Biomechanics and Simulation Subcommittee has submitted a response to the Five Year Rulemaking Plan proposal but did not address the FMVSS No. 206 rulemaking that was included. NHTSA attaches a copy of a letter dated January 31, 1979, to the Safety Board from a staff engineer of SAE to indicate that NHTSA has been communicating with the SAE Latch and Hinge Subcommittee on Door Locks and Door

Retention Components prior to issuance of the amendment to the rule.

Marine

M-78-33 and 34.—The National Oceanic and Atmospheric Administration (NOAA) on March 19 responded to the Safety Board's January 30 comments regarding NOAA's earlier response of December 14 (43 FR 60677, December 28, 1978). The recommendations resulted from investigation of the sinking of the SS EDMUND FITZGERALD in Lake Superior on November 10, 1975. The safety Board advised that NOAA's actions were acceptable and responsive to the recommendations but, for recordkeeping purposes, the recommendation files would be kept open until revised charts are published, including the 10 fathom contour for M-78-33, and until the verification study is completed for M-78-34.

NOAA provided a copy of the new edition of chart 14962 (15th edition, January 20, 1979), which implements part of recommendation M-78-33. NOAA said the major change was to give more positive delineation of the shoal areas in the vicinity of Southwest Bank by inclusion of a 60-foot contour line around the shoal area. A similar modification is being made to Caribou Island on chart 14961, which will be issued in a new edition by the end of 1979.

Railroad

R-78-17 and 18.—Letter of February 22 from the Federal Railroad Administration is in response to the Safety Board's inquiry and comments of last July 26 concerning FRA's initial response of July 5 (43 FR 35567, August 10, 1978). The recommendations were developed following investigation of the Illinois Central Gulf commuter train collision at Chicago, Ill., on January 26, 1978.

FRA reports that its Office of Rail Safety Research is now processing a procurement request for an investigation into the behavior of brake systems. One of the tasks in this study specifically addresses the concerns raised in these recommendations. The study is scheduled to be completed in August 1980, and is described as follows:

The contractor will investigate and empirically determine the effects of temperature on brake shoe coefficient of friction. The cumulative effect of prolonged temperature extremes and prolonged application (snow brake, drag brake, etc.) will be examined. The contractor will introduce moisture and contaminants to the tests and compile results over the

temperature range to ascertain their effect on performance.

Further, FRA reports that an interim study is underway to address the ICG/NYAB "Snow Brake" and the safety of its operation. FRA anticipates a preliminary report in June 1979, and will advise the Safety Board of its progress.

On March 14 the Safety Board acknowledged receipt of preliminary reports of the study activities, and advised that the recommendations will be kept in open status pending receipt of the progress report of June 1979 and the final report of August 1980.

Note.—Single copies of the Safety Board's safety effectiveness evaluations are available without charge, as long as limited supplies last. Copies of the Board's recommendation letters, responses thereto, and related correspondence are also available free of charge. All requests for copies must be in writing, identified by report or recommendation number. Address inquiries to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Multiple copies of the evaluation reports may be purchased by mail from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

(Secs. 304(a)(2) and 307 of the Independent Safety Board Act of 1974 (Pub. L. 93-633, 88 Stat. 2169, 2172 (49 U.S.C. 1903, 1906)).) April 3, 1979.

Margaret L. Fisher,
Federal Register Liaison Officer.

[N-AR 79-14]

[FR Doc. 79-10514 Filed 4-4-79; 8:45 am]

BILLING CODE 4910-58-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 on 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 and supporting documents 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.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

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 AGRICULTURE

Agency Clearance Officer—Donald W. Barrowman—447-6202.

New Forms

Economics, Statistics, and Cooperatives Service

*Satellite Ground Data Collection

Other (see SF-83)

Farmers within selected segments

10,000 Responses; 1,667 hours

Charles A. Ellett, 395-5080

Office of General Sales Manager

Alternatives for report submission—

agricultural export sales

Single time

Agricultural commodity exporters

370 Responses; 31 hours

Charles A. Ellett, 395-5080

Soil Conservation Service

*Application for Assistance—Rural

Clean Water Program

SCS-WR-1 & WR-2

annually

Land users & operator of abandoned

mine lands

45,000 Responses; 14,000 hours

Charles A. Ellett, 395-5080

DEPARTMENT OF COMMERCE

Agency Clearance Officer—Edward Michaels—377-4217.

New Forms

Maritime Administration

Maritime Workforce Survey

Single time

Maritime industry

100 Responses; 25 hours

David P. Caywood, 395-6140

Revisions

Bureau of the Census

Experimental Census Forms—1980

Census of Population and Housing

D-1900, D-1901, D-1902, & D-1903

Single time

U.S. population

Off. of Federal Statistical Policy &

Standard, 673-7974

Bureau of the Census

Census Employment Inquiry for the 1980

Census

D-263

Single time

Job applicants

5,000 Responses; 1,667 hours

David P. Caywood, 395-6140

Industry and Trade Administration

Jewel Bearing and Related Components

ITA-941 (formerly DIE-941)

Annually

Producers, consumers & importers of

jewel bearings

600 Responses; 240 hours

David P. Caywood, 395-6140

DEPARTMENT OF ENERGY

Agency Clearance Officer—Albert H. Linden—566-9021.

New Forms

National Petroleum Council Survey for the Secretary of Energy

EIA-150

Annually

Petroleum comp. & owners of

Transportation Equipment

6,650 Responses; 15,250 hours

Jefferson B. Hill, 395-5867

Retail Motor Gasoline Cost and Revenue

Survey

EIA-148

Single time

Retailers of gasoline

1,600 Responses; 6,400 hours

Jefferson B. Hill, 395-5867

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Agency Clearance Officer—Peter Gness—245-7488.

New Forms

National Institutes of Health

Pilot Nutrition Education Program

Knowledge Survey

Single time

Household shopper (main)

1,600 Responses; 266 hours

Richard Eisinger, 395-3214

National Institutes of Health

National High Blood Pressure Interview

Survey:

Follow-up

Single time

Adult public

5,034 Responses; 3,372 hours

Off. of Federal Statistical Policy &

Standard, 673-7974

Revisions

Alcohol, Drug Abuse and Mental Health Administration

CMHC monitoring and reporting

package (P.L. 94-63 as amended)

Annually

Federally supported CMHCs in 50

States, P.R., V.I., Guam

760 Responses; 4,940 hours

Richard Eisinger, 395-3214

National Institutes of Health

National Research Service Award

Institutional Grant Application

PHS 6025

On occasion

Institutional awards

2,000 Responses; 80,000 hours

Richard Eisinger, 395-3214

Extensions

Food and Drug Administration

New Animal Drug Application

FD 356V

On occasion

Academic inst., govt. agen. pharma,
drug, premix & fee mfgs. 1,884 responses;
35,168 hours

Richard Eisinger 395-3214

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

Agency Clearance Officer—John
Kalagher—755-5184.

New Forms

Housing Management
Housing Owner's Certification and
Application for Housing Assistance
HUD-52670/52670-A

Monthly

Section 8 owners & program
administrators 15,300 responses; 15,300
hours

Arnold Strasser, 395-5080

DEPARTMENT OF LABOR

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

New Forms

Employment and Training
Administration
CETA Grant Application and Reporting
Requirements
ETA 2-202, ETC.

Single time

State & local agencies 1,998,082
responses; 1,168,390 hours
Budget Review Division, 395-4775

DEPARTMENT OF STATE (EXC. AID)

Agency Clearance Officer—Gail J.
Cook—632-3538.

New Forms

Selection Research Questionnaire
Single time
Applicants for FSO Written
Examination 3,000 responses; 1,000
hours

Marsha D. Traynham, 395-6140

**COMMUNITY SERVICES
ADMINISTRATION**

Agency Clearance Officer—Jack
Stolhr—254-5300.

New Forms

Financial Monitoring Forms
285A, B, 291 292A, B, 293 294, 500, 501
Quarterly
Community Development Corporations
160 responses; 800 hours
Barbara F. Reese, 395-6132

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

Agency Clearance Officer—Wallace
Velandier—755-3122.

Revisions

Petition for Waiver
NASA 1393, 1473, 1473, 1475
On occasion
NASA Contractors 300 responses; 2,400
hours
David P. Caywood, 395-6140

Stanley E. Morris,
Deputy Associate Director for Regulatory Policy and Re-
ports Management

[FR Doc. 79-10513 Filed 4-4-79; 8:45 am]

BILLING CODE 3110-01-M

**SECURITIES AND EXCHANGE
COMMISSION**

**Hanseatic Money Market Trust, Short
Term Series (and Subsequent Series)
and Sponsors; Application for
Exemption**

March 29, 1979.

Notice is hereby given that Hanseatic Money Market Trust, Short Term Series (and Subsequent Series) (the "Fund"), a unit investment trust registered under the Investment Company Act of 1940 (the "Act") and its sponsors, Stuart Brothers, Butcher & Singer, Inc., and The Robinson-Humphrey Company, Inc. (the "Sponsors") (hereinafter the Sponsors and the Fund are collectively referred to as "Applicants"), C/O Stuart Brothers, 55 Broad Street, New York, New York 10004, filed an application on February 9, 1979, and amendments thereto on March 5, 1979, and March 27, 1979, pursuant to Section 6(c) of the Act for an order of the Commission exempting the Applicants from the provisions of Section 14(a) of the Act and exempting the secondary market operations of the Sponsors from the provisions of Rule 22c-1 under the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Short Term Series of the Fund is a unit investment trust, and is the first of a series of similar but separate trusts that the Sponsors intend to form (hereinafter The Short Term Series and all such Subsequent Series are collectively referred to as the "Series"). The Series will be created under the laws of the State of New York pursuant to separate trust indentures. Applicants state that the portfolio of the Short Term Series will be comprised of money market instruments consisting of interest-

bearing bankers' acceptances and/or certificates of deposit from among the 100 largest domestic banks and their foreign branches and/or federal agency discount notes, all having maturities of approximately six months ("Trust Securities"). The Trust Securities that will constitute the portfolio of each Series will be selected in advance and will be identifiable in respect of each Series on the date of deposit with the Trustee.

The Applicants have filed a Form S-6 Registration Statement under the Securities Act of 1933 ("1933 Act") covering Units of fractional undivided interests in the Short Term Series to be offered to investors at a public offering price set forth in the prospectus included in the Form S-6 Registration Statement. The 1933 Act Registration Statement has not become effective. The Applicants have also filed a Form N-8A Notification of Registration and a Form N-8B-2 Registration Statement under the Act relating to the Short Term Series and all subsequent Series.

Each Series of the Fund will be governed by the provisions of a trust indenture ("Indenture") to be entered into by the Sponsors and a banking corporation organized and doing business under the laws of the United States or any State, that is authorized to exercise corporate trust powers and having at all times an aggregate capital, surplus, and undivided profits of not less than \$5,000,000 ("Trustee"). United States Trust Company of New York will serve as Trustee for the Short Term Series. Interactive Data Services Inc. will serve as Evaluator for the Short Term Series. It is planned that a separate Indenture will be entered into each time a Series is created and activated and the Trust Securities that comprise its portfolio (or contracts and funds for the purchase of such securities) are deposited with the Trustee. The Indenture for each series will contain standard terms and conditions of trust common to all trusts.

Each Series will be substantially identical, although there may be variations among the Series in such features as size, number of Units, sales and other charges, nature and composition of the money market instruments in the portfolio, reinvestment provisions, and organization, operation, and marketing of Units to the extent that there are changes in the Sponsors (other than Stuart Brothers), underwriters, Trustee, evaluator and others serving the Fund. Furthermore, there conceivably could be changes in the Sponsors (other than Stuart Brothers) and others serving the Short Term series prior to the

effectiveness of the registration statement for the Short Term Series filed under the 1933 Act.

When a Series of the Fund is created, the Sponsors and the Trustee will enter into an Indenture and the Trust Securities to constitute such Series of the Fund (or contracts and funds for the purchase thereof) will be deposited with the Trustee by the Sponsors. Simultaneously with the deposit of the Trust Securities that will comprise that Series' portfolio, the Trustee will deliver to the Sponsors certificates of receipt, or registered certificates, for Units that will represent the entire ownership of the respective Series. These Units in turn will be offered for sale to the public by the Sponsors, other underwriters, and dealers at prices equal to the then aggregate offering price of the Trust Securities in the portfolio of the Trust divided by the number of Units outstanding plus a sales charge after the above 1933 Act Registration Statement has become effective.

The Applicants state that the Trust Securities will not be pledged or be in any other way subjected to any debt at any time after they are deposited with the Trustee, except for the lien of the Trustee as security for certain liabilities as set forth in the Indenture. The assets of a Series will consist of the Trust Securities initially deposited, accrued and undistributed interest and discount, and undistributed cash. Certain of the Trust Securities may from time to time be sold under special circumstances, or may be redeemed or will mature in accordance with their terms. The proceeds from such dispositions will be distributed to the Unitholders upon the termination of the Series and will not be reinvested. There will be no provision in the Indenture for any Series for the sale and reinvestment of Trust Securities, and such activity will not take place.

Each Unit of a Series will represent a fractional undivided interest in that Series and will be redeemable. In the event that Units are redeemed, the fractional undivided interest represented by each Unit outstanding will increase accordingly. Units will remain outstanding until redeemed or until termination of the Indenture. A Series of the Fund will be terminated on the date specified in the Indenture or upon the sale or other disposition of the last Trust Security held thereunder if that should occur first. In addition, if within ninety days from the date that a Series' Registration Statement under the 1933 Act has become effective, the net worth of that Series declines to less than \$100,000 or in the event that redemptions by the Sponsors of unsold Units results

in that Series having a net worth of less than 40 percent of the principle amount of Trust Securities initially deposited in such Series, the Series will be terminated.

There will be no provision in the Indenture as to any Series for the issuance of any Units after the initial offering of Units (except that the Sponsors may continue to offer Units that remain unsold at the end of the initial 30-day offering period and except to the extent that secondary trading in Units by the Sponsors is deemed to constitute issuance of Units under the Act), and such activity will not take place.

The Sponsors, while under no obligation to do so, intend to maintain a market for whole Units of the Fund and to offer to purchase such Units at prices in excess of the redemption price. In the absence of such a market, unitholders may only be able to dispose of their Units by redemption.

Section 14(a) of the Act, in substance, provides that no registered investment company and no principal underwriter for such a company shall make a public offering of securities of which such company is the issuer unless (1) the company has a net worth of at least \$100,000; (2) at the time of a previous public offering it had a net worth of at least \$100,000; or (3) provision is made that a net worth of \$100,000 will be obtained from not more than twenty-five responsible persons within ninety days, or the entire proceeds received, including sales charge, will be refunded.

The Applicants seek an exemption from the provisions of Section 14(a) of the Act in order that a public offering of Units of the Fund as described above may be made. In connection with the requested exemption from Section 14(a) the Sponsor agrees (1) to refund, on demand and without deduction all sales charges to holders of Units of a Series who purchased such Units from the Sponsors or any underwriter of dealer participating in distribution of the Units, and to instruct the Trustee to liquidate the Trust Securities held by the Series and distribute the proceeds to the Unitholders if, within ninety days from the time that a registration statement for a Series becomes effective under the 1933 Act, the net worth of the Series shall be reduced to less than \$100,000, or if such Series is terminated; (2) to instruct the Trustee on the date Trust Securities are deposited in each Series that in the event that redemption by the Sponsors or underwriters of Units constituting a part of the unsold Units shall result in the Series having a net worth of less than 40% of the principal

amount of Trust Securities originally deposited for such Series, the Trustee shall terminate the Series in the manner provided in the Indenture and distribute any Trust Securities or other assets deposited with the Trustee pursuant to the Indenture as provided therein; and (3) in the event of termination for the reasons described in (2) above, to refund all sales charges to any Unitholder who purchased his Units from the Sponsors or any underwriter or dealer participating in the distribution of such Units, on demand and without any deduction. Thus, the Applicants represent that it is highly unlikely that, except during the course of liquidation, the net worth of any Series would ever decline to \$100,000 or less.

In the event that the Registration Statement under the 1933 Act for the Short Term Series is declared effective prior to issuance by the Commission of the order of exemption requested herein, the Applicants state that the Sponsors will retain for investment and without a view to distribution a number of Units representing not less than \$100,000 of the aggregate offering price of Trust Securities held by the Short Term Series as of the effective date. The Applicants also state that they will be free to rely on any exemptive rule in this area adopted by the Commission prior to the issuance of the Commission exemptive order requested herein.

Rule 22c-1

The Applicants state that following the initial offering period, the Sponsors, while not obligated to do so, intend to offer to purchase whole Units in the secondary market at prices based on the offering side evaluation of the Trust Securities in any Series, determined on the last business day of each week, effective for all sales made during the following week. The Sponsors may also offer Units that remain unsold at the end of the initial 30-day offering period in the same manner.

To avoid the Sponsors receiving more than the specified sales charge on the resale of Units, the Sponsors have undertaken not to resell any Units which they may repurchase at a price below the offering side evaluation of the Trust Securities in any Series.

The Applicants also state that the Sponsors have undertaken to adopt a procedure whereby the Evaluator, without a formal evaluation, will provide estimated evaluations on trading days. In the case of a repurchase, if the Evaluator cannot state that the previous Friday's price is at least equal to the current bid price, the Sponsors will order a formal evaluation.

The Sponsors agree that, in the case of the resale of Units in the secondary market, if the Evaluator cannot state that the previous Friday's price is not more than one-half point (\$5.00 on a unit representing \$1000.00 principal amount of underlying Trust Securities) greater than the current offering price a formal evaluation will be ordered. Under these circumstances the Applicants contend that the exemption of the Sponsors from the provisions of Rule 22c-1 will in no way affect the operations of the Fund and will benefit the Unitholders by providing a repurchase price for their Units that is in excess of the current net asset value of such Units as computed for redemption purposes.

Rule 22c-1 provides, in pertinent part, that no registered investment company issuing any redeemable security, and no dealer in any such security, shall sell, redeem or repurchase any such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

The Applicants state that Rule 22c-1 has two purposes: (1) to eliminate or to reduce any dilution of the value of outstanding redeemable securities of registered investment companies which might occur through the sale, redemption or repurchase of such securities at prices other than their current net asset value; and (2) to minimize speculative trading practices in the securities of registered investment companies.

The secondary market activities of the Sponsors and the manner for the acquisition by investors of new Units, may be deemed to violate Rule 22c-1 because of the absence of daily pricing. The Applicants contend, however, that the purposes of Rule 22c-1 will not be frustrated by the Sponsors in the proposed secondary market activities. The Applicants assert that the pricing of Units by the Sponsors in the secondary market will in no way dilute the assets of the Fund, and that Unitholders will benefit from the Sponsor's pricing procedure in the secondary market because they will normally receive a higher repurchase price for their Units than they could obtain by redeeming their Units at the current net asset value, and that this will be accomplished without the cost burden to the Fund of daily evaluations of the Units' redemption value.

The Applicants also contend that speculation in Units of any Series is unlikely because price changes are limited in respect to the kind of Trust Securities that will be held by such Series. Finally, the Applicants contend that the rationale for allowing the

Sponsors to offer for sale in the secondary market Units that remain unsold at the end of the initial 30-day offering period based on weekly pricing is essentially the same as allowing the Sponsors to base their secondary market activities on weekly pricing. In addition, the Applicants state that there is no risk of unfair discrimination as between those investors who will purchase Units during the initial offering period and those investors who will purchase Units in the secondary market because of the pricing procedures proposed to be followed by the Sponsors.

The Applicants therefor request an exemption from the provisions of Rule 22c-1 for the Short Term Series and for all subsequently created Series insofar as the Rule may apply after completion of the primary distribution of Units of such Series.

The Applicants also state that they will be free to rely on any exemptive rule in this area adopted by the Commission prior to the issuance of the requested Commission exemptive order requested herein.

Section 6(c) of the act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than April 23, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course

following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons, who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[Release No. 10648: 812-432]

[FR Doc. 79-10461 Filed 4-4-79; 8:45 am]

BILLING CODE 8010-01-M

Investors Diversified Services, Inc., et al.; Application for Exemption

March 29, 1979.

Notice is hereby given that Investors Diversified Services, Inc. ("IDS"), IDS Life Insurance Company ("IDS Life"), IDS Life Variable annuity Fund A and IDS Life Variable Annuity Fund B, IDS Tower, Minneapolis, Minnesota 55402 (collectively, the "Variable Annuity Funds"), Investors Mutual, Inc., Investors Selective Fund, Inc., Investors Stock Fund, Inc., Investors Variable Payment Fund, Inc., IDS Bond Fund, Inc., IDS Cash Management Fund, Inc., IDS Growth Fund, Inc., IDS New Dimensions Fund, Inc., IDS Progressive Fund, Inc., IDS Tax-Exempt Bond Fund, Inc., 1000 Roanoke Building, Minneapolis, Minnesota (collectively, the "Investors Group") and Alleghany Corporation, 350 Park Avenue, New York, New York 10022 ("Alleghany") (hereinafter collectively referred to as the "Applicants") have filed an application pursuant to Section 6(c) of the Investment Company Act of 1940 ("the Act") on February 28, 1979, for an order of the Commission temporarily exempting the Applicants from the provisions of Section 15(a) of the Act to permit the surviving corporation of a proposed merger of IDS into a wholly-owned subsidiary of Alleghany, and IDS Life to continue to render investment advisory services to the Variable Annuity Funds and the Investors Group after assignment of their present investment advisory contracts on the same basis as such services are currently being provided. The Variable Annuity Funds and the Investors Group are registered under the Act as open-end, diversified management investment companies. All interested persons are referred to the application on file with the Commission for a statement of the

representations contained therein, which are summarized below.

IDS, a Delaware corporation, serves as investment adviser to the Investors Group. IDS and IDS Life, a wholly-owned subsidiary of IDS, serve as investment advisers to the Variable Annuity Funds. As required by Section 15(a) of the Act, the investment advisory agreements between IDS and the Investors Group, all dated July 13, 1978, were submitted to and approved by the respective shareholders of the Investors Group at their annual meeting held on July 12, 1978. Similarly, the advisory agreements between IDS Life and the Variable Annuity Funds and between IDS and IDS Life were approved by the contractholders of the Variable Annuity Funds on June 29, 1977. All of such agreements were also approved by the boards of directors of the Investors Group and the boards of managers of the Variable Annuity Funds, including, in each instance, the approval of a majority of those who were not "interested persons" within the meaning of the Act. In accordance with Section 15 of the Act, each investment advisory agreement contains a provision to the effect that such agreement will terminate automatically in the event of its "assignment."

On November 20, 1978, Alleghany owned beneficially 709,323 shares of IDS Class A Common Stock and 7,878,997 shares of IDS Class B Common Stock, constituting 37% of the combined equity and 56.4% of the combined voting power of the two classes of IDS voting stock.

On that same date, members of the family of the late Allan P. Kirby had the power to vote, directly or indirectly in various capacities, 3,437,872 shares of Alleghany Common Stock or approximately 44.2% of the voting securities outstanding on that date. Messrs. Allan P. Kirby, Jr. and F. M. Kirby, the only members of the Kirby family active in the management of Alleghany, effectively control the voting of almost 40% of the outstanding Alleghany Common Stock.

Alleghany, as the beneficial owner of 37% of the combined equity and 56.4% of the voting power of IDS Common Stock, is the only shareholder of IDS who may be deemed to control IDS for purposes of Section 2(a)(9) of the Act. The proposed transaction involves the merger of IDS into a wholly-owned subsidiary of Alleghany, recently incorporated under the laws of the State of Delaware for the purpose of effecting this transaction and which will engage in no other business prior to the merger. The merger proposal has been approved by the respective boards of directors of

IDS and Alleghany, and is subject to the execution of definitive agreements and to the approval of the shareholders of the two companies, as well as to the receipt of a favorable ruling from the Internal Revenue Service, or the receipt of satisfactory opinions of counsel in lieu thereof. The proposed merger will be submitted to the shareholders of IDS and Alleghany for approval at meetings presently expected to be held in April, 1979. Pursuant to the agreement of Merger, Alleghany's subsidiary will succeed to all the rights, privileges, powers and franchises and be subject to all of the restrictions, liabilities and duties of IDS. After the effective date of the merger, the surviving corporation will be operated as a wholly-owned subsidiary of Alleghany. The officers of IDS in office at the effective time of the merger will become the officers of the surviving corporation. The surviving corporation will conduct the business and operations previously conducted by IDS in substantially the same manner and with substantially the same assets and personnel as previously conducted by IDS, and it is expected that the same IDS personnel currently responsible for providing investment advisory services to the Investors Group and the Variable Annuity Funds will continue to provide these services after the proposed merger.

When the merger becomes effective, each outstanding share of IDS Common Stock, other than shares owned by Alleghany or held in treasury by IDS, will be converted either into cash or a combination of Alleghany Common Stock and a new Alleghany Series A preferred stock. Although the issuance of additional shares of Alleghany Common Stock would result in a dilution in the voting power of current Alleghany shareholders, the Kirby family will continue to have the power to vote, directly or indirectly in various capacities, more than 25 percent of the voting securities of Alleghany. Since Section 2(a)(9) of the Act provides that any person who owns beneficially more than 25 percent of the voting securities of any company shall be presumed to control such company, the Kirby family's percentage voting control of Alleghany Common Stock after the proposed merger will continue to be well in excess of the necessary percentage which gives rise to a presumption of control under the Act.

Similarly, Messrs. Allan P. Kirby, Jr. and F. M. Kirby would continue to control the voting of approximately 33% of the then outstanding shares of Alleghany Common Stock. No other person or group will acquire a

controlling interest in Alleghany as a result of the proposed merger.

Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract which has been approved by the vote of a majority of the outstanding voting securities of such registered company, and requires that such written contract provide for automatic termination in the event of its assignment.

Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a securityholder of the assignor.

Consummation of the proposed merger will involve an assignment of the investment advisory agreements between IDS and the Investors Group, between IDS Life and the Variable Annuity Funds, and between IDS and IDS Life, either because the agreements would be transferred, by operation of law, to the surviving corporation or because there would be a change in the extent of Alleghany's controlling interest in IDS. Accordingly, pursuant to the provisions of Section 15(a) of the Act, and provisions in the present investment advisory agreements, such advisory agreements will terminate automatically upon the effective date of the proposed merger. To deal with this situation, the boards of directors of the Investors Group and the boards of managers of the Variable Annuity Funds, at their meetings held on February 8, 1979 and February 21, 1979, respectively, authorized the continuation of the investment advisory agreements approved by the shareholders of the Investors Group on July 12, 1978, and by the contractholders of the Variable Annuity Funds on June 29, 1977. In each instance, such action included the vote of a majority of directors who were not "interested persons", as defined in Section 2(a)(19) of the Act, of any party to the investment advisory agreement, and all of such votes were cast in person at a meeting called for the purpose of voting on said authorization.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction from any provision of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly

intended by the policy and provisions of the Act.

Thus, Applicants request an order of the Commission pursuant to Section 6(c) of the Act temporarily exempting the Applicants from the provisions of Section 15(a) of the Act to the extent necessary to permit the surviving corporation to continue to serve as investment adviser for the Investors Group and, together with IDS Life, to continue to serve as investment advisers for the Variable Annuity Funds, pursuant to the terms and conditions of the present investment advisory agreements, until the final adjournment of the first annual meetings of the shareholders of the Investors Group and the contractholders of the Variable Annuity Funds, subsequent to the effectiveness of the proposed merger. Both of these annual meetings will take place prior to August 1, 1979.

Applicants contend that an order of the Commission pursuant to Section 6(c) of the Act, granting the requested temporary exemption, is necessary or appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act for the following reasons:

(i) Although the proposed merger will increase Alleghany's percentage ownership of IDS, no actual change of control of IDS will occur. The Applicants state that, as the holder of a majority of the outstanding IDS Common Stock, Alleghany presently has the voting power to elect all of the directors of IDS. Furthermore, as controlling shareholder of IDS, Alleghany has the ability to exercise a controlling influence over the business plans and policies of IDS. Moreover, the proposed merger will not result in a change of control of Alleghany. The Applicants state that, since Alleghany Common Stock and Preferred Stock will be issued to IDS shareholders in the proposed merger, the transaction will result in a dilution of the interest of the present shareholders of Alleghany. However, in any event, the family of the late Allan P. Kirby will continue to hold, directly or indirectly in various capacities, substantially more than 25% of the total outstanding Alleghany Common Stock. Allan P. Kirby, Jr. and F. M. Kirby will continue to control the voting of approximately 33% of the shares of Alleghany Common Stock. No other person or group will acquire a controlling interest in Alleghany as a result of the proposed merger.

(ii) While the proposed merger of IDS into a wholly-owned subsidiary of Alleghany will technically constitute an

assignment of the present investment advisory agreements by operation of law, this merger is more analogous to a corporate reorganization than to a transaction giving rise to an actual change of control. The proposed merger will not change the ultimate control of either Alleghany or IDS, nor will it change the manner in which IDS performs its investment advisory services or affect the business of IDS or its ability to provide such investment advisory services to the Investors Group and the Variable Annuity Funds. The Applicants state that, since Alleghany has no current plan to change the officers or employees of IDS, the surviving corporation will conduct the business and operations previously conducted by IDS in substantially the same manner, and with substantially the same assets. Furthermore, it is expected that the same IDS personnel currently responsible for providing investment advisory services will continue to provide such services after the proposed merger.

(iii) Because the proposed merger will not affect the nature of the services provided by IDS pursuant to the present investment advisory agreements, or the ability of the surviving corporation to provide such services after the merger, the cost of holding special shareholder and contractholder meetings to approve new investment advisory agreements is not warranted.

Notice is further given that any interested person may, not later than April 23, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application, accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted; or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any

notices and orders issued in this matter, including the date of the hearing (if ordered), and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[Release No. 10649]

[FR Doc. 79-10462 Filed 4-4-79; 8:45 am]

BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Application for Unlisted Odd-lot Trading Privileges and Opportunity for Hearing

March 29, 1979.

The above-named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted odd-lot trading privileges in the common or capital stock of 122 companies, which securities are listed and registered on one or more of the national securities exchanges. The 122 companies are the issuers of all such securities listed on the New York Stock Exchange ("NYSE") that are currently not listed or admitted to unlisted trading privileges on the Midwest Stock Exchange ("MSE"). A list of such companies is reproduced below.

Previously, the Commission granted an MSE application for unlisted odd-lot trading privileges in the securities of 865 issuers, which securities are among those listed and registered on the NYSE.¹ In granting that application, the Commission found, among other things, (i) that the MSE rules delineate the precise manner in which odd-lot trading will occur in the subject securities; (ii) that trading pursuant to those rules was consistent with the maintenance of fair and orderly markets, and (iii) that the applicable rules provide substantial protections for investors whose odd-lot orders in the subject securities are executed on the MSE. The MSE's instant application is intended simply to augment the number of NYSE-listed securities authorized for odd-lot trading under the MSE Dual Trading System.

Upon receipt of a request, on or before April 23, 1979 from any interested person, the Commission will determine whether the application with respect to any or all of the companies named shall be set down for hearing. Any such request should state briefly the title of

¹ See, Securities Exchange Act Release No. 14800 (May 25, 1978).

the security to which the request pertains, the nature of the interest of the person making the request and the position which the interested party proposes to take at a hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. Reference should be made to File No. 7-5108. If no one requests a hearing with respect to the particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

List of Companies Whose Securities are the Subject of Midwest Stock Exchange, Inc. Application for Unlisted Odd-Lot Trading Privileges

Amsted Industries
Allergan Pharmaceuticals, Inc.
American Heritage Life Investment Corp.
Allegheny Airlines, Inc.
Barry Wright Corp.
Bell Industries
Biscayne Federal Savings & Loan
Banner Industries, Inc.
Butler International, Inc.
Binney & Smith, Inc.
Cooper Industries, Inc.
Corroon & Black Corp.
Chelsea Industries, Inc.
Community Public Service Company
Community Psychiatric Centers
Cessco, Incorporated
CNA Income Shares, Inc.
Coachman Industries, Inc.
Connecticut Natural Gas Corp.
Century Telephone Enterprises, Inc.
Daniel Industries, Inc.
Datapoint Corp.
Dennison Manufacturing Co.
Data Terminal Systems, Inc.
Dynamic Corporation of America
Essex Chemical Corp.
Financial Corp. of America
Foremost-McKesson, Inc.
Fotomat Corp.
Four-Phase Systems, Inc.
Falcon Seaboard, Inc.
Filmways, Inc.
Gelco Corp.
Great Lakes Dredge & Dock Co.
Great Northern Iron Ore Properties
Crow Chemical Corp.
Gray Drug Stores, Inc.
Geosource, Inc.
Hunt International Resources
Hiram-Walker Gooderham Worts Ltd.
Health Tecna Corp.

Hoover Universal
International Aluminum Corp.
INA Investment Securities, Inc.
Interway Corp.
Jamesway Corp.
Keystone International, Inc.
KLM Royal Dutch Airline
Kollmorgen Corp.
Koracorp Industries, Inc.
Kuhlman Corp.
LITCO Corp. of N.Y.
Lanier Business Products, Inc.
Lee Enterprises, Inc.
Southwest Airlines Co.
McDonough Co.
Medtronic, Inc.
Medenco, Inc.
Metro-Goldwyn-Mayer Inc.
Mark Controls Corp.
Miller-Wohl Co., Inc.
Modern Merchandising Inc.
McMoRan Exploration Co.
Minnesota Power & Light Co.
Milton Roy Co.
Memorex Corp.
Mercantile Texas Corp.
Measurix Corp.
Northern California Savings & Loan Assoc.
New England Nuclear Corp.
Newpark Resources, Inc.
Overhead Door Corp.
Outlet Company
Pertec Computer Corp.
Petroleum & Resources Corp.
Puritan Fashions Corp.
Pengo Industries
Perkin-Elmer Corp.
Pacific Lumber Co.
Plantronics, Inc.
Pacific Northwest Bell Telephone Co.
Pogo Producing Co.
Prime Computer, Inc.
Northern Central Railway
Penn Central Corp.
R.L. Burns Corp.
RLC Corp.
Rohm Corp.
Ryan Homes, Inc.
Sun Electric Corp.
Seafirst Corp.
Shaklee Corp.
Standard Motor Products, Inc.
Standard Pacific Corp.
Spectra-Physics, Inc.
Sterling Bancorp
Transamerica Income Shares, Inc.
Twin Disc, Inc.
Tidewater, Inc.
Tokheim Corp.
Trico Industries
Toro Company
Texas Industries, Inc.
Tymshare, Inc.
Wabash, Inc.
Wyly Corp.
Wisconsin Power & Light Co.
WUI Inc.
Wyle Laboratories
Hartfield Zody's Inc.
Veeco Instrument
Christiana Companies
Federal Express Corp.
Fox-Stanley Photo Products
General Care Corp.
The Manhattan Life Corp.

National Liberty Corp.
Orion Capital Corp.
PIH Group, Inc.
Sta-Rite Industries Inc.
Van Dorn Co.
Vulcan, Inc.

[Release No. 15684]

[FR Doc. 79-10463 Filed 4-4-79; 8:45 am]

BILLING CODE 8010-01-M

New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

March 27, 1979.

On December 6, 1978, the New York Stock Exchange, Inc., 11 Wall Street, New York, New York 10005 ("NYSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) [the "Act"] and Rule 19b-4 thereunder, copies of a proposed rule change which authorizes the NYSE, after written notice, to summarily suspend an employee or approved person from association with an NYSE member if the employee or approved person fails to pay a fine assessed by the NYSE within 45 days of the date on which the fine became due.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 15543, January 30, 1979) and by publication in the Federal Register (44 FR 7854, February 7, 1979). No comments with respect to the proposed rule change have been received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[Release No. 15680; SR-NYSE-78-69]

[FR Doc. 79-10464 Filed 4-4-79; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Proposed Rule Change by Pacific Securities Depository Trust Co.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15

U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on February 22, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change replaces the pilot Transfer Agent Custodian ("TAC") Agreement with a revised TAC Agreement.

The proposed rule change relates to PSDTC's filing on form 19b-4A, File No. SR-PSD-76-1.

Statement of Basis and Purpose

The purpose of the proposed rule change is to refine and replace the outdated pilot TAC Agreement ("Old Agreement"), and to make certain substantive changes in that Agreement. Specifically, the revised TAC Agreement ("New Agreement") changes the reporting requirements imposed upon individual custodians to require periodic statements of account concerning transactions in each security for which the custodian is the transfer agent, not necessarily on a daily basis, but at a minimum to include a statement at the end of each business week and month showing the balance held for each issue. This more flexible system provides PSDTC with information adequate for its requirement without imposing undue hardship on certain custodians.

A related change defines "balance certificate" in a manner designed to reduce the actual preparation and use of physical certificates through utilization of book entries by the custodian. This reduces the documentation required of the custodians while still enabling immediate reporting of share balances and rapid obtaining of certificates when necessary.

The New Agreement also states that, in instances in which no actual certificate exists, instructions by PSDTC to transfer shall constitute a presentation of the "balance certificate" to the custodian. PSDTC agrees to indemnify the custodian for actions taken in accordance with PSDTC's instructions.

A final substantive change is the inclusion in the New Agreement of language designed to address the lien prohibition in the hypothecation rules under the Securities Exchange Act of 1934, specifically rules 8c-1 and 15c2-1. This language narrowly defines those instances in which a custodian may refuse to promptly deliver securities as directed by PSDTC, with specific

exclusion of a mere assertion of claim or lien as a basis for such refusal.

The New Agreement enhances PSDTC's capacity to facilitate the prompt and accurate clearance and settlement of securities transactions by reducing the reporting requirements and other documentation necessary on the part of the custodian, thus reducing transfer turnaround time. It helps to safeguard securities for which PSDTC is responsible by reducing the movement of actual certificates and maintaining securities in a non-negotiable form. It complies with the rules and regulations under the Securities Exchange Act of 1934 (the "Act") by including language addressing the lien prohibition in the hypothecation rules, specifically Rules 8c-1(g) and 15c2-1(g). There is also compliance with the Act in allowing expanded participation, since the Old Agreement referred only to national banking associations as potential custodians.

Comments were solicited from participants. No written comments were received. The only oral comments received were general positive statements that did not include suggested alterations.

PSDTC perceives no burden on competition by reason of the proposed rule change.

Within 35 days of the April 5, 1979, publication of this notice in the *Federal Register* (May 10, 1979), or within such longer period (i) as the Commission may designate up to 90 days of such date (June 4, 1979) if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number

referenced in the caption above and should be submitted on or before April 26, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

March 30, 1979.

[Release No. 34-15686; File No. SR-PS-78-3]

[FR Doc. 79-10467 Filed 4-4-79; 8:45 am]

BILLING CODE 8010-01-M

Shell Oil Co.; Application and Opportunity for Hearing

March 22, 1979.

Notice is hereby given that Shell Oil Company, a Delaware corporation, (the "Applicant") has filed an application pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeships of Bankers Trust Company, a New York corporation ("Bankers"), under

(i) An indenture qualified under the Trust Indenture Act, dated as of April 15, 1977 (the "1977 Indenture"), between Bankers and the Applicant, and

(ii) An indenture of trust and first preferred ship mortgage not so qualified, dated as of March 7, 1979 (the "New Indenture"), between Bankers and United States Trust Company of New York, a New York corporation (the "Owner Trustee"), not in its individual capacity but solely as trustee under a trust agreement, dated as of January 31, 1979 (the "Trust Agreement"), between the Owner Trustee and General Electric Credit And Leasing Corporation, a Delaware corporation, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bankers from acting as trustee under the 1977 Indenture or the New Indenture.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect (with certain exceptions), that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), such other

indenture may be excluded from the operation of this provision if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as such under one of such indentures.

The Applicant alleges the following:

1. The 1977 Indenture relates to the issuance by the Applicant of its 8% Debentures Due 2007 (the "1977 Debentures"), which are issued in an aggregate principal amount of \$300,000,000. A copy of the 1977 Indenture was filed as an exhibit to the Applicant's Registration Statement No. 2-58580 under the Securities Act of 1933, as amended (the "Securities Act"), and is incorporated herein by reference. The 1977 Debentures issued under the 1977 Indenture are subject to redemption, in part, on April 15 or October 15, 1988, and on each April 15 or October 15 thereafter, to and including October 15, 2006, at 100% of the principal amount thereof together with accrued interest to the date fixed for redemption, pursuant to the terms of the mandatory sinking fund provided in the 1977 Indenture.

2. The 1977 Debentures constitute "indenture securities" and the Applicant is the "obligor" thereon, as such terms are defined in Section 303 of the Trust Indenture Act.

3. The Owner Trustee intends to finance a part of the acquisition cost of a steam screw oil tanker (Shipbuilder's Hull No. 613) built at Newport News, Virginia, to be documented under the laws of the United States and to be named the U.S.T. ATLANTIC (the "Vessel"), through the placement with institutional investors of approximately \$61,586,545 principal amount of 9.30% Secured Ship Financing Notes (the "1979 Notes"), issued pursuant to the New Indenture and payable in 46 consecutive semiannual installments commencing on the date six months after the Delivery Date of the Vessel. The Delivery Date, as defined in the New Indenture, means the date on which the Vessel is simultaneously (i) delivered to the Owner Trustee by the shipbuilder, (ii) demise chartered by the Owner Trustee to VLCC I Corporation, a Delaware Corporation (the "Demise Charterer"), under the demise charter dated as of the date of the New Indenture (the "Demise Charter"), and (iii) time chartered by the Demise Charterer to the Applicant under the time charter dated as of the date of

the New Indenture (the "Time Charter"). The 1979 Notes will be secured by the Vessel and by all right, title and interest of the Owner Trustee in and to (i) the Demise Charter (excluding the fees, expenses and disbursements of the Owner Trustee, after the Delivery Date, payable pursuant to the Trust Agreement, (ii) the guaranty agreement from the Applicant to the Owner Trustee dated as of the date of the New Indenture (the "Guaranty") guaranteeing the due and punctual payment of all sums specified in the Demise Charter as payable by the Demise Charterer to the Owner Trustee, (iii) the assignment from the Demise Charterer to the Owner Trustee of certain of its rights, title and interest in and to the Time Charter, and (iv) other documents and income more fully described in the granting clause of the New Indenture, all as provided in the New Indenture. Copies of a proof of the participation agreement and other documents (combined as a single document) setting forth the terms and provisions governing the 1979 Notes which are to be issued under the New Indenture are annexed to the Applicant's application as Exhibit A. It is anticipated that the New Indenture will be executed and the initial issuance of notes thereunder will occur in March 1979.

4. Section 2(4) of the Securities Act states that "with respect to equipment-trust certificates or like securities, the term 'issuer' means the person by whom the equipment or property is or is to be used. . . ." As the 1979 Notes to be issued under the New Indenture will be secured, *inter alia*, by the Vessel, and as the proceeds of the sale of the 1979 Notes will be used to finance a part of the acquisition cost of the Vessel, the 1979 Notes may arguably be "equipment-trust certificates or like securities" within the meaning of Section 2(4). Since the Applicant will be the time charterer of the Vessel under the Time Charter, the Vessel may arguably be said to be "equipment or property . . . to be used" by the Applicant, and the Applicant thus may arguably be construed to be (considering also the Guaranty) the "issuer" of the 1979 Notes for purposes of the Securities Act. Under this analysis, upon the issuance of the 1979 Notes, a conflict conceivably may exist under Section 310(b) of the Trust Indenture Act with respect to Bankers' trusteeship under the 1977 Indenture due to such Section's statement that "an indenture trustee shall be deemed to have a conflicting interest if . . . such trustee is trustee under another indenture under which any other securities . . . of any obligor

upon the indenture securities are outstanding. . . ."

5. The Applicant's obligations under the 1977 Indenture and its obligations under the Time Charter and under the Guaranty are wholly unsecured and rank equally *pari passu* and therefore there is no material likelihood of a conflict of interest should Bankers be obligated to proceed against the Applicant under the 1977 Indenture and the New Indenture.

6. The Applicant is not in default under the 1977 Indenture or the New Indenture.

The Applicant has waived (i) notice of hearing, (ii) hearing on the issues raised by its application, and (iii) all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a further statement of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than April 16, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[File No. 22-9885]

[FR Doc. 79-10465 Filed 4-4-79; 8:45 am]

BILLING CODE 8010-01-M

The Thrift and Profit Sharing Retirement Plan of Latham & Watkins; Application for Exemption

March 27, 1979.

Notice is hereby given that the law firm of Latham & Watkins, 555 South Flower Street, Los Angeles, CA 90071 ("Applicant" or the "Firm"), a California

partnership, by letter dated January 23, 1979, and enclosures submitted therewith, has applied for an exemption from the registration requirements of the Securities Act of 1933 (the "Act") for participations or interests issued in connection with The Thrift and Profit Sharing Retirement Plan of Latham & Watkins (the "Plan"). All interested persons are referred to the letter and enclosures which are on file with the Commission for the facts and representations contained therein, which are summarized below.

I. Introduction

Applicant represents that the Plan covers the Applicant's partners and full time employees, of whom approximately 50 partners and 79 employees were eligible to participate as of December 31, 1978. Full time employees or partners of the Firm who have completed three years of service (as defined) become participants of the Plan at intervals provided in the Plan.

Applicant states that the Plan covers persons (in this case, Applicant's partners) who are employees within the meaning of Section 401(c)(1) of the Internal Revenue Code (the "Code"). Such a plan is excepted from the exemption provided by employee benefit plans. Section 3(a)(2) of the Act provides, however, that the Commission may exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit sharing plan which covers employees, some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

II. Description and Administration of the Plan

Applicant reports that the Plan has received a determination letter from the United States Internal Revenue Service that it is qualified under Section 401(a) of the Code. The Plan is also an employee pension benefit plan which is subject to the Employee Retirement Income Security Act of 1974 ("ERISA") and to the rules, regulations and standards of the Department of Labor adopted thereunder. The Plan is funded through a single trust of which three partners of the Firm currently act as trustees under a trust agreement.

All required contributions to the Plan on behalf of employees or partners are

made by the Firm, without contribution by the participant, in an amount equal to the lesser of \$7500 or 7½% of the participant's compensation in each Plan year. In addition, under the Plan each participant is permitted to make voluntary additional contributions to his account in the Plan, in a lump sum or through withholding, of up to an additional 10% of his annual compensation, currently limited by Plan rules to the first \$100,000 of such compensation. All Firm and voluntary contributions are at all times fully vested and nonforfeitable, but withdrawal of Firm contributions and earnings on voluntary contributions by a participant is restricted in accordance with applicable tax laws.

Contributions are held in four funds, the first two of which are commingled and invested in a portfolio of equity and debt securities. Specified firm contributions for the account of legal personnel and partners are invested in the first fund, and all other Firm contributions are, except as described below, invested in the second fund. These funds are managed by Scudder, Stevens & Clark, an independent investment counseling firm. The third fund includes only contributions directed to such fund by a participant, is invested solely in debt securities, and is managed by Scudder, Stevens & Clark. The fourth fund consists of individually directed investments of participants, such as savings accounts, stocks, municipal bonds or other securities. All investment discretion with respect to the fourth fund is exercised by each participant as to his individual account within that fund. Assets invested in the first three funds are held by Lloyds Bank of California, as custodian. Assets invested in the fourth fund are held by the trustees.

Any participant may at any time withdraw all or any part of the aggregate of his voluntary contributions, but may not withdraw earnings thereon without certain penalties as required by applicable tax laws. Upon termination of a participant's employment for any reason, or in the event of permanent disability, the participant or his designated beneficiary is entitled to receive the entire amount of the Firm's and his personal contributions to his account under the Plan, adjusted for gains and losses thereon. The participant or his beneficiary may elect to receive such distribution in either a lump sum payment in cash or through payment of installments for a set term.

The Plan is administered by the managing partner of the Firm or his designee, presently a committee

composed of three persons. The committee has general authority to control the operation of the Plan and to supervise its administration, including interpreting the Plan, determining eligibility for participation under the Plan, adopting rules with respect to the Plan, and conducting claims procedures under the Plan. All costs of administration of the Plan are paid by the Firm.

III. Reporting and Disclosure to Plan Participants

Applicant represents that the Plan is subject to ERISA, and that the Firm must comply with all applicable ERISA reporting and disclosure requirements. ERISA requires a summary description of the Plan and a summary of the Plan's annual report to be delivered to each participant and persons currently receiving benefits under the Plan. Each participant and person receiving benefits under the Plan must also be informed that the full annual report of the Plan is available upon request. All reports and other basic documents relating to the Plan must be available to participants for their review, and copies must be supplied to participants at no charge upon request. At least annually, each participant must be notified of the value of his account under the Plan, and an ERISA notice briefly describing to participants their rights to information must be distributed.

IV Discussion

Applicant states that the exemption from registration provided by Section 3(a)(2) of the Act is not available because of the participation in the Plan of applicant's partners, who are "employees" within the meaning of Section 401(c)(1) of the Code. If Applicant's business were organized in corporate form, interests and participations in the Plan would be exempt from registration pursuant to Section 3(a)(2) of the Act. Applicant submits that the intent of Congress in drafting Section 3(a)(2) of the Act was to prevent the sale, without registration, of interests in mass-marketed plans offered by financial institutions to self-employed persons who might be unable to protect adequately their interests and those of their participating employees. Applicant's plan is not a mass marketed master or prototype retirement plan, but is, according to Applicant, an individualized plan covering eligible employees of Applicant only.

Finally, Applicant states that it is engaged in furnishing legal services of a type which necessarily involves financially sophisticated and complex

matters, and for that reason, as well as the extensive administrative control over the Plan maintained by the Firm, is able to represent adequately its interests and the interests of its employees who are participants in the Plan.

Applicant concludes for the foregoing reasons that granting the request for the exemptive order would be appropriate in the public interest, consistent with the protection of investors and the purposes, the policy and provisions of the Act.

Notice is further given that any interested person may, not later than April 23, 1979, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously within the request. An order disposing of the application will be issued as of course following April 23, 1979, unless the Commission thereafter orders a hearing upon request or upon the Commission's on motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[Rel. No. 6043; 18-34]

[FR Doc. 79-10466 Filed 4-4-79; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Alaska; Declaration of Disaster Loan Area

Matanuska-Susitna Borough and adjacent Boroughs within the State of

Alaska constitute a disaster area as a result of damage caused by gale force winds, extremely cold weather and heavy snowfall which occurred on February 1, 1979 through February 10, 1979. Applications will be processed under provisions of Public Law 94-305. Interest rate is 7½ percent. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on May 29, 1979, and for economic injury until the close of business on December 31, 1979, at:

Small Business Administration,
District Office, Suite 200 Anchorage
Legal Center, 1016 West Sixth Avenue,
Anchorage, Alaska 99501,
or other locally announced locations.

(Catalog of Federal Domestic Assistance
Program Nos. 59002 and 59008.)

Date: March 29, 1979.

A. Vernon Weaver,
Administrator.

[Declaration of Disaster Loan Area 1595]

[FR Doc. 79-10416 Filed 4-4-79; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Meeting

The Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, Hawaii, will hold a public meeting on Friday, April 27, 1979, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Room C-270, Honolulu, Hawaii, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call David K. Nakagawa, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2213, Honolulu, Hawaii 96850—(808) 546-8950.

Dated: March 30, 1979.

K Drew,

Deputy Advocate for Advisory Councils.

[FR Doc. 79-10417 Filed 4-4-79; 8:45 am]

BILLING CODE 8025-01-M

Texas Declaration of Disaster Loan Area

The above numbered Declaration (See F.R. 44 11019) and Amendment #1 (See 44 F.R. 12530), are amended by adding the following counties:

| County | Natural disaster(s) | Date(s) occurred | |
|----------|---------------------|-----------------------------|---|
| | | Before 10/1/78 (P.L. 95-89) | After 9/30/78 (P.L. 94-305) |
| Bee | Severe freeze | | 12/19/78-12/21/78, 12/31/78, 1/1/79-1/13/79 |
| Cameron | Hard freeze | | 1/2/79-1/3/79 |
| Hidalgo | Freeze | | 12/9/78-12/10/78, 1/2/79-1/3/79 |
| Live Oak | Severe freeze | | 12/19/78-12/21/78, 12/31/78, 1/1/79-1/3/79 |
| McMullen | Severe freeze | | 12/19/78-12/21/78, 12/31/78, 1/1/79-1/3/79 |
| Starr | Hard freeze | | 12/9/78-12/10/78, 1/2/79, 1/3/79 |
| Willacy | Freeze | | 12/9/78-12/10/78, 1/1/79-1/2/79 |
| Brewster | Drought | 6/7/78-12/31/78 | |
| Terrell | Drought | 6/15/78-12/31/78 | |

and adjacent counties within the State of Texas as a result of natural disasters as indicated. All other information remains the same; i.e., the termination date for filing applications for physical damage is close of business on August 7, 1979, and for economic injury until the close of business on November 7, 1979.

(Catalog of Federal Domestic Assistance
Program No. 59002 and 59008)

Dated: March 13, 1979.

A. Vernon Weaver,
Administrator.

[Amdt. 2]

[FR Doc. 79-10418 Filed 4-4-79; 8:45 am]

BILLING CODE 8025-01-M

SMALL BUSINESS ADMINISTRATION

Associate Administrator for Procurement Assistance; Delegation of Authority

Delegation of Authority No. 13, Revision 1 (39 FR 29444), as amended (40 FR 18055), is hereby revised to reflect the transfer of Section 8(a) contracting authority from the Associate Administrator for Procurement Assistant to the Associate Administrator for Minority Small Business and Capital Ownership Development as a result of Pub. L. 95-507 (October 24, 1978).

Accordingly, Delegation of Authority No. 13, Revision 2, reads as follows:

i. Pursuant to the authority vested in the Administrator of the Small Business Administration by the Small Business Act, 72 Stat. 384, as amended and the Small Business Investment Act of 1958, 72 Stat. 689, as amended, there is hereby delegated to the Associate Administrator for Procurement Assistance the following authority:

A. Procurement Assistance. 1. To (a) enter into, (b) negotiate, and (c) recommend approval of joint agreements and memoranda of understanding with other Government contracting, procurement, or disposal agencies;

2. To take any and all actions necessary to carry out the provisions of joint agreements and memoranda of understanding with other Government contracting, procurement, or disposal agencies;

3. To take any and all actions necessary to carry out SBA's authority to insure that a fair proportion of total Government procurements, including research and development procurements, be made from small business;

4. To take any and all actions necessary to carry out SBA's authority to encourage the letting of subcontracts by prime contractors to small business concerns;

5. To take any and all actions necessary to carry out SBA's authority to insure that a fair proportion of the total sales of Government property be made to small business concerns;

6. To appeal determinations made under joint agreements or memoranda of understanding by Government contracting, procurement or disposal agencies to the heads of such agencies;

7. To take any and all actions relating to SBA prime contracting authority;

8. To take any and all actions necessary to carry out the certificate of competency provisions of the Small Business Act, including the issuance or denial of such certificates;

9. To take any and all actions necessary to carry out SBA's authority to make an inventory of productive facilities of small business concerns;

10. To take any and all actions necessary to carry out SBA's authority to utilize effectively the productive facilities of small business concerns.

11. To take any and all actions necessary to carry out SBA's authority to enable small business to obtain materials from its normal sources;

12. To take any and all actions necessary to carry out SBA's authority for procurement assistance in surplus labor areas and area redevelopment areas in the implementation of

procurement assistance programs in such areas.

II. The authority delegated herein may be redelegated to Central Office officials with the exception of subsection IA1(a) and IA6.

III. All authority delegated herein may be exercised by any Small Business Administration employee designated as Acting Associate Administrator for Procurement Assistance.

Effective Date: April 5, 1979.

Dated: April 2, 1979.

A. Vernon Weaver,
Administrator.

[Delegation of Authority No. 13, Rev. 2]

[FR Doc. 79-10502 Filed 4-4-79; 8:45 am]

BILLING CODE 8025-01-M

Delegation of Authority to the Assistant Administrator for Minority Small Business and Capital Ownership Development

Pub. L. 95-507 (October 24, 1978) authorized the appointment in SBA of an Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSBCOD) with responsibility for coordinating and formulating policies relating to Federal assistance to small business concerns eligible for assistance under Section 7(i), 7(j) and 8(a) of the Small Business Act. Therefore, Delegation of Authority No. 17, Revision 1, to the Assistant Administrator for Management Assistance (39 FR 43675 effective 23 August 1974) is hereby revoked and authority for Technical or Management Assistance (406 Program) is transferred to the AA/MSBCOD. Additionally, the Section 8(a) contracting authority is hereby transferred to AA/MSBCOD from the Associate Administrator for Procurement Assistance. Accordingly, the following authority is delegated.

I. Pursuant to the authority vested in the Administrator by the Small Business Act, 72 Stat. 384, as amended, and the Small Business Investment Act of 1958, 72 Stat. 689, as amended, there is hereby delegated to the Associate Administrator for Minority Small Business and Capital Ownership Development the following authority:

A. Section 8(a)(1)(A) Contracting Authority

1. To enter into contracts on behalf of the Small Business Administration with the United States Government and any department, agency, or officer thereof having procurement powers, obligating the Small Business Administration to furnish articles, equipment, supplies, services, or materials to the Government

or to perform construction work for the Government.

2. To certify to any officer of the Government having procurement powers that the Small Business Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer.

3. To submit for determination to the Secretary or the head of the appropriate department or agency cases where SBA and the procurement officer fail to agree on terms and conditions of contracts in para. 1 above.

B. Section 8(a)(1)(B) Contracting Authority (This is a pilot program and the authority therefor expires on September 30, 1980)

1. To enter into contracts with Department of the Army, to furnish articles, equipment, supplies, services, or materials, or to perform construction work for such agency.

2. To certify to any officer of the Department of Army having procurement powers that the Small Business Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer.

3. To notify, in writing, the Secretary of the Army of disagreement between DA procurement officers and SBA on terms and conditions of proposed contracts. Upon receipt of reply from Secretary of the Army stating the terms and conditions upon which such procurement contract may be let, to accept such procurement contract or withdraw prior certification that SBA is competent and responsible to perform such contract.

C. Subcontracting

To arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for the construction work, services or the manufacture, supply, or assembly of such articles, equipment, supplies, or materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Small Business Administration to perform such contracts.

D. Technical or Management Assistance (7j Program)

1. To execute grants, agreements, and contracts to provide financial assistance to public or private organizations to pay all or part of the cost of projects

designed to provide technical or management assistance to individuals or enterprises eligible for assistance under sections 7(i), 7(j)(10), and 8(a) of the Small Business Act, as amended, with special attention to small businesses located in areas of high concentration of unemployed or low-income individuals, to small businesses eligible to receive contracts pursuant to section 8(a) of the Small Business Act.

Such financial assistance may be provided for projects, including, but not limited to:

- a. Planning and research, including feasibility studies and market research;
- b. The identification and development of new business opportunities;
- c. The furnishing of centralized services with regard to public services and Federal government programs including programs authorized under sections 7(i), 7(j)(10), and 8(a) of this Act;
- d. The establishment and strengthening of business service agencies, including trade associations and cooperatives; and
- e. The furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

II. The authority delegated herein may be redelegated to Central Office officials.

III. All authority delegated herein may be exercised by any SBA employee designated as Acting Associate Administrator for Minority Small Business and Capital Ownership Development.

Effective Date: April 5, 1979.

Dated: March 30, 1979.

William H. Mauk, Jr.,
Acting Administrator.

[Delegation of Authority No. 16]

[FR Doc. 79-10501 Filed 4-4-79; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Louisville, Kentucky and Nashville, Tennessee, will hold a public meeting April 19 and 20, 1979, at the Lure Lodge, Lake

Cumberland State Resort Park in Jamestown, Kentucky, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call R. B. Blankenship, District Director, U.S. Small Business Administration, Federal Office Building, Room 188, 600 Federal Place, P.O. Box 3517, Louisville, Kentucky 40202.

Dated: March 30, 1979.

K Drew,

Deputy Advocate for Advisory Councils.

[FR Doc. 79-10503 Filed 4-4-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

Ship Structure Subcommittee Meeting

Pursuant to Section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Ship Structure Subcommittee to be held Monday, May 7, 1979 at 9:00 A.M. at the Maritime Administration, 14th and Constitution Avenue, Washington, D.C. The agenda for this meeting is as follows: The proposed research program of the Ship Structure Committee for Fiscal Year 1980 will be discussed and reviewed, and recommendations for research projects to be funded will be established.

Attendance is open to the interested public. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify LCDR T. H. Robinson USCG, Secretary, Ship Structure Committee, U.S. Coast Guard Headquarters, Washington, D.C. 20590, (202) 426-2205 not later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[79-048]

[FR Doc. 79-10458 Filed 4-4-79; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA), Special Committee 136—Installation of Emergency Locator Transmitters (ELT) in Aircraft; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Special Committee 136 on Installation of Emergency Locator Transmitters in Aircraft (ELT) to be held April 24 through 26, 1979, in RTCA Conference Room 261, 1717 H Street, N.W., Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of Third Meeting held December 12 through 14, 1978; (3) Working Group Reports; (4) Working Groups meet in separate Sessions; (5) Assignment of Tasks; and (6) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact the RTCA Secretariat, 1717 H Street, N.W., Washington, D.C. 20006; (202) 296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on March 23, 1979.

Karl F. Bierach,
Designated Officer.

[FR Doc. 79-10277 Filed 4-4-79; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Control Tower; Notice of Commissioning

Notice is hereby given that on June 15, 1979, through October 1, 1979, the Airport Traffic Control Tower at the Martha's Vineyard Airport, Martha's Vineyard, Massachusetts, will be commissioned as a part-time facility. Tower hours of operation and the effective hours of the Martha's Vineyard, Massachusetts, Control Zone, will be established in advance by a Notice to Airmen, and, therefore, be published in the Airmen's Information Manual. The designated facility

identification for the FAA Airport Control Tower: Vineyard Tower. This information will be reflected in the FAA Organization Statement the next time it is issued.

Communications to the tower should be directed to: Federal Aviation Administration, Airport Traffic Control Tower, Post Office Box 71, Vineyard Haven, Massachusetts 02568.

[Section 313(a), 72 Stat. 752; 49 USC 1354(a) and Section 6(c) of the Department of Transportation Act (49 USC 1655(c))]. Issued in Burlington, Massachusetts, on March 28, 1979.

Robert E. Whittington,
Director, New England Region.

[FR Doc. 79-10479 Filed 4-4-79; 8:45 am]

BILLING CODE 4910-13-M

Materials Transportation Bureau

Transport of Radioactive Materials; Request for Public Advice on Revising International Regulations

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Request for public comment.

SUMMARY: The International Atomic Energy Agency is preparing to review and revise as necessary its "Regulations for the safe Transport of Radioactive Materials", 1973 Revised Edition. This publication invites public comment and input on specific topics that should be addressed in the review and on specific changes to the IAEA regulations that should be considered.

DATE: Comments should be received on or before May 1, 1979.

ADDRESS COMMENTS TO: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. It is requested that five copies be submitted.

FOR FURTHER INFORMATION CONTACT: R. R. Rawl, Office of Hazardous Materials Regulation, Materials Transportation Bureau, U.S. Department of Transportation, 2100 Second Street, SW., Washington, D.C. 20590, telephone 202-426-0656.

SUPPLEMENTARY INFORMATION: In 1959, at the request of the Economic and Social Council of the United Nations, the International Atomic Energy Agency (IAEA) undertook the development of international regulations for the safe transportation of radioactive materials. The initial regulations published by the Agency in 1961 were recommended to member states as the basis for national regulations and for application to

international transportation, as a result of extensive revision in 1963 and 1964, and further effort in 1966, a version of the IAEA "Regulations for Safe Transport of Radioactive Materials, Safety Series No. 6" was published in 1967. The IAEA regulations have since been adopted generally by most of the nations of the world as a basis for their own national regulations governing the transportation of radioactive materials.

Since 1966, the U.S. Nuclear Regulatory Commission (USNRC) (formerly the Atomic Energy Commission (AEC)) has issued regulations which are substantially in conformance with IAEA standards for fissile radioactive materials and large quantities of radioactive materials. On October 4, 1968, the Hazardous Materials Regulations Board of the Department of Transportation (DOT) published amendments which were also in substantial conformance with the 1967 IAEA standards (Docket HM-2, 33 FR 14918).

In February 1969, recognizing that the international standards should be revised from time-to-time on the basis of scientific and technical advances, as well as accumulated experience in their application, the IAEA invited all of its member states to submit comments and suggested changes to the regulations. Another aim was to remove any ambiguities and to simplify the presentation of the text of the regulations.

Comments and suggested revisions to the IAEA regulations were then collected by DOT from the AEC, the American National Standards Institute (ANSI), Atomic Industrial Forum, and others. As a result of that effort a compilation of some 40 comments was then forwarded by DOT to the IAEA in July 1969. Some of these suggested changes were intended to make a more positive alignment of the U.S. regulations with the IAEA regulations possible.

A final Review Panel of experts was convened by the IAEA in October 1971, to finalize the revisions. As a result of that Panel, the IAEA subsequently issued its "Safety Series No. 6, Regulations for the Safe Transport of Radioactive Materials, 1973 Revised Edition", in late 1973. Since that time most major countries and international transport organizations, i.e., Inter-Governmental Maritime Consultative Organization (IMCO), International Air Transport Association (IATA), European Agreement for the Carriage of Dangerous Goods by Rail (RID); European Agreement Concerning International Carriage of Dangerous

Goods by Road (ADR), have completed revising their own regulations to achieve conformity with the 1973 IAEA Standards.

The DOT issued a notice of proposed rulemaking on January 8, 1979, (Docket HM-169; Notice 79-1, 44 FR 1852) which would, in conjunction with a soon to be published NRC proposal, bring the U.S. regulations into alignment with the 1973 Revised Edition of the IAEA regulations. With the exception of the packaging requirements for low specific activity materials and low level solid materials, the proposed regulations in HM-169 are essentially the same as the 1973 revised edition of the IAEA transport regulations.

Since it is recognized that the international standards need to be updated periodically (as was accomplished by the 1973 revision), the IAEA has initiated plans for a comprehensive review of the transport regulations. This review is aimed at identifying any areas where the regulations may be improved or simplified and is one of the first steps directed toward producing a 1983 revised edition of "Safety Series No. 6."

As a part of the compilation of the U.S. recommendations for improving the IAEA transport regulations, the DOT is requesting public input and advice on this matter. This input may be based on scientific and technological progress that has been made since the last revision as well as experience gained in operating under the IAEA regulations in international transportation. Comments are requested in either of two areas, which are:

1. Specific topics or issues that should be addressed in the comprehensive review, and
2. Specific proposals for changes in the IAEA regulations.

Any comments suggesting specific changes may address either substantive issues or may be of an editorial nature intended to improve the clarity of the regulations. In the submittal of comments on specific changes it is requested that the following information be provided:

(a) The current text of the 1973 Revised Edition of the IAEA Regulations, considering the minor amendments and changes promulgated in 1975 and 1977;

(b) A concise explanation of the reasons for the proposed change; and,

(c) The proposed new wording.

All comments received will be considered and included, as far as practical, in the U.S. recommendations to the IAEA.

Issued in Washington, D.C. on March 29, 1979.

Alan I. Roberts,
Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 79-10262 Filed 4-4-79; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

Proposed Plan for Highway Safety Research, Development and Demonstration (Section 403 of Title 23, USC) for Fiscal Years 1980-1984

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

ACTION: Request for public comment.

SUMMARY: This notice invites public comment on a proposed five year plan for the highway safety research, development and demonstration activities to be conducted under Section 403 of Title 23 of the United States Code (hereafter referred to as Five Year 403 Program Plan).

NHTSA has developed a comprehensive five year plan for its highway safety research, development, and demonstration program. The proposed Five Year 403 Program Plan document consists of two sections. Section I presents goals and objectives, issues and policies, criteria for setting program priorities, criteria description, application of criteria and program priority rationale, process for allocating funds, program characterization, discussion of technology transfer and implementation, and issues for public comment. Section II contains summaries of each proposed program area, which include descriptions of: (1) background, (2) approach, (3) project areas and potential final products, and (4) proposed funding levels for each project area by year.

Because of its length, the proposed Five Year 403 Program Plan will not be published in the *Federal Register* in its entirety and as such is not contained with this notice. Individuals interested in commenting on the five year plan may obtain copies from the address shown below. In late March 1979, implementation Plans which contain more detailed information will be available from the same address for each proposed program area.

The proposed Five Year 403 Program Plan is concerned only with those activities funded under the Highway Safety Act of 1966 and not those activities, such as Motor Vehicle Rulemaking, funded under the National

Traffic and Motor Vehicle Safety Act of 1966. A five year plan for Motor Vehicle Safety and Fuel Economy Rulemaking was published March 16, 1978 (43 FR, pages 11100-11107) and will be revised shortly.

This plan will be updated periodically in response to the dynamic environment in which highway safety program planning takes place. Publication of the proposed Five Year 403 Program Plan will provide the highway safety community and members of the general public with an opportunity to participate in the early stages of NHTSA's planning process. This process will include a Highway Safety Program Conference (403 Conference) for highway safety personnel to be conducted by the Transportation Research Board (TRB) of the National Academy of Sciences, April 22-26, 1979, at the Dulles Marriott Hotel, Dulles Access Road, Chantilly, Virginia. The public is invited to attend and observe the conference but participation as a conference member will be by TRB invitation only. A detailed agenda for the Conference will be published in a subsequent notice. The resulting TRB Conference Report, along with comments to the docket, will form the basis for publication of the final Five Year 403 Program Plan late in 1979.

DATES: Comments to the docket are due by July 2, 1979.

DOCKET COMMENTS: Comments should refer to the docket number and must be submitted (preferably in ten copies) in writing to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590.

Interested persons may obtain single copies of the proposed Five Year 403 Program Plan and individual Implementation Plans (when they are available), by contacting Ms. Eleanor Kitts, Office of Management Services, National Highway Traffic Safety Administration, Room 4423, 400 7th Street, S.W., Washington, D.C. 20590 202-426-0874.

Parties interested in more detailed 403 Conference information (e.g., public observation, conference participation) as well as copies of the 403 Conference Proceedings and Report should contact Mr. James K. Williams, National Academy of Sciences, Transportation Research Board, 2101 Constitution Avenue, N.W., Washington, D.C. 20418 202-389-6466.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Delahanty, Chief, Special Projects Planning Staff, Office of Plans and Programs, National Highway Traffic Safety Administration, Room 5212, 400

Seventh Street, S.W., Washington, D.C. 20590 202-426-1570.

Interested persons are invited to submit written comments on all aspects of this proposal. To facilitate review of comments, the Agency requests that a limit of 30 pages be observed. Additional supporting material may be submitted as appendices or attachments. Comments should refer to Docket Number 79-05 and be submitted to the Docket Section at the address provided at the beginning of this notice.

Comments will be available for examination in the Docket Section at the above address both before and after the closing date. To the extent possible, comments filed after the closing date will also be considered or they may be treated as suggestions for future changes in the plan. However, the issuance of the final Five Year 403 Program Plan will not occur until after the TRB completes a report on the 403 Conference. Since changes will be reflected by periodically updating the plan in response to a changing environment, NHTSA will continue to file relevant material as it becomes available in the docket after the closing date.

The program officials principally responsible for the development of the proposed Five Year 403 Program Plan are Mr. Barry Felrice, Mr. Charles F. Livingston, and Dr. R. Rhoads Stephenson.

Issued on April 2, 1979.

Joan Claybrook,
Administrator.

Purpose of the Plan

The proposed Five Year 403 Program Plan represents research, development, demonstration, and supporting activities to be conducted under Section 403 of the Highway Safety Act of 1966 (23 USC 403). The plan's objectives are:

To provide an internal planning document to guide NHTSA officials and program managers in preparing program strategies and estimating resource requirements.

To provide the public, private groups and government at all levels insight into NHTSA plans and thus an opportunity to comment during the early planning stages; and to permit States and local communities, as well as the highway safety research community, to anticipate NHTSA's programs in their own planning.

The Five Year 403 Program Plan constitutes NHTSA's most fully coordinated and comprehensive review of Section 403 activities to date, and consequently establishes proposed project activities in research,

development, and demonstration. This document reflects the program strategies now available to Federal Highway Safety program managers based on a present understanding of the highway safety problem and potential solutions. The plan will be adjusted as accident causation and State/local safety requirements become better understood.

The ultimate goal of the Section 403 Program, and thus this proposed five year plan, is to improve the ability of safety programs conducted with the use of Section 402 grants and State/local revenues to save lives and reduce injuries; as well as to improve the efficiency of State and local highway safety programs. Under Section 402 of Title 23, a State-level highway safety effort has been established covering a diverse set of program areas and needs related to accident reduction: police enforcement; programs for drinking drivers; court and licensing systems; emergency medical services; pedestrian, bicyclist, motorcyclist and occupant restraint safety programs, etc. Congress intended 403 activities to develop new methods and techniques that will benefit State and local safety programs and to serve as a catalyst to upgrade the use of annual 402 grants. In effect, this plan divides the problem into fourteen (14) priority program areas, eight (8) of which are designed to directly affect accident occurrence or accident outcome in addition to six (6) program areas which are designed to improve the efficiency of State and local highway safety programs. A series of project areas are proposed for each program area to accomplish and achieve those specific objectives necessary for satisfying State/local community requirements. Funding levels, for planning purposes only, are also shown by program area, by project area and by fiscal year.

Programs Areas

The program areas proposed in the Five Year 403 Program Plan (in priority order) are: (1) 55 MPH Non-Compliance and Other Unsafe Driving Acts, (2) Occupant Restraints, (3) Alcohol and Drugs, (4) Pedestrian/Bicyclist/Pupil Transportation, (5) Driver Licensing, (6) Motorcycle/Moped, (7) Young Driver, (8) Emergency Medical Services, (9) State Traffic Records, (10) State Program Management, (11) Traffic Law Adjudication, (12) Police Traffic Services, (13) Motor Vehicle Registration, Titling, and Anti-Theft, and (14) National Driver Register.¹ A brief description of each is given below for

¹Items 9 to 14 are also considered "Systems Support" program areas.

purposes of defining and apprising the reader of the scope of each program area.

Program Area Descriptions

1. *55 MPH Non-Compliance and Other Unsafe Driving Acts.* Non-compliance with the 55 mph national maximum speed limit (NMSL) is increasing and safety and fuel saving benefits that this law has provided are eroding. An estimated 4,000 to 6,000 lives and 3.5 billion gallons of gasoline have been saved each year since the 55 mph law was passed. Improved programs to reduce 55 mph violations must be implemented at the State and local level. Planned NHTSA activities will identify, develop and transfer to States and communities the systems, technologies, guidelines and information which will assist State 55 mph enforcement and related public information and education programs. NHTSA is also concerned with unsafe driving actions such as following too closely, unsafe entry into traffic and unsafe speed for conditions which are causally involved in 60 percent of traffic accidents. NHTSA plans to develop and pilot test certain promising approaches for solving these problems.

2. *Occupant Restraints.* Active restraints (seat belts) have been shown to be highly effective in preventing the death and injury of motor vehicle occupants involved in crashes. Not only does the seat belt reduce the incidence of the "second collision" of occupants (e.g. occupants striking various interior parts of the vehicle), but it also prevents the occupant from being ejected from the vehicle. Unfortunately, recent surveys of usage in the United States indicate that only about 14 percent of front seat vehicle occupants are using the active restraint systems that are in their automobiles. Few programs designed to stimulate voluntary belt (or child restraint) usage have been successful, although some foreign programs have produced appreciable increases, to about 30 percent. Additionally, some smaller scale education/promotional programs within specific organizations have been able to obtain significant, but small, increases in belt usage rates. On the whole, however, voluntary belt usage programs have not fared very well.

The Occupant Restraints program proposed by NHTSA will guide activities designed to research, develop, evaluate and promote programs to increase and monitor occupant restraint usage. These activities include: (1) research, development and pilot testing of various approaches for promoting

restraint usage; (2) educational programs (including workshops) and materials distribution efforts; (3) a coordinated mass media program; (4) evaluation of education, media, and legislative efforts; and (5) surveys of restraint usage. Overall, NHTSA is concerned about improving the public acceptance of occupant restraint systems, particularly in view of the mandate issued by the Secretary of Transportation requiring the progressive installation of passive crash protection in passenger cars beginning in model year 1982.

3. *Alcohol and Drugs.* It is generally accepted that alcohol plays a causal role in approximately half of all fatal crashes. The most convincing evidence for this comes from carefully controlled studies which have demonstrated that while only 2 percent of the drivers on the road at times and places where fatal crashes occur are impaired (Blood Alcohol Content > .10%) fully 50 percent or more of the drivers, judged by the police to be responsible for such crashes, are impaired by alcohol.

The basic objectives of NHTSA's proposed Alcohol and Drugs program are threefold: (1) to obtain necessary information on various subgroups of drinking drivers in order to allow for the development of safety measures, means or methods directed at these subgroups and to assist in determining which methods should be most effective for different target groups; (2) to develop alcohol safety procedures and assist the States in implementing them so that the deaths and injuries resulting from alcohol related crashes will be reduced; and (3) for drugs, to determine the nature and scope of the highway safety problem related to drugs, and based on the defined need, develop appropriate safety procedures and techniques.

In addition to problem identification and drugs (other than alcohol) project areas, the core of NHTSA's proposed alcohol and drugs plan involves the development of methods and techniques which (1) limit the opportunity for high risk groups to drink and drive, (2) influence the motorist's decision to drink and drive, and (3) reduce the consequences of drinking and driving.

4. *Pedestrian/Bicyclist/Pupil Transportation.*—Each year approximately 8,000 pedestrians, 1,000 bicyclists, and 100 school bus passengers are killed in motor vehicle accidents. The combined total, 9,100 fatalities, represents about 20 percent of all motor vehicle fatalities. The first priority of this program area will be the field test and demonstration of urban pedestrian safety procedures and

techniques. Rural pedestrian safety methods will also be field-tested and demonstrated during this planned period. Research, development and demonstration of bicyclist safety measures and methods will be limited to those accidents involving motor vehicles. The transfer of new R&D developments and provision of management and technical information to the States will also be emphasized. School bus accidents will continue to be examined.

5. Driver Licensing—Driver licensing is a basic element in all driver-related highway safety programs. Enforcement depends on licensing to establish the identity of drivers and their ability to drive under various conditions of highway traffic and environment situations. Traffic courts depend on licensing to establish driver identity and to support the courts in programs of correction and remediation. Thus, the licensing agency works continuously with the police and courts. Other relationships exist between driver licensing and driver and traffic records systems; driver improvement programs, motor vehicle inspection, motorcycle safety, pedestrian safety, alcohol emphasis programs and other components of the total highway safety system.

The main thrust of the NHTSA approach toward improvement of the driver licensing system is through the development and endorsement of suitable products and policies, and the dissemination of those products and policies to State driver licensing Administrators. Current emphasis is being directed toward the integrity of the driver's license issuance system.

NHTSA plans to develop a valid recordkeeping system to provide the States with the optimal control mechanism for the management of drivers and for assuring that all drivers possess only one license. Additionally, development will continue in providing screening techniques, safety information materials, and regulatory mechanisms designed to improve the identification of unsafe driving behaviors and/or conditions.

6. Motorcycle/Moped—The United States has experienced and is expected to continue to experience a rapid growth in the two-wheeled vehicle population. At present, 5.1 million motorcycles and approximately 450,000 mopeds are on U.S. roads. Motorcycles are approaching four percent of all vehicle registrations compared with slightly over one percent in 1964. Motorcycle travel has sextupled since then, and it reached 22 billion vehicle miles in 1975.

Deaths have increased dramatically as well, rising from 1,175 in 1964 to 3,312 in 1976. The level for 1977 was 4,103 deaths—an increase of 24 percent over 1976. In 1976, motorcycle riders accounted for 7.3 percent of the motor vehicle deaths, while motorcycles represented only 3.6 percent of registered vehicles. By 1977, this fatality portion was up to 9 percent. The death rate (number of deaths per 100 million vehicle miles) in 1964 was 28.9. This dropped to 13.0 by 1976, but remains very high considering that the overall death rate for all vehicles has now dropped to 3.3 per 100 million vehicle miles.

The Motorcycle/Moped plan for FY 1980-1984 proposes work in the following areas:

- Rider education and training
- Licensing and screening programs
- Study and promotion of helmet usage
- Motorcycle and moped conspicuity
- Basic studies for motorcycles (with possibility of moped studies later)

Young Driver—Young people largely bear the brunt of the highway safety problem in the United States. Compared to other major health problems which usually take their toll among those over forty, death and injury on the highway primarily strike the young. Traffic accidents are the leading cause of death for young people between 16 and 24 years. Drivers in the 16-24 age group have nearly twice the fatal crashes that would be expected considering the number of licenses they hold. They represent 22 percent of licensed drivers, but are involved in 39 percent of highway crashes and 38 percent of fatal crashes.

Driver error is the major cause of traffic crashes no matter what age group is considered. The opportunity to reduce error is perhaps the greatest with the young driver target group because of two well-established programs which presently exist; driver education and driver licensing. These activities in each State will enable 403 efforts to reach this driver group with programs to upgrade knowledge and performance. It is through the crash prevention potential of driver education and licensing programs that NHTSA is placing major emphasis. While prevention represents the major thrust, secondary areas of emphasis are enforcement, driver records, adjudication and sanctioning programs.

8. Emergency Medical Services—The objective of the Emergency Medical Services (EMS) program is to insure that victims of traffic accidents and other medical emergencies receive prompt and adequate care at the scene and enroute to the medical facility. Both

Federal and State/local actions have been successful to the point where the U.S. emergency response and care system is the best in the world. Recognizing that 15-20 percent of current highway fatalities could be avoided if prompt and effective EMS were available in every instance, the 5 year EMS plan proposes improvements by means of effectiveness evaluation, development of EMS capabilities in rural localities, upgraded training, system planning and application of advanced technologies for communications and other purposes.

9. State Traffic Records—A major problem continues to be the fostering of the development of State traffic records systems with data and capabilities for utilizing that data in the management of traffic safety programs at the national, State and local levels of government. Thus, the objective of the program is to improve the content of systems which are designed to provide data on accidents, drivers, motor vehicles and roadways for aggregate analysis of safety trends and progress at the national level, as well as for serving State and local needs for problem identification, program planning and evaluation.

The five-year plan for State Traffic Records proposes activities which will increase standardization and uniformity, improve the quality, and expand the range and type of data required for highway safety purposes; provide the tools and accompanying technical assistance to facilitate retrieval and analysis of the data; and establish a model, totally integrated traffic records system for the States to emulate in their systems design or re-design efforts.

10. State Program Management—State Program Management has a significant effect on the total highway safety system because the Governor's Representatives for Highway Safety have the primary responsibility for administering and coordinating the State and Community Highway Safety Program. As such, State Program Management is a key component of NHTSA's technology transfer and State technical assistance activities.

NHTSA's proposed approach in this program area will be to develop and conduct training workshops, seminars, and courses for State highway safety management personnel. In addition to developing the training material above, NHTSA will also develop procedures and methods manuals for use by State Program Managers to support problem identification, countermeasure selection and implementation, project planning

and monitoring, as well as evaluation efforts funded by Section 402.

11. Traffic Law Adjudication—This program area is concerned with NHTSA activities geared toward improvement in the principal components of the Traffic Law System; specifically, enforcement, adjudication and sanctions. Improvements in performance, efficiency, fairness to motorists, and effectiveness in driver control are the objectives of this program area.

NHTSA's five-year plan in this program area proposes to train traffic adjudication professionals, package existing materials on administrative adjudication for transfer to the States, promote the Non-resident Violator Compact of 1977, develop a model traffic adjudication management information system as well as develop, test, and demonstrate a model traffic safety adjudication system.

12. Police Traffic Services—State, county and municipal law enforcement agencies are responsible for delivering police traffic services which are essential to the lifesaving goals of highway safety. Crashes and injuries can be directly affected through aggressive enforcement. The quality and quantity of crash and injury causal data for problem identification and program evaluation is directly affected by well trained police officers investigating crashes. The severity of injuries can potentially be reduced by well trained police officers, usually the first at the scene, who are able to give competent emergency medical services to the crash victims.

In this program area NHTSA proposes utilizing the membership and/or permanent staffs of authoritative police organizations and nationally recognized police educational institutions to: (1) assist in problem identification for "product" development by NHTSA; (2) act as quality control for the "product" developed; and (3) assist in the "marketing" of the product to the policy community.

13. Motor Vehicle Registration, Titling and Anti-Theft—NHTSA strategy has long been to promote the use of State registration and titling systems as a means of affecting safety goals in the areas of automobile theft prevention/recovery, as well as vehicle defect recall campaign compliance. To this end, NHTSA's program plan proposes improving the effectiveness and uniformity of State registration and titling practices and developing methods by which that registration and titling support system can be used as a means of controlling motor vehicle theft and

affecting defect recall campaign compliance.

14. National Driver Register (NDR)—A plan for the NDR was not formally considered by NHTSA in preparing the proposed five year plan. However, a contingency plan is presented. The Agency decided to defer decisions on the NDR pending completion of a report by NHTSA on the development of a fully automated, "quick response" system. This report will be submitted by the Secretary of Transportation to Congress by October 1979, and is required by Section 204 of the Surface Transportation Assistance Act of 1978.

Periodic Update and Review

The final Five Year 403 Program Plan, to be published subsequent to analysis of the docket comments, the 403 Conference, and the TRB 403 Conference Report will receive periodic updates by NHTSA. The intent is to reflect continuing research results, technical developments, new information and assessments, and changing State/local traffic safety priorities and safety needs. Changes in legislation, new technology, and the nature of the traffic safety problems require that this plan remain a flexible, dynamic document. New areas of activity will have to be added and others adjusted or cancelled periodically to keep the plan current.

[Docket No. 79-05, Notice 1]

[FR Doc. 79-10404 Filed 4-4-79; 8:45 am]

BILLING CODE 4910-59-M

National Highway Traffic Safety Administration

Northwest Headlamp Conference Inc.; Denial of Petition for Rulemaking

This notice sets forth reasons for denial of a petition for rulemaking to amend 49 CFR 571.108, *Lamps, Reflective Devices, and Associated Equipment*. It is published in accordance with section 124 of the National Traffic and Motor Vehicle Safety Act which provides that the National Highway Traffic Safety Administration must grant or deny such petitions within 120 days, and that if a petition is denied the reasons for it shall be published in the Federal Register (sec. 124(d)).

On October 4, 1978, the Northwest Headlamp Conference Inc. petitioned that Standard No. 108 be amended "to allow replacement equipment for all motor vehicles to meet [SAE Recommended Practice] J584 [Motorcycle and Motor Driven Cycle Headlamps] as well as the existing

J579A and C." Petitioner is an organization comprised of importers and users of European motor vehicle headlamps that do not comply with the requirements of Standard No. 108. It believes that an amendment of the nature it proposes will allow it to legally market the European headlamps in the United States.

Photometric requirements are different for motorcycles than for other vehicles, for example, because of the safety need of the cyclist for early detection of pot holes and obstacles in the roadway which could upset his balance, and which require a light directly in front of the vehicle. A motorcycle upper or lower beam would not sufficiently illuminate the roadway for the safety of other motor vehicles and their occupants at greater distances.

The petitioner apparently did not consider the differences in photometric requirements between motorcycles equipped with one or two headlamps designed to meet J584, and larger four-wheeled vehicles equipped with two or four headlamps meeting SAE Standards J579a or J579c. On the upper beam, motorcycle headlamps must comply with photometric requirements of 11 test points; only six of these coincide with the 13 test points specified for headlamps for other motor vehicles. Similarly with respect to the motorcycle lower beam, there are 10 test points, only 5 of which coincide with the 12 test points set forth for larger motor vehicles. In summary, to grant the petition would mean to propose allowing sale of headlamps with inadequate photometrics on motor vehicles other than motorcycles for replacement of headlamps with adequate photometrics. Accordingly the petition was denied.

(Sec. 103, 119, Pub. L. 89563, 80 Stat. 718 (15 U.S.C. 1392, 1407); sec. 106, Pub. L. 93-492, 88 Stat. 1482 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.)

Issued on March 29, 1979.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 79-10283 Filed 4-4-79; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

Certain Firearms and Parts From Brazil; Receipt of Countervailing Duty Petition and Initiation of Investigation

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Initiation of Countervailing Duty Investigation.

SUMMARY: A satisfactory petition has been received and a countervailing duty investigation has been started to determine if benefits are paid by the Government of Brazil to manufacturers or exporters of certain firearms and parts which constitute the payment of a bounty or grant within the meaning of the U.S. countervailing duty law. A preliminary determination will be made not later than August 22, 1979, and a final determination not later than February 22, 1980.

EFFECTIVE DATE: April 5, 1979.

FOR FURTHER INFORMATION CONTACT:

Michael Ready, Operations Officer, Office of Operations, United States Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION:

A petition in satisfactory form was received on February 22, 1979, from the law firm of Patton, Boggs & Blow on behalf of the Winchester Group (a Division of the Olin Corporation), and Harrington & Richardson, alleging that benefits conferred by the Government of Brazil upon the manufacture, production or exportation of certain firearms and parts from Brazil constitute the payment or bestowal of a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

The merchandise specified in the petition includes rifles classified under item numbers 730.23, 730.25, 730.27, 730.29, and 730.31 of the Tariff Schedules of the United States Annotated (TSUSA); shotguns under item numbers 730.37, 730.39, 730.41, 730.43, and 730.45; combination shotguns and rifles under item numbers 730.51, 730.53, 730.55, 730.57, and 730.59; and parts of rifles, shotguns, and combination shotguns and rifles under item numbers 730.63, 730.65, 730.67, 730.71, 730.73, 730.74, 730.75, and 730.77. Merchandise from Brazil entered under each of the foregoing item numbers except 730.29, 730.41, and 730.77 is currently free of ordinary customs duties under the Generalized System of Preferences (GSP). In the event that it becomes necessary to refer this matter to the United States International Trade Commission pursuant to section 303(a)(2), Tariff Act of 1930, as amended, (19 U.S.C. 1303(a)(2)), there is evidence on record concerning injury to, or likelihood of injury to, an industry in the United States.

This information indicates that while the petitioners' sales and market share have declined, imports from Brazil, priced lower than the petitioners' products, have increased.

Alleged bounties or grants as listed in the petition include the following:

1. The excessive remission upon export of the federal Industrial Products Tax (IPI) and the state Merchandise Circulation Tax (ICM). The Treasury Department has determined in the context of previous countervailing duty investigations involving Brazil that the ICM has been abolished. Therefore the latter will not be subject to investigation in this case.
2. Exemption from the payment of Customs duties and value-added taxes on the plant and equipment imported for the production of firearms for export. These benefits are allegedly conferred under programs of the Industrial Development Council (CDI), the Commission for the Granting of Fiscal Benefits to Special Export Programs (BEFIEIX) and CIEIX.
3. Regional aid assistance in the form of tax credits available to firms located in less developed areas (SUDAM and SUDENE).
4. The granting of IPI credits for the purchase of Brazilian-made equipment and accelerated depreciation for facilities and equipment manufactured in Brazil for the production of firearms and preferential credit arrangements for imported raw materials under CDI.
5. Export financing at rates lower than those otherwise available commercially.
6. Exemption from the corporate income tax for profits attributable to export sales.

Pursuant to section 303(a)(4) Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(4)), the Secretary of the Treasury is required to issue a preliminary determination as to whether or not any bounty or grant is being paid or bestowed within the meaning of that statute within 6 months of receipt, in satisfactory form, of a petition alleging the payment or bestowal of a bounty or grant. A final determination must be issued within 12 months of the receipt of such a petition.

Therefore, a preliminary determination on this petition will be made no later than August 22, 1979, as to whether or not the alleged payments or bestowals conferred by the Government of Brazil upon the manufacture, production or exportation of the merchandise described above constitute a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended. A final determination will be issued no later than February 22, 1980.

This notice is published pursuant to section 303(a)(3) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(3)), and section 159.47(c), Customs Regulations (19 CFR 159.47(c)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 (Revision 15), March 16, 1978, the provisions of Treasury Department Order 165, Revised, November 2, 1954, and § 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain

to the initiation of a countervailing duty investigation by the Commissioner of Customs, are hereby waived.

March 29, 1979.

Robert H. Mundheim,
General Counsel of the Treasury.

[FR Doc. 79-10440 Filed 4-4-79; 8:45 am]

BILLING CODE 4810-22-M

Internal Revenue Service

Public Inspection of Written Determinations; Intention To Disclose

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Intention to Disclose.

SUMMARY: This document provides notice that the Service intends to make open to public inspection certain written determinations. This notice also explains how any person may determine whether any of the described written determinations pertain to that person, and explains the procedures that person may follow if there is disagreement regarding the proposed deletions. This document does not meet the criteria for significant regulations set forth in paragraph eight of the Treasury Directive appearing in the *Federal Register* for Wednesday, November 8, 1978.

DATES: Persons wanting to find out whether their particular written determinations are among those to be made open to public inspection pursuant to this notice are requested to contact the Service by April 20, 1979.

Requests for additional deletions must be submitted by May 10, 1979. A petition in the United States Tax Court must be filed by June 19, 1979. Except for the disputed portion of any document that is the subject of an action brought in the United States Tax Court, the written determinations described in this notice will be made open to public inspection on July 30, 1979.

ADDRESS: Any questions or correspondence regarding this notice should be sent to: Internal Revenue Service, Attention: T:FP:R, Ben Franklin Station, Post Office Box 7604, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: George E. Freeland of the Rulings Disclosure Branch, Tax Forms and Publications Division, Office of the Assistant Commissioner, Technical; 202-566-4378 or 202-566-6272.

SUPPLEMENTARY INFORMATION: Section 6110(h) of the Internal Revenue Code of 1954 provides that certain written determinations (letter rulings and technical advice memoranda) issued in

response to requests submitted before November 1, 1976, shall be open to public inspection. Accordingly, the Service is preparing to open to public inspection the general written determinations issued after July 4, 1967, (except those issued in response to requests submitted after October 31, 1976) that originated in the Individual Tax Branch, Individual Tax Division, Office of the Assistant Commissioner (Technical), or predecessor branches, and that involve issues falling within the jurisdiction of this branch. A general written determination is one the Commissioner has not determined to have significant reference value.

Issues falling within the jurisdiction of the Individual Tax Branch are those involving income taxes of noncorporate taxpayers (including individuals, partnerships, estates, and trusts). The branch also has jurisdiction over issues involving both noncorporate and corporate taxpayers with respect to:

- (a) Political organizations under section 527 of the Internal Revenue Code (except section 527(f));
- (b) Charitable contributions;
- (c) Tenant-stockholders of cooperative housing corporations;
- (d) Employee stock option and stock purchase plans;
- (e) Real estate investment trusts;
- (f) Election of certain small business corporations as to tax status and related matters, except the rules relating to certain qualified pension plans.

All general written determinations issued during the prescribed time periods discussed in this notice and originating in this branch or in predecessor branches are intended to be within the scope of this notice.

Deletions

Section 6110(c) of the Code requires the Internal Revenue Service to delete certain information from the documents described in this notice. The Service intends to delete names, addresses, and taxpayer identifying numbers, and will also attempt to recognize and delete other identifying details, trade secrets, and the other information described in section 6110(c), before making the written determination open to public inspection.

Persons to whom the written determinations described in this notice pertain (or successors in interest, executors, or authorized representatives of these persons) may contact the Internal Revenue Service to find out whether their particular written determinations are among those to be made open to public inspection pursuant to this notice. These persons may

request a copy of their written determinations with proposed deletions indicated. Such requests should be submitted by April 20, 1979. Such requests must indicate the specific name of the party to which the written determination pertains, for example, a corporation acting on behalf of one or more subsidiaries must indicate the name of such subsidiary or subsidiaries. If such a person disagrees with the proposed deletions, that person may indicate any additional information that person believes should be deleted. Any request for additional deletions must be submitted by May 10, 1979 and must include a statement indicating which of the exemptions provided in section 6110(c) of the Code is applicable to each additional deletion requested. If the Service feels it cannot make any or all of the additional deletions requested, the Service will so advise the requester. The requester will then have the right to file a petition in the United States Tax Court. This petition must be filed by June 19, 1979.

Additional Disclosure

After the deleted copy of a written determination is made open to public inspection in the National Office Reading Room, any person may request the Service to make additional portions of the written determination open to public inspection. If the Service receives a request that involves disclosure of names, addresses, or taxpayer identifying numbers, the Service will deny the request. If the request involves disclosure of anything other than names, addresses, or taxpayer identifying numbers, the Service will contact the person to whom the written determination pertains before further action is taken.

Background File Documents

After the deleted copy of a written determination is made open to public inspection, any person may request copies of related background file documents. Notice will be provided to the person to whom the written determination pertains if a request for related background file documents is received.

Any notice regarding background file documents or requests for additional disclosure and any other correspondence relating to public inspection of written determinations, will be mailed to the latest address in the Service's written determination file, unless a later address is provided to the Service in connection with these matters.

The written determinations described in this notice will be made open to public inspection by being placed in the National Office Reading Room, Room 1564, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, D.C. on July 30, 1979. However, the disputed portion of any document that is the subject of an action brought in the United States Tax Court shall not be made available until after a court determination regarding such portion is made.

Jerome Kurtz,
Commissioner of Internal Revenue.

[FR Doc. 79-10458 Filed 4-4-79; 8:45 am]

BILLING CODE 4830-01-M

Study Project Relating to the Treatment of Nonqualified Stock Options; Invitation for Public Comments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Invitation for public comments:

SUMMARY: This document contains an invitation for public comments on methods for valuing nonqualified stock options under section 83 of the Internal Revenue Code of 1954. The Internal Revenue Service invites interested members of the public to submit written comments (preferably six copies) that address the problem of how to value nonqualified stock options that are not actively traded on an established market.

DATES: Written comments must be delivered or mailed by July 5, 1979.

ADDRESS: Send comments to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-59-79), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Mr. Geoffrey B. Lanning of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 202-566-3909, not a toll-free call.

SUPPLEMENTARY INFORMATION: Section 603 of the Tax Reform Act of 1976 (90 Stat. 1574) changed the treatment of certain stock options granted after May 20, 1976. Generally, all stock options granted after that date are subject to the rules of section 83 of the Internal Revenue Code of 1954, which apply in the case of most nonqualified stock options granted after June 30, 1969.

In the report submitted by the Committee of Conference to accompany section 603 of the Act (H. Rept. No. 94-1515, 438-439 (1976), and Sen. Rept. No. 94-1236, 438-439 (1976), 1976-3 C.B. 842-843), the conferees suggested that the

Internal Revenue Service attempt to develop additional rules or guidelines for valuing nonqualified stock options for purposes of section 83.

The Service invites public comment on the issue of how a nonqualified stock option can be valued with reasonable accuracy if it is not actively traded on an established market.

Comments that address the problem of how to value options on the stock of new or small companies would be especially appreciated.

Jerome Kurtz,
Commissioner of Internal Revenue.

[LR-59-79]

[FR Doc. 79-10499 Filed 4-4-79; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Delegation of Authority

AGENCY: Internal Revenue Service.

ACTION: Delegation of Authority.

SUMMARY: In accordance with a revision to 31 CFR, Part 5, the amount on which collection actions may be terminated without the approval of Counsel has been revised from \$50 to \$100. The last sentence of Paragraphs 1(a), (b) and (c), respectively, of the Delegation Order have been revised to reflect this change.

EFFECTIVE DATE: March 28, 1979.

FOR FURTHER INFORMATION CONTACT: Charles H. Jenkins, Jr. RM:F:S, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 566-6851 (Not Toll Free).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the *Federal Register* for Wednesday, November 8, 1978.

Joseph F. Kump,
Fiscal Management Officer.

Federal Claims Collection Act of 1966

1. Pursuant to authority vested in the Commissioner of Internal Revenue by 31 CFR Part 5, the authority for administrative collection, compromise, termination, or suspension of agency collection action under the Federal Claims Collection Act of 1966 is hereby delegated as follows:

(a) The Chief, Fiscal Management Branch, each Regional Office; the Chief, Accounting Section, National Office; and the Chief, Fiscal/Personnel Processing Division, Data Center, shall take aggressive action, on a timely basis, with effective follow-up, to collect claims of the United States (except claims arising from damage to, or loss of, Government property, breach of contract cases, or other damages arising from tortious acts against the Service) for money or

property arising out of the activities of, or referred to, the Service. Each Chief is authorized to compromise, terminate, or suspend collection action on such claims that do not exceed \$20,000, exclusive of interest, upon written recommendation of Chief Counsel or Chief Counsel's designee, and may terminate collection action on such claims up to \$100 without the recommendation of Chief Counsel.

(b) The Chief, Facilities Management Branch, each Regional Office, shall take aggressive action on a timely basis with effective follow-up, to collect claims arising from damage to, or loss of, Government property, breach of contract cases, or other damages arising from tortious acts against the Service up to \$5,000, exclusive of interest and costs, of the United States for money or property arising out of the field activities of the Service. Each Chief is authorized to compromise such claims or terminate, or suspend collection action on such claims up to \$5,000 upon written recommendation of Regional Counsel, and may terminate collection action on such claims up to \$100 without the recommendation of Regional Counsel.

(c) The Safety Management Officer, Space and Property Branch, National Office, shall take aggressive action, on a timely basis with effective follow-up, to collect claims of the United States for money or property arising out of the activities of, or referred to, the Service, for damage to, or loss of, Government property, breach of contract cases, or other damages arising from tortious acts against the Service. The Safety Management Officer is authorized to compromise, terminate, or suspend collection action on such claims that do not exceed \$20,000 upon written recommendation of Chief Counsel and may terminate collection action on such claims up to \$100 without recommendation of Chief Counsel.

2. This Order does not apply to tax claims nor any claim where there is an indication of fraud or misrepresentation on the part of the debtor.

3. The authority delegated herein may not be redelegated.

4. This Order supersedes Delegation Order No. 111 (Rev. 4), issued July 2, 1978.

Date of issue and effective date: March 28, 1979.

Jerome Kurtz,
Commissioner.

[Delegation Order No. 111 (Rev. 5)]

[FR Doc. 79-10467 Filed 4-4-79; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Advisory Committee on Health-Related Effects of Herbicides; Establishment

In accordance with the provisions of the Federal Advisory Committee Act (Public Law 92-463) and Office of Management and Budget Circular A-63 of March 1974, and in consultation with GSA and OMB, the Veterans

Administration has determined that the establishment of the Advisory Committee on Health-Related Effects of Herbicides is necessary and in the public interest.

The Veterans Administration has recently been faced with the issue of possible delayed adverse health effects of herbicidal chemicals, which were used in the Republic of Vietnam during the recent conflict. This Committee will enable our staff to develop the best medical policies and procedures for the benefit of veterans of the Vietnam War. Members will be specialists delegated by sister federal agencies and the private sector who have specialized expertise in this area. Members will include representation by chemical companies and universities, plus members of the public who can furnish expert advice pertaining to the matter. Thus, a balanced representation of multiple viewpoints will be used.

Comments of interested persons concerning the establishment of this Committee or recommendations for membership may be submitted to Gerrit W. Schepers, M.D., Medical Service (111), Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC 20420.

The charter for this Committee will be filed on April 20, 1979.

Dated: March 29, 1979.

Max Cleland,
Administrator.

[FR Doc. 79-10380 Filed 4-4-79; 8:45 am]

BILLING CODE 6320-01-M

INTERSTATE COMMERCE COMMISSION

Assignment of Hearings

March 30, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 113678 (Sub-748F), Curtis, Inc., now assigned for hearing on May 8, 1979, at Orlando, Florida, and will be held in the Hilton Inn West, 3200 W. Colonial Drive.

MC 139193 (Sub-74F), Roberts & Oake, Inc., now assigned for hearing on April 17, 1979, at New Orleans, Louisiana, and will be held in the Marriott Hotel, Canal and Charters Streets.

MC 8768 (Sub-37F), Security Van Lines, Inc., now assigned for hearing on April 23, 1979, at New Orleans, Louisiana, and will be held in Monteleone Hotel, Bienville Room, 214 Royal Street.

MC 69281 (Sub-45F), The Davidson Transfer & Storage Co., now assigned for hearing on April 23, 1979 (1 week), is postponed to June 4, 1979 (1 week), at Baltimore, Md., in a hearing room to be later designated.

MC 145339 (Sub-3F), Nebraska Beef Express, Inc., now for hearing on May 8, 1979 (2 days), at Omaha, NE., in a hearing room to be later designated.

H. G. Homme, Jr.,
Secretary.

[Notice No. 59]

[FR Doc. 79-10394 Filed 4-4-79; 8:45 am]

BILLING CODE 7035-01-M

Fourth Section Application for Relief

March 30, 1979.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before 4-20-79.

FSA No. 43677, Western Trunk Line Committee, Agent's No. A-2758, carload rates on sugar, beet or cane, in bulk, from stations in Transcontinental and Western-Trunk Line Territories, to Omaha, Nebr., in Trans-Continental Freight Bureau, Agent, Tariff ICC TCFB 3002-P; Western Trunk Line Committee, Agent, Tariff ICC WTL 4417; Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Tariff ICC MILW 3006, and H. H. Kirchoff, Agent, Tariff ICC KHH 3605-Q, to become effective April 21, 1979. Grounds for relief—market competition and rate relationship.

By the Commission.

H. G. Homme, Jr.,
Secretary

[FR Doc. 79-10395 Filed 4-4-79; 8:45 am]

BILLING CODE 7035-01-M

INTERSTATE COMMERCE COMMISSION

Assignment of Hearings

April 2, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices

of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 127840 (Sub-80F), Montgomery Tank Lines, Inc., now assigned for hearing on April 12, 1979, at New York, New York, and will be held in E-2222, Federal Building, 26 Federal Plaza.

No. 37064, OKC Corporation v. Missouri-Kansas-Texas Railroad Company, Et Al., now assigned for hearing on April 18, 1979, at Dallas, Texas, and will be held in room 5A15-17, Federal Building, 1100 Commerce Street.

MC 59531 (Sub-109F), Auto Convoy Co., a Limited Partnership, now assigned for hearing on April 23, 1979, at Dallas, Texas, and will be held in room 5A15-17, Federal Building, 1100 Commerce Street.

MC 59531 (Sub-110F), Auto Convoy Co., a Limited Partnership, now assigned for hearing on April 23, 1979, at Dallas, Texas, and will be held in room 5A15-17, Federal Building, 1100 Commerce Street.

MC 134477 (Sub-281F), Schanno Transportation, Inc., now assigned for hearing on May 16, 1979 (1 day), at St. Paul, MN., in a hearing room to be later designated.

MC 134477 (Sub-241F), Schanno Transportation, Inc., now assigned for hearing on May 17, 1979 (2 days), at St. Paul, MN., in a hearing room to be later designated.

MC 118569 (Sub-7F), Halberg Construction and Supply, Inc., MC 112223 (Sub-109F), Quickie Transport Company, now assigned for hearing on May 21, 1979 (5 days), at St. Paul, MN., in a hearing room to be later designated.

No. 37135F, Increased Rates on Coal, BN Montana to Cohasset, Minnesota, No. 37135 (Sub-1), Increased Rates on Coal, BN, Montana to Cohasset, Minnesota and No. 37153, Minnesota Power & Light Company v. Burlington Northern, Inc., now being assigned for Prehearing Conference on April 11, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 102616 (Sub-947F), Coastal Tank Lines, Inc., now assigned for hearing on April 25, 1979, at Dallas, Texas, and will be held in room 5A15-17, Federal Building, 1100 Commerce Street.

MC 2202 (Sub-568F), Roadway Express, Inc., now assigned for hearing on April 17, 1979, at Dallas, Texas, and will be held in room 5A15-17, Federal Building, 1100 Commerce Street.

H. G. Homme, Jr.,
Secretary.

[Notice No. 61]

[FR Doc. 79-10498 Filed 4-4-79; 8:45 am]

BILLING CODE 7035-01-M

¹This notice corrects the date and notice no. on the assignment of Hearings Publication of March 29, 1979.

Assignment of Hearings; Correction¹

April 2, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

AB-7 (Sub No. 65), Stanley E. G. Hilliman, Trustee of The Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor Abandonment near Walworth and Avalon, in Rock and Walworth Counties, now assigned for hearing on April 18, 1979 (3 days), at Council Chamber, Municipal Building, 4th floor, 18 North Jackson Street, Janesville, WI, is canceled and reassigned at the Walworth Big Foot High School, Walworth, WI.

MC 121683 (Sub-3F), Jackson Express, Inc., now assigned for continued hearing on April 4, 1979 (2 days), at the Ramada Inn, U.S. 45 By-Pass at I-40, Jackson, TN.

MC 66746 (Sub-21F), Shippers Express, Inc., now assigned for continued hearing on April 18, 1979 (2 days) at the Executive Inn, 1471 E. Brooks Road, Memphis, Tennessee.

H. G. Homme, Jr.,
Secretary.

[Notice No. 60]

[FR Doc. 79-10497 Filed 4-4-79; 8:45 am]

BILLING CODE 7035-01-M

Chicago and North Western Transportation Company Abandonment near James Valley Junction and Redfield in Beadle and Spinks Counties, SD; Findings

Notice is hereby given pursuant to 49 U.S.C. § 10903 (formerly Section 1a of the Interstate Commerce Act) that by a Certificate and Decision decided March 21, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.-Abandonment Goshen*, 354 I.C.C. 584 (1978), provided, however, that applicant shall keep intact all of the right-of-way underlying the track, including all of the bridges and culverts for a period of 120 days from the effective date of this certificate and decision to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way, and provided, further, that

North Western may not exercise the authority granted herein until approval of the pending directly related application in Finance Docket No. 28949F and institution of operation thereunder, the present and future public convenience and necessity permit the abandonment by the Chicago and North Western Transportation Company of its line of railroad extending from railroad milepost 4.0 near James Valley Junction to railroad milepost 37.8 near Redfield, a distance of 33.8 miles in Beadle and Spinks Counties, SD. A certificate of public convenience and necessity permitting abandonment was issued to the Chicago and North Western Transportation Company. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than April 20, 1979. The offer, as filed, shall contain information required pursuant to § 1121.38(b)(2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 45 days from the date of this publication.

H. G. Homme, Jr.,
Secretary.

[Docket No. AB-1 (SUB-No. 72F)]

[FR Doc. 79-10484 Filed 4-4-79; 8:45 am]

BILLING CODE 7035-01-M

Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor—Trackage Rights—Over Chicago and North Western Transportation Company

Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee Road), 516 West Jackson Boulevard, Chicago, IL 60606, represented by William C. Sippel, Attorney and William L. Phillips, Assistant General Solicitor, 516 W. Jackson Boulevard, Suite 888, Chicago, IL 60606, hereby give notice that on the

21st day of March, 1979, it filed with the Interstate Commerce Commission at Washington, DC, an application under Section 11343 of the Interstate Commerce Act (formerly Section 5(2)) for a decision approving and authorizing the acquisition of trackage rights over the Chicago and North Western Transportation Company between Clinton, IA, and Tama, IA, between Otis, IA, and Cedar Rapids, IA, and between Beverly, IA, and Cedar Rapids, IA.

Applicant proposes to operate its own trains with its own locomotives and crews over the double track mainline of Chicago and North Western Transportation Company (C&NW) between MP 0.1 at Clinton, IA, and MP 133.2 at Tama, IA, and over the lines of C&NW between MP 77.8 at Otis, IA, and MP 81.6 at Cedar Rapids, IA, and between MP 86.1 at Beverly, IA, and MP 84.3 at Cedar Rapids, IA, a total distance of 135.2 miles.

The C&NW mainline runs in an east-west direction through Clinton, Cedar, Linn, Benton and Tama Counties, IA.

This application is one of three directly related and concurrently filed applications designed to effect a restructuring of Applicant's service in the central region of the State of Iowa.

In docket No. AB-7 (Sub-No. 81F), Milwaukee Road seeks to abandon its line between Green Island, IA, and Dove, IA, and its branch line between Delmar, IA, and Maquoketa, IA, a total distance of 79.9 miles.

In Docket No. AB-7 (Sub-No. 82F), Milwaukee Road seeks to abandon its line between Louisa, IA, and Tama, IA, a distance of 50.1 miles. Applicant will continue to serve Louisa, Marion, and Dove, all in Linn County, IA.

Interested persons may participate formally in a proceeding by submitting written comments regarding the application. Such submissions shall indicate the proceeding designation Finance Docket No. 28883 (Sub-No. 1F) and the original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423, not later than May 21, 1979. Such written comments shall include the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction; specific reasons why approval would or would not be in the public interest; and a request for oral hearing if one is desired. Additionally, interested persons who do not intend to formally participate in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and

service requirements specified herein. Person submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation and the Attorney General.

H. G. Homme, Jr.,
Secretary.

[Finance Docket No. 28883 (Sub-No. 1F)]

[FR Doc. 79-10496 Filed 4-4-79; 8:45 am]

BILLING CODE 7035-01-M

Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Co., Debtor—Discontinuance of Trackage Rights—Over the Escanaba and Lake Superior Railroad Between Channing and Escanaba in Dickinson, Menominee and Delta Counties, Mich.; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 (formerly Section 1a of the Interstate Commerce Act) that by a Certificate and Decision decided March 22, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen*, 354 I.C.C. 584 (1978), the present and future public convenience and necessity permit the discontinuance of trackage rights over the Escanaba and Lake Superior Railroad extending from Channing to Escanaba, a distance of 66.0 miles, in Dickinson, Menominee and Delta Counties, MI. A certificate of public convenience and necessity permitting discontinuance of trackage rights was issued to the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than April 20, 1979. The offer, as filed, shall contain information required pursuant to Section 1121.38(b) (2) and (3)

of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 45 days from the date of this publication.

H. G. Homme, Jr.,
Secretary.

[Docket No. AB-7 (Sub-No. 80F)]

[FR Doc. 79-10495 Filed 4-4-79; 8:45 am]

BILLING CODE 7035-01-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Applications for Temporary Authority

Decided: March 28, 1979.

There is an emergency resulting from work stoppages affecting a large number of the Nation's motor carriers which are unable to transport property.

There exists an immediate and urgent need for motor carrier service to supplement temporarily the transportation facilities of the Nation for the movement of property.

To meet this need the Commission will provide a more flexible method for the processing of applications for temporary authority to render the required motor service.

It is ordered:

Pursuant to 49 U.S.C. 10928, all persons who shall apply to any regional operations director, assistant regional operations director, district supervisor, or their designees, of the Commission's Bureau of Operations are granted temporary authority to transport property in interstate or foreign commerce, by motor vehicle for a period of not more than 60 days to the extent and scope that any of the above designated, officials certify that there is an immediate and urgent need for service.

Special procedures to expedite the filing and processing of these applications will be used.

This grant of temporary authority is conditioned upon compliance with applicable requirements concerning tariff and schedule publications, evidence of security for the protection of the public, and designation of agents for service of process, and further conditioned upon such tariffs and schedules quoting rates, fares, and charges no lower than those of existing rail, water, or motor carriers in the territory in which the operations are to be authorized.

Service performed under temporary authority granted pursuant to this order shall in no way constitute evidence or a showing warranting future issuance of a

certificate of public convenience and necessity or permit, as provided in 49 U.S.C. 10922 and 49 U.S.C. 10923.

Temporary authority granted pursuant to this order shall expire as of the first midnight after the issuance of an order by this Commission revoking General Temporary Order No. 17, except as to property, the transportation of which began prior to that time.

This order shall become effective April 1st, 1979.

Notice of this order shall be given to motor carriers, rail carriers, other parties of interest, and to the general public by depositing a copy thereof in the Office of the Secretary of the Commission, Washington, D.C., and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian.

H. G. Homme, Jr.,
Secretary.

[Ex Parte No. MC-84, General Temporary Order No. 17]

[FR Doc. 79-10590 Filed 4-4-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register

Vol. 44, No. 67

Thursday, April 5, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD.

Notice of short notice and closure of meeting.

TIME AND DATE: At close of oral argument scheduled to begin at 1:30—April 2, 1979.

PLACE: Room 1011, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT: French Government position on passenger tariffs for effect April 1.

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

SUPPLEMENTARY INFORMATION: The letter from the French authorities setting forth their position on U.S. carrier tariff filings was received on the evening of March 28, 1979. The French tariffs and some U.S. carrier tariffs are effective April 1 and further negotiations may be required, so the Board must act quickly.

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

This meeting will concern the Board's view of the appropriate United States response to the French position. Premature public disclosure of the options, plans and opinions of the Board could seriously compromise the United States' ability to successfully resolve this issue in the best interests of the United States. Accordingly, the following Members have voted that public observation of this meeting would involve matters the premature disclosure of which would likely to significantly frustrate implementation of

proposed agency action within the meaning of the exemption provided under 5 U.S.C.(c)(9)(B) and 14 CFT Section 310b.5(9)(B) and that the meeting will be closed:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

Persons Expected to Attend

Board Members.—

Chairman, Marvin S. Cohen; Member, Richard J. O'Melia; Member, Elizabeth E. Bailey; and Member, Gloria Schaffer.

Assistants to Board Members.—Mr. David M. Kirstein and Mr. Stephen H. Lachter.

Acting Managing Director.—Mr. Sanford Rederer.

Executive Assistant to Managing Director.—Mr. John R. Hancock.

Bureau of Pricing and Domestic Aviation.—Mr. Michael E. Levine, Ms. Barbara A. Clark, Mr. Herbert P. Aswall, Mr. Doug Leister, Mr. John Kiser, and Mr. Keith Shangrow.

Bureau of International Affairs.—Mr. Donald A. Farmer, Jr., Mr. Donald L. Litton, and Mr. Anthony M. Largay.

Office of the General Counsel.—Mr. Phillip J. Bakes, Jr., Mr. Gary J. Edles, Mr. Peter B. Schwarzkopf, Mr. Michael Schopf, and Ms. Carol Light.

Bureau of Consumer Protection.—Mr. Reuben Robertson and Ms. Patricia Kennedy.

Office of Economic Analysis.—Mr. Robert H. Frank and Mr. Larry Manheim.

Office of the Secretary.—Mrs. Phyllis T. Kaylor and Ms. Deborah A. Lee.

General Counsel Certification

I certify that this meeting may be closed to the public under 5 U.S.C. 552b(c)(9)(B) and 14 CFR Section 310b.5(9)(B) and that the meeting may be closed to public observation.

Phillip J. Bakes, Jr.,
General Counsel.

[S-658-79 Filed 4-3-79; 3:47 pm]

BILLING CODE 6320-01-M

2

CIVIL AERONAUTICS BOARD.

Notice of short notice and closure of meeting.

TIME AND DATE: 11 a.m., April 3, 1979.

PLACE: Room 1011, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT: U.S.-Peru Negotiations.

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

SUPPLEMENTARY INFORMATION:

Scheduling of the negotiations has been uncertain due to Peruvian restrictions on U.S. carrier operations. Now it appears likely that the talks will be held and a position must be submitted to the Department of State. Accordingly, the following Members have voted that agency business requires that the Board meet on this item on less than seven days' notice and that no earlier announcement of the meeting was possible.

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

This meeting will concern the Board's views on the consultations with the Government of Peru. Public disclosure, particularly to foreign governments, of opinions, evaluations, and strategies of the consultations could seriously compromise the ability of the United States Delegation to achieve an agreement which would be in the best interest of the United States. Accordingly, the following Members have voted that public observation of this meeting would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552b(c)(9)(B) and 14 CFR section 310b.5(9)(B) and that the meeting will be closed.

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

Persons Expected To Attend

Board Members.—Chairman, Marvin S. Cohen; Member, Richard J. O'Melia; Member, Elizabeth E. Bailey; and Member, Gloria Schaffer.

Assistants to Board Members.—Mr. David M. Kirstein and Mr. Stephen H. Lachter.

Acting Managing Director.—Mr. Sanford Rederer.

Executive Assistant to Managing Director.—Mr. John R. Hancock.

Bureau of Pricing and Domestic Aviation.—Mr. Michael E. Levine, Ms. Barbara A. Clark, Mr. Herbert P. Aswall, Mr. Doug Leister, Mr. John Kiser, and Mr. Keith Shangrow.

Bureau of International Affairs.—Mr. Donald A. Farmer, Jr., Mr. Donald L. Litton, Mr. Anthony M. Largay, and Mr. Frank Murphy. Office of the General Counsel.—Mr. Phillip J. Bakes, Jr., Mr. Gary J. Edles, Mr. Peter B. Schwarzkopf, Mr. Michael Schopf, and Ms. Carol Light.

Bureau of Consumer Protection.—Mr. Reuben Robertson and Ms. Patricia Kennedy.

Office of Economic Analysis.—Mr. Robert H. Frank and Mr. Larry Manheim.

Office of the Secretary.—Mrs. Phyllis T. Kaylor and Ms. Deborah A. Lee.

GENERAL COUNSEL CERTIFICATION

I certify that this meeting may be closed to the public under 5 U.S.C. 552b(c)(9)(B) and 14 CFR section 310b.5(9)(B) and that the meeting may be closed to public observation.

Phillip J. Bakes, Jr.,
General Counsel.

[S-659-79 Filed 4-3-79; 3:47 pm]

BILLING CODE 6320-01-M

3

CIVIL AERONAUTICS BOARD

TIME AND DATE: 9:30 A.M., April 6, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.

2. Docket 31750, Application of Aero Uruguay S.A. for a foreign air carrier permit to carry property and mail, (Memo No. 8626, BIA, OGC.)

3. Docket 34338, Application of Chatham Air Service Ltd. for an initial foreign air carrier permit to operate charters between Canada and the U.S. using small aircraft. (Memo No. 8630, BIA, OGC, BLJ.)

4. Docket 34432, application of Miramichi Air Service Ltd. (Canada) for a foreign air carrier permit. (Memo No. 8637, BIA, OGC, BLJ.)

5. Docket 33145, Application of Cargolux Airlines International S.A. for an initial foreign air carrier permit. (Memo No. 8646, BIA, OGC, BLJ.)

6. Docket 33012, application of Thomson Travel Limited (U.K.) for an foreign indirect air carrier permit. (Memo No. 8376-B, BIA, OGC, BLJ.)

7. Docket 34160, Application of Daetwyler IWT Airfreight (Swiss) d.b.a. Interamerican World Transport Corp. (U.S.A. for a foreign indirect air carrier permit. (Memo No. 8657, BIA, OGC, BLJ.)

8. Docket 32828, Objection of North Central to Order 79-1-149. (Memo No. 8447-A, BIA, OGC, BLJ.)

9. Dockets 28213 et al. Applications of Seven Japanese Air Freight Forwarders—Final order. (Memo No. 8492, OGC.)

10. Docket 34138, In the Matter of Computer/Certificated Carrier Joint Fares—Order amending order. (Memo No. 8311-E, OGC, BPDA.)

11. Policy Statement on Price Discrimination. (Memo No. 8588-A, OGC, BPDA, OEA, BCP.)

12. Docket 27557, Cargo Charter Transfer Rate Investigation Seaboard World Airways' petition for discretionary review. (Memo No. 8703-B, OGC.)

13. Docket 34573, Anchorage-London Service Case. (Memo No. 8422-B, OGC.)

14. Dockets 34136, 34288, 34305, 34310, 34319, 34326, 34328, and 34329; Chicago/Texas/Southeast-Western Mexico Route Proceeding. (Memo No. 8314-A, OGC.)

15. Docket 31491, St. Louis-Louisville and San Francisco Bay Area Nonstop Case—Draft order. (Memo No. 7379-E, OGC.)

16. Docket 21448, Spokane-Montana Points Service Investigation—Tentative opinion and order disposing of deferred issues. (Memo No. 8639, OGC.)

17. Docket 30170, 32749, 32799, 32787, 32897, and 33114; West Coast-Alaska Investigation—Draft Opinion and Order. (Memo No. 6567-C, OGC.)

18. Docket 32665, California/Southwest-Western Mexico Route Proceeding (Albuquerque/El Paso-Western Mexico Phase). (Memo No. 8656, OGC.)

19. H.R. 655—Cargo Security Act of 1979. (Memo No. 8344-A, OGC.)

20. Delegation to Chief of Essential Air Services Division BPDA, to renew Board orders to continue essential air service while a replacement carrier is sought. (Memo No. 8647, OGC.)

21. Docket 34140, Application of Continental Air Lines for Exemption authority between Houston and the coterminal points Pittsburgh, Detroit and Cleveland. (Memo No. 8629, BPDA.)

22. Dockets 32801, 33628, 32917, 32864, 33892, 33596, 33742, 33679, 33888, 34112, 34341, 34498, 33999, 34221, 29622, 34192, 34320, 34658, 34691, 34692, and 34712; United, American, Southern, Allegheny, Braniff, Continental, Ozark, Delta, Piedmont, Northwest, Frontier, TXI, and Western requesting authority between Memphis and various points. (Memo No. 8414-b, BPDA.)

23. Dockets 34771, 32573, 32725, 32628, 35013, 35000, 33606, 34992, 34971, 32758, 32756, 34991, 35015, and 34968; Allegheny, Braniff, Continental, Delta, Frontier, Northwest, Ozark, Piedmont, Southern, TXI, TWA, and Western requesting authority between Birmingham and various points. (Memo No. 8497-A, BPDA.)

24. Docket 33552, Finalization of Show-Cause Order 79-1-32, tentatively adding a new segment to Frontier's Route 73 consisting of the terminal point Oklahoma City, Okla., and the terminal point Shreveport, La. (Memo No. 8397-A, BPDA.)

25. Dockets 33703, 33744, 33934, 34437, 34748, and 34780; Applications of Braniff, Allegheny, Ozark, TXI, Delta and Western for Dallas/Ft. Worth-Cincinnati/Indianapolis certificate authority. (Memo No. 8442-A, BPDA.)

26. Dockets 33642, 34091, and 34220; Joint Motion of the Massachusetts Port Authority, the Greater Boston Chamber of Commerce and Braniff for an order to show cause or hearing on Braniff's certificate application for Detroit-Boston nonstop authority; Allegheny's

and Ozark's motions to consolidate applications for similar authority. (Memo No. 8628, BPDA.)

27. Dockets 33726 and 33727; Delta's applications for certificate and exemption authority to permit nonstop Atlanta-Nashville service. (Memo No. 8612, BPDA.)

28. Dockets 34654, 34725, 34878, 34987, and 35068; Applications of Allegheny, Northwest, Ozark, Braniff and National for Las Vegas-Phoenix authority. (Memo No. 8650, BPDA.)

29. Dockets 32587, 33396, 33561, 33583, and 34921; Applications of Allegheny, Northwest, Ozark, and Piedmont for Pittsburgh-Charlotte-Raleigh/Durham authority and of Southern for Pittsburgh-Charlotte authority. (Memo No. 8479-A, BPDA.)

30. Docket 28944, Allegheny's Request to Delete Youngstown, Ohio. (Memo No. 6328-F, BPDA.)

31. Dockets 34203 and 34666; Allegheny's Notice to Terminate Service at Catskill/Sullivan County; Ransome's Notice to Terminate Service at Catskill/Sullivan County. (Memo No. 8535-B, BPDA, OCCR.)

32. Docket 34682, Ozark's notice to suspend service in 10 markets. (Memo No. 8641, BPDA, OCCR.)

33. Docket 34854, Northwest's notice to suspend nonstop service between Miami and Minneapolis/St. Paul. (Memo No. 8643, BPDA.)

34. Docket 34850, Southern's notice to suspend service between Birmingham and Greenville/Spartanburg. (Memo No. 8660, BPDA, OCCR.)

35. Docket 34194, Invitation to interested persons to submit proposals for providing the interim level of essential air transportation at New Bedford. (BPDA.)

36. Docket 34859, American's 401(j)(2) Notice of Intent to Terminate Service in five Markets in 60 days. (Memo No. 8642, BPDA, OCCR.)

37. Docket 34593, Eastern's 90-day Notice to suspend service at Huntsville, Alabama. (Memo No. 8658, BPDA, OCCR.)

38. Docket 31133, Agreement among the members of the Air Traffic Conference of America (ATC) relating to a Personal Guarantee of Performance of Air Traffic Conference Sales Agency Agreement; Agreements CAB 5044-A222, 16874-A71, and 25132-A4. (Memo No. 8620, BPDA, OGC.)

39. Dockets 34818 and 34557, Advance purchase contract container rates from Europe to points in the United States proposed by Pan American. Seaboard complains that the tariff is ambiguous resulting in differing rates for the same shipment and should be rejected. (Memo No. 8655, BPDA, BIA.)

40. Docket 34677, Air Midwest's application to extend its embargo on live animal shipments (excluding dogs and cats), plants, and cut flowers. (Memo No. 8631, BPDA.)

41. Dockets 33852, 34367, and 34571; Applications of Capitol, World, TIA and Altair for exemption to permit exchange of transportation for goods and services. (Memo No. 8649, BPDA.)

42. Docket 34827, Complaint of Western against a proposal by United to extend the applicability of the 50 percent discount now available to children under 12 accompanying

Super Saver and Freedom discount fare passengers, to children under 18. (Memo No. 8627, 8648, BPDA.)

43. Docket 34218, Complaint of Amos E. Heacock, d/b/a/ Air Transport Associates, et al., against New York-Los Angeles fares of Pan American World Airways, Inc. (Memo No. 8622, BPDA.)

44. Docket 32350, *Our Animal Wards v. Alaska Airlines, et al.*, Petition for discretionary review of Bureau of Consumer Protection dismissal of third-party complaint alleging carrier refusals to accept live animal shipments. (Memo No. 8640, OGC.)

45. Docket 30662 (*The Flying Tiger Line v. Scandinavian Airlines System*), petitions for reconsideration of Board Order 78-8-86 remanding case to the ALJ to consider charge that SAS provide air transportation to unauthorized point and applied incorrect tariff rate. (Memo No. 8632, OGC.)

46. Docket 34015, Petition by the Air Transport Association of America for rulemaking to eliminate a requirement to file balance sheets and income statements on a monthly basis. (Memo No. 8653, OEA, OGC, BCAA, BIA, BPDA, OC.)

47. Revised craft of pamphlet "Air Travelers' Fly Rights" (BCP, OGC, BPDA.)

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor,
Secretary (202)673-5068

[S-660-79 Filed 4-3-79; 3:47 pm]

BILLING CODE 6320-01-M

4

COMMISSION ON CIVIL RIGHTS.

PLACE: Room 512, 1121 Vermont Avenue, N.W., Washington, D.C.

DATE AND TIME: Tuesday, April 10, 1979, 4 p.m. to 6 p.m., Wednesday, April 11, 1979, 11:30 a.m. to 12:30 p.m., 2 p.m. to 3 p.m.

STATUS: Portion of meeting open to public, portion closed to public (Tuesday session).

MATTERS TO BE CONSIDERED: Tuesday, April 10 (open to the public):

- I. Approval of agenda.
- II. Approval of minutes of last meeting.
- III. Staff Director's report:
 - A. Status of funds.
 - B. Office Directors' reports.
 - C. Correspondence:
 1. Letter from Secretary Califano on HEW's activities re battered women.
 2. Letter from Secretary Califano re affirmative actions programs in graduate school admissions.
 3. Letter from OCR Director Tatel re OCR comments on discrimination in vocational education programs.
 4. Letter from Japanese American Citizens League re Asian Pacific consultation.
- IV. Report on Civil Rights Developments in Southwest Region.
- V. State Advisory Committee Re-Chararters:
 - A. Arizona,
 - B. Colorado,

- C. District of Columbia,
- D. Kentucky,
- E. Michigan,
- F. Oklahoma,
- G. South Carolina,
- H. Utah.

MATTERS TO BE CONSIDERED: Tuesday, April 10 (closed to the public):

VI. Discussion of Internal Commission on Civil Rights Personnel Matters.

MATTERS TO BE CONSIDERED: Wednesday, April 11 (open to public) 11:30 a.m. to 12:30 p.m.:

VII. Meeting with National Coalition of Women and Girls in Education.

MATTERS TO BE CONSIDERED: 2 p.m. to 3 p.m. (open to public):

VIII. Oral Briefing on Asian-Pacific Consultation.

PERSON TO CALL FOR FURTHER INFORMATION: Barbara Brooks, Public Affairs Unit (202) 254-6697.

[S-653-79 Filed 4-3-79; 2:48 pm]

BILLING CODE 6335-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 2 p.m., Monday, April 9, 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.
- Recommendation 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. 43,863-I.—The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee.
- Recommendations with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:
- Kaye, Scholer, Fierman, Hays & Handler, New York, New York, in connection with the receivership of American Bank & Trust Company, New York, New York.
- Hansell, Post, Brandon & Dorsey, Atlanta, Georgia, in connection with the liquidation of The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee.
- Recommendation with respect to the amendment of Corporation rules and regulations:
- Memorandum and resolution proposing the publication for comment of a new Part 345 of the Corporation's rules and regulations, to be entitled "Foreign Banks," in implementation of the International Banking Act of 1978.
- Memorandum proposing the payment of a third divided of six percent in connection

with the receivership of San Francisco National Bank, San Francisco, California.

Memorandum proposing the appointment of an agent for service of process in the State of Florida.

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:

Mr. Hoyle L. Robinson, Acting Executive Secretary (202) 389-4425.

[S-649-79 Filed 4-3-79; 10:48 am]

BILLING CODE 6714-01-M

6

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 2:30 p.m., Monday, April 9, 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: Huntington Bank, a proposed new bank to be located at 125 North First Avenue, Arcadia, California, for Federal deposit insurance.

The Bank of New Haven, a proposed new bank to be located at 209 Church Street, New Haven, Connecticut, for Federal deposit insurance.

American State Bank, a proposed new bank to be located at 608 West B Street, McCook, Nebraska, for Federal deposit insurance.

Applications for consent to establish branches:

Imperial Bank of Lakeland, Lakeland, Florida, for consent to establish a branch at the intersection of South Combee Road and Skyview Drive, Unincorporated Polk County (P.O. Lakeland), Florida.

Coolidge Bank and Trust Company, Watertown, Massachusetts, for consent to establish a branch at 56 Main Street, Watertown, Massachusetts.

Application for consent to merge and establish a branch:

Central Counties Bank, State College, Pennsylvania, an insured State nonmember bank, for consent to merge, under its charter and title, with The Union National Bank of Lewisburg, Lewisburg, Pennsylvania, and for consent to establish the sole office of the Union National Bank of Lewisburg as a branch of the resultant bank.

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. 43,849-L(amended)—
International City Bank and Trust Company,
New Orleans, Louisiana.

Case No. 43,861-L—State Bank of Clearing,
Chicago, Illinois.

Case No. 43,862-L—The Drovers' National
Bank of Chicago, Chicago, Illinois.

Case No. 43,867-NR—United States
National Bank, San Diego, California.

Case No. 43,869-L—The Hamilton National
Bank of Chattanooga, Chattanooga,
Tennessee.

Memorandum re: The Monroe Bank and
Trust Company, Monroe, Connecticut.

Memorandum re: Northern Ohio Bank,
Cleveland, Ohio.

Recommendation with respect to payment
for legal services rendered and expenses
incurred in connection with receivership and
liquidation activities:

Casey, Lane & Mittendorf, New York, New
York, in connection with the liquidation of
Franklin National Bank, New York, New
York.

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)(iii)).

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)).

Reports of committees and officers:

Audit Reports: Franklin National Bank
Liquidation, New York, New York, dated
January 5, 1979, Asset Nos. A-21, C-1092, C-
1093, and C-1094.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Hoyle L. Robinson,
Acting Executive Secretary (202) 389-
4425.

[S-650-79 Filed 4-3-79; 10:48 am]

BILLING CODE 6714-01-M

7

March 28, 1979.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., April 4, 1979.

PLACE: 825 North Capitol Street, N.E.,
Washington, D.C. 20426. Room 9306.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be
deleted without further notice.

**CONTACT PERSON FOR MORE
INFORMATION:** Kenneth F. Plumb,
Secretary, telephone (202) 275-4166.

This is a list of the matters to be
considered by the Commission, it does
not include a listing of all papers
relevant to the items of the agenda,
however, all public documents may be
examined in the Office of Public
Information.

Power Agenda—252nd Meeting, April 4, 1979, Regular Meeting (10:00 a.m.)

CAP-1. Docket No. ER79-191, Public Service
Co. of Oklahoma.

CAP-2. Docket No. ER79-202, Indiana &
Michigan Electric Co. and Ohio Power Co.

CAP-3. Docket No. ER79-208, Mid-Continent
Area Power Pool.

CAP-4. Docket No. ER78-365, Consolidated
Edison Co.

CAP-5. Docket No. ES79-26, El Paso Electric
Co.

CAP-6. Docket No. ER77-923, Puget Sound
Power & Light Co.

CAP-7. Docket No. ER78-375, Duquesne Light
Co.

CAP-8. Docket No. ER78-414, Delmarva
Power & Light Co.

CAP-9. Docket No. ER77-465 and ER78-423,
Oklahoma Gas & Electric Co.

CAP-10. Docket No. ER78-511, Public Service
Co. of Oklahoma.

CAP-11. Project No. 620, Alaska Packers
Association.

Gas Agenda—252nd Meeting, April 4, 1979, Regular Meeting

CAG-1. Docket No. RP78-84 (PGA No. 79-1),
Raton Natural Gas Co.

CAG-2. Docket No. CI78-633 and CI78-644,
Tenneco Exploration Ltd.

CAG-3. Docket No. CI78-1207, Estate of H. L.
Hunt.

CAG-4. Docket No. CI78-1094, Anadarko
Production Co., Docket No. CI78-606, Atlantic
Richfield Oil Co., Docket No. CI79-185,

Continental Oil Co., Docket No. CI79-147,
Exxon Corp., Docket No. CI78-1268, Exxon
Corp., Docket No. CI79-245, Freeport Oil Co.,

Docket No. CI78-1205, General Crude Oil Co.,
Docket No. CI78-993, Gulf Oil Corp., Docket
No. CI78-890, A. G. Hill, Docket No. CI78-613,

Hondo Oil & Gas Co., Docket No. CI78-616,
Hondo Oil & Gas Co., Docket No. CI78-860,

The Offshore Co., Docket No. CI78-666, Sonat
Exploration Co., Docket No. CI78-816,

Amerada Hess Corp., Docket No. CI78-1096,
Southland Royalty Co., Docket No. CI78-628,

Louisiana Land Offshore Exploration Co., Inc.,
Docket No. CI78-920, Getty Oil Co., Docket
No. CI78-1060, Transco Exploration Co.,

Docket No. CI78-1033, Marathon Oil Co.,
Docket No. CI78-1110, Marathon Oil Co.,

Docket No. CI78-1129, Mitchell Energy Corp.,
Docket No. CI78-242, Odessa Natural Corp.,

Docket No. G-6296, Tenneco Oil Co., Docket
No. CI78-1124, Terra Resources, Inc., Docket
No. CI78-1151, Transco Exploration Co.,

Docket No. CI77-370, Union Oil Co. of Calif.

CAG-5. Docket No. CI78-1151, Transco
Exploration Co.

CAG-6. Docket Nos. CI78-6528, et al.,
Louisiana Land Offshore Exploration Co., et
al., Docket No. CI78-916, Amerada Hess
Corp.

CAG-7. Docket Nos. CI78-1251, CI78-1268,
CI78-1272, and CI79-200, Exxon Corp.

CAG-8. Docket Nos. CS71-579, et al., Harry
Spooner and Spooner Petroleum Co. (Harry
Spooner, Jr.) et al.

CAG-9. Docket Nos. CS75-287, et al., The
Polumbus Corp., et al.

CAG-10. Docket Nos. CS78-522, et al., C. R.
McClennahan, et al.

CAG-11. Docket Nos. G-11083, et al.,
Continental Oil Co., et al.

CAG-12. Docket Nos. CI75-16, et al., Exxon
Corp.

CAG-13. Docket Nos. CI71-460, et al., Mobil
Oil Corp., et al.

CAG-14. Docket Nos. CI78-1188, et al., Mobil
Oil Corp., et al.

CAG-15. Docket No. CI78-907, General
American Oil Co. of Texas

CAG-16. Docket No. CI78-675, Lloyd W.
Roberts.

CAG-17. Docket No. CI66-1106, CRA, Inc.

CAG-18. Docket No. CP79-131,
Transcontinental Gas Pipe Line Corp.

CAG-19. Docket No. CP79-70,
Transcontinental Gas Pipe Line Corp.

CAG-20. Docket No. CP78-323, Columbia Gas
Transmission Corp. and National Fuel Gas
Supply Corp.

CAG-21. Docket No. CP78-405, The Montana
Power Corp.

CAG-22. Docket No. CP79-122, Texas
Eastern Transmission Corp.,
Transcontinental Gas Pipe Line Corp. and
Northern Natural Gas Co.

CAG-23. Docket No. CP74-316, Michigan
Wisconsin Pipe Line Co., Docket No. CP74-
317, Great Lakes Gas Transmission Co.

CAG-24. Docket No. CP68-75, Northern
Natural Gas Co.

CAG-25. Docket No. CP77-99, Northern
Natural Gas Co.

Miscellaneous Agenda—252nd Meeting, April
4, 1979, Regular Meeting

CAM-1. Recommendation Relating to the
Exemption From Natural Gas Act Regulation
Granted by Section 801(a)(1)(B) of the Natural
Gas Policy Act of 1978 (NGPA).

CAM-2. Docket No. RA79-16, J&W Refining.

CAM-3. Docket No. RA79-18, Osro Corp.

CAM-4. Docket No. RA79-19, Lunday-
Thagard Oil.

CAM-5. Docket No. RA79-20, Kern County
Refinery, Inc.

CAM-6. Carolina Power & Light Co.

CAM-7. The Connecticut Light & Power Co.

**Power Agenda—252nd Meeting, April 2, 1979,
Regular Meeting**

I. Licensed Project Matters

P-1. Project No. 2612, Central Maine Power
Co.

P-2. Project No. 2818, City and Borough of Sitka, Alaska.

P-3. Project No. 2795, City of Seattle, Wash.

II. Electric Rate Matters

ER-1. Docket No. ER79-195, Florida Power Corp.

Gas Agenda—252nd Meeting, March 28, 1979, Regular Meeting

I. Producer Matters

CI-1. Docket No. RI78-18, Natural Gas Pipeline Co. of America.

CI-2. Docket Nos. RI77-6 and RI63-281, William E. McCommons D/B/A/McCommons Exploration Co., et al.

CI-3. Docket No. RI66-117, H. N. Burnett.

CI-4. Docket No. G-16858, J. A. Kimmey (operator) et al., Docket No. A864-2, et al., Area Rate Proceedings, et al. (Texas Gulf Coast Area).

CI-5. Docket No. CI79-221, Arkansas Louisiana Gas Co.

CI-6. Docket No. CS76-887, EOC Production Co.

II. Pipeline Certificate Matters

CP-1. Docket No. CP76-492, National Fuel Gas Supply Corp. and National Gas Storage Corp., Docket No. CP77-644, National Fuel Gas Supply Corp., Docket No. CP77-472, Transcontinental Gas Pipeline Corp., Docket Nos. CP77-518 and CP77-519, Columbia Gas Transmission Corp., Docket Nos. CP77-569, CP77-570 and CP77-571, Tennessee Gas Pipeline Co., a Division of Tenneco, Inc.

CP-2. Docket No. RP72-99, Transcontinental Gas Pipe Line Corp.

CP-3. Docket Nos. RP71-29, et al. United Gas Pipeline Co.

Miscellaneous Agenda—252nd Meeting, April 4, 1979, Regular Meeting

M-1. Docket No. RM79-15, Proposed Regulation for the Implementation of Section 401 of the NGPA of 1978.

M-2. Docket No. RM79- , Proposed Rule To Revise Limits, Definitions and Authorization Time Periods of Budget-Type Certificate Applications—Gas Purchase Facilities.

M-3. Docket No. RA79-4, Arizona Fuels Corp.

Kenneth F. Plumb,
Secretary.

[S-647-79 Filed 4-3-79; 10:31 am]

BILLING CODE 6740-02-M

8

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (Public Law, April 5, 1979.)

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., April 4, 1979.

CHANGE IN MEETING: The following item has been added:

Item No., Docket No., and Company

CAG-28, CI75-45, et al., Tenneco Oil Co., et al.

Kenneth F. Plumb,
Secretary.

[S-651-79 Filed 4-3-79; 11:22 am]

BILLING CODE 6740-02-M

9

April 3, 1979.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 3 p.m., April 5, 1979.

PLACE: 825 North Capitol Street, N.E., Washington, D.C. 20426, Room 9306.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Civil litigation.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, telephone (202) 275-4166.

[S-652-79 Filed 4-3-79; 1:40 pm]

BILLING CODE 6740-02-M

10

FEDERAL MARITIME COMMISSION.

TIME AND DATE: April 10, 1979, 10 a.m.

PLACE: Room 12126, 1100 L Street, N.W., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion open to the public:

1. Monthly report of actions taken pursuant to authority delegated to the Managing Director.

Portions closed to the public:

1. Docket No. 76-46: Agreements T-3191, et al.—Decision on whether to hear oral argument and possible consideration of the record.

2. Docket No. 78-51: Agreement No. 10349—A Cargo Revenue Pooling and Sailing Agreement in the Argentina/U.S. Atlantic Coast Trade and Docket No. 78-52: Agreement No. 10346—A Cargo Revenue Pooling and Sailing Agreement in the Argentina/U.S. Gulf Coast Trade—Consideration of order of court on remand and petition for expedited procedure.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-648-79 Filed 4-3-79; 10:46 am]

BILLING CODE 6730-01-M

11

FEDERAL RESERVE SYSTEM.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 10 a.m., Friday, April 6, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Forwarded to Federal Register on March 30, 1979.

CHANGES IN THE MEETING: Change in time of the above open/closed meeting from 10 a.m. to 11 a.m.

CONTACT PERSON FOR HOME INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204.

April 2, 1979.

Theodore E. Allison,
Secretary of the Board.

[S-646-79 Filed 4-3-79; 9:04 am]

BILLING CODE 6210-01-M

12

PAROLE COMMISSION: National Commissioners (The Commissioners presently maintaining offices at Washington, D.C. Headquarters).

TIME AND DATE: Thursday, April 12, 1979, at 9:30 a.m.

PLACE: Room 828, 320 First Street, N.W., Washington, D.C. 20537.

STATUS: Closed, pursuant to a vote to be taken at the beginning of the meeting.

MATTER TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 15 cases in which inmates of Federal Prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: A. Ronald Peterson, Analyst (202) 724-3094.

[S-654-79 Filed 4-3-79; 2:54 pm]

BILLING CODE 4410-01-M

13

PAROLE COMMISSION.

TIME AND DATE: Monday, April 16, 1979, starting at 3:00 p.m.

PLACE: Hilton Inn, 2424 Erwin Rd., Durham, North Carolina.

STATUS: Closed, pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 15 cases decided by the National Commissioners pursuant to a reference under 28 CFR § 2.17 and appealed pursuant to 28 CFR § 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal Prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: A. Ronald Peterson,

Analyst (202) 724-3094, 320 1st Street N.W., Washington, D.C.

[S-655-79 Filed 4-3-79; 2:54 pm]

BILLING CODE 4410-01-M

14

PAROLE COMMISSION.

TIME AND DATE: Tuesday, April 17, 1979 and Wednesday, April 18, 1979, 9:30 a.m. to 5:30 p.m.

PLACE: Hilton Inn, 2424 Erwin Road, Durham, North Carolina.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Introductory remarks.
2. Approval of minutes of previous meetings.
3. Reports of the Chairman, Vice-Chairman, and Commissioners.
4. Consideration of regulations at 28 CFR § 2.19(c) dealing with recommendations of judges.
5. Consideration of regulations at 28 CFR § 2.19(e) concerning preponderance of evidence.
6. Consideration of revision of 28 CFR § 2.34 concerning rescission of parole and related procedures.
7. Consideration of revision of certain guideline provisions at 28 CFR §§ 2.20 and 2.21.
8. Interim report on the National Parole Institute.
9. Consideration of what constitutes superior program achievement, and weight to be given to it.
10. Search and seizure by probation officers.
11. Proposed change in policy relating to dispositional review.
12. Drug aftercare—application to certain cases.
13. Discussion of National Appeals Board methods and procedures.
14. Consideration of the following items previously reported on a consent agenda, if any Commissioner wishes to have such item discussed at this meeting:
 - (a) Reporting of parole violations,
 - (b) Local revocation hearings,
 - (c) Specified changes in the Procedures Manual, and
 - (d) Modification of disclosure regulations.

CONTACT PERSON FOR MORE

INFORMATION: Peter B. Hoffman; 320 First Street, N.W., Washington, D.C. 20537; (202) 724-3095.

[S-656-79 Filed 4-3-79; 2:54 pm]

BILLING CODE 4410-01-M

15

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of April 9, 1979, in Room 825,

500 North Capitol Street, Washington, D.C.

A closed meeting will be held on Tuesday, April 10, 1979, at 9 a.m. and an open meeting will be held at 10 a.m. this date.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402 (a)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans, Pollack and Karmel determined to hold the aforesaid meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 10, 1979, at 9:00 a.m., will be:

- Formal orders of investigation.
- Settlement of administrative proceedings of an enforcement nature.
- Access to investigative files by Federal, State, or Self-Regulatory Authorities.
- Regulatory matter bearing enforcement implications.
- Institution of injunctive actions.
- Institution of injunctive action and administrative proceedings.
- Institution of administrative proceedings of an enforcement nature.
- Institution of administrative proceedings of an enforcement nature and issuance of interpretative release.
- Dismissal of administrative proceedings of an enforcement nature.
- Personnel matter.
- Freedom of Information Act appeals.
- Litigation matter.

The subject matter of the open meeting scheduled for Tuesday, April 10, 1979, at 10 a.m., will be:

1. Consideration of amendments to the Commission's Rules of Organization delegating to the Directors of the Divisions of Enforcement and Market Regulation and to the Regional Administrators authority to inform the Securities Investor Protection Corporation ("SIPC") of facts concerning the activities and the operational and financial condition of any registered broker-dealer which is or appears to be a SIPC member and which is in or approaching financial difficulty. For further information, please contact Michael J. Simon at (202) 755-8767.
2. Consideration of an application by Kent W. Johnson asking permission for him to become associated with Securities Corporation of Iowa, a registered broker-dealer, as a registered representative in a supervisory capacity. For further information, please contact Michael F. Perlis at (202) 755-1498 or David P. Tennant at (202) 378-2036.

FOR FURTHER INFORMATION, CONTACT: John Ketels at (202) 755-1129

April 3, 1979.

[S-657-79 Filed 4-3-79; 3:47 pm]

BILLING CODE 8010-01-M

Federal Register

Thursday
April 5, 1979

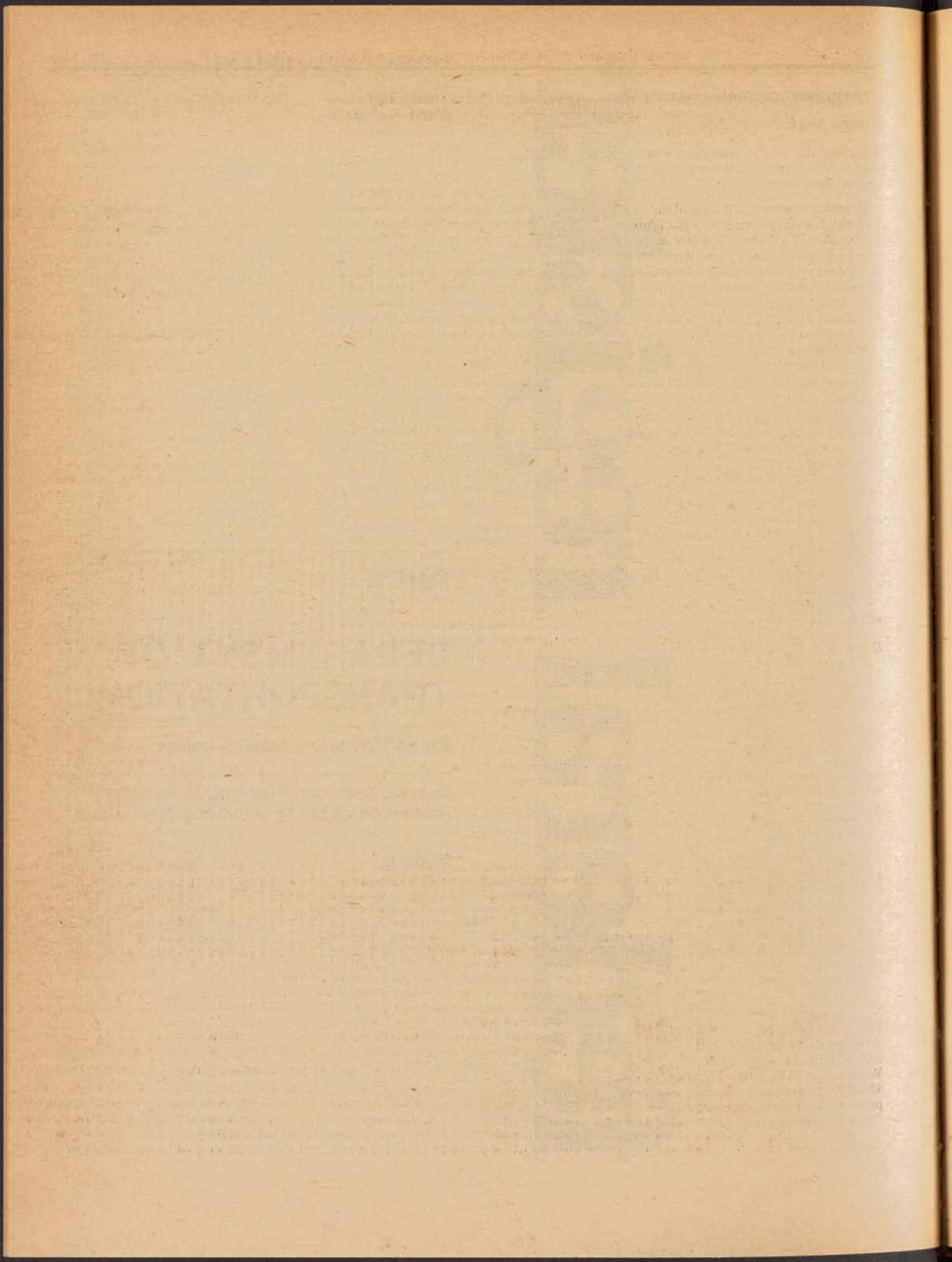
Part II

**DEPARTMENT OF
TRANSPORTATION**

Federal Aviation Administration

Special Aviation Fire and Explosion
Reduction (SAFER) Advisory Committee

Meeting



DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Special Aviation Fire and Explosion Reduction (SAFER) Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Special Aviation Fire and Explosion Reduction (SAFER) Advisory Committee to be held in Room 6A/B/C of the Federal Aviation Administration (FAA) Headquarters Building, 800 Independence Avenue, S.W., Washington, D.C., on May 10 and 11, 1979, beginning at 9:00 a.m.

The agenda for the meeting is as follows:

1. *Welcome address* by the Acting Director, Flight Standards Service, who will introduce the temporary Chairperson and the Executive Director.
2. *Discussion of the scope of the Committee's work.*
3. *Discussion of Technical Groups to provide technical expertise.*
Identification and scope of each needed Technical Group.
Structure of Technical Groups.
Liaison between the Committee and its Technical Groups.
4. *Presentations on current status of R & D efforts in the Committee's area of concern.*
5. *Discussion of funding available for R & D work in the Committee's area of concern.*
6. *Assignments.*
To members.
To the Executive Director.
To Technical Groups.
7. *Election of the permanent Chairperson by the members.* The name of the Chairperson-elect will be submitted for confirmation by the Administrator. If confirmed, the elected Chairperson will serve at the second and subsequent Committee meetings.
8. *Agenda, time, and place of next Committee meeting.*

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons wishing to attend and present oral statements should notify, not later than the day before the meeting, Irving Fagin, AFS-105, Executive Director, SAFER Advisory Committee, Engineering and Manufacturing Division (AFS-100), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591. Telephone 202-426-8198. Any member of the public may present a written statement to the Committee at any time.

The members and alternate members of the SAFER Advisory Committee are as follows:

Name and Title

- E. L. Thomas, Asst. Vice President, Engineering, Air Transport Association.
John P. Reese, Director of Airworthiness Programs, Aerospace Industries Assoc.
William F. Fanning, Mgr., Technical Services, National Business Aircraft Association.
B. V. Hewes, Chairman, ALPA Rescue & Fire Comm. *Alternate:* R. W. Clarke, Air Line Pilots Association.
Cornish F. Hitchcock, Attorney, Aviation Consumer Action Project.
Pat Slater, Acft. Technical Committee, Association of Flight Attendants.
Stanley J. Green, Vice President; General Counsel, General Aviation Mfrs. Assoc.
G. N. Goodman, Director, Eng. & Environment, Int'l. Air Transport Assoc.
Edward L. Hutcheson, Safety Consultant, Helicopter Assoc. of America.
Clayton Huggett, Acting Deputy Director, Center for Fire Research. *Alternate:* Sanford Davis, National Bureau of Standards.
John H. Enders, Chief, Aviation Safety Technology Branch, National Aeronautics & Space Administration.
Lowell R. Perkins. *Alternate:* James D. Tanzilli, Society of the Plastics Industry.
Dr. Martin Goland, President, Southwest Research Institute.
Joseph M. Del Balzo, Acting Director, FAA; National Aviation Facilities Experimental Center.
James O. Robinson, Chief, Eng. & Manufacturing Division, FAA; Flight Standards Service.
Douglas E. Busby, M. D., Deputy Federal Air Surgeon, FAA; Office of Aviation Medicine.
Charles W. McGuire, Acting Director, Office of Safety Affairs, DOT; Office of Environment and Safety.
S. Harry Robertson, Director, Engineering Safety Center, Arizona State University.
J. A. Bert, American Petroleum Institute.
James E. Dougherty, Aviation Consultant.

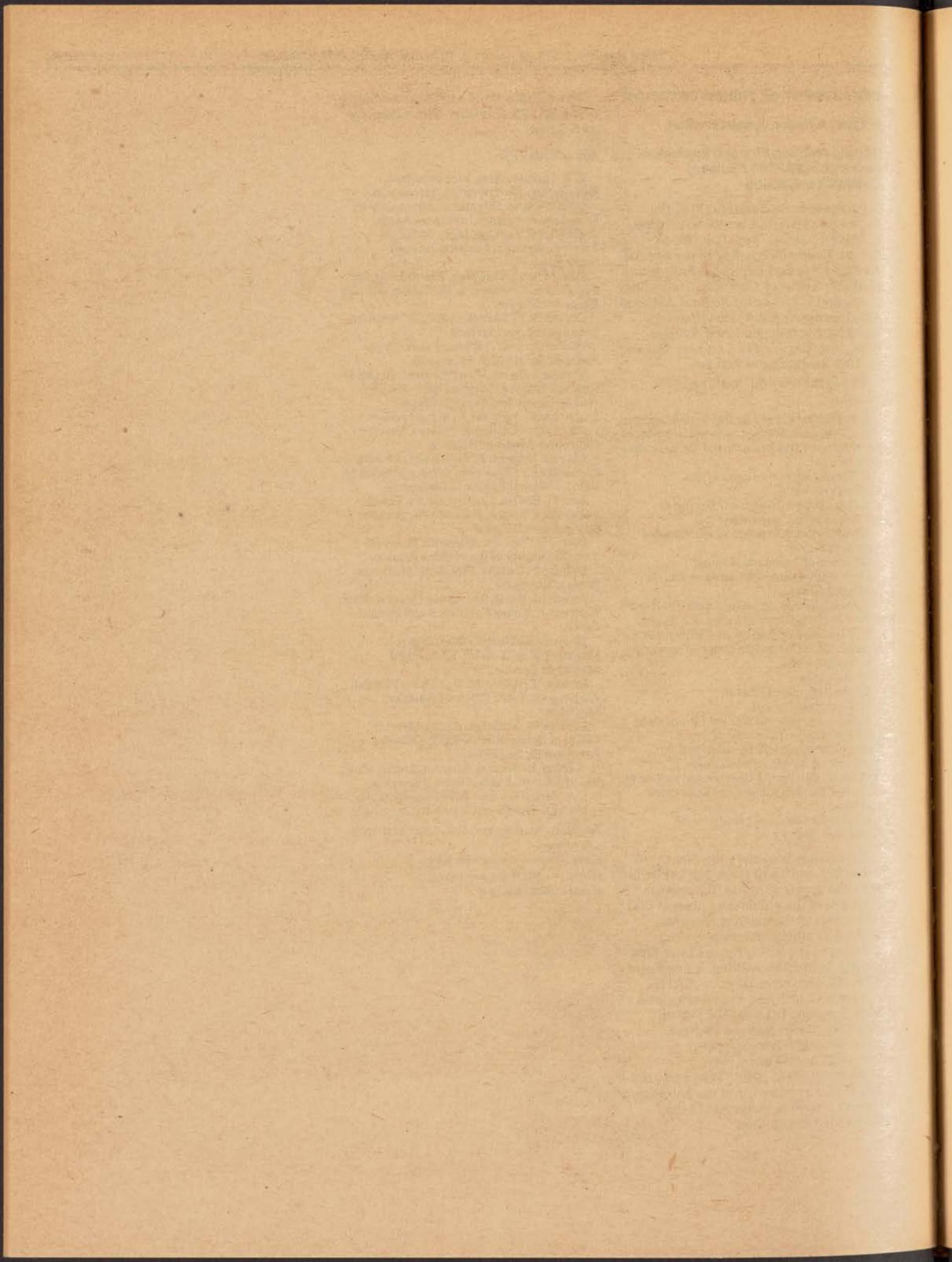
Issued in Washington, D.C., March 28, 1979.

J. A. Ferraroso,

Acting Director, Flight Standards Service.

[FR Doc. 79-10278 Filed 4-4-79; 8:45 am]

BILLING CODE 4910-13-M



Register Federal Register

Thursday
April 5, 1979

Part III

Office of Management and Budget

Office of Federal Procurement Policy

Acquiring of Commercial or Industrial
Products and Service Needed by the
Government; Policy Revision

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Acquiring of Commercial of Industrial Products and Services Needed by the Government; Policy Revision

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

SUMMARY: This revision replaces OMB Circular A-76 "Policies for Acquiring Commercial or Industrial Products and Services for Government Use," dated August 30, 1967, and supplements dated October 18, 1976 and June 13, 1977. It reaffirms the Government's general policy of reliance on the private sector for goods and services, while recognizing that governmental functions must be performed by Government personnel and that proper attention must be given to relative cost. More definitive guidelines are provided to ensure greater consistency and equity to all parties in the implementation of this Circular.

A comprehensive Cost Comparison Handbook is provided with the new Circular to ensure that comparative cost analyses, when prepared, reflect all significant costs to the Government for both in-house and contract performance and provide a valid basis for agency decisions. Such analyses are made to justify a Government activity providing commercially available goods or services on the basis of cost, to justify conversion of a Government activity to contract performance, to determine whether new requirements will be met by in-house or contract performance, and to determine whether contract performance will be continued when there is a probability that a Government activity would be more economical.

FOR FURTHER INFORMATION CONTACT: Mr. William D. Russell, Deputy Assistant Administrator for Logistics, Telephone 202-395-7207.

SUPPLEMENTARY INFORMATION: Under Public Law 93-400, the Administrator for Federal Procurement Policy is responsible for monitoring and revising policies, regulations, procedures and forms relating to reliance by the Federal Government on the private sector to provide needed properly and services. On June 13, 1977, the Administrator and the Director of OMB announced a comprehensive review of OMB Circular A-76 and its implementation, and solicited input and suggestions from interested parties. On November 21, 1977, a number of proposed changes to

the Circular were published for comment. A draft revision of the Circular was published for comment on August 22, 1978, and this final version reflects consideration of all responses received.

Discussion of Proposed Policy Policy

The current Circular A-76 states the Government's general policy of relying on the private sector to supply its needs. This revision expands that policy statement to recognize that "governmental functions" must be performed by Government personnel, and that the American people are entitled to economy in Government, which requires appropriate emphasis on comparative cost.

The new policies and procedures are designed to establish a balanced and disciplined management system that will produce consistency, predictability, and equity for affected workers, agencies, and contractors. These Government make-or-buy decisions will continue to be difficult but the new procedures should make them far more equitable and consistent.

Definitions

Circular A-76 currently defines a "new start" as any new Government commercial or industrial activity, or any significant expansion or additional capital investment in an existing activity. The revision defines "new start" and "expansion" separately, permitting appropriately different treatment in reviews and cost studies.

"Government commercial or industrial activity" is defined in more detail, and a representative listing of commercial and industrial activities is provided as Attachment A.

"Governmental function" is defined to clearly embrace the activities that should always be performed by Government personnel because they involve exercising governmental authority, controlling monetary transactions and entitlements, and maintaining needed core capabilities. The definition is primarily limited to those functions which inherently involve value judgments, and does not include ancillary and support activities.

Scope

The scope of the Circular has been simplified and clarified to exclude "governmental functions" from inventory and review requirements, and also to clearly prohibit contracts which establish an employer-employee relationship between the Government and contract personnel. It also

reemphasizes that agencies should not contract out for the purpose of avoiding personnel ceilings or salary limitations, and clarifies the relationship with OMB Circular A-109 and guidance on consulting services. New language more clearly states the applicability of the Circular to R&D activities, although a follow-on study will develop more precise guidelines for later application of the Circular to R&D activity. These changes should eliminate some misunderstandings and improper interpretations that have caused problems in the past.

Interagency Provision of Goods and Services

The previous Circular listed services obtained from another agency as one of the exceptions to reliance on the private sector. Agency guidance was not adequate and resulted in inconsistent treatment of such arrangements; in some cases, an activity was listed by both agencies, in other cases, it was not listed or reviewed by either. In the revision, this coverage is placed in a separate paragraph and provides new guidance to assure proper reviews.

Circumstances Under Which the Government May Operate a Commercial or Industrial Activity

Previous language has permitted this section to be very loosely interpreted and applied. Under the revised Circular, coverage is simplified to provide more consistent implementation. One exception was moved to a separate paragraph and two were consolidated, leaving three circumstances to justify in-house performance: lack of a satisfactory private source, military necessity, and relative cost.

More specific guidelines are provided for determining when there is no satisfactory commercial source, including any case where use of a contract would delay or disrupt a program. More detailed criteria for identifying those activities that must be performed by Government personnel to maintain military readiness is included.

Cost comparison guidelines were rather general in the previous Circular, permitting a wide divergence in practice between agencies. The revision establishes basic principles to be followed, which are supplemented by detailed guidance in the Cost Comparison Handbook. Significant changes in the cost comparison principles, which are designed to produce greater accuracy and consistency in cost analyses, include: use of firm bids or proposals to establish commercial costs; recognition of

overhead and indirect costs for Government operations; standard cost factors for Government employee fringe benefits and administration of contracts; and cost differentials which must be met before converting in-house activity to contractor or contracts to in-house new starts.

Implementation

Implementation has been the most criticized aspect of Circular A-76 since its issuance. This responsibility is assigned to the executive agencies where it has not received a high level of management attention. Several specific changes in the revised Circular are intended to promote more effective and consistent implementation. These are:

- (1) Publication of an advance schedule for review of all commercial and industrial activities and service contracts suitable for Government performance;
- (2) Public access to all reviews and decisions; and
- (3) A procedure for appeal and administrative review of decisions disputed by affected parties.

These actions will provide a level of visibility and discipline that should significantly enhance implementation.

Federal Employee Protections

Past application of contracting out policies has worked to abruptly and inconsistently threaten the jobs and financial security of the workers affected. This has been among the most serious defects under past practice. Several key provisions have been added to protect these workers, including the advance notice of review, "sunshine" access to reviews, appeals procedures, and cost differential favoring continued in-house performance as mentioned above. In addition, the new Circular requires that any Federal workers displaced by a conversion to contract will have rights of first refusal to new contract job openings. The agencies are also required to find other suitable Governmental positions, pay training costs, and phase transitions to ease employee dislocations. Finally, OMB will consider granting relief to agency personnel ceiling if, under the terms of the Circular, new work should be performed in-house.

Lester A. Fettig,
Administrator.

Executive Office of the President,
Office of Management and Budget,
Washington, D.C. 20503, March 29, 1979.

Circular No. A-76, Revised,
Transmittal Memorandum No. 4.

To: The heads of executive departments and establishments.

Subject: Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government.

Transmitted herewith is a revision of Office of Management and Budget Circular A-76, which replaces Transmittal Memorandum No. 1, dated August 30, 1967, Transmittal Memorandum No. 2, dated October 18, 1976, and Transmittal Memorandum No. 3, dated June 13, 1977.

The revised Circular (1) reaffirms the Government's general policy of reliance on the private sector for goods and services, while recognizing that (2) certain functions are inherently governmental in nature and must be performed by Government personnel, and (3) relative cost must be given appropriate consideration in decisions between in-house performance and reliance on private commercial sources. The balanced approach in this revised Circular is designed to achieve consistent policy implementation in all agencies, equitable treatment of all parties, and improved economy and efficiency in providing goods and performing services needed by the Government.

To support the increased emphasis on relative economy of Government and contract performance, a comprehensive Cost Comparison Handbook is provided as a supplement to the Circular. This Handbook is to be used by all agencies in conducting comparative cost analyses. The Handbook provides instructions for determining the total cost of Government for each alternative and will provide a more accurate basis for cost-based decisions.

This revision of Circular A-76 is the result of an extensive review of the Circular and its implementation by executive agencies, and careful consideration of all comments submitted on the draft revision that was published in August 1978. Many of those comments were accommodated through clarification and refinement of the draft. Supplementary guidance on special subjects will be developed as needed.

Application to R&D Activities

Some concern was expressed over the potential impact of the application of this Circular of Government R&D activities. While agencies with a need for in-house R&D capability can consider a "core capability" in this area as a "governmental function," additional guidance is needed to ensure some consistency in determining and justifying the size of that core capability and applying the Circular to R&D requirements, in excess of that level of capacity.

An interagency committee jointly sponsored by the Office of Federal Procurement Policy and the Office of Science and Technology Policy, has been established under the Federal Coordinating Council for Science, Engineering, and Technology, to study these issues and recommend guidelines for appropriate and uniform agency implementation. Supplemental guidance addressing R&D activities will then be developed and, after public review and comment, be issued as an amendment to the Circular. In the interim, compliance with this Circular and the periodic review of inventoried R&D activities are to be deferred

for one year pending completion of the study, except for new starts and expansions, as defined in the Circular. Additional guidance will be provided on determining justified "core capability" and applying the policy to other R&D requirements to assure that essential in-house capability is maintained, and that the Government and taxpayers' interests are properly considered in contract versus in-house decisions.

Government-Owned Contractor-Operated Activities

Government-owned, contractor-operated (GOCO) activities were excluded from the prior issuances of the Circular. A comprehensive review of all GOCO activities is necessary to determine whether they can be completely treated under the terms of this Circular. In the interim, this Circular is to be applied only to new starts and expansions of Government-owned equipment and facilities.

Personnel Ceilings

The relationship between Circular A-76 and agency personnel ceilings was reviewed in some detail and clarified in the Circular. While it is clearly specified that agencies will not use the Circular to contract out solely to meet personnel ceilings, it is equally clear that agencies will contract out when justified under the Circular regardless of the relationship between personnel levels and authorized ceilings. Conversely, contracts for activities that are shown to be justified for in-house performance will be terminated as quickly as in-house capability can be established; when the additional spaces required cannot be accommodated within the agency's personnel ceiling, a request for adjustment will be submitted to OMB in conjunction with the annual budget review process.

The Office of Management and Budget will monitor agency implementation of this revised Circular, providing guidance and interpretations as required. Further revisions and supplements will be issued as necessary in the future to achieve the policy objectives.

James T. McIntyre, Jr.,
Director.

Lester A. Fettig,

Administrator for Federal Procurement Policy.

Executive Office of the President,
Office of Management and Budget,
Washington, D.C. 20503, March 29, 1979.

Circular No. A-76, Revised.

To: The heads of executive departments and establishments.

Subject: Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government.

1. *Purpose.* This Circular establishes the policies and procedures used to determine whether needed commercial or industrial type work should be done by contract with private sources or in-house using Government facilities and personnel. This Circular replaces OMB Circular No. A-76, dated August 30, 1967, and all subsequent amendments.

2. *Background.* In a democratic free enterprise economic system, the Government should not compete with its citizens. The private enterprise system, characterized by

individual freedom and initiative, is the primary source of national economic strength. In recognition of this principle, it has been and continues to be the general policy of the Government to rely on competitive private enterprise to supply the products and services it needs.

This policy has been expressed in Bureau of the Budget Bulletins issued in 1955, 1957, and 1960. In 1966, Circular No. A-76 was issued and, for the first time, prescribed the policy and implementing guidelines in a permanent directive. The Circular was revised in 1967, by Transmittal Memorandum No. 1, to clarify some provisions and to lessen the burden of work by the agencies in implementation. Transmittal Memorandum No. 2 was issued in 1976, providing additional guidance on cost comparisons and prescribing standard cost factors for Federal employee retirement and insurance benefits.

In 1977, a comprehensive review of the Circular and its implementation was initiated. Transmittal Memorandum No. 3 was issued on June 13, 1977, announcing the review and temporarily reducing the Government retirement cost factor. This revision is the result of that review and careful consideration of comments from all interested parties.

3. *Responsibility.* Each agency head has the responsibility to ensure that the provisions of this Circular are followed. This Circular provides administrative direction to heads of agencies and does not establish, and shall not be construed to create, any substantive or procedural basis for any person to challenge any agency action or inaction on the basis that such action was not in accordance with this Circular, except as specifically set forth in Section 11 below.

4. *Policy.* This policy builds on three equally valid policy precepts:

a. *Rely on the Private Sector.* The Government's business is not to be in business. Where private sources are available, they should be looked to first to provide the commercial or industrial goods and services needed by the Government to act on the public's behalf.

b. *Retain Certain Governmental Functions In-House.* Certain functions are inherently governmental in nature, being so intimately related to the public interest as to mandate performance by Federal employees.

c. *Aim for Economy; Cost Comparisons.* When private performance is feasible and no overriding factors require in-house performance, the American people deserve and expect the most economical performance and, therefore, rigorous comparison of contract costs versus in-house costs should be used, when appropriate, to decide how the work will be done.

5. *Definitions.* For the purposes of this Circular:

a. A "Government commercial or industrial activity" is one which is operated and managed by a Federal executive agency and which provides a product or service that could be obtained from a private source. A representative, but not comprehensive, listing of such activities is provided in Attachment A. An activity can be identified with an organization or a type of work, but must be

(1) separable from other functions so as to be suitable for performance either in-house or by contract; and (2) a regularly needed activity of an operational nature, not a one-time activity of short duration associated with support of a particular project.

b. An "expansion" is the modernization, replacement, upgrade, or enlargement of a Government commercial or industrial activity involving additional capital investment of \$100,000 or more, or increasing annual operating costs by \$200,000 or more; provided, the increase exceeds 20% of the total investment or annual operating cost. A consolidation of two or more activities is not an "expansion" unless the proposed total capital investment or operating cost exceeds the total from the individual activities by the amount of the threshold. An expansion which increases either capital investment or annual operating cost by 100% or more is a "new start."

c. A "conversion" is the transfer of work from a Government commercial or industrial activity to performance by a private commercial source under contract.

d. A "new start" is a newly-establish Government commercial or industrial activity, including a transfer of work from contract to in-house performance. Also included is any expansion which would increase capital investment or annual operating cost by 100% or more.

e. A "private commercial source" is a private business, university, or other non-Federal activity, located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico, which provides a commercial or industrial product or service required by Government agencies.

f. A "Governmental function" is a function which must be performed in-house due to a special relationship in executing governmental responsibilities. Such governmental functions can fall into several categories:

(1) *Discretionary application of Government authority*, as in investigations, prosecutions and other judicial functions; in management of Government programs requiring value judgments, as in directing the national defense; management and direction of the Armed Services; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers and other natural resources; direction of intelligence and counter-intelligence operations; and regulation of industry and commerce, including food and drugs.

(2) *Monetary transactions and entitlements*, as in Government benefit programs; tax collection and revenue disbursements by the Government; control of the public treasury, accounts, and money supply; and the administration of public trusts.

(3) *In-house core capabilities* in the area of research, development, and testing, needed for technical analysis and evaluation and technology base management and maintenance. However, requirements for such services beyond the core capability which has been established and justified by

the agency are not considered governmental functions.

6. *Scope.*

a. No executive agency will engage in or contract for commercial or industrial activities except in accordance with the provisions of this Circular, or as otherwise provided by law, including, for example, Title 44 of the U.S. Code.

b. The implementation provisions of this Circular do not apply to governmental functions as defined in paragraph 5(f). These functions must be performed in-house by Government personnel.

c. This Circular applies to the need for Government ownership in any "new start" or "expansion" of a Government-owned, contractor-operated (GOCO) facility.

Additional provisions are as follows:

(1) This Circular does not provide authority to enter into contracts. Guidelines governing contracts for goods and services are set forth in applicable acquisition regulations.

(2) This Circular will not be used as authority to enter into contracts which establish a situation tantamount to an employer-employee relationship between the Government and individual contract personnel. Additional guidance on this subject is provided in the Federal Personnel Manual issued by the Office of Personnel Management.

(3) This Circular will not be used to justify a conversion to contract solely to meet personnel ceilings or to avoid salary limitations. When in-house performance of a "new start" is justified under this Circular but cannot be accommodated within agency personnel ceilings, an appeal for necessary adjustment to implement this Circular agency-wide should be made to OMB in connection with the annual budget review process.

(4) Major system acquisitions are governed by the provisions of OMB Circular No. A-109, "Major System Acquisitions." Reliance on the private sector is one of the general policies contained in Circular A-109 to ensure competitive consideration of all alternatives before making a decision as to the best method of satisfying an agency mission need.

(5) This Circular does not apply to consulting services of a purely advisory nature relating to the governmental functions of agency administration and management and program management. Assistance in the management area may be provided either by Government staff organizations or from private sources, as deemed appropriate by executive agencies, in accordance with executive branch guidance on the use of consulting services.

(6) This Circular applies to printing and binding only in those agencies or departments which are exempted by law from the provisions of Title 44 of the U.S. Code.

(7) This Circular should not be applied when it would be contrary to law or inconsistent with the terms of any treaty or international agreement.

7. *Use of Products and Services from Other Federal Agencies.*

a. Excess property and services available from other Federal agencies should be used

in preference to new starts or contracts, unless the needed product or service can be obtained more economically in the private sector. This is consistent with the Federal Property and Administrative Services Act of 1949 and related regulations.

b. When a commercial or industrial activity operated by an agency primarily to meet its own needs has excess capacity, that capacity can be used to provide products or services to other agencies.

(1) If a formal program is established for managing excess capacity, such as the ADP sharing program operated by GSA, capacity that has been reported as excess can be used by other agencies with no further justification. In the absence of a formal program and report of excess capacity, another agency's use of a Government activity must be justified in accordance with paragraph 8 of this Circular. When the cost justification is used, the agency requiring the product or service will solicit competitive bids or proposals to establish commercial costs, and award a contract when more economical. The prospective providing agency will prepare the Government cost estimate, in accordance with this Circular, for comparison with the commercial cost.

(2) It is not intended that agencies create or expand capacity for the purpose of providing commercially available products or services to other agencies. When the performing agency's own requirements increase, capacity used to support other agencies is no longer excess and should be used in preference to acquisition of additional capability. Consequently, agencies should not expand a commercial or industrial activity which is providing products or services to other agencies. The user agency (or agencies) should be informed, with sufficient notice to arrange alternative sources, that the support will be terminated unless exceptional circumstances prevent that agency from finding a new source.

c. In some cases, a commercial or industrial activity is operated for the primary purpose of providing a product or service to other agencies, such as the Federal Data Processing Centers or the Office of Personnel Management training centers. All such activities must be reviewed under this Circular to determine whether continued Government operation is justified. The review should be made at the earliest possible date, but under no circumstances later than October 1, 1981. Prior to that review, agencies may use the products and services available without further justification. When continued Government operation of the activity is approved, agencies may use the products or services provided, up to the level of capability approved, with no further justification. When expansion of such an activity is proposed, the justification for approval under this Circular can be based on the entire workload, including work for other agencies.

8. *Government Operation of a Commercial or Industrial Activity.* Government operation of a commercial or industrial activity may be authorized under one of the following conditions.

a. *No Satisfactory Commercial Source Available.*

(1) A Government commercial or industrial activity can be authorized without a comparative cost analysis when it is demonstrated that:

(a) There is no private commercial source capable of providing the product or service that is needed; or

(b) Use of a private commercial source would cause an unacceptable delay or disruption of an essential agency program.

(2) Before concluding that there is no private commercial source capable of providing the needed product or service, the agency must make all reasonable efforts to identify available sources.

(a) As a minimum, the agency must place at least three notices of the requirement in the *Commerce Business Daily* over a 90-day period. In the case of urgent requirements, publication in the *Commerce Business Daily* can be reduced to two notices over a 30-day period.

(b) Agencies' efforts to find satisfactory commercial sources, especially small and minority-owned businesses, should include obtaining assistance from the General Services Administration, Small Business Administration, and the Domestic and International Business Administration in the Department of Commerce.

(3) A conclusion that use of a commercial source would not be satisfactory because it would cause an unacceptable delay or disrupt an agency program requires a specific documented explanation.

(a) Delay or disruption must be spelled out specifically in terms of cost, time and performance measures.

(b) Disruption must be shown to be of a lasting or unacceptable nature. Transitory disruption caused by conversions are not sufficient grounds.

(c) In all cases, specific explanations must be documented. If it is known that the function has been performed by contract elsewhere or at another time, the justification must specify why circumstances are substantially different.

(d) The fact that an activity involves a classified program, or is part of an agency's basic mission, or that there is a possibility of a strike by contract employees is not an adequate justification for in-house performance of that activity. Urgency by itself is not an adequate reason for starting or continuing a Government commercial or industrial activity. It must be shown that commercial sources are not able and the Government is able to provide the product or service when needed.

b. *National Defense.*

(1) A Government commercial or industrial activity, operated by military personnel, may be justified when:

(a) The activity or military personnel assigned are utilized in or subject to deployment in a direct combat support role;

(b) The activity is essential for training in those skills which are exclusively military in nature; or

(c) The activity is needed to provide appropriate work assignments for career

progression or a rotation base for overseas assignments.

(2) A Government commercial or industrial activity providing depot or intermediate level maintenance may be justified in accordance with criteria approved by the Secretary of Defense to ensure a ready and controlled source of technical competence and resources necessary to meet military contingencies. These criteria will limit the extent of in-house capability and capacity within the military departments for depot and intermediate maintenance support of mission-essential equipment to the minimum necessary to accomplish that objective. Justification under these criteria will require a detailed explanation, on a case-by-case basis, why the needed capability cannot be supplied by:

(a) A private commercial source; or

(b) Contract operation of Government-owned facilities.

Such justification must be approved at the military department assistant secretary level or equivalent in the defense agencies.

c. *Higher Cost.* A Government commercial or industrial activity may be authorized if a comparative cost analysis, prepared in accordance with paragraph 9 of this Circular, indicates that the Government can provide or is providing a product or service at a lower total cost than if it were obtained from a private commercial source.

9. *Cost Comparisons.* A decision for in-house performance based on economy must be supported by a comparative cost analysis prepared in accordance with this Circular and the supplementing Cost Comparison Handbook.

a. *Common Ground Rules.*

(1) Both Government and commercial cost figures must be based on the same scope of work and the same level of performance. This requires the preparation of a sufficiently precise work statement with performance standards that can be monitored for either mode of performance.

(2) Standard cost factors will be used as prescribed by the Cost Comparison Handbook and as supplemented by agencies for particular operations. It will be incumbent on each agency to defend any variations in costing from one case to another.

(3) Cost comparisons are to be aimed at full cost, to the maximum extent practical in all cases. All significant Government costs (including allocation of overhead and indirect costs) must be considered, both for direct Government performance and for administration of a contract.

(4) In the solicitation of bids or offers from contractors for workloads that are of a continuing nature, unless otherwise inappropriate, solicitations should provide for prepriced options or renewal options for the out-years. These measures will guard against "buy-in" pricing on the part of contractors. While recompetition also guards against "buy-ins," the use of prepriced or renewal options provides certain advantages such as continuity of operation, the possibility of lower contract prices when the contractor is required to provide equipment or facilities, and reduced turbulence and disruption.

(5) Ordinarily, agencies should not incur the delay and expense of conducting cost comparison studies to justify a Government commercial or industrial activity for products or services estimated to be less than \$100,000 in annual operating costs. Activities below this threshold should be performed by contract unless in-house performance is justified in accordance with paragraph 8. a. or b. However, if there is reason to believe that inadequate competition or other factors are causing commercial prices to be unreasonable, a cost comparison study may be conducted. Reasonable efforts should first be made to obtain satisfactory prices from existing commercial sources and to develop other competitive commercial sources.

(6) The cost comparison will use a rate of 10% per annum as the opportunity cost of capital investments and of the net proceeds from the potential sale of capital assets, as prescribed in the Cost Comparison Handbook.

b. Calculating Contract Costs.

(1) The contract cost figure must be based on a binding firm bid or proposal, solicited in accordance with pertinent acquisition regulations. Bidders or offers must be told that an in-house cost estimate is being developed and that a contract may or may not result, depending on the comparative cost of the alternatives.

(2) The factor to be used for the Government's cost of administering contracts, in addition to other costs of using contract performance as specified in the Handbook, is 4% of the contract price or expected cost.

c. Calculating Costs of Government Operation.

(1) Each agency should assure that Government operations are organized and staffed for the most efficient performance. To the extent practicable and in accordance with agency manpower and personnel regulations, agencies should precede reviews under this Circular with internal management reviews and reorganizations for accomplishing the work more efficiently, when feasible.

(2) The Government cost factor to be used for Federal employee retirement benefits, based on a dynamic normal cost projection for the Civil Service Retirement Fund, is 20.4%.

(3) The Government cost factor to be used for Federal employee insurance (life and health) benefits, based on actual cost, is 3.7%.

(4) The Government cost factor to be used for Federal employee workmen's compensation, bonuses and awards, and unemployment programs is 1.9%.

d. An existing in-house activity will not be converted to contract performance on the basis of economy unless it will result in savings of at least 10% of the estimated Government personnel costs for the period of the comparative analysis.

e. A "new start" will not be approved on the basis of economy unless it will result in savings compared to contract performance at least equal to 10% of Government personnel costs, plus 25% of the cost of ownership of equipment and facilities, for the period of the comparative analysis.

f. All cost comparisons must be reviewed by an activity independent of the cost analysis preparation to ensure conformance to the instructions in the Cost Comparison Handbook.

10. Administering the Policy. a. Implementation.

(1) Each agency will designate an official at the assistant secretary or equivalent level, and officials at subordinate contact points for major components, to have overall responsibility for implementation of this Circular within the agency.

(2) Each agency will establish one or more offices as central points of contact to maintain cognizance of specific implementation actions. These offices will have access to all decision documents and data pertinent to actions taken under the Circular and will respond, in a timely manner, to all requests concerning inventories, schedules, reviews, and results of reviews. In considering requests which include information supplied by contractors or prospective contractors, agencies will be guided by OFPP Policy Letter No. 78-3, "Requests for Disclosure of Contractor-Supplied Information Obtained in the course of a Procurement."

(3) Within 90 days after the date of issuance, each agency will promulgate this Circular, with the minimum necessary internal instructions, identifying the designated official and the central and subordinate contact points. When issued, copies of the internal instructions will be forwarded to OMB's Office of Federal Procurement Policy for review. Copies of subsequent changes will also be forwarded for review.

(4) Each agency will recognize that work for the Federal Government may be performed by use of military personnel, civilian employees, and contract services and that past experience demonstrates that all three methods have been responsive and dependable in performing sensitive and important work.

(5) Each agency will ensure that contracts awarded as a result of reviews under Circular A-76:

(a) Contain all applicable clauses and provisions related to equal employment opportunities, veterans, preference, and minimum wages and fringe benefits, including implementation of OFPP Policy Letter No. 78-2, dated March 29, 1978, relating to "wage busting;"

(b) Include a provision, consistent with Government post employment conflict of interest standards, that the contractor will give Federal employees, displaced as a result of the conversion to contract performance, the right of first refusal for employment openings on the contract in positions for which they are qualified;

(c) Are awarded to a responsible and responsive bidder or offeror, as required by applicable acquisition regulations; and

(d) Are administered and monitored to achieve proper performance, using appropriate contractual remedies any time performance is less than satisfactory.

(6) Each agency will exert maximum effort to find suitable employment for any displaced Federal employees, including:

(a) Giving them priority consideration for suitable positions with the Government;

(b) Paying reasonable costs for training and relocation when these will contribute directly to placement;

(c) Arranging for gradual transition when conversions are made to provide greater opportunity for attrition and placement; and

(d) Coordinating with the Department of Labor and other agencies to obtain private sector employment for separated workers.

(7) Each agency will provide for alternations to the mode of performance to be timed in consonance with, and adjusted for, the budget process to the extent required and consistent with the firm bid cost study approach.

b. *Inventories.* Each agency will immediately compile a complete inventory of all commercial and industrial activities subject to this Circular.

(1) Agencies will prepare and maintain a complete inventory of all individual commercial or industrial activities (as defined in paragraph 5.a.), which they operate. In addition to general descriptive information, the inventory should include for each activity: the amount of the Government's capital investment, the annual cost of operation, the date the activity was last reviewed, and the basis on which the activity is being continued under this Circular. The inventory will be updated at least annually to reflect the results of reviews as conducted.

(2) Agencies will also prepare and maintain an inventory of all contracts in excess of \$100,000 annually, except those awarded under a duly authorized set aside program, for services which the agency determines could reasonably be performed in-house, including any activities that have been converted from in-house to contract performance. In addition to general descriptive information, the inventory will include: the contract number, name of the contractor, contract period period of any options, and the total contract price or estimated cost. Inventory updated will reflect exercise of options and the termination and award of contracts.

c. *Reviews.* Agencies will prepare a detailed schedule for the review of each commercial or industrial activity and contract in the inventory to determine if the existing performance, in-house or contract continues to be in accordance with the policy and guidelines of this Circular. The flow chart provided as Attachment B demonstrates the sequence of actions required for proper implementation of the Circular.

(1) The schedule for review of in-house commercial and industrial activities will provide for review of all activities during the three-year period following issuance of this revised Circular. Consideration should be given first to criteria that do not concern cost. Unless continuation is justified under paragraphs 8.a. or b., a cost comparison must be conducted to determine the relative cost of Government and private performance.

(2) The schedule for review of contracts will show the date that each contract (including options) will expire, and the date that the requirement will be reviewed to determine if contract performance is to be continued. The agency will review the contract cost and determine whether it is likely that the work can be performed in-house at a cost that is less than contract performance by 10% of Government personnel costs plus 25% of the cost of ownership of equipment and facilities. When this is determined to be likely, a cost comparison will be conducted.

(3) Both schedules will be completed and provided to the Office of Federal Procurement Policy, OMB, within 120 days of the date of issuance of this Circular. These schedules will be made available by the agency to all potentially affected employees and their representatives, and published for the information of contractors.

(4) Reviews will be conducted in accordance with the schedules, unless it is determined that a change in the schedule will be in the best interest of the Government. In such cases, after approval by the agency head or his designee, the schedule can be revised with 60 days notice to all affected parties.

(5) After the initial review, activities approved for continuation will be reviewed again at least once every five years. When it is determined by the agency head or his designee that the circumstances which supported the initial approval are not subject to change, subsequent reviews may be waived. These activities will be retained in the inventory, however, and so identified. A copy of the justification and the waiver will be made available to all interested parties upon request to the agency contact point.

(7) When the number of commercial and industrial activities and the number of covered contracts is so great that reviews cannot be completed in the prescribed time period, the agency may request approval from the Office of Federal Procurement Policy, OMB, to schedule the reviews over a longer period.

d. New Starts.

(1) A new start should not be initiated by an executive agency unless the justification for establishing the activity under the provisions of this Circular has been reviewed and approved by a senior official of the agency. A new start which involves a capital investment or annual costs of \$500,000 or more must be approved by the agency head or by an official at the assistant secretary or equivalent level.

(2) The actions to be taken under this Circular should normally be completed before the agency's budget request is submitted to OMB. Data in support of such budget requests will be submitted in accordance with OMB Circular No. A-11. In the case of a proposed new start involving a major capital investment where the item to be acquired requires a long lead time (e.g., ADP system, building), approval of budget resources will not constitute OMB approval of that method of meeting the agency need. A final determination to initiate the new start or to rely on a private commercial source, within

the resources approved, will be made in accordance with this Circular and other applicable policies, prior to any commitment to a particular acquisition strategy.

(3) When Government ownership of facilities is necessary, the possibility of contract operation must be considered before in-house performance is approved as a new start. If justification for Government operation is dependent on relative cost, the comparative cost analysis may be delayed to accommodate the lead time necessary for acquiring the facilities.

(4) When in-house performance to meet a new requirement is not feasible, or when contract performance would be under an authorized set-aside program, a contract can be awarded without conducting a comparative cost analysis.

e. Set-Aside Programs

(1) It is the general policy of the Government, as expressed in the Small Business Act, to ensure that small businesses, including those owned and managed by disadvantaged persons, receive a fair share of Government contract awards.

(2) Consequently, contracts awarded under authorized set-aside programs will not be reviewed for possible in-house performance. Additionally, new requirements which would be suitable for award under a set-aside program should be satisfied by such a contract without a comparative cost analysis.

(3) On the other hand, in-house activities (in excess of \$100,000 annually) will not be considered for performance under a set-aside contract except when the conversion is justified by a comparative cost analysis.

11. Appeals.

a. Each agency will establish a procedure for an informal administrative review of determinations made under this Circular. This procedure will only be used to resolve questions of the determination between contract and in-house performance, and will not apply to questions concerning award to one contractor in preference to another contractor. Upon written request from a directly affected party raising a specific objection, the appeals procedure will provide for:

(1) An independent, objective review of the initial determination and the rationale upon which the decision was based.

(2) An expeditious determination, within 30 days, made by an official at the same or higher level than the official who approved the original decision.

b. The appeals procedure is to provide an administrative safeguard to assure that agency decisions are fair, equitable, and in accordance with established policy. This procedure does not authorize an appeal outside the agency or a judicial review.

c. Since the appeal procedure is intended to protect the rights of all affected parties—Federal employees and their representative organizations, contractors and potential contractors, and contract employees and their representatives—the procedure and agency determinations may not be subject to negotiation, arbitration, or agreements with any one of those parties. Agency decisions are final.

d. Agency appeal procedures, when issued, will be submitted to OFPP for review pursuant to paragraph 10.a.(3).

12. Effective Date.

This Circular is effective May 1, 1979, but need not be applied to studies in process where a solicitation for contract bids or proposals was issued prior to the effective date.

Questions or inquiries about this Circular or its implementation should be addressed to the Office of Federal Procurement Policy, OMB, telephone number (202) 395-7207.

James T. McIntyre, Jr.,

Director.

Lester A. Fetting,

Administrator for Federal Procurement Policy.

Attachment A.—Examples of Commercial and Industrial Activities

Audiovisual Products and Services

Photography (still, movie, aerial, etc.).
Photographic processing (developing, printing, enlarging, etc.).
Film and videotape production (script writing, direction, animation, editing, acting, etc.).
Microfilming and other microforms.
Art and graphics services.
Distribution of audiovisual materials.
Reproduction and duplication of audiovisual products.

Automatic Data Processing

ADP services—batch processing, time-sharing, etc.
Programming and systems analysis, design, development, and simulation.
Key punching and data entry services.
Systems engineering and installation.
Equipment installation, operation, and maintenance.

Maintenance, Overhaul, and Repair

Aircraft and aircraft components.
Ships, boats, and components.
Motor vehicles.
Combat vehicles.
Railway systems.
Electronic equipment and systems.
Weapons and weapon systems.
Medical and dental equipment.
Office furniture and equipment.
Industrial plant equipment.
Photographic equipment.
Space systems.

Systems Engineering, Installation, Operation, and Maintenance

Communications systems—voice, message, data; radio, wire, microwave, and satellite.
Missile ranges.
Satellite tracking and data acquisition.
Radar detection and tracking.
Television systems—studio and transmission equipment, distribution systems, receivers, antennas, etc.
Recreational areas.
Bulk storage facilities.

Manufacturing, Fabrication, Processing, and Packaging

Ordnance equipment.
Clothing and fabric products.
Liquid, gaseous, and chemical products.

Logging and lumber products.
Communications and electronics equipment.
Rubber and plastic products.
Optical and related products.
Sheet metal and foundry products.
Machined products.
Construction materials.
Test and instrumentation equipment.

Real Property

Design, engineering, construction, modification, repair, and maintenance of buildings and structures.
Construction, alteration, repair, and maintenance of roads and other surfaced areas.
Landscaping, drainage, mowing and care of grounds.

Industrial Shops and Services

Machine, carpentry, electrical and other shops.
Industrial gas production and recharging.
Equipment and instrument fabrication, repair and calibration.
Plumbing, heating, electrical, and air conditioning services, including repair.
Fire protection and prevention services.
Custodial and janitorial services.
Refuse collection and processing.

Health Services

Surgical, medical, dental, and psychiatric care.
Hospitalization, outpatient, and nursing care.
Physical examinations.
Eye and hearing examinations—manufacturing and fitting glasses and hearing aids.
Medical and dental laboratories.
Dispensaries.
Preventive medicine.
Dietary services.
Veterinary services.

Transportation

Operation of motor pools.
Bus service.
Vehicle operation.
Air transportation.
Water transportation.
Trucking and hauling.

Printing and Reproduction

Printing and binding—where the agency or department is exempted from the provisions of Title 44 of the U.S. Code.
Reproduction, copying, and duplication.
Blue-printing.

Research and Development

Basic research.
Applied research.
Development.
Concept formulation and demonstration.
R&D studies.
R&D testing.
R&D support services.

Office Services

Stenographic recording and transcribing.
Word processing/data entry.
Mail/messenger.
Translation.

Information systems and distribution.
Financial auditing and services.
Management auditing.

Security

Guard and protective services.
Systems engineering, installation, and maintenance of security systems and individual privacy systems.
Forensic laboratories.

Food Services

Operation of cafeterias, mess halls, kitchens, bakeries, dairies, and commissaries.
Vending machines.
Ice and water.

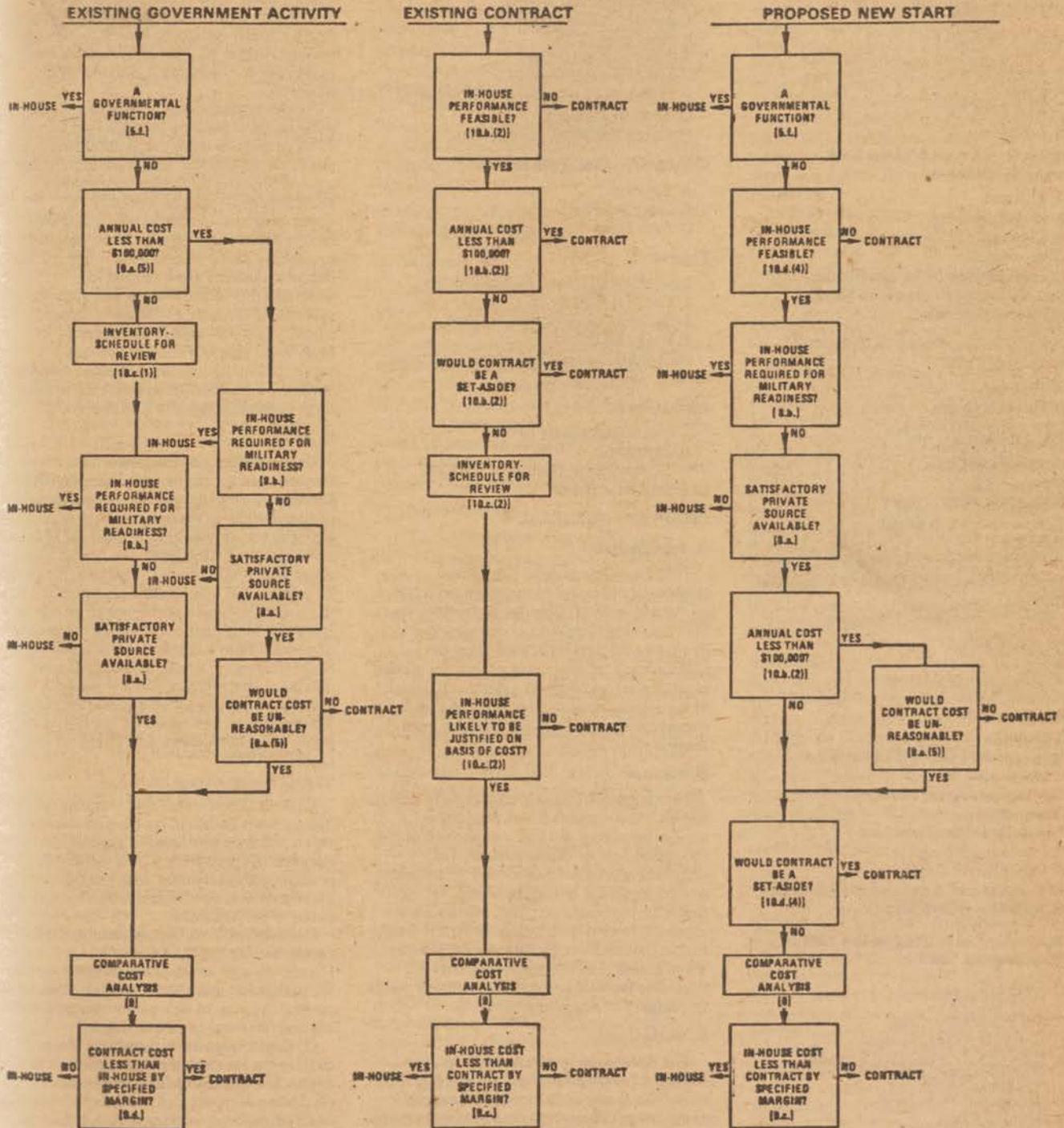
Other Services

Laundry and dry cleaning.
Library operation.
Mapping and charting.
Architect and engineer services.
Geographical surveys.
Cataloging.
Training—academic, technical, vocational, and specialized (within the limitation of P.L. 85-507, unless waived by the Office of Personnel Management).
Operation of utility systems (power, gas, water, steam, and sewage).

BILLING CODE 3110-01-M

Attachment B

IMPLEMENTATION OF OMB CIRCULAR A-76



References in brackets in this appropriate paragraph in Circular A-76

BILLING CODE 3110-01-C

COST COMPARISON HANDBOOK**Supplement No. 1 to OMB Circular No. A-76: Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government**

Executive Office of the President, Office of Management and Budget, March 1979

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CHAPTER I—GENERAL**A. Introduction**

This Cost Comparison Handbook implements the cost comparison principles contained in OMB Circular A-76, "Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government." Official use of this Handbook is prescribed in OMB Circular A-76, which directs Federal agencies to ensure that their comparative cost analyses conform with these instructions.

B. Purpose

The purpose of this Handbook is to provide detailed instructions for developing a comprehensive and valid comparison of the estimated cost to the Government of acquiring a product or service by contract and of providing it with in-house, Government resources. This Handbook is intended to establish consistency, assurance that all substantive factors are considered when making cost comparisons, and a desirable level of uniformity among agencies in comparative cost analyses.

C. Background

The American people have a right to expect economical performance of Federal activities. Some activities are inherently governmental functions or, for other reasons, must be performed by Federal employees. Many activities, however, may be performed either by contract or by Federal employees. The choice between these alternatives must be based on a finding as to which method of performance would be more economical.

Government reliance on the private sector was first formally expressed by the executive branch as a general policy in 1955. Since then, Federal agencies have struggled to make rational judgments as to the cost considerations that should be included in a comparative analysis to establish whether the Government's interest would be served best by contract or in-house performance. Assistance was provided by OMB Circular A-76, initially issued on March 3, 1966 and revised August 30, 1967, which contained guidelines for agencies in making those analyses.

As Government cost accounting techniques progressed, it became obvious that Circular A-76 guidelines were too general to achieve desirable uniformity, and were insufficient as a basis for comprehensive cost studies. Providing more precise guidance in developing cost estimates and analyzing comparative costs was the most prevalent suggestion made when, in 1977, agency and public comments were invited for consideration in the review and subsequent revision of Circular A-76. The proposed solution, a detailed cost comparison handbook, was widely and strongly supported by the numerous respondents to OMB's November 1977 request for comments on proposed changes to Circular A-76.

D. Policy

Under certain circumstances, a Government agency is authorized by OMB Circular A-76 to establish in-house capability or to continue an existing activity to provide a product or service that is obtainable from a private source. One justifying circumstance is when a comparative cost analysis, prepared as provided in this Handbook, indicates that the cost of in-house performance would be lower than the cost of obtaining the product or service from a commercial or other non-Federal source. Detailed instructions for making a cost comparison are set forth in this Handbook for use by all Federal agencies. The guidelines are based on the following policy principles, quoted from the revised Circular A-76.

"9.a. Common Ground Rules

(1) Both Government and commercial cost figures must be based on the same scope of work and the same level of performance. This requires the preparation of a sufficiently precise work statement with performance standards that can be monitored for either mode of performance.

(2) Standard cost factors will be used as prescribed by the Cost Comparison Handbook and as supplemented by agencies for particular operations. It will be incumbent on each agency to defend any variations in costing from one case to another.

(3) Cost comparisons are to be aimed at full cost, to the maximum extent practical in all cases. All significant Government costs (including allocation of overhead and indirect costs) must be considered, both for direct Government performance and for administration of a contract.

(4) In the solicitation of bids or offers from contractors for workloads that are of a continuing nature, unless otherwise inappropriate, solicitations should provide for

prepriced options or renewal options for the out-years. These measures will guard against "buy-in" pricing on the part of contractors. While recompetition also guards against "buy-ins," the use of prepriced or renewal options provides certain advantages such as continuity of operation, the possibility of lower contract prices when the contractor is required to provide equipment or facilities, and reduced turbulence and disruption.

(5) Ordinarily, agencies should not incur the delay and expense of conducting cost comparison studies to justify a Government commercial or industrial activity for products or services estimated to cost the Government less than \$100,000 in annual operating costs. Activities below this threshold should be performed by contract unless in-house performance is justified in accordance with paragraph 8.a. or b. However, if there is reason to believe that inadequate competition or other factors are causing commercial prices to be unreasonable, a cost comparison study may be conducted. Reasonable efforts should first be made to obtain satisfactory prices from existing commercial sources and to develop other competitive commercial sources.

(6) The cost comparison will use a rate of 10% per annum as the opportunity cost of capital investments and of the net proceeds from the potential sale of capital assets, as prescribed in the Cost Comparison Handbook.

b. Calculating Contract Costs.

(1) The contract cost figure must be based on a binding firm bid or proposal, solicited in accordance with pertinent acquisition regulations. Bidders or offerors must be told that an in-house cost estimate is being developed and that a contract may or may not result, depending on the comparative cost of the alternatives.

(2) The factor to be used for the Government's cost of administering contracts, in addition to other costs of using contract performance as specified in the Handbook, is 4% of the contract price or expected cost.

c. Calculating Costs of Government Operation.

(1) Each agency should assure that Government operations are organized and staffed for the most efficient performance. To the extent practicable and in accordance with agency manpower and personnel regulations, agencies should precede reviews under this Circular with internal management reviews and reorganizations for accomplishing the work more efficiently, when feasible.

(2) The Government cost factor to be used for Federal employee retirement benefits, based on a dynamic normal cost projection for the Civil Service Retirement Fund, is 20.4%.

(3) The Government cost factor to be used for Federal employee insurance (life and health) benefits, based on actual cost, is 3.7%.

(4) The Government cost factor to be used for Federal employee workmen's compensation, bonuses and awards, and unemployment programs is 1.9%.

d. An existing in-house activity will not be converted to contract performance on the basis of economy unless it will result in savings of at least 10% of the estimated Government personnel costs for the period of the comparative analysis.

e. A "new start" will not be approved on the basis of economy unless it will result in savings compared to contract performance at least equal to 10% of Government personnel costs, plus 25% of the cost of ownership of equipment and facilities for the period of the comparative analysis.

f. All cost comparisons must be reviewed by an activity independent of the cost analysis preparation to ensure conformance to the instructions in the Cost Comparison Handbook."

CHAPTER II—OVERVIEW OF THE COST COMPARISON PROCESS

A. General

A valid comparative cost analysis under Circular A-76 requires an accurate determination of the costs of acquiring the needed products or services from the private sector and from the existing or proposed Government commercial or industrial activity. To ensure an equitable comparison, both cost figures must be based on the same scope of work, and include all significant identifiable costs that would be incurred by the Government under either alternative.

B. Initial Planning

1. The comparative cost analysis and implementation of the conclusions reached involve the responsibilities of many functional and staff offices of the agency. For best coordination of these responsibilities, a task group should be formed by representatives of the various organizations and offices concerned, such as: the functional or operational organization, the manpower and/or personnel office, the finance and accounting office, the management analysis group (if available), the budget office, the procurement office, the legal office, and other staff functions as appropriate. The task group chairman should be thoroughly familiar with this Handbook.

2. This group should establish a plan and time schedule for orderly completion of the necessary steps to conduct the study and reach a timely conclusion to either award a contract or to continue or initiate the Government commercial or industrial activity. The schedule must allow adequate time for preparation of a comprehensive work statement, solicitation of bids or proposals, determination of in-house costs, evaluation of bids and the Government estimate, independent audit of the Government cost estimate, and review and approval of the conclusions. Close coordination with the procurement office and the personnel office is required to ensure compliance with procurement regulations and to provide maximum consideration for Government personnel who would be displaced in the event of a conversion from in-house to contract performance.

C. Statement of Work

1. The preparation of the work statement is a critical step. It must be comprehensive enough to ensure that performance in-house or by contract will satisfy the Government requirement. It must also serve as the basis for determining both the contract and Government cost, to ensure comparability and equity in the cost analysis. The work statement should clearly state *what* is to be done without prescribing *how* it is to be done. It should also provide performance standards to ensure a comparable level of performance with either alternative and to provide a basis for evaluation. Maximum flexibility should be permitted in staffing to permit each potential performer to propose the most efficient approach consistent with its organization and resources.

2. The work statement should describe all duties, tasks, responsibilities, frequency of performance of repetitive functions, and requirements for furnishing facilities and materials. Where the workload is variable, historical data for a representative period on workload, material and parts consumption, etc. will be provided, when available, along with the best estimate of future requirements. Bid solicitations will normally call for use of contractor facilities, unless performance on Government property is essential or would be more economical. When the work is currently being performed in a Government-owned facility or appropriate Government facilities are available, and contractor use of those facilities would be in the Government's interest, bids will be requested on that basis. Requirements regarding the proximity of the contractor's facility to the Government installation will be used only when clearly justified in terms of operational necessity to meet Government needs.

3. The work statement will be reviewed by the contracting officer to ensure that it is adequate and appropriate for a contract specification. The contracting officer will be responsible for advertising the requirement, through the Commerce Business Daily and by other means, and the functional organization will identify any known commercial sources—this is particularly important in the case of unique products or services which have not been previously obtained from a commercial source.

D. Procedure

1. When the statement of work has been completed, firm bids or proposals will be solicited. Formal advertising, with firm fixed price bids, will be used when appropriate for the requirement. Proposals may be requested for competitive negotiations when this method would be more suitable and warranted under current acquisition regulations. It is essential that the invitation for bids or request for proposals provide for a common standard of performance to permit an equitable comparison of Government and contract costs for performing the same task. This is particularly important when the proposed contract will contain flexible pricing provisions, such as incentive or award fees. Use of the maximum incentive or award fee available would be inappropriate if it reflects a different standard of

performance from the level which provided the basis for the in-house cost estimate. The contract cost figure ultimately entered in line 10 of the Cost Comparison Form (Exhibit 1) must include an estimate of the incentive or award fee that corresponds to the level of performance expected of the Government in performing the same task.

2. Concurrent with the contracting procedure, the in-house cost estimate will be prepared, based on the same work statement that is used in the contract solicitation, by completing the Cost Comparison Form in accordance with the instructions in this Handbook. When the cost analysis concerns an existing Government activity manned by civilian personnel, and the proposed staffing plan differs from the existing activity, the proposal plan must be consistent with agency manpower and personnel regulations and implementation must be initiated within 30 days after a determination is made to continue Government performance.

3. When all the costs connected with in-house performance have been estimated (lines 1 through 9, 18 through 22, and 31, if appropriate), they should be totaled and entered on line 33 of the Cost Comparison Form. The Form should then be signed and dated by the person responsible for its preparation in the line entitled, "In-House Estimate Prepared By". If the Form was prepared by a task force, the Chairman of the group should sign, indicating that he was the Chairman. The sealed in-house cost estimate must then be submitted to the contracting officer by the required submission date for bids or proposals. The confidentiality of both the in-house estimate and contract prices will be maintained to ensure that they are completely independent.

4. After the contracting officer opens the bids or completes negotiations, he will determine the lowest acceptable contract price, conducting preaward surveys as required to establish the lowest responsible and responsive bidder. The contracting officer will enter the dollar amount of the lowest responsible bid or proposal in line 10 of the Cost Comparison Form, and will return it to the preparer for completion.

5. If the contract figure in line 10 is higher than the Government's in-house estimate in line 33, the preparer may be able to make a shortened cost comparison in accordance with Chapter V.B. If, on the other hand, the contract price is less than the total in-house costs, the detailed cost comparison must be completed, giving due consideration to all types of costs which could add to or subtract from the cost of either mode of performance (Chapter V.C.).

6. After the comparison is completed and the Form is signed, it will be submitted to a qualified activity independent of the cost analysis preparation to ensure that the Government's estimated costs have been prepared in accordance with the provisions of this Handbook. If no, or only minor, discrepancies are noted during the review, the reviewing activity will execute the audit certificate and return the Form to the preparer. If significant discrepancies are noted during the review, they will be reported to the party which prepared the cost

comparison. The reviewing agency should indicate the impact of the discrepancy or recommend that the preparer correct and resubmit its estimate. If the solicitation pertains to a new-start and the estimate cannot be corrected in a timely manner, the in-house figure will be rejected and the contract awarded. Conversely, if the contemplated contract pertains to an activity presently being performed in-house, and the estimate cannot be corrected within the validity date of the bids or proposals, the solicitation may be cancelled and the comparison rescheduled for a later date.

7. When the cost comparison has been audited and, with any necessary corrections approved by the reviewing agency, the party responsible for preparing the cost comparison will originate the Decision Summary Form (Exhibit 2), including the recommendation to award a contract or to perform the work in-house. When the amount in line 35 of the Cost Comparison Form indicates that the cost of in-house performance exceeds the cost of contracting-out, the recommendation should be for contract performance. Conversely, when the cost of in-house performance is less than (under) the cost of contracting out, the recommendation should be to perform in-house.

8. The Decision Summary Form and the Cost Comparison Form will be forwarded to the approving authority for review and approval. The approving authority is an official with responsibility for the organization in which the activity reviewed is or would be located.

9. The approving authority will send the approved Forms to the contracting officer, who will announce the results of the cost study and make available the detailed analysis to any interested parties: bidders, affected employees, and unions representing affected employees. If no significant discrepancy in the cost comparison is reported within five working days after the announcement, the contracting officer will award a contract or cancel the solicitation, as appropriate. When warranted by the complexity of the analysis, the contracting officer may extend this review period to a maximum of 15 working days.

10. If a discrepancy in the cost analysis is reported during the public review period, every effort will be made to correct it in a time frame that corresponds to the requirement and the validity date of the bids or proposals. If the analysis is for a new start, and there is a serious defect in the in-house cost estimate, the in-house figure will be rejected and a contract will be awarded. When the analysis concerns a Government commercial or industrial activity, and the discrepancies cannot be corrected within the validity date of proposals, the solicitation may be cancelled and the review rescheduled.

E. Organization of the Handbook

1. This Handbook (Chapters III through VI) is organized by the major subjects which must be considered in developing bottom line in-house and contract cost estimates. The significance of each topic (usually an element of cost) and related terms are discussed in

sufficient detail to explain all points which must be considered, computations which must be made, and documentation which must be retained to support the cost analysis and estimates. This method of presentation is intended to allow the user to approach the specific tasks of analysis and estimating with an adequate general understanding of the type of cost under review.

2. The user's ultimate goal is to complete the Cost Comparison Form (Exhibit 1) so that an informed decision can be made and documented on the Decision Summary Form (Exhibit 2). To facilitate achieving this goal, Cost Comparison Form line numbers are referred to in the text.

3. The three appendices to the text serve three distinct purposes. Appendix 1 provides a table for estimating the amount of federal income tax payable on the contract price, supplementing guidance on this subject in Section V.G. Appendix 2 is a glossary of pertinent terms in one alphabetical listing.

4. Appendix 3 is provided to put the entire cost comparison process in a chronological perspective. It lists the actions which must be taken to properly complete the cost comparison process, from start to finish. The party responsible for each action is noted in parentheses. Beside each numbered action is a reference to the paragraphs in the text which discuss the action in detail.

5. Appendix 3 provides an overview of the cost comparison process. However, it can also be used in initial planning, assigning specific tasks to group members, and noting progress throughout the process. Users must ensure that the actual performance of each action is consistent with the guidance provided in the referenced paragraphs of the Handbook.

BILLING CODE 3110-01-M

Exhibit 1

(DEPARTMENT OR AGENCY)

COMPARATIVE COST OF IN-HOUSE AND CONTRACTING-OUT PERFORMANCE OF (PRODUCT/SERVICE)

(Date)

| LINE # | Cost Element | FIRST YEAR | SECOND YEAR | THIRD YEAR | ADDITIONAL YEARS AS APPROPRIATE (NOTE 1) | TOTAL | REFER-ENCE (NOTE 2) | |
|--|------------------------------------|---|-------------|------------|--|-------|---------------------|--|
| IN-HOUSE PERFORMANCE (CHAPTER III) | | (Enter Amounts Rounded to Nearest Dollar) | | | | | | |
| 1. | DIRECT MATERIAL | | | | | | A | |
| 2. | MATERIAL OVERHEAD | | | | | | B | |
| 3. | DIRECT LABOR | | | | | | C | |
| 4. | FRINGE BENEFITS ON DIRECT LABOR | | | | | | D | |
| 5. | OPERATIONS OVERHEAD | | | | | | E | |
| 6. | OTHER DIRECT COSTS | | | | | | F | |
| 7. | GENERAL AND ADMINISTRATIVE EXPENSE | | | | | | G | |
| 8. | INFLATION | Not applic. | | | | | H | |
| 9. | TOTAL | | | | | | | |
| PERFORMANCE BY CONTRACTING-OUT (CHAPTER IV) | | | | | | | | |
| 10. | CONTRACT PRICE | | | | | | I | |
| 11. | TRANSPORTATION | | | | | | J | |
| 12. | CONTRACT ADMINISTRATION | | | | | | K | |
| 13. | GOVERNMENT-FURNISHED PROPERTY | | | | | | L | |
| 14. | STANDBY MAINTENANCE | | | | | | M | |
| 15. | OTHER COSTS | | | | | | N | |
| 16. | GENERAL AND ADMINISTRATIVE EXPENSE | | | | | | O | |
| 17. | TOTAL | | | | | | | |

NOTE 1: If more than four years are involved, use another form(s) to detail the annual cost of each year and enter the total here.

NOTE 2: Attach supporting documentation as prescribed for each element of cost for which an entry is made and identify it with the established reference. Pages should be separately numbered with the prescribed alphabetic reference and in numerical sequence, e.g. A-1, A-2, A-3, etc. The entry in this column should indicate the total number of pages submitted; e.g. A-14 means reference "A" consists of 14 pages.

| LINE # | Cost Element OTHER CONSIDERATIONS (CHAPTER V) | FIRST YEAR | SECOND YEAR | THIRD YEAR | ADDITIONAL YEARS AS APPROPRIATE | TOTAL | REFER- ENCE |
|--|---|------------|-------------|------------|------------------------------------|-------|----------------|
| <u>ADDITIONS AND (DEDUCTIONS) TO IN-HOUSE PERFORMANCE</u> | | | | | | | |
| | ADD: | () | () | () | () | () | P |
| 18. | COST OF CAPITAL | () | () | () | () | () | Q |
| 19. | ONE-TIME NEW-START COSTS | () | () | () | () | () | R |
| 20. | OTHER COSTS | () | () | () | () | () | S |
| | DEDUCT: | () | () | () | () | () | |
| 21. | OTHER COSTS | () | () | () | () | () | |
| 22. | TOTAL | () | () | () | () | () | |
| <u>ADDITIONS AND (DEDUCTIONS) TO CONTRACTING-OUT PERFORMANCE</u> | | | | | | | |
| | ADD: | () | () | () | () | () | T |
| 23. | COST OF CAPITAL ON GOV'T-FURNISHED FACILITIES | () | () | () | () | () | U |
| 24. | UTILIZATION OF GOVERNMENT CAPACITY | () | () | () | () | () | V |
| 25. | ONE-TIME CONVERSION COSTS | () | () | () | () | () | W |
| 26. | OTHER COSTS | () | () | () | () | () | X |
| | DEDUCT: | () | () | () | () | () | Y |
| 27. | FEDERAL INCOME TAXES | () | () | () | () | () | Z |
| 28. | NET PROCEEDS FROM DISPOSAL OF ASSETS (ANNUAL VALUE) | () | () | () | () | () | |
| 29. | OTHER COSTS | () | () | () | () | () | |
| 30. | TOTAL | () | () | () | () | () | |
| <u>MINIMUM COST DIFFERENTIAL (CHAPTER VI)</u> | | | | | | | |
| 31. | NEW-START | () | () | () | () | () | AA |
| 32. | CONVERSION | () | () | () | () | () | BB |
| <u>SUMMARY</u> | | | | | | | |
| 33. | ADJUSTED COST OF IN-HOUSE PERFORMANCE (LINE 9 + LINE 22 + 31) | () | () | () | () | () | |
| 34. | ADJUSTED COST OF CONTRACTING-OUT PERFORMANCE (LINE 17 + LINE 30 + 32) | () | () | () | () | () | |
| 35. | COST OF IN-HOUSE OVER (UNDER) COST OF CONTRACTING-OUT PERFORMANCE (LINE 33 - LINE 34) | () | () | () | () | () | |

IN-HOUSE ESTIMATE PREPARED BY:

(Name)

(Date)

(Title)

(Telephone)

APPROVED BY:

(Name)

(Date)

(Title)

(Telephone)

PERFORMANCE RECOMMENDATION (IN-
HOUSE OR CONTRACT) APPROVED BY:

(Name)

(Date)

(Title)

(Telephone)

COST COMPARISON PREPARED BY:

(Name)

(Date)

(Title)

(Telephone)

AUDIT CERTIFICATION

We have reviewed the above form and substantiated the currency, accuracy, and completeness of the data. We further verified that the procedures followed were in compliance with OMB Circular A-76 and the related Cost Comparison Handbook.

(Name)

(Date)

(Title)

(Telephone)

DECISION SUMMARY
FOR
IN-HOUSE OR CONTRACT PERFORMANCE
BASED ON
COST COMPARISON PER OMB CIRCULAR A-76

I. Department/Agency _____
 Location _____
 Function or Activity _____
 Currently Performed In-house/by Contract _____

II. Contract Data:
 Solicitation date _____ Solicitation No. _____
 Number of bids _____ Closing date _____

Contract proposal is for ___ year(s) with options for ___ year(s).
 Cost comparison covered ___ years, from _____, 19__
 to _____, 19__.
 Proposed changeover date _____

III. Total Adjusted Cost of In-House Performance (Line 33) _____

Total Adjusted Cost of Contracting-Out Performance (Line 34) _____

Cost of In-House Performance Over (Under) Cost of Contracting-Out Performance (Line 35) _____

IV. Final Recommendation - Perform In-House _____
 Contract Out _____

| | |
|--------------|--------------|
| Prepared by: | Approved by: |
| /s/ _____ | /s/ _____ |
| (Name) | (Name) |
| (Date) | (Date) |
| (Title) | (Title) |
| (Telephone) | (Telephone) |

V. Action of Contracting Officer:
 Perform In-House _____ Bidders Notified _____
 Contract Out _____ Contract No. _____
 Awarded To _____

| | |
|---------|-------------|
| _____ | _____ |
| (Name) | (Date) |
| _____ | _____ |
| (Title) | (Telephone) |

Exhibit 2. Decision Summary Form

CHAPTER III—DEVELOPING AN ESTIMATE OF GOVERNMENT COSTS

A. General

1. In order to develop the estimated cost to the Government of producing a product or performing a service, it is necessary to determine and accumulate the various elements of direct and related indirect costs. The Costs Comparison Form (Exhibit 1), will be used for this purpose. The following sections provide instructions on how to estimate the amount to be included in each cost element, classify costs by elements, and distinguish between direct and indirect costs. Also included are the requirements for documentation to support estimates for each cost element. The following definitions are particularly pertinent to these determinations:

a. *Cost Objective.* A function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

b. *Final Cost Objective.* A cost objective which has allocated to it both direct and indirect costs, and, in the cost accumulation system, is one of the final accumulation points. For the purpose of this Handbook, the product/service being estimated is the final cost objective.

c. *Direct Cost.* Any cost which can be identified specifically with a particular final cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs which can be identified specifically with a product/service are direct costs of that product/service. All costs identified specifically with other products/services are direct costs of those products/services.

d. *Indirect Cost.* Any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

2. It is important that the basic principles contained in the above definitions be understood to preclude the possibility of "double counting" in preparing the estimate of Government costs. "Double counting" results from inconsistent treatment of a specific type of cost, generally by classifying costs of that type as both direct and indirect. The following is an example of how "double counting" can occur. *Example:* An agency produces products A, B, and C in the same organization, which is treated as one cost center for cost accounting purposes. A comparative analysis is being conducted to determine if one of the products could be acquired from a private commercial source at less cost. Travel costs for personnel whose time is a direct cost to product A have been charged as direct costs to that product. All other travel costs for the cost center, including travel for personnel whose time is a direct charge to products B and C, are classified as indirect. Since the total indirect cost which is accumulated for the cost center is allocated proportionately to all three products, an excessive amount of travel cost

is charged to product A and the costs of products B and C are understated. The simplest way to avoid "double counting," as illustrated in this example, is to treat all travel costs as indirect, which is common practice. Alternatively, when there is some reason for charging travel as direct to one product/service, then comparable travel costs for all products/services provided by that cost center must be charged as direct.

B. Material Costs

1. When the cost of the material that would be furnished by the Government, or by the contractor, is negligible in comparison to the cost of labor, this section and the requirement to make entries on lines 1 and 2 of the Cost Comparison Form may be disregarded. When the product or service being analyzed is the sole output from the cost center, it is not necessary to distinguish between direct and indirect material—total material cost can be shown on line 1.

2. Direct Material Costs—Line 1

a. Direct material costs are those incurred for such goods as raw materials, parts, subassemblies, components, and supplies that are identifiable specifically for use in producing the product or performing the service for which costs are being estimated. "Use," in this sense, means to be consumed or to be incorporated into the product.

b. Material shall be classified as direct when:

- (1) It is essentially directly related to the product or service;
- (2) The material cost can be measured with reasonable effort; and
- (3) The material cost is significant.

c. The estimate of direct material costs begins with a review of the work statement to determine the types and quantities of material needed. Available material usage data and detailed listings of material requirements (bills of material) prepared for the same or similar work will be used to estimate the material needed. Differences between the work statement and past practice or workload in an existing Government activity must be taken into consideration, and historical material usage data adjusted accordingly. Allowance for normal scrap, spoilage, overruns, and defective work must be included. To this extent, the estimated quantity of direct material to be used will exceed the minimum necessary to meet the requirements of the work statement. A detailed listing of each type of direct material and the quantity needed will be developed and retained as supporting documentation.

d. The next step is to determine the cost of the direct material to be used. When unit prices from past purchases are used, they must be adjusted for price level changes to the time period of the first year of the comparative analysis. If there is no usable purchase history, the appropriate supply or procurement activity should be requested to estimate expected prices, using recent purchase prices, suppliers' catalogs, and other available information.

e. *Pricing material from other government agencies.* For purposes of the cost analysis, indirect costs associated with direct material

obtained from other agencies will be added to the direct material cost and be included on Line 1 of the Cost Comparison Form.

(1) General Services Administration. In most instances, the prices charged by GSA for material do not include all the costs of the acquisition and storage functions performed by GSA. Since inclusion of some of these costs in GSA prices is not authorized by law, it will be necessary to adjust GSA prices for purposes of Circular A-76 cost estimates. Following is a description of the material supply services provided by GSA together with mark-up rates to be applied to GSA prices to show full costs:

Wholesale and Stores Direct Delivery. This program area involves the distribution of common-use, commercially available items, to agency requisitioners worldwide, through a network of supply distribution facilities located throughout the United States. Also included is the Stores Direct Delivery Program which is designed to provide customers with the same type of items carried in stock which, because of volume orders, are procured from the vendor for direct delivery to the requisitioner in instances when delivery time is not critical. Add 21%.

Retail. The Retail Program provides the agency requisitioner with high demand common-use office and janitorial requirements from retail outlets located in areas of concentrated Federal activity. Add 36%.

Nonstores Direct Delivery and Competitive Federal Supply Schedules. This program is concerned with obtaining customer nonstock requirements through direct shipment from the vendor. Presently, agencies are ordering directly from vendors using schedules established by the GSA Federal Supply Service. Agencies pay the vendors directly for goods and services obtained. Add 5%.

(2) Department of Defense. The following definitions describe material supply services provided by the Defense Logistics Agency (DLA). The appropriate mark-up rates to be applied to DLA prices to show full costs are noted.

Wholesale Stock Fund. Material for which the Defense Stock Fund has procurement, receiving, storage, and shipping responsibility. Add 24.5%.

Direct Delivery. Material for which the Defense Stock Fund has procurement responsibility only, and which is delivered directly to the customer from the vendor. Add 13.4%.

(3) Other agencies. The furnishing agency must be requested to determine the indirect costs of acquiring, managing, and storing the material. These indirect costs will usually be presented as a percentage of direct costs. For guidance in identifying the costs, the furnishing agency may use the instructions on Material Overhead in section III.B.3. of this Handbook.

f. The supporting documentation for the costs estimated for direct material is summarized in Figure 1. The material items, quantities, prices, supporting calculations, and sources of information must be indicated.

FIGURE 1.
ESTIMATE OF DIRECT MATERIAL COSTS

| Item Nomenclature (1) | National Stock Number (2) | Quantity per Bill of Mat. or Specifications (3) | Quantity | | Cost | | | Adjust- ment 1/ (8) | Final Est. Unit Price (9) | Direct Material Cost (5)X(9) (10) | Source of Supply (11) |
|-----------------------------|------------------------------------|--|---------------------------|----------------------------------|----------------------------------|-----------------------------------|---------|---------------------------|------------------------------------|---|--------------------------------|
| | | | Adjust- ment 1/ (4) | Final Est. Quantity (5) | Unit Purchase Price (6) | Source of Unit Price (7) | | | | | |
| Widget | 6730001161618 | 120 | 30 a/ | 150 | \$11.00 | GSA Cat. c/ | .55 b/ | \$11.55 | \$ 1,732.50 | GSA | |
| Socket | None | 60 | 5 a/ | 65 | 15.00 | Pur. Dept. | .75 b/ | 15.75 | 1,023.75 | PM, Inc. | |
| Frontam | 3760008161611 | 500 | 50 | 550 | 57.00 | Inventory | 3.30 b/ | 60.30 | 33,165.00 | ABC Corp. | |
| TOTAL COST | | | | | | | | | \$35,921.25 | | |

NOTE: 1/ Explain basis for adjustment.
a/ Normal spoilage.
b/ Estimated price change.
c/ Price list dated October 1, 1978.

3. Material Overhead—Line 2

a. In addition to the basic cost of the material to be used, there are additional costs incurred in acquiring, handling, storing, and controlling the material which must be identified and included in the cost of performance. When the cost center acquires material for more than one product/service, these overhead costs are determined for all the material acquired and then allocated proportionately to each product/service. For material acquired from other Government agencies, however, the indirect material cost incurred by other agencies is added to the direct cost of the material rather than adding it to the material overhead cost pool of the using activity.

b. Functions that are normally included in the material overhead cost pool are described below:

(1) *Acquiring.* Includes the efforts related to determination of material needs, ordering and/or purchasing of material to meet the needs, and incoming transportation costs (when separately identified). Do not determine and include the costs of transportation provided by the supplier and included in the supplier's price; these costs are included in the direct cost figures.

(2) *Handling.* Includes all efforts involved in receipt, storage, and issuance of materials. These efforts include: physical receipt, unpacking, inspection, testing, preserving (when required), placing in storage, protecting, assembly and disassembly of "sets" or "kits" when required, removal from storage, and preparation for use (including depreservation when required). The cost of losses and damage during handling and storage is also included.

(3) *Controlling.* Includes all efforts involved in monitoring and documenting material acquisition, handling, and distribution. Specific activities covered by this function include physical inventory, maintenance of records and documentation of material on hand and on order, and records of material distributed.

c. Costs of these functions must be estimated for the first year of the cost analysis. Estimates will include all costs for efforts that benefit or are caused by these functions, such as assigned personnel, immediate supervision, material and supplies,

the cost of ownership (depreciation) of equipment and facilities, purchased services (such as special tests during receipt or storage), utilities, etc.

d. When the total amount of material overhead cost is determined, it is necessary to allocate the proper portion to the product/service for which the estimate is being prepared. In most cases, an equitable allocation can be obtained by developing a material overhead rate based on the total cost of material acquired by the cost center.

e. The material overhead rate will normally be expressed as a percentage of total material cost, computed by dividing the material overhead cost by total material cost. In making this computation, it is necessary to include in the base all costs of direct material for all products/services by all other work centers, and all indirect material included in operations overhead pools and general and administrative (G&A) expense, as determined later. The material overhead cost to be charged to a product/service is calculated by multiplying the material overhead rate times the direct material charged to that product/service and entering the result on line 2. The development of a material overhead rate is illustrated in Figure 2. Material overhead must also be applied to indirect material issues.

f. While the use of total material cost as an allocation base will generally be satisfactory, there could be cases where the relationship between material overhead and the individual products/services is better represented by some other characteristic of the material. In such cases, allocation can be based on volume, weight, quantity, or number of receipts or issues for any or all of the types of materials involved. When more than one allocation base is used, more than one overhead pool will be required, and care must be exercised to ensure that no applicable cost is omitted, counted twice, or inappropriately allocated.

Figure 2.—Material overhead

| Description | Estimated Cost For the Year Ending |
|-------------------------------|------------------------------------|
| Salaries and Wages: | |
| Labor..... | \$XXX,XXX |
| Fringe Benefits on above..... | XX,XXX |

| | |
|--|-------------------|
| Travel..... | XX,XXX |
| Operating Supplies..... | XX,XXX |
| Maintenance..... | XX,XXX |
| Stationery, Printing & Office Supplies..... | XX,XXX |
| Utilities..... | XX,XXX |
| Depreciation..... | XX,XXX |
| Rent (SLUC)..... | XX,XXX |
| Allocated Amounts of Centrally Performed Functions: ¹ | |
| Purchasing..... | XX,XXX |
| Receiving..... | XX,XXX |
| Others (list separately)..... | X,XXX |
| Total Material Overhead Expense (A)..... | XX,XXX |
| Total Material Costs (B)..... | XX,XXX,XXX |
| Material Overhead Rate (A) + (B)..... | |

¹ Attach details of allocation. That is, what rate was used and how the rate was determined.
² This centrally performed purchasing is local/retail level purchasing performed for the activity producing the product or performing the service. Centralized wholesale level purchasing or contracting performed for all activities agency-wide is part of contract administration.

C. Personnel Costs

1. Direct Labor—Line 3

a. Direct labor cost is that portion of wages or salaries which can properly be identified with and charged only to one specific product or service (final cost objective). Costs are either direct or indirect only. As discussed previously in regard to "double-counting," labor costs of a type treated as direct for the product/service being estimated must also be considered as direct costs of other final cost objectives and not included in an indirect cost pool. Conversely, no final cost objective shall have charged to it as a direct labor cost a portion of any labor costs the remainder of which is included in an indirect cost pool.

b. Labor shall be classified as direct when:
(1) It is essentially directly related to the product or service;
(2) The labor cost can be measured with reasonable effort; and
(3) The labor cost is significant.

c. Direct labor costs are composed of two factors: the first is the time it takes to do the job, and the second is the rate(s) of pay for the labor skills required. These two factors are equally important and each must be estimated as precisely as possible. For this reason, they are treated separately in the following paragraphs.

d. In estimating the time required to perform a service or produce a product, the starting point is the statement of work. When the estimate is being made for a product/

service presently being provided by the Government, and agency management considers that authorized staffing is proper for efficient operation, the number of nonsupervisory positions authorized may be used to estimate the number of man-years of direct labor required. For all other cases, including proposed "new starts," a thorough review of the work requirements should definitize the outputs requiring labor. The time required to perform these outputs can be estimated by utilizing prior experience if it is available, engineering standards, or engineering estimates. If similar jobs have been completed, the direct labor hours of those jobs may be used as a basis for subsequent job estimating, provided appropriate adjustments are made for any scope and procedural changes. Also, when estimating the direct labor hours, include all on-the-job training which involves productive work. Time spent on all other training will be treated as indirect labor and included in the appropriate overhead pool.

e. When time requirements are expressed in man-hours, they can be converted to man-years by dividing the total man-hours required by either the total number of working hours in a year (i.e., 52×40 or 2,080) or by the number of hours normally worked in a year (i.e., 2,080 less leave and holiday time). It is important to know how the man-years were developed to determine whether the labor rate to be applied to the time estimate should be increased to provide for leave and holidays to be earned and taken by the workers. If the time estimate includes a provision for leave and holidays, the rate by which such a time estimate is to be multiplied should not be increased to provide for these

costs, and *vice versa*. Additional comments in this regard are contained in the following paragraphs dealing with the rate of pay to be applied to the time estimates and in the examples at the end of this section.

f. When the number of hours of each type of labor are identified, they must be multiplied by the appropriate hourly rate in order to arrive at an estimate of direct labor costs. The skill requirements determined to be needed for performance (and thus for developing times estimates) will dictate the basic rates to be used. Normally, the skills required will specify a Wage Board (WB) or General Schedule (GS) level. When computing costs for an existing Government activity, use the actual rates for current employees. For positions that are not occupied, or for a proposed new start, use salary step 5 for GS positions and wage step 3 for Wage Board positions. When a salary increase for Government employees is expected during the first year of performance, the amount of the increase should be included in the direct labor estimate.

g. Wage Board rates are normally expressed as hourly rates. These are called the basic hourly rates and will be applied to all hours worked and to all hours of annual leave earned, and sick, holiday and other leave taken to ascertain the total pay of a Wage Board employee. If night and/or environmental differential pay will be required, these differentials should also be included in the direct labor cost for Wage Board employees. Premium pay for Federal civilian firefighters and law enforcement officers is also to be included. Excluded are bonuses, allowances, and overtime and holiday premium pay.

h. General Schedule rates are normally expressed as annual rates of pay. Night and post differentials are excluded from this annual rate for GS employees. In order to convert this annual rate to an hourly rate comparable to that of a Wage Board employee, it must be divided by 2,080 hours.

i. Based on Civil Service Commission data, a factor of 18% must be added to the basic hourly pay to compensate for the amount of annual leave earned and sick leave, holiday, and other leave taken. In computing direct labor costs when stated time requirements do not include allowances for leave and holiday time, this factor must be used. As indicated earlier, the factor may be applied to either the basic labor rate or the time estimate. Because of this, care must be taken that the 18% factor not be included in or excluded from both. The following decision diagram illustrates the proper rate to be applied to the time estimate.

| Time estimate represents | Labor rate to use |
|---|--|
| Estimated hours required to do the job. | Basic hourly rate increased by the factor for leave and holidays (i.e., base pay \times 118%). |
| Estimated hours required to do the job, plus the allowance for leave and holidays (i.e., actual hours \times 118%). | Basic hourly rate. |
| Estimated man years of effort, including leave and holidays to be taken. | Annual rate, or basic hourly rate \times 2,080. |

j. The detail necessary to support the estimate of direct labor costs will be a listing of the various labor skills required, and the number of hours and rate of pay for each job or component contained in the statement of work as illustrated in Figure 3.

FIGURE 3

ESTIMATE OF DIRECT LABOR COSTS

(Examples of Typical Entries)

| Line Item | Skill Required | Req. Hrs. | Basic Hourly Rate | Hourly Rate Based on Annual Salary | Annual Salary | Direct Cost W/O Leave & Holiday (Required Hours X Applicable Rate) | Leave & Holiday (18%) | Total Direct Labor Costs |
|-------------------------------------|--------------------|-------------|-------------------|--|---------------|--|-----------------------|--------------------------|
| Repair Electric Meters | Electrician W/B-4 | 200 | \$11.00 | \$ - | - | \$2,200.00 | \$396.00 | \$2,596.00 |
| Install Meter Mounts | Carpenter W/B-3 | 100 | 11.50 | - | - | 1,150.00 | 207.00 | 1,357.00 |
| Install Water Coolers | Carpenter's Helper | 100 | 7.00 | - | - | 700.00 | 126.00 | 826.00 |
| Inspection | Inspector GS 9/2 | 100 | - | 7.21 (\$15,000 \div 2,080 hours = \$7.21) | - | 721.00 | 129.78 | 850.78 |
| Reliability Improvement Engineering | Engineer GS 12/2 | 1 Man Year* | - | - | \$23,000 | - | - | \$23,000.00** |

* Includes leave and holiday but excludes other fringe benefits.

**Annual salary already includes leave and holiday.

2. Fringe Benefits—Line 4

a. Fringe benefits are allowances and services provided by the Government to its employees as compensation in addition to the wages or salaries used in determining the basic hourly rate or the annual rate of pay. For purposes of estimating the cost of a Government operation, fringe benefits will include only the normal, recurring benefit costs attributable to an on-going operation. Costs such as termination and separation allowances of Government personnel displaced by a contractor operation are not fringe benefits but rather are to be included as termination costs in comparing Government costs and contractor costs. Employee relocation allowances provided to Government personnel shall be included in Government start-up or termination costs, as applicable, when associated with the opening or closing of a Government-operated activity. (Termination costs should be reflected in the cost analysis under one-time conversion (Line 25) or new-start (Line 19) costs.)

b. The following guidance has been developed to facilitate estimating fringe benefits applicable to the basic hourly pay and the annual rate of pay of Wage Board and General Schedule employees. In cases where certain employees receive fewer or additional benefits, special computations will be needed.

c. In determining direct labor costs, leave and holiday time is considered as being included. Therefore, they are not included in fringe benefits. Premium pay for working on holidays is discussed under "Additional Benefits."

d. **Standard Fringe Benefit Factors.** Government-wide percentage factors shall be applied to annual or periodic labor costs to determine the following fringe benefit costs:

(1) Retirement and Disability (for employees under Civil Service Retirement), 20.4%.

(2) Health and Life Insurance, 3.7%.

(3) Other Benefits (including work disability, unemployment programs, bonuses and awards, etc.), 1.9%.

e. **FICA.** For Government civilian employees (normally temporary employees) who are not under the Civil Service Retirement System, the Social Security (FICA) cost factor to be applied to salary or wage costs is the actual employer contribution rate for the employees involved. When estimating the FICA cost, care must be exercised to assure that the FICA rate is applied only to wages and salaries subject to the tax. Information regarding FICA tax rates and maximum salaries and wages to which they are applicable should be obtained from the appropriate personnel office.

f. Additional Benefits.

(1) If the Government employees whose time is included in the cost estimate will receive allowances for off-site pay, location allowances, hardship pay, hazardous duty pay, uniform allowances, incentive pay, cost of living differential, night differential for General Schedule employees, etc., an estimate of the actual costs thereof will be

used to develop individual rates for the local area. Information needed to compute rates involved should be obtained from the cognizant personnel or payroll office. Where allowances are not uniformly distributed among all local personnel, it may be necessary to compute separate rates or amounts for individual employees or employee groupings, such as General Schedule employees and Wage Board employees.

(2) Overtime premiums and premium pay for working holidays are not included as additional benefits. Overtime and holiday premiums are either "indirect costs" (to be included in the appropriate indirect cost pool), or "other direct costs." In either case, they are not included in the determination of additional benefits nor in the total annual or periodic labor costs. Overtime and holiday premiums are direct costs only when it is known that the work required to provide the product/service being estimated must be performed on overtime. Otherwise, overtime and holiday premiums are indirect costs since the incurrence of overtime provides equal benefit to all work scheduled. Although

night and environmental differentials are considered additional benefits for General Schedule employees, they are added to the hourly rate and included in the annual or periodic labor costs for Wage Board employees. Fire fighters and law enforcement officers' premiums are also included in the annual or periodic labor costs in the same manner.

g. **Documentation.** The backup material for the amount shown as fringe benefits applicable to direct and indirect labor shall be a detailed summary of each fringe benefit, supported by a schedule showing the computation of each fringe benefit cost. The computation schedule should include the base costs to which fringe benefit factors are applied and their source(s), as well as the rate factors and their source(s) (except for the standard factors provided). Normally, a single fringe benefit factor may be used for both direct and indirect labor. However, if significant differences exist in their composition, different fringe benefit rates will have to be calculated separately for direct labor costs and for indirect cost pools. A sample schedule is shown in Figure 4.

Figure 4.—Fringe Benefits

| | Annual or periodic labor costs | | | | Fringe benefit amounts |
|--|------------------------------------|-----------------|---------------|-------------------|------------------------|
| | Subject to retirement ¹ | Subject to FICA | | Total | |
| | | Under limit | Over limit | | |
| Direct labor..... | \$6,800,000 | \$170,000 | \$30,000 | \$7,000,000 | |
| Indirect labor included in: | | | | | |
| Material overhead..... | 1,980,000 | 17,000 | 3,000 | 2,000,000 | |
| Operations overhead..... | 2,984,000 | 16,000 | | 3,000,000 | |
| G&A expense..... | 4,000,000 | | | 4,000,000 | |
| Total..... | 15,764,000 | 203,000 | 33,000 | 16,000,000 | |
| Retirement at 20.4% of \$15,764,000..... | | | | | \$3,215,856 |
| FICA at 6.13% of \$203,000..... | | | | | 12,444 |
| Health, life insurance and other benefits at 5.6% of \$16,000,000..... | | | | | 896,000 |
| Total standard fringe benefits..... | | | | | 4,124,300 |
| Additional fringe benefits (list and explain)..... | | | | | 1,906,949 |
| Total fringe benefits..... | | | | | 6,031,249 |

¹ See Subchapter S, 14, "Computation of Annuities," *Federal Personnel Manual*.

Calculation of fringe benefit rate:

Total fringe benefits ÷ total annual or periodic labor costs =

$$\frac{\$6,031,249}{\$16,000,000} = 38\%$$

Entries on cost comparison form:

Line 4—\$7,000,000 direct labor × 38% = \$2,660,000.

Lines 2, 5, and 7—The fringe benefits to be included in the overhead pools are 38% of \$2,000,000, \$3,000,000 and \$4,000,000, respectively. The prorata share of each of these pools is to be entered in the appropriate line.

D. Operations Overhead—Line 5

1. General

Operations overhead is one of the three classifications of indirect costs. The other two, material overhead and general and administrative (G&A) expense, are discussed in separate sections. This section deals only with operations overhead.

2. Definition

a. Operations overhead costs are the indirect costs of an annual fiscal period which are necessarily incurred to produce or deliver the products/services being provided by a particular organizational element (hereinafter referred to as a work center). Operations overhead differs from material

overhead costs which are related only to acquiring, handling, and storing material, and from general and administrative expenses which are those costs whose incurrence benefits all the activities of the organization of which the particular work center is a part.

b. For practical reasons, some minor costs are treated as indirect costs even though a direct cost relationship can be determined. Short-term work efforts and small, inexpensive items of material generally fall in this category. They should be included in the overhead pool which is most closely related to the nature of the costs; i.e., material overhead, operations overhead, or general and administrative expense. It is important, however, that all costs incurred for the same purpose in like circumstances be treated consistently as either direct costs or indirect costs with respect to the final cost objective (i.e., the product or service being provided by the work center).

3. Estimating Operations Overhead Costs

a. *Step One.* The first step in estimating operations overhead costs is to determine the work center(s) which will perform the work necessary to provide the product/service being estimated. Once this determination is made, all of the estimated costs related to the elements of expense of that work center must be classified as either direct or indirect costs. (Refer to the applicable sections for each element of expense.) The following table illustrates the final result of such a classification.

Total Estimated Costs To Be Incurred by Work Center "A" During Fiscal Year 197X

| | |
|---|------------------|
| Direct Costs..... | \$9,000,000 |
| Indirect Costs: | |
| Operations Overhead..... | \$4,500,000 |
| Material Overhead..... | (¹) |
| General and Administrative Expense..... | (¹) |
| Total Indirect Costs..... | 4,500,000 |
| Total Annual Costs..... | 13,500,000 |

¹ While it is possible to incur some of these types of costs in Work Center "A", for purposes of this illustration it is assumed that none will be.

b. *Step Two.* The summary amount of operations overhead shown in the illustration in *Step One* represents the total cost of the individual types of expenses involved. To arrive at this amount, it is necessary to estimate the amount of the individual types of expenses. As a general rule, where the product or service is to be provided by an existing work center, historical records of the amounts and types of indirect costs incurred by it will be available. These historical records may be used as the basis for developing an estimate of the indirect costs to be incurred during the first year in which the product or service is to be provided. They should be adjusted to reflect inflation and any other changes instaffing or operations contemplated by management. If the product or service being estimated represents a new start, the statement of work will be the fundamental document on which the estimate will be predicated. Once the requirements of the statement of work are determined, it may be possible to find a work center within the organizational structure that is similar to the

one required. The indirect costs of that similar work center, appropriately adjusted, would be an acceptable basis for developing the estimate of the costs of the individual elements of expense. If neither an existing nor similar work center is available, then the annual amounts of the individual items of indirect costs necessary to accomplish the statement of work should be estimated in consultation with cognizant management and technical personnel.

4. *Types of Operations Overhead Expenses*
A description of the more common types of operations overhead expenses are discussed in the following paragraphs.

a. *Indirect Labor*—This category includes all personnel costs of the work center not considered as direct labor, material overhead, or general and administrative expense, as defined in the sections dealing with those costs. The costs of supervision and administration within the work center, as well as the costs of the time of direct employees on leave or not spent in productive effort (e.g., idle time, training, etc.) should be included. Care must be taken to ensure that indirect labor costs that are more appropriately classified as material overhead or general and administrative expense are not included in the operations overhead. Indirect labor costs should include all applicable fringe benefit costs (see Figure 2). Estimates of and supporting documentation for indirect labor should be prepared in much the same way as for direct labor. Essentially, positions required by the work center identified as providing the product/service are identified and designated as direct or indirect. Once the designation is made, it must be consistently followed. The salaries and wages of the indirect employees are estimated for the first year of performance.

b. *Indirect Materials and Supplies*—Included in this category are those items of material or supplies utilized by the work center in its operations but which are not chargeable as direct materials as defined in section III.B.1. Included in indirect material cost is the applicable material overhead.

(1) Examples of such items are lubricants and rags for equipment, or common use low-cost fasteners, such as wire, staples and screws. The costs of indirect materials and supplies should include their allocable share of material overhead. Estimates of indirect materials and supplies are determined in much the same manner as those for direct materials. The prices for these types of materials and supplies are estimated and total indirect material and supply costs determined.

(2) If it is not practical to list each single item of indirect material and supplies in the documentation supporting the estimated amount, they may be aggregated into logical subgroupings and shown in total, with a reference to where the detail can be examined. If the amounts of indirect material and supplies are estimated other than by a detailed listing, a clear explanation of the method used to arrive at the estimated amount must be contained in the supporting documentation.

c. *Depreciation*—Depreciation is the method used to spread the cost of tangible

capital assets (plant, machinery, etc.) less residual value, over their estimated useful lives in a systematic and logical manner. Note that because land has an unlimited life, it is not a depreciable asset and its cost should not be included with other asset costs that are subject to depreciation. Land improvements, however, are depreciable assets (e.g., roads, parking lots). For purposes of this Handbook, depreciation will be computed on a straight-line basis. That is, an equal amount of the difference between the acquisition cost of the asset and its residual value should be charged to each accounting period or unit of usage covered by its useful life.

(1) The cost of a tangible capital asset includes the original acquisition cost plus the transportation and installation costs incurred to place the asset in use. Additions need to be added and retirements deleted to keep the costs current.

(2) Useful life refers to the estimated period of economic usefulness of the asset in a particular operation as distinguished from its physical life. Determination of the asset's useful life should be based on actual or planned retirement and replacement practices. An asset that is still in use should not be reflected as being fully depreciated. To avoid this happening, the estimated useful lives need to be reviewed and adjusted periodically to conform to current plans.

(3) Residual value is defined in Appendix 2. Because useful life and physical life may differ, the residual value is not always equal to scrap value. Both the useful life and residual value should be estimated, based on historical records and in consultation with engineering and management personnel.

(4) One example of calculating depreciation involves an asset which costs \$1,000 and had a residual value of \$100 and a useful life of 10 years. \$90 should be charged to each year's operation during its useful life (\$1,000 - \$100 = \$900 ÷ 10 years = \$90/year).

(5) In another example, where depreciation is to be based on hours of usage, the difference between the cost and residual value would be divided by the estimated number of hours the machine will be used during its useful life to arrive at an hourly depreciation rate. The amount of depreciation to be included in the operations overhead pool would be the product of the number of hours that the machine will be used during the year, multiplied by the hourly rate previously described, as illustrated below:

| | |
|--|---------|
| Acquisition Cost..... | \$1,000 |
| Residual Value..... | -100 |
| | ===== |
| | \$900 |
| Estimated usage during useful life (hours)..... | 5,000 |
| Depreciation Rate (\$900 ÷ 5,000 hours) (per hour)..... | \$0.18 |
| Estimated usage during year (hours)..... | 500 |
| Depreciation to be included (500 hours × \$0.18 hour)..... | \$90 |

(6) The annual depreciation related to all the tangible capital assets (building, plant, equipment, etc.) used by the work center in providing the product/service being estimated will be included in the work center operations overhead costs.

(7) For all other assets the indirect cost pool (material overhead, operations

overhead, or general and administrative expense) to which annual depreciation is assigned will depend on the use made of the assets.

(8) Supporting documentation for the estimated amount of depreciation should be a detailed listing of the assets involved and the annual depreciation related to each. Where, because of the magnitude of the assets involved, it would not be practical to prepare such a list, the amount of depreciation may be supported by a listing of logical groupings by type of assets, with references to where the detailed supporting property records may be examined. If depreciation is estimated on other than an item-by-item basis, a complete explanation of the methodology used must be included in the supporting documentation.

d. Rent—This is a cost incurred for the use of another entity's tangible assets (land, plant and machinery, etc.) in providing the product/service being estimated. All such costs anticipated to be incurred during a fiscal year encompassing the period of performance should be included in the operations overhead pool unless the assets are used in connection with only one product/service. In the latter case, the rental amounts will be treated as a direct cost of that product/service, provided that the rental amounts of similar assets are treated consistently for all other products/services. The amount of rent and the charges included must be determined.

(1) If the rent includes a separate charge for maintenance and repair, utility charges, etc., and the amount is significant, those charges should be included in their proper expense classification, if they do not benefit all products or services in the same proportion as the rental charge.

(2) Where a Government-owned asset is "rented" by one Government organization, from a different Government organization, only the actual costs of ownership should be regarded as cost. If the rental amount is predicated on the market rental value, or an incremental cost basis, there may be a significant difference between the rental amount and the cost of ownership. If the rental amount to be included in the estimate represents a GSA-billed Standard Level User Charge (SLUC) and is in excess of \$50,000 annually, a determination of this difference will be made. The difference will be either added to or subtracted from the "rental" costs to bring them to the actual costs to the Government. If the rental costs are based on incremental costs, the difference will be determined regardless of their amounts. If it is impractical to arrive at actual Government ownership costs by consultation with the Government lessor, a reasonable estimate of ownership costs will be included.

e. Maintenance and Repair—The normal costs incurred during a fiscal year for maintaining and repairing the tangible capital assets utilized by the work center providing the product or service being estimated (but not those properly classified as material overhead or general and administrative expense) will be included in the operations overhead cost pool. These costs relate only to those maintenance and repair activities that are necessary to keep the buildings and

equipment in operating condition. The costs of major overhauls and repairs which add value to or prolong the life of the asset should be treated as capital expenditures and depreciated over the extended or remaining useful life of the asset. The methodology used to estimate all of these costs should be contained in the supporting documentation.

f. Support Costs—This category includes those indirect costs incurred during the fiscal year by other organizational elements in support of the work center in which the product/service being estimated is to be performed.

(1) For example, motor pool services in support of the products or services provided by the work center would be included in operations overhead. Support costs applicable to material overhead or general and administrative expense should not be included in operations overhead (e.g., ADP services involving material inventory or general management information), but should be included in those accounts.

(2) Supporting documentation for these costs should indicate the service involved and the performing organization. If significant in amount, the organization supplying the support should estimate the costs in accordance with the provisions of this Handbook and provide the estimate and supporting documentation to the recipient work center for inclusion in its estimate. If the amount is not considered significant enough to warrant preparation of an estimate as described above, the methodology used to arrive at the estimate must be clearly stated in the supporting documentation.

g. Utilities—This category includes charges for fuel, electricity, telephone, water and sewage services, etc. The amount of these costs applicable to the work center will be determined either on a metered or allocated basis of consumption. Proration of the amounts to the various overhead pools will be by a unit of measure that would vary directly with consumption (e.g., floor space, number of telephones, etc.). Estimates of these expenses to be incurred for the first year of performance should be based on current experience appropriately adjusted for anticipated future experience. Engineering estimates should be used when experience data are not available. All estimates should be appropriately documented with supporting detail.

h. Insurance—Operation of any government activity involves risks and potential costs from fire and casualty losses and from liability claims. These risks are normally covered by insurance in the private sector, but the Government is primarily self-insured and must pay for such losses as incurred. Casualty losses can be estimated by multiplying .0005 times the value of Government facilities, equipment, and material; liability losses can be estimated by multiplying .0007 times personnel costs. For a simplified estimate of insurance costs, multiply the sum of lines 1 through 4 and the net book value (acquisition cost less depreciation accumulated to the beginning of the cost analysis period) of all depreciable assets used by the work center by .0006.

i. Overtime and Other Premium Pay—The amounts of overtime and other premium pay to be included as indirect costs in the operations overhead pool are those incurred in order to complete all work of the work center in a timely manner. The reason for considering the overtime or other premium portion of the salaries and wages as an indirect cost is that the scheduling of work effort is usually done on a random basis. That is, the actual work performed during overtime hours or on holidays is usually no more the basis for incurring the premium payments than the effort performed during the regularly scheduled hours. Accordingly, under these circumstances, all work performed in the work center should receive a proration of the premium costs. This is accomplished by including these costs in the overhead expense pool.

(1) The straight time portion of such wages will be considered as Direct Labor, as in section III.C.1. of this Handbook. If the premium pay is necessitated not by an overloading of the work center's normal capacity, but by the special demands of a single customer or client, the related premium costs should be considered as Other Direct Costs of the product or service furnished that customer or client.

(2) Supporting documentation for the amount of overtime and other premium pay included in the indirect cost pool should indicate how the need for such payments was determined and how the amount was computed.

j. Other Costs—There may be other indirect costs incurred by or for the work center being reviewed which do not fall into any of the categories discussed in this paragraph 4, but which must still be included in the overall cost estimate. If further guidance is required on some unique element of cost, the cognate accounting office should be consulted.

5. Developing Overhead Rates

a. Allocation Base—Determination of the amount of the annual operations overhead cost to be applied to the product/service being estimated required establishment of an appropriate base for allocation of costs. Where the product/service being estimated represents the total effort of the organization for the year, all of the operations overhead costs are applicable. However, where work is done on more than one product or service during the year, an allocation must be made among these products and/or services. This is normally done by determining and applying an overhead rate. Overhead rates can be expressed as a percentage of one or more elements of expense (e.g., 20% of direct labor or 15% of total direct costs). An overhead rate can also be expressed as a monetary unit related to some quantitative measure (e.g., \$2.00 per direct labor hour, \$3.00 per machine hour, \$0.50 per square foot of space used).

To illustrate, assume that Work Center "A" provides three products/services entitled A-1, A-2, and A-3, and a cost comparison analysis is being prepared for A-3. The following additional facts are to be assumed:

That 300,000 direct labor hours are incurred annually on the three products/services, as follows:

| | |
|----------------------------|---------|
| A-1 | 150,000 |
| A-2 | 90,000 |
| A-3 | 60,000 |
| Total (direct labor hours) | 300,000 |

Direct labor costs for the year are \$3,000,000.

50,000 machine hours are used to provide the three products/services.

| | |
|-----------------------|--------|
| A-1 | 5,000 |
| A-2 | 5,000 |
| A-3 | 40,000 |
| Total (machine hours) | 50,000 |

b. **Overhead Rates**—Using these assumptions as well as those shown for Work Center "A" in paragraph D.3.a., the following overhead rates (and many others) can be developed:

Percentage of Direct Labor Costs: Operations Overhead (\$4,500,000) divided by Direct Labor (\$3,000,000) equal 150%.

Percentage of Direct Costs: Operations Overhead (\$4,500,000) divided by Total Direct Costs (\$9,000,000) equal 50%.

Rate Per Direct Labor Hour: Operations Overhead (\$4,500,000) divided Direct Labor Hours (300,000) equal \$15.00 per Direct Labor Hour.

Rate Per Machine Hour: Operations Overhead (\$4,500,000) divided by Machine Hours (50,000) equal \$90.00 per Machine Hour.

(1) As can be seen from the above, there are several ways of developing overhead rates. Rarely will the various rates result in the identical allocation of the overhead costs to the products/services provided by the work center. Accordingly, the selection of the proper base of allocation is of extreme importance in costing product/service A-3.

(2) A straightforward way to select the best allocation base is to chart operations overhead costs and various possible allocation bases over time. The allocation base that varies most frequently in the same direction at the same time as the operations overhead costs would be the best allocation base.

(3) As long as it can be ascertained that indirect costs vary directly and proportionately with a measure of an element of expense or activity (dollars, hours, etc.) and that all products or services furnished by the work center benefit from the same elements of expense or activity, and in the same proportion, the use of that single element as the allocation base will normally result in an equitable distribution of overhead costs. Assuming direct labor hours meet these criteria for Work Center "A," operations overhead would be allocated to the three products/services as follows:

| Product/service | Direct labor hours | Operations overhead rate per direct labor hour | Overhead allocation |
|-----------------|--------------------|--|---------------------|
| | (1) | (2) | (1) x (2) |
| A-1 | 150,000 | \$15.00 | \$2,250,000 |
| A-2 | 90,000 | 15.00 | 1,350,000 |
| A-3 | 60,000 | 15.00 | 900,000 |
| | 300,000 | \$15.00 | \$4,500,000 |

(4) A single base of allocation will not normally be adequate in a work center where:

(a) The indirect costs do not vary directly and proportionately with a single measure of expense or activity, or

(b) all elements of expense and activities which influence the incurrence of operations overhead costs (e.g., direct labor influences supervision, etc.) are not incurred in roughly the same proportion for the various products/services provided.

When these conditions are encountered, there are two possible solutions. The first would be to subdivide the work centers into departments and develop a separate operations overhead pool and rate for each. In that case, development of the departmental operations overhead would be identical to the development of the operations overhead rate(s) for Work Center "A", as described herein. The second solution is to develop two or more overhead rates within the work center by grouping the indirect expenses in overhead pools related to the disparate functions and allocating them on appropriate bases. Obviously, the bases of allocation will not be the same.

(5) We can illustrate the use of two rates for Work Center "A" using the assumptions previously cited. From these assumptions, it can be seen that product/service A-3 is responsible for most of the machine hours used by the work center. Specifically:

- A-1 uses, 5,000 machine hours;
- A-2 uses 5,000 machine hours;
- A-3 uses 40,000 machine hours.

Accordingly, direct labor hours would not be an appropriate allocation base because it would result in a disproportionate amount of machine shop expenses (depreciation, maintenance and repair) being allocated to products A-1 and A-2. Conversely, the use of machine hours would result in an inequitable share of the labor-related indirect expenses being allocated to product/service A-3.

(6) Two pools for Work Center "A" may be established by segregating machine-related costs from other operations overhead costs as follows:

| | |
|---------------------------|-------------|
| Basic Pool | \$1,500,000 |
| Machine Pool | 3,000,000 |
| Total Operations Overhead | 4,500,000 |

(7) It is determined that the best allocation base for the basic pool is direct costs and the rate is: Basic Pool divided by \$1,500,000 equals 16.67%. Direct Costs total \$9,000,000.

(8) The \$9,000,000 direct costs are determined to be charged to each product as follows:

| | |
|-------|-------------|
| A-1 | \$4,500,000 |
| A-2 | 2,700,000 |
| A-3 | 1,800,000 |
| Total | 9,000,000 |

(9) Therefore, the allocation of the \$1,500,000 in the basic pool is:

| | |
|---------------------------|-----------|
| A-1—16.67% of \$4,500,000 | \$750,000 |
| A-2—16.67% of \$2,700,000 | 450,000 |
| A-3—16.67% of \$1,800,000 | 300,000 |
| Total | 1,500,000 |

(10) It is also determined that the best allocation base for the machine pool is machine hours and the rate, \$60.00 per machine hour: \$3,000,000 Machine Pool divided by 50,000 Machine Hours equals \$60 per machine hour.

Taking the machine hour usage previously determined and this rate, the allocation is:

| | |
|-----------------------------|-----------|
| A-1—5,000 hours at \$60.00 | \$300,000 |
| A-2—5,000 hours at \$60.00 | 300,000 |
| A-3—40,000 hours at \$60.00 | 2,400,000 |
| Total | 3,000,000 |

(11) Combining the two pools gives us the total allocations:

| | Basic Pool | Machine Pool | Together |
|-------|------------|--------------|-------------|
| A-1 | \$750,000 | \$300,000 | \$1,050,000 |
| A-2 | 450,000 | 300,000 | 750,000 |
| A-3 | 300,000 | 2,400,000 | 2,700,000 |
| Total | 1,500,000 | 3,000,000 | 4,500,000 |

(12) The following comparison highlights the significant differences that can result from using different overhead allocation methods.

| | One Rate (Direct Labor Hours) | Two Rates (Basic and Machine) | Difference (Subtract One from Two) |
|-------|-------------------------------|-------------------------------|------------------------------------|
| A-1 | \$2,250,000 | \$1,050,000 | \$(1,200,000) |
| A-2 | 1,350,000 | 750,000 | (600,000) |
| A-3 | 900,000 | 2,700,000 | 1,800,000 |
| Total | 4,500,000 | 4,500,000 | 0 |

6. **Summary.** In summary, operations overhead is a significant cost element in estimating the cost of providing a product or service. It is extremely important that elements of indirect expense included in the operations overhead pool are appropriate and the amounts thereof are carefully estimated. It must be determined by careful study whether more than one pool of expenses is required. Also, the selection of a proper base(s) for allocation is essential to accurate estimating. As illustrated above, significant differences can result from the use of different methods for allocating overhead. The choice of the appropriate method should be based on a review of the functions and their related costs within the work center. The pools and bases should be selected based on supported facts and circumstances. They should not be selected on the basis of arbitrary assumptions, or the fact that the data for a particular base are readily available. The main purpose of the overhead rate must always be kept in mind. It is developed to permit the allocation of overhead expenses to the products/services being provided on the basis of the benefits they receive from the incurrence of the cost.

7. **Supporting Documentation.** The supporting documentation needed for the amount of operations overhead allocated to product/service A-3 will be a listing of the expenses included, the base used to develop the rate(s), and the supporting detail for each. Figure 5 is an illustration of the operations overhead costs of Work Center "A."

Figure 5—Work center "A": Computation of operations overhead rate for the year ending

| Operations overhead expenses | Basic | Machine | Total |
|---|------------------|------------------|------------------|
| Indirect Labor: | | | |
| Supervision..... | \$70,000 | \$30,000 | \$100,000 |
| Clerical..... | 700,000 | 30,000 | 1,000,000 |
| Indirect Time of Direct Personnel.... | 400,000 | 600,000 | 1,000,000 |
| Indirect Materials and Supplies..... | 30,000 | 370,000 | 400,000 |
| Depreciation..... | 40,000 | 400,000 | 440,000 |
| Rent..... | 10,000 | 50,000 | 60,000 |
| Maintenance and Repair..... | 40,000 | 385,000 | 425,000 |
| Support Costs..... | 50,000 | 115,000 | 165,000 |
| Utilities..... | 60,000 | 610,000 | 670,000 |
| Insurance..... | 10,000 | 20,000 | 30,000 |
| Overtime and Other Premium Pay..... | 60,000 | 100,000 | 160,000 |
| Other..... | 30,000 | 20,000 | 50,000 |
| Total Operations Overhead (A)..... | 1,500,000 | 3,000,000 | 4,500,000 |
| Allocation Bases (B): | \$9,000,000 | | |
| Machine Hours..... | | 50,000 | |
| Overhead Rate (A) ÷ (B) = (C)..... | 16.67 | \$60.00 | |
| Application to Product/Service A-3: | | | |
| Direct Costs Applicable To A-3 (D)..... | \$1,800,000 | | |
| Machine Hours Applicable To A-3 (D)..... | | 40,000 | |
| Amount of Operations Overhead Allocated to A-3 (C) × (D)..... | \$300,000 | \$2,400,000 | \$2,700,000 |

¹ Percent of direct costs.

² Per machine hour.

E. Interagency Support

1. In developing the estimates of Government costs, products or services which are excess to the needs of other Federal agencies should be used in preference to new procurements when reported as excess under a formal program or when more economical than procurement from a private commercial source. When a comparative cost analysis is to be made, the agency that would be providing the excess product or service must prepare cost estimates in accordance with this Handbook and furnish its cost data on lines 1 through 9 and its other considerations on lines 23 through 30 of the Cost Comparison Form. The Form must be signed on the "prepared by" and "audit certification" lines. The Cost Comparison Form will be submitted to the agency receiving the product or service. The receiving agency will classify the providing agency's costs as other direct costs, operations overhead, or general and administrative expense, as appropriate. The other considerations will also be added to the appropriate classification. The providing agency's Cost Comparison Form will be used as supporting documentation. NOTE: Agency reimbursement charges for providing the product or service to another agency may not be used as a basis for the cost estimate unless such charges reflect all costs as provided in this Handbook.

2. If a decision to contract out would cause the Government not to utilize available excess facilities, material or service capacity,

the impact in terms of costs to the Government must be considered in computing the total cost of contracting for the product or service. For guidance in developing and documenting such costs, see the section V.F.

F. Other Direct Costs—Line 6

1. Other direct costs are the sum of all those direct costs exclusive of direct material and direct labor, which are identified as having been incurred specifically for a particular product or service (the final cost objective). Some examples of other direct costs are: Service center charges (e.g., ADP service center, printing shop, etc.), travel, and purchased services.

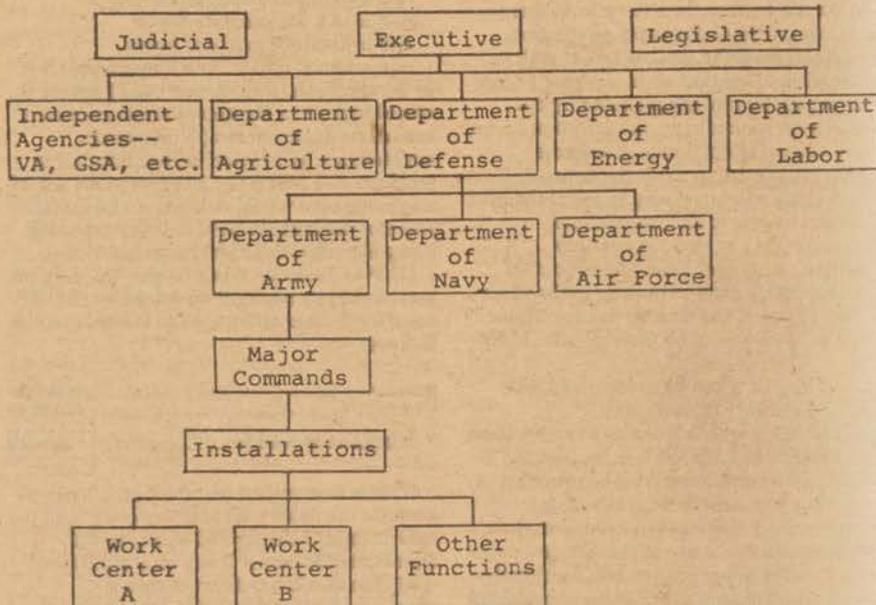
2. There are certain types of effort that some organizations treat as indirect expense and others classify as direct. Examples of these costs are special travel expenses, preservation, packaging and packing, plant rearrangement, consultant's fees, certain clerical salaries, shop supplies, transportation costs, plant protection, royalties, computer expenses, and telephone and telegraph expenses. Whenever an organization decides to classify any of these costs as direct, they normally will be included under Other Direct Costs unless they are direct material or direct labor. When an organization decides to reclassify a cost from an indirect to a direct charge, it is necessary to ascertain that the organization's

accounting and estimating practices provide consistent treatment of these special costs during the period under review. To prevent duplication, it must be established that when these items of expense are treated as direct costs, similar costs are excluded from indirect costs applied to the estimate. Conversely, when an organization reclassifies a cost from direct to indirect, care must be taken to include these costs in the appropriate indirect cost pool.

3. Refer to sections III.B.2. and III.C.1. for cost estimating instructions and supporting documentation requirements which are appropriate for estimating and documenting other direct costs.

G. General and Administrative Expense—Line 7

1. General and administrative (G&A) expense consists of those financial, management or other expenses which are incurred for the benefit of an organizational unit as a whole. They do not include expenses which should be classified as material or operations overhead expenses which have been discussed previously in this Handbook. Because of their nature, general and administrative expenses may be incurred at various levels within the Governmental structure. The following simplified diagram depicts the various levels within the Government where G&A expenses may be incurred:



2. Certain administrative expenses incurred by the executive, legislative and judicial branches of the Government are applicable to the various departments and independent agencies. Similarly, certain administrative expenses incurred at the department level would be applicable to the activities within the departments organization (e.g., Departments of Army, Navy, and Air Force). This flow would continue on down to the organization level. Within the organization itself, general and administrative expenses

may be incurred which are applicable to all the functions being performed there. This flow-down of G&A expenses will vary based on the organizational structure of each department or agency, but will exist in some form in each. A portion of the general and administrative expenses incurred above the installation level are applicable to the product or service being estimated. However, for purposes of this Handbook, only those G&A expenses which contribute directly to

the actual operation of the organization will be included in the estimate. This decision is based on materiality of amount and the conclusion that the efforts involved in funding, policy-making, long-range planning, direction, etc. (commonly referred to as staff functions) would continue and be equally applicable to either contractor or Government effort.

3. In deciding at what level to discontinue the allocation of G&A expenses to the product or service to be provided, a self-sufficiency criterion should be used. A self-sufficient organization is one that operates as an independent unit, receiving only funds, policy direction, and guidance from the next higher organizational unit. If any general and administrative-type activities are provided at no cost or on an incremental cost basis, the organization is not self-sufficient. In these circumstances, an appropriate allocation of the applicable expenses of the incurring organization should be included in the recipient's G&A expenses, to be allocated to the products and/or services the recipient provides.

4. To illustrate, assume the organization we are concerned with is a laundry. If that laundry is located on its own land, does its own maintenance, budgeting, accounting, etc., then it can be considered self-sufficient and no further G&A costs will be allocated to it from the next higher organizational unit. The G&A costs incurred by the laundry itself will be allocated to the various products or services it provides. However, if that laundry was located on the same grounds or in the same building of another organization, say a hospital, and the hospital staff provides it with certain maintenance, budgeting and accounting effort, on a no-cost or incremental cost basis, then the laundry would not be self-sufficient. The applicable portion of the hospital's G&A expense must be allocated to the laundry. Assume further that the hospital to which the laundry is attached is located on a military base and the hospital receives certain support from the base, such as road and parking lot maintenance, security, fire protection, etc. If the hospital receives these services on a no-cost or incremental cost basis, it is not a self-sufficient unit. The allocable portion of the costs incurred by the base that benefits the hospital should be included in the hospital's G&A expenses and an equitable amount thereof allocated to the laundry. For purposes of this illustration, we will assume that the military base is self-sufficient (they all are not); that is, it receives only funding, policy direction, and guidance from its next higher level of command. Accordingly, none of the G&A expenses incurred by the next higher level of command would be allocated to the military base.

5. In addition to the self-sufficiency criterion, materiality of amount must be kept in mind in determining the level above which G&A expenses will not be considered in the estimate. When the costs involved are minor in amount and their ultimate allocation to the product or service is not likely to have a bearing on the decision to contract-out or perform in-house, they may be excluded if not readily available.

6. The G&A rate to be used to allocate the organization's G&A expenses to its activities will be developed in much the same manner as the operations overhead rate was developed. That is, a pool of annual G&A expenses will be developed and the total will be divided by the allocation base.

7. A significant difference between the development of a general and administrative expense rate and an operations overhead rate is that G&A expenses must be accumulated in a single pool. This differs from operations overhead where certain circumstances may require the establishment of more than one pool. The reason that only one pool of G&A expenses is needed is the nature of G&A expenses. As previously stated, G&A expenses are incurred for the benefit of the organization as a whole. If an incurred expense does not meet this criterion, it should not be included in the G&A pool.

8. Typical examples of the types of cost to be included in the G&A expense pool are the expenses connected with the following offices or functions:

The Office of the Organization Director (Commander).

The Office of the Comptroller.
The Office of the General Counsel (Judge Advocate).

Centralized Personnel Services.
Centralized Administrative Services (Adjutant General).

Public Relations.
Internal Review (Audit).
Security, including security clearances.

9. To develop a G&A expense pool, the costs associated with any function performed for the benefit of all product/services provided must be estimated. The cost of performing each function is the total of the expenses (indirect labor, indirect material, etc.) incurred for that purpose during the year. The nomenclature for the types of expenses to be included in the G&A overhead pool is similar to that used in the context of operations and material overhead. The characteristic which distinguishes these three types of overhead costs, one from the other, is the purpose for which each is incurred. Accordingly, the G&A pool will be made up of elements of expense similar to those for operations overhead in nomenclature but which are related to performing functions and services such as those performed by the offices listed above. The methods of estimating the amounts of these costs will be the same as those described in the Operations Overhead section and are not repeated here.

10. Since all G&A expenses must be incurred for the benefit of the organization as a whole, the base used to allocate these costs to the final cost objective must be representative of the overall operation of the organization. For this reason, the total costs incurred (exclusive of G&A expenses) has been chosen as the allocation base. This base should include the cost of all the mission functions of the organization whether these are commercial, industrial or governmental functions.

11. The following steps depict the development of a G&A rate:

a. *Step 1:* Develop the G&A expense pool. The amount to be included in the pool is the amount of the G&A expense expected to be incurred during the first year of performance. This amount will be predicated on past experience, adjusted to provide for inflation and any change in operations.

General and Administrative Expenses

| | |
|---|------------------|
| Executive, Professional, Technical, and Supervision Salaries (including fringe benefits)..... | \$1,450,000 |
| Clerical and Other Salaries (including fringe benefits)..... | 1,175,000 |
| Other Expenses (Training, Depreciation, Indirect Materials, Allocated Support Costs, etc., except those included in material or operations overhead)..... | 3,100,000 |
| Total G&A Expenses..... | 5,725,000 |

b. *Step 2:* Develop the Base of Allocation (costs incurred by Organization A, exclusive of G&A expense)

| | |
|---|-------------------|
| Direct Costs..... | \$42,500,000 |
| Operations Overhead Costs..... | 8,900,000 |
| Material Overhead Costs..... | 100,000 |
| Total Cost Incurred Exclusive of G&A Expenses..... | 51,500,000 |

c. *Step 3:* Develop the Organizational G&A rate (divide the pool by the base): \$5,725,000 divided by \$51,500,000 equals 11.12%.

12. To estimate the amount of the annual G&A expenses applicable to the product or service being estimated, the above developed rate will be applied to the total estimated annual cost (exclusive of G&A) of providing the product or service as illustrated below:

| | |
|---|------------------|
| Direct Material..... | \$450,000 |
| Material Overhead..... | 5,000 |
| Direct Labor..... | 1,000,000 |
| Fringe Benefits..... | 250,000 |
| Other Direct Costs..... | 50,000 |
| Operations Overhead..... | 1,500,000 |
| Subtotal..... | 3,255,000 |
| General and Administrative Expense (\$3,255,000 × 11.12%)..... | 361,956 |
| Total cost..... | 3,616,956 |

13. The detail required to support the amount of G&A expense allocated to the product or service being estimated will be a listing of the expenses related to the functions and offices classified as general and administrative expenses.

H. Inflation of Out-Year Costs—Line 8

1. In preparing the Government's estimate, all known or anticipated increases in costs to be incurred in the first year of operation should be provided for in each element of cost, as stipulated by the instructions contained in this Handbook, including any expected salary increases for government employees. For all subsequent years, anticipated changes in scope of work may be added but no inflation factors will be added to the individual elements of cost.

2. To calculate the amount to enter in Line 8 for inflation, follow these instructions.

For year 2, multiply the sum of lines 1 through 7 in column "Second year" by the factor .04.

For year 3, multiply the sum of lines 1 through 7 in column "Third year" by the factor .082.

For year 4, multiply the sum of lines 1 through 7 in column for "Fourth Year" by the factor .125.

For year 5, multiply the sum of lines 1 through 7 in column for "Fifth Year" by the factor .17.

3. The entry in line 9 in each column will be the sum of lines 1 through 8 in that column.

CHAPTER IV—DEVELOPING AN ESTIMATE OF CONTRACTING-OUT COSTS

A. General

This section of the Handbook deals with the determination of the cost to the Government of acquiring the product or service being analyzed by letting a contract. It includes determination of not only the amount to be paid to the contractor (contract price) but also the related in-house costs that will be incurred by the Government as a result of contracting out. The Cost Comparison Form (Exhibit 1) identifies the following categories of Government cost which might be incurred in connection with contracting out: Contract Price, Transportation, Contract Administration, Government-Furnished Property, Standby Maintenance, Other Costs, and General and Administrative Expense (on the above).

Comments on each of these categories are contained in the following paragraphs.

B. Contract Price—Line 10

1. The contract price included in the cost comparison must be supported by a firm bid or proposal. The contractor's bid or proposal must be predicated on the same statement of work utilized in preparing the Government's estimate. Also, the solicitation for bids or proposals will notify the bidders or offerors that a comparison will be made between the cost of contracting the effort and performing it in-house.

2. In determining the amount to be recorded as the contract price, consideration must be given to the contract type. The following guidance is provided in this regard.

a. In the case of an advertised firm fixed price contract, the price of the low bidder or offeror will be entered without adjustment. If a firm fixed price contract is to be negotiated, the low negotiated price will be entered.

b. When fixed price contracts with flexible pricing arrangements are contemplated (e.g., fixed price incentive fee), the target price of the apparent low bidder or offeror will be entered.

c. If a contract with an award fee is proposed, the performance level comparable to that attributed to Government employees in preparing the Government's estimate will be used to estimate the amount of the fee. The estimated award fee, plus the contract costs of the apparent low bidder or offeror will be entered.

d. If a time and material or labor-hour contract is proposed, the estimated total cost of performance may be calculated and entered. Alternatively, comparable rates can be developed for the Government cost estimate and the comparison can be made on the basis of rates, rather than total costs.

e. If a cost reimbursement-type contract is required by special circumstances, the

apparent low bidder or offeror's estimated costs must be subjected to a meticulous technical and cost evaluation to assure that the estimated costs are neither over nor understated. Adjustments to the bidder's or offeror's estimate need to be reviewed with the bidder or offeror before the adjusted contract price is entered.

C. Transportation Cost—Line 11

1. The Government may incur transportation costs whether a product/service is provided by an in-house operation or by a contractor's operation. Transportation for an in-house operation is normally associated with the applicable overhead. This section deals with the cost to the Government of transportation provided in connection with a product/service obtained by contract.

2. The contract documents or negotiation memoranda will indicate the additional transportation that is to be furnished or reimbursed by the Government. These items are usually clearly indicated. There may be some transportation in addition to that spelled out in the contract which require an estimate. The best source for obtaining estimates of the cost of this transportation is the local transportation or purchasing office.

3. Typical of the transportation costs that may be incurred by the Government are:

- a. Cost of transporting a contractor's employees;
- b. Cost of transporting Government material, equipment, or supplies to and from a contractor's site, such as:
 - (1) Cartage cost from airport, bus, rail or marine terminals;
 - (2) The cost of special equipment, like refrigerated vans or heated containers;
 - (3) The cost of demurrage on rail cars or detention charges for trucks;
 - (4) In exceptional cases, the cost of special insurance.

4. The supporting documentation for these costs should describe the transportation to be provided, the mileage and/or rates utilized in arriving at the estimates, and the source(s) from which they were obtained. If transportation costs were derived in some way other than by extending applicable mileage and rates, the methodology used to arrive at the estimate should be fully explained.

D. Contract Administration—Line 12

1. Contract administration includes the costs incurred by the Government in assuring that the contract is faithfully executed by both the Government and the contractor. In addition to reviewing contractor performance and compliance with the terms of the contract, contract administration consists of processing payments, negotiating change orders, and monitoring close-out of contract operations. Centralized agency-wide contracting costs are also included.

2. The costs of contract administration will be determined by applying four percent (4%) to the contract price, line 10. The result will be entered on line 12 as the cost of contract administration.

E. Government-Furnished Property—Line 13

1. When Government property is furnished to a contractor in connection with the performance of a contract, associated costs must be considered in determining the overall cost of the contract. Government-furnished property includes:

a. Property that is in the possession of, or acquired directly by, the Government and is subsequently delivered or otherwise made available to the contractor.

b. Property, acquired by a contractor in accordance with the terms of the contract, that does not become a part of the end item and is not consumed during contract performance, and title thereto vests in the Government. Examples of Government-furnished property are land, buildings, facilities, equipment, special tooling, materials, and supplies.

2. The methods for determining the costs related to furnishing Government property will vary with the use made of the property. Where Government property becomes a part of the end product (material) or is consumed in providing a product or service (supplies) the full cost to the Government of acquiring and furnishing these materials and supplies must be added to the cost of contracting. When property such as land, buildings, facilities, equipment, and special tooling are provided for the contractor's use during the performance of the contract but will be returned to the Government upon contract completion, the costs of ownership of these assets by the Government during the period of contract performance, plus any other costs incurred in connection with furnishing the property to the contractor must be added to the cost of contracting. More specific guidance is contained in the following paragraphs. The sum of the costs for Government-furnished materials and supplies and for Government-furnished facilities, in accordance with these paragraphs, will be entered on line 13 of the Cost Comparison Form.

3. Government-Furnished Material and Supplies

a. Government-furnished material and supplies (GFM&S) is property which may be incorporated into or attached to a product/service to be delivered under a contract and those supplies which may be consumed or expended in the performance of a contract. It includes, but is not limited to, such items as raw materials, parts, subassemblies, components, and manufacturing supplies.

b. The instructions for estimating the costs of GFM&S are identical to those for estimating the cost of in-house material and supplies (see sections III.B.2. and III.B.3. for guidance in estimating the cost of GFM&S). For instructions on the treatment of costs associated with transporting GFM&S to and from the contractor's site, see section IV.C.

c. The supporting documentation for GFM&S shall include a detailed listing of all the items to be furnished with quantities, unit prices, suppliers, details of adjustments and the source(s) of the information. See Figure 1 in section III.B. for an illustration of the supporting documentation required.

4. Government-Furnished Facilities (Buildings and Other Land Improvements) and Equipment

a. The costs applicable to facilities and equipment furnished to contractors by the Government must be added to the cost of contracting out for purposes of Circular A-76 comparisons. These costs consist of depreciation of capitalized equipment or facilities, or the full expense of minor items of equipment which do not meet agency capitalization criteria. Depreciation on government-furnished facilities and equipment shall be computed in accordance with the instructions on computing depreciation contained in section III.D.4.c. Only the depreciation costs applicable to the proposed contract period will be considered for purposes of the cost comparison.

b. When the Government rehabilitates, modifies, or expands existing Government-owned facilities or equipment for the purpose of providing it to a contractor as Government-furnished property, the related costs will be treated as follows:

(1) If the rehabilitation, modification or expansion of the Government facilities or equipment increases the useful life of the assets to the Government or the asset value of the property, the related costs shall be depreciated over the remaining useful life of the assets. The amount to be included in the Circular A-76 cost comparison as an add-on to the contract cost shall be limited to the cost amortization applicable to the period covered by the proposed contract.

(2) If the rehabilitation or modification work consists primarily of plant rearrangement, minor repairs, or other work which does not extend the useful life of the assets or does not increase the value of the property to the Government, the related costs shall be considered as additional costs of contracting out. The entire cost of such rehabilitation or modification will be charged to the first year of contract operations or spread over the contract period depending on the period the costs are determined to benefit.

(3) While the acquisition cost of land is not depreciable, the costs of any improvements or alterations made to land utilized in performance of the contract, such as landscaping, special grading, etc., should be accumulated and depreciated over the estimated useful life of the improvements or alteration. The add-on to the contract cost will be limited to the depreciation applicable to the period covered by the proposed contract.

c. Cost estimates will be supported by a summary listing of all the above types of cost and the location of the detailed records used to determine them as follows:

Government-Furnished Facilities and Equipment

| | Amount | Location of Records |
|------------------------|--------|---------------------|
| Depreciation: | | |
| Land Improvements..... | \$XX | |
| Buildings..... | X,XXX | |

Government-Furnished Facilities and Equipment— Continued

| | Amount | Location of Records |
|--------------------------|----------|---------------------|
| Equipment..... | XX,XXX | |
| | \$XX,XXX | |
| Other Expenses: | | |
| Plant Rearrangement..... | X,XXX | |
| Minor Repairs..... | XXX | |
| Other..... | XXX | |
| | XXX | |
| Total..... | \$XX,XXX | |

d. Supporting data should include details on original cost, residual value, annual depreciation, etc., of the equipment and facilities.

F. Standby Costs—Line 14

1. In unusual and infrequent instances, it may be necessary to hold Government equipment and/or facilities in a standby status when an in-house activity is terminated in favor of contract performance to assure provisions of the needed product or service. Costs related to holding equipment and facilities for any other purpose are not standby costs for purposes of this Handbook, and should not be added to the contract price. Standby costs are defined as expenses necessary for the upkeep of property in standby status which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient, operating condition or available for possible use in providing the needed product or service.

2. Standby cost is not to be confused with Utilization of Government Capacity or Disposal of Fixed Assets. Each of these factors is discussed separately in Chapter V of this Handbook. In most cases Government property will be disposed of or put to other use when a decision is made to obtain a product or service from the private sector instead of continuing to produce it in-house. A detailed justification is required for holding the Government property in standby status, and a copy of the justification should be included in documentation supporting the cost analysis.

3. If it is determined that it is necessary to hold Government property in a standby status, all related costs must be estimated for inclusion in the cost comparison analysis. The estimate of standby costs begins with a determination of the facilities and/or equipment that will be placed in a standby status to support a contractor. The next step is to estimate the cost, if any, of preparing the facilities and equipment for standby status. The cost of holding the facilities or equipment in a standby status must also be estimated in order to determine the total standby maintenance cost which would result from contract versus in-house production. These costs may be estimated by utilizing engineering estimates, prior experience, or experience of other organizations. If similar standby costs have been incurred previously,

these may be used as a basis for subsequent costing provided appropriate adjustments have been made for facilities, equipment, and pricing variations. When computing the depreciation cost of property in standby status, it will be necessary to review the useful life of the property since useful life may be increased by the change from production to standby status. This review will be necessary even if the depreciation is based on machine hours usage because, while wear and tear may cease, obsolescence may continue.

4. When the estimated standby cost is determined, the total of this cost will be entered on line 14 of the Cost Comparison Form. Backup data must be included for all the cost elements associated with preparation for and maintenance in standby status. See Chapter III for cost estimating instructions, types of cost elements to be included, and documentation requirements.

G. Other Costs—Line 15

1. This cost category encompasses any additional Government costs which would result from contracting and which are not covered elsewhere in the cost comparison. This cost category is included to provide for unusual circumstances which may be encountered in particular cost analyses. The total amount of such other costs should be entered on line 15 of the Cost Comparison Form.

2. Supporting data will include a complete description of the costs involved and the rationale for including each, together with cost detail as outlined for the various cost elements in Chapters III and IV.

H. General and Administrative Expense— Line 16

The general and administrative (G&A) expense applicable to the in-house effort related to contracting for a product or service must be included as part of the cost of contracting out. The amount of such expenses to be included will be determined by applying the G&A rate developed in Chapter III to the total costs of the in-house effort (the sum of lines 11 through 14).

I. Inflation of Contracting-Out Costs

1. The four percent inflation factor is applicable to the costs associated with contracting-out (lines 11, 13, 14, and 15) on a line by line basis. However, any nonrecurring costs included in the first year's total should be identified and removed from the base figure for purposes of applying the appropriate factor. For example, assume that the estimate of transportation costs for the first year of performance is \$5,000, and that \$3,000 of that total represents the cost of transportation necessary to enable the contractor to begin performance. While the full \$5,000 would be entered in Line 11 under the "First Year" column, only \$2,000 (\$5,000—\$3,000) would be incurred in subsequent years and be subject to inflation. This amount subject to inflation will be multiplied by 1.04 for the "Second Year" column, 1.082 for the "Third Year" column, 1.125 for a fourth year, and 1.17 for a fifth year.

2. The inflation factor must not be applied routinely to these first year costs, however. If

the Statement of Work does not require consistent Government support throughout the period of performance, then first-year costs should not be inflated. Instead, the requirements for support in each time period would have to be separately evaluated, and the appropriate inflation factor applied to the estimated cost. Therefore, entries in out-year columns may bear no direct connection to the "First Year" entry on the same line. Since General and Administrative expense is derived by applying a G&A rate to already-inflated figures, the inflation factor shall not be separately applied to line 16.

3. It is particularly important to identify the nonrecurring portion of Government-furnished property (line 13) and standby costs (line 14). Of the Government-furnished property costs, only minor repair and "other" costs are subject to inflation. The standby cost total must be reduced by the amount attributable to preparing facilities or equipment for standby status before the inflation factor is applied.

CHAPTER V—OTHER CONSIDERATIONS

A. General

Up to this point, the Handbook has been concerned with determining the cost to the Government of acquiring a product or service either by contracting-out or by in-house performance. The decision as to which alternative to follow will not usually be made solely on the basis of the costs of providing the product or service as developed in accordance with Chapters III and IV. Additional costs or revenue losses will normally be considered to determine the most economical of the two methods.

B. Shortened Cost Comparison When In-House Costs are Below Best Offer for a Conversion

1. After the contracting officer opens the bids or completes negotiations, he will indicate in line 10 of the form the lowest responsible bid or proposal. When the basic contract price (line 10) exceeds the total in-house costs (line 33) it can be assumed that the cost of in-house performance will be less than the cost of contracting-out. This assumption precludes the necessity for completing the portions of the form dealing with the cost of contracting-out. Completion of these portions would only serve to document the net additional costs which must be added to the contract price. Since the contract price already exceeds the cost of in-house performance, such information would not alter the ultimate conclusion of the comparison. However, an exception should be made when it is likely that offsets resulting from contracting-out (e.g., Federal Income Tax lost, disposal of Government facilities, etc.) would reduce the contract cost below Government cost.

2. When the shortened comparison is considered proper and advisable, the contract price entered in line 10 will also be entered on line 34. The amount by which the cost of in-house performance (shown on line 33) is under the contract price (shown on line 34) will be determined and entered on line 35. The Form will then be signed on the line entitled "Cost Comparison Completed By,"

by the Task Force Chairman or such other individual who was assigned the responsibility. The Form, together with backup documentation, will then be subject to audit and other final procedures described in Chapter II.

C. Detailed Cost Comparison

When total in-house costs (line 33) exceed the basic contract price (line 10), the full impact of the two alternatives on the overall cost of Government operations must be determined. This will require the decision-maker to evaluate the following types of costs, as described in the remainder of this chapter:

1. Loss of opportunity to employ resources in other areas if performed in-house (cost of capital);
2. The one-time costs that will be incurred to start or terminate a Government operation;
3. The impact on remaining operations of contracting-out a portion of a work center's effort (utilization of Government capacity);
4. Loss of revenue (Federal taxes) due to in-house performance.

D. Cost of Capital

1. The cost of capital is defined as an imputed charge on the Government's investment in all of the plant facilities and other assets necessary for the work center to manufacture products or to provide services.

2. Basically, the imputed charge for the cost of capital is an opportunity cost: if the capital had not been devoted to this performance during the current period, it could have been devoted to another use which would have provided other income or avoided interest expenses. The imputed charge is not an attempt to recover interest on borrowed money. For purposes of the comparisons required by this Handbook, a distinction is made between those assets which will be retained and those that will be disposed of if the product or service is contracted out. However, all of the required assets will be considered.

a. The cost of capital for assets that will be used both for in-house performance and contractor performance will be determined in accordance with paragraphs D.3. and D.4. below. The appropriate amount will be entered on both lines 18 and 23 for each year in the period of performance.

b. The cost of capital related to assets that will be used in the event of in-house performance but disposed of in the event of contractor performance will be accorded the following treatment. The cost of capital computed as in D.3. and D.4. below, will be entered on line 18. In addition, the estimated gain or loss on the disposal of the assets will be determined by deducting the net book value of the assets and the related disposal costs from the estimated proceeds of the sale (see "Disposal of Fixed Assets"). A 10% cost of capital factor will be applied to this gain or loss and entered on line 28 for each year in the period of performance. If the disposal results in a gain, the amount entered on line 28 will reflect a reduction to the cost of contracting-out. If the disposal results in a loss, the amount entered on line 28 will be an additional cost of contracting-out.

c. The cost of capital for assets that will be used only for in-house performance but which must be retained by the Government to assure performance in the event of significant contract interruption or delay will also be entered on both lines 18 and 23 for each year in the period of performance.

d. The cost of capital for assets that will be used only for in-house performance, but will be retained by the Government if the function is contracted out to meet possible future contingencies, will be entered on line 18 for each year in the period of performance.

e. The cost of capital for assets that will not be used by the Government for in-house performance but will be required to assure contractor performance will be entered only on line 23 for each year in the period of performance.

f. No entry will be made for those assets that will not be used in in-house performance but are required to meet possible future contingencies.

3. Determination of the Cost of Capital for Fixed Assets.

a. In order to estimate the cost of capital, it is necessary to determine the net book value (total acquisition cost less depreciation accumulated prior to the cost comparison period) of each tangible capital asset (land, improvements, buildings, equipment, etc.) which is related to performance. The acquisition cost of land and the net book value of each depreciable tangible asset should be available from accounting records. However, if accounting records do not provide the necessary information, it will be necessary to utilize engineering estimates, prior experience, or experience of other organizations.

b. The cost of capital will be computed by applying an opportunity cost rate of 10% to the total net book value of the assets. If the assets involved are used solely to provide the product or service being estimated, the total amount of the cost of capital will be entered in the appropriate line(s) on the Cost Comparison Form. If the assets involved are used not only to provide the product or service being estimated, but other products or services as well, a proration of the cost of capital will be made.

4. Prorating Cost of Capital.

a. If the cost of capital were a real rather than an imputed cost, it would be properly classified as a General and Administrative (G&A) expense. Accordingly, its proration to the product or service being estimated will be in the same proportion that the total estimated costs to be incurred (less G&A expense) for the product or service being estimated bears to the total estimated cost to be incurred (less G&A expense) for the performing organization. This latter amount is the base for allocation of the G&A expenses and should be readily obtainable from the supporting documentation. An example of this computation is shown below:

b. From the illustration in section III.G., the following data are obtained:

| | |
|---|-------------|
| Total costs incurred (less G&A expenses) for the product/service being estimated..... | \$3,255,000 |
| Total costs incurred in Organization A (less G&A expenses)..... | 51,500,000 |
| Assume total annual cost of capital for assets required..... | 250,000 |

The cost of capital applicable to the product or service being estimated would be computed as follows: $\$3,255,000$ divided by $\$51,500,000 \times \$250,000 = \$15,806$.

5. Disposal of Fixed Assets.

a. When a product/service is being produced in-house by Federal employees, a decision to contract that operation may eliminate the need for all or some portion of the fixed assets used in providing the product or service. The value to the Government of reducing this need must be included as a consideration in the comparative cost analysis. This section deals with those fixed assets which will be disposed of if a decision is made to contract for the product or service.

b. In determining such costs for consideration in a comparative analysis, the current market value of each of the fixed assets must be ascertained. If the property is to be disposed of by GSA or the Defense Property Disposal Service, assistance may be obtained from the office concerned to estimate current market value and disposal costs. Also, estimates of the market value of equipment may be based on commercial publications which list sales prices of used machinery and equipment. Assistance in this regard may also be available from dealers in the specific equipment for which an estimate is needed.

c. After an estimate is made of the current market value of the fixed asset to be disposed of, an estimate will be made of the expenses connected with the disposition, i.e., sales commission, advertising, legal fee, relocation, etc. The total expenses related to the disposal will be deducted from the estimated market value to determine the net value to the Government of the fixed asset.

d. The net book value of the assets to be disposed of will be determined by reference to the amounts determined in D.3., above. The totals of the estimated net value and net book value for these assets will be determined. The net estimated gain or loss from the disposal of these assets will be calculated by deducting the net book value from the estimated net value of the assets. It is this estimated gain or loss that will be the basis for calculating the amount to be included on line 28 of the Cost Comparison Form. The gain or loss will be multiplied by a factor of 10% to ascertain the annual value to the government of the gain or loss. For purposes of this cost comparison, the net gain that could be realized by disposal of the assets is considered to be a source of additional revenue to the Government. Accordingly, when a gain is indicated, the amount determined from applying the cost of capital factor is considered as potential revenue and will be treated as an offset (reduction) to the cost of contracting out. Conversely, when a loss is indicated, the amount determined by applying the cost of capital factor must be considered as an addition to the cost of contracting-out.

6. Supporting Documentation.

a. Supporting documentation for the cost of capital related to the assets to be utilized shall include a detailed listing of such assets and the net book value of each. If these assets have been previously listed in connection with the computation of

depreciation, a reference may be made to that listing rather than duplicating it. Where, because of the magnitude of the assets involved, it would not be practical to prepare such a list, the assets may be supported by a listing of logical groupings by types of assets and reference made to where the detailed supporting property records may be examined.

b. Supporting documentation for the cost of capital related to the assets to be disposed of shall include a list of the assets noting the market value and disposal expenses associated with each asset. The listing should also include references to more detailed documentation which indicates how the market value and disposal expense figures were determined.

E. One-Time Costs

1. In every case where the Government either starts or discontinues an in-house activity it incurs one-time costs resulting from changing the source of the product or service it uses. For new starts, the one-time costs are those associated with establishing the in-house capability and discontinuing a contract arrangement. For conversions, the one-time costs arise from terminating the in-house activity and starting a contract arrangement. Even though these costs are incurred only once and will not recur unless the mode of performance again changes, the impact on total costs may be significant. All one-time costs will be allocated over a five-year period.

2. Guidance involved in determining one-time costs for new starts and conversions is contained in the following paragraphs.

3. One-Time Costs Related to a New Start—Line 19

a. While a new start may require substantial new investment by the Government in facilities and equipment, these costs should not be included as one-time costs under this section. Instead, such costs should be handled in accordance with the sections of this Handbook which deal with depreciation (III.D.4.c) and cost of capital (V.D.). The costs of acquiring a facility, however, and costs incurred for the acquisition and installation of equipment (unless included in the capitalized cost), would need to be included in one-time cost estimates. Other examples of one-time costs would include office and plant rearrangements; employee recruitment, training, clearance, and relocation expenses; and expenses which are the direct result of discontinuing an existing contract. If the contract is completed, it is not normal that any additional costs will be borne by the Government.

b. Determination of the full scope of the Government's one-time new start costs should be made in consultation with engineering, production, management, and contracting personnel. Supporting documentation should indicate clearly the type of new start costs anticipated and the methodology used to estimate the amounts to be incurred. The detail supporting the estimate of each element of cost should be similar to that provided for in Chapter III. One-fifth of the total one-time costs should be

added to each year of the cost comparison by entering the one-fifth figure(s) on line 19.

4. One-Time Costs Related to a Conversion—Line 25

a. When the Government discontinues an in-house activity to obtain the product or service by contract there are usually substantial one-time costs associated with the conversion. These costs are identified and discussed in the following paragraphs.

b. *Material-Related Costs*—A conversion will normally result in certain items of material (either unissued material, work in process, or finished goods) becoming excess.

(1) It may be possible to transfer certain of this material to the contractor who is going to provide the product or service in the future. In this case, the material will be treated as Government-furnished material and priced in accordance with section IV.E.3.

(2) In other cases, the material may be diverted to other uses of the Government. Only the additional costs incurred in connection with making the material available for the other uses will be included as conversion costs.

(3) When neither of the above dispositions of the material is practical, the material will normally be disposed of by sale. If it is anticipated that the material will be sold, the estimated gain or loss on the sale must be considered in determining conversion costs. The estimated gain or loss will be computed by deducting from the estimated sales price the acquisition cost of the material plus material overhead (at the rate developed in Chapter III) and all other expenses related to disposition, such as packing, shipping, etc. If the material is to be disposed of by either GSA or the Defense Property Disposal Service, these agencies should be consulted in arriving at these costs and estimating the sales price.

(4) The supporting documentation for such costs should contain a listing of the items and the quantity to be disposed of, their acquisition cost, and the estimated sales price. In addition, all other expenses such as packing, shipping, disposal, etc., should be adequately supported by documentation describing how the amounts were determined.

c. *Labor-Related Costs*—A conversion will also normally result in the incurrence of certain labor-related expenses that are considered one-time costs. These include severance pay, homeowner's assistance, pay rate retention, relocation and retraining expenses. The amount of these expenses should be computed in consultation with management and the personnel department. Historical data from the agency or from other agencies gathered from similar circumstances can be considered in arriving at the appropriate cost. The supporting documentation should contain appropriate detail and indicate how the various amounts were determined.

Note.—When a conversion results in a reduction in force (RIF), there may be an impact on Civil Service retirement costs. Some employees could take premature retirement, which may increase costs; others could withdraw, which would reduce costs.

The actuarial model used to compute the standard retirement cost factor (20.4%) provides for normal levels of early retirement and withdrawals, but any significant number of actions could have additional impact. In cases where this effect is likely to have a determinative bearing on the outcome of the cost comparison, the situation will be called to the attention of the agency official responsible for Circular A-76, who may confer with OMB on proper consideration.

d. *Other Costs*—A conversion will normally require an agency to take certain actions that would not be necessary if the activity were to be continued. For example, a special physical inventory to ascertain the material (supplies, equipment, small tools, etc.) on hand may be necessary in connection with a transfer of accountability to a contractor. The cost of taking such an inventory would be a proper conversion cost. Also, it may not be possible to avoid the continuation of some costs, such as lease or rental agreements for facilities or equipment, beyond the time that they are no longer required. These are also conversion costs. Supporting documentation for such costs should clearly state the purpose for each item of cost, and how the associated dollar amount was determined.

e. *General and Administrative Expense*—An amount for general and administrative expense must be included. That amount will be determined by applying the G&A rate developed in Chapter III to the sum of the material-related, labor-related and other costs.

f. *Final Computation and Documentation*—The amount for general and administrative expense must be added to the sum of the costs to which the G&A rate was applied to establish the total one-time costs related to a conversion. The detail supporting the estimate of each element of cost should be similar to that provided for in Chapter III. One-fifth of the total one-time costs should be added to each year of the cost comparison by entering the one-fifth figure(s) on line 25.

F. Utilization of Government Capacity—Line 24

1. The potential impact on a work center of contracting out for a product or service which it currently provides must be taken into consideration before a decision is made. The decision to contract out can result in the work center becoming completely idle, operating at a reduced capacity, or operating at the same or increased capacity.

2. When the decision to contract out will result in the work center becoming completely idle because no other use of its capacity is planned, its facilities will either be disposed of or placed in standby status. The circumstances under which the costs related to placing assets in standby status will be considered as an additional cost of contracting out are set forth in the *Standby Costs* portion of this Handbook. When the assets are to be disposed of, they will be handled in accordance with section V.D.

3. When it is planned that the efforts of the work center will not be reduced because the product or service to be contracted out will be replaced by others, consideration should

be given to any savings or additional costs to the Government resulting from transferring the replacement products or services. Where the transfer of effort will result in the disposal of Government assets related to the replacement product or service or the avoidance of rental costs, these occurrences should be treated as if they were happening in the work center which currently provides the product or service being estimated. See sections V.D.5. and III.D.4.d. for further guidance in this regard.

4. Where the decision to contract out will result in the work center(s) operating at less than its present level of utilization, the costs attributable to this underutilized capacity must be determined. In these cases, some overhead costs which would be partially allocable to the product or service being contracted out may continue. These continuing overhead costs must be absorbed by the remaining in-house activities. The additional amount to be absorbed by the remaining activities is a cost of contracting out.

5. For purposes of this Handbook, the cost of underutilization will be determined as follows:

a. *Step 1:* From the supporting documentation for operations overhead, determine the total operations overhead expense pool(s), the total amount of the base of allocation and the resultant overhead rate. From the example shown in discussing operations overhead, these amounts would be as follows:

| | Basic pool | Machine pool |
|--------------------------|-------------------------|-----------------------|
| Overhead Expense | \$1,500,000 | \$3,000,000 |
| Base of Allocation | \$9,000,000 | 50,000 machine hours. |
| Overhead Rate | 16.67% of direct costs. | \$60.00/machine hour. |

b. *Step 2:* Again, from the supporting detail of the Government cost estimate, ascertain the amount of the base(s) of allocation applicable to the product or service being estimated. These amount(s) will then be deducted from the total base(s) of allocation. As illustrated in section III.D., the product/service A-3 incurred direct costs of \$1,800,000 and 40,000 machine hours. Thus, we would show:

| | Direct costs | Machine hours |
|---|--------------|---------------|
| Total Base of Allocation | \$9,000,000 | 50,000 |
| Less: Applicable to Product/Service Being Estimated (A-3) | 1,800,000 | 40,000 |
| Adjusted Base of Allocation | 7,200,000 | 10,000 |

c. *Step 3:* In consultation with accounting and management personnel, ascertain the decreases in overhead expenses that can be expected to occur if the product/service is contracted out. Deduct these decreases from the appropriate overhead pool. Assume that, as a result of contracting out, the total basic overhead pool will be reduced by \$500,000 and the machine pool by \$2,000,000. This would result in the following:

| | Basic | Machine |
|--|-------------|-------------|
| Total Overhead Expense | \$1,500,000 | \$3,000,000 |
| Less Reductions due to Contracting Out | 500,000 | 2,000,000 |
| Adjusted Overhead Pool | 1,000,000 | 1,000,000 |

d. *Step 4:* Ascertain the overhead rate to be applied to the remaining effort. The overhead rate will be developed by dividing the adjusted overhead pool developed in Step 3, above, by the adjusted allocation base developed in Step 2, as follows:

| | Basic | Machine |
|---|-------------|--------------------|
| Adjusted Overhead Pool (From Step 3) | \$1,000,000 | \$1,000,000 |
| Adjusted Base of Allocation (From Step 2) | \$7,200,000 | 10,000 hours. |
| Overhead Rate (Pool ÷ Base) | 13.89% | \$100.00 per hour. |

e. *Step 5:* Ascertain the difference between the amount of overhead costs applicable to the effort which is to be continued in-house in both circumstances. In our illustration, this would be done as follows:

| Product/service (portion of allocation base) | Basic (direct costs) | Machine |
|--|----------------------|----------------|
| A-1 | \$4,500,000 | 5,000 hours. |
| A-2 | 2,700,000 | 5,000 hours. |
| Total (A) | \$7,200,000 | 10,000 hours. |
| Overhead Rates if Performed In-House (From Step 1) (B) | 16.67% | \$60.00/hours. |
| Overhead Amount if Performed In-House (A)X(B) = (C) | \$1,200,240 | \$600,000. |
| Overhead Rates if Contracted Out (From Step 4) (D) | 13.89% | \$100.00/hour. |
| Overhead Amount if Contracted Out (A)X(D) = (E) | \$1,000,000 | \$1,000,000. |
| Increase (Decrease) in Overhead Charged to Remaining Products Due to Contracting Out (E)-(C) | (\$200,240) | \$400,000. |

f. The increase in cost due to contracting out is the sum of the differences shown above, or \$199,760 [\$400,000 - \$200,240]. This increased cost should be added to the cost of contracting out for the first year in the period of performance, and for each subsequent year unless it is likely that the agency will dispose of or be able to more fully utilize the excess capacity through reorganization or reallocation of work. The supporting documentation should contain the adjustments made to the overhead expense pool and explain how they were computed.

g. If the product or service being estimated represents more than 5% of the general and administrative expense allocation base (total costs incurred minus general and administrative expenses), computations similar to those above should also be made for the general and administrative expense

rate. Similarly, the impact of contracting-out a product or service on material overhead should be determined if the material content of the product or service is 5% of the total material costs.

G. Federal Taxes—Line 27

1. When comparing the cost to the Government of a product or service obtained by contract with the cost of inhouse performance, the potential Federal income tax revenues must be considered. Since contract performance would provide the contractor with income subject to tax, an estimated amount of such taxes is an appropriate deduction from the net cost to the Government of acquiring the product or service by contract, unless the prospective contractor is a tax-exempt organization.

2. To simplify the tax computation, a table (Appendix 1) prepared by the Internal Revenue Service provides, by types of industry, appropriate tax rates in relation to business receipts. The industry groupings conform to the Enterprise Standard Industrial Classification issued by the Department of Commerce. To determine the amount of the estimated Federal income tax, the contract price (line 10 of the Cost Comparison Form) shall be multiplied by the tax rate in Appendix 1, which is applicable to the industry identified with the product or service under consideration. The result of this computation, the estimated amount of Federal income tax, will be entered on line 27 as a deduction from the cost of contracting.

H. Other Additions/Deductions

Space has been provided on the Cost Comparison Form for any additions to or deductions from the cost of in-house performance or contracting-out not specifically covered by any of the foregoing classifications of costs (see lines 20, 21, 26, and 29). Amounts entered on these lines should be supported by a definition of the type of cost, a justification for inclusion, a description of the methods of computation used, and if appropriate, a detailed listing of specific cost elements included therein.

CHAPTER VI—COST DIFFERENTIALS

A. General.

Different cost margins have been established by OMB Circular A-76 that must be exceeded before initiating a "new start" (in-house), and before converting an in-house activity to a contract. Details pertaining to these cost margins and the methods by which they are to be determined are set forth in the following paragraphs.

B. Conversion—Line 32

1. Conversion, for purposes of OMB Circular A-76 and this Handbook, concerns only a change from in-house to contract performance. The opposite change, that is, from a contract to in-house performance, is considered a "new start" and is covered in paragraph C below. When a possible conversion is being considered, a cost margin equal to 10% of the in-house personnel-related costs must be added to the cost of contracting-out on the Cost Comparison Form. This amount is added to give

consideration in the cost comparison to the loss of production, the temporary decrease in efficiency and effectiveness, and other unpredictable risks that result any time a change is made in the method of operation from in-house to contract. It also takes into consideration the personnel turbulence that results from such a change.

2. Computation of this personnel-related cost margin is identical to the computation of the personnel-related portion of the cost margin for a new start. Accordingly, the personnel-related portion of Steps 1 through 6, below, will be followed to compute the cost margin. The resulting amount will be added to the cost of contracting-out by entry on line 32 of the Cost Comparison Form for each year of the analysis.

C. New Start—Line 31

1. A new start, for purposes of OMB Circular A-76 and this Handbook, refers to any activity not currently being done in-house at a particular location. When a comparative cost analysis is conducted for a possible "new start", a cost margin equal to 10% of the estimated Government personnel-related costs plus 25% of the estimated cost of ownership of the required facilities and equipment must be added to the cost of in-house performance on the Cost Comparison Form. For this purpose, ownership costs will be considered to be the product's or service's prorata share of the depreciation and cost of capital that are applicable to the required assets.

2. The margin of 10% of estimated personnel costs is consistent with the margin favoring the status quo in studies of existing Government activities. (See paragraph B. above.) The additional margin, 25% of the cost of ownership of the required facilities and equipment, recognizes the risks inherent in Government investment in industrial facilities, and provides a tangible expression of the basic policy of the circular.

3. The method of computing the cost margin for a "new start" is illustrated in the following steps. Data from the figures provided in sections III. D. and G., as they pertain to Product A-3, will be used to the extent possible. Since these examples do not contain all the data necessary for the computation (e.g., direct labor, material overhead data), certain additional assumptions pertaining to Product A-3 are necessary. These assumptions and the steps in the computation of the cost margin are shown below:

a. *Step 1.* Determine the amount of direct labor applicable to the product or service being estimated. This will be the amount shown on line 3 of the Cost Comparison Form.

Example: For product A-3, this amount is assumed to be \$1,000,000 of its \$1,800,000 direct costs. Based on this assumption, the direct labor amount that would be shown on line 3 is \$1,000,000.

b. *Step 2.* Determine the prorata share of the indirect labor and depreciation contained in each overhead pool that is applicable to the product or service being estimated. The total indirect labor and depreciation contained in each overhead pool should be

readily available from the detail utilized to develop the various overhead rates, which is to be included as supporting documentation.

Example: To the extent data were available in the examples used in various sections of the Handbook, they have been utilized; otherwise, the assumptions made are stated.

(1) *Material Overhead* Assume that \$600,000 of the direct costs of \$1,800,000 shown for Product A-3 in the Operations Overhead section represent direct material costs. This would normally be obtained from line 1 of the Cost Comparison Form. Also, assume that in the material overhead pool there are total indirect labor costs of \$500,000 and depreciation costs of \$100,000; also, the total material costs (direct and indirect) in the allocation base are \$4,800,000. These data should normally be available from the documentation supporting material overhead. The following computation for Product A-3 can then be made.

(a) Determine the ratio of Product A-3's direct material cost to the total allocation base: $600,000/4,800,000 = 12.5\%$.

(b) Apply the above ratio to the total indirect labor and depreciation in the material overhead pool to arrive at the amounts thereof applicable to Product A-3:
Indirect Labor, $500,000 \times 12.5\% = \$62,500$.
Depreciation, $100,000 \times 12.5\% = \$12,500$.

(2) *Operations Overhead* From the illustration in the Operations Overhead section, the following data are available:

| | |
|---|-------------|
| Total Indirect Labor in Basic Pool | \$1,170,000 |
| Indirect Labor in Machine Pool | \$930,000 |
| Total Depreciation in Basic Pool | \$40,000 |
| Total Depreciation in Machine Pool | \$400,000 |
| Total Allocation Base (direct costs) of Basic Pool | \$9,000,000 |
| Total allocation base (machine hours) of Machine Pool | \$50,000 |
| Direct Costs of Product A-3 | \$1,800,000 |
| Machine Hours applicable to Product A-3 | \$40,000 |

(a) The computations for the two pools would be as follows:

Basic Pool: $1,800,000/9,000,000 = 20\%$.
Indirect Labor, $1,170,000 \times 20\% = \$234,000$.
Depreciation, $40,000 \times 20\% = \$8,000$.
Machine Pool: $40,000 \text{ hours}/50,000 \text{ hours} = 80\%$.

Indirect Labor, $930,000 \times 80\% = \$744,000$.
Depreciation, $400,000 \times 80\% = \$320,000$.

(b) *Summary*

Total indirect labor in operations overhead applicable to Product A-3 = \$1,078,000.

Total depreciation in operations overhead applicable to Product A-3 = \$328,000.

(3) *General and Administrative (G&A) Expense.* From the illustrations in the G&A Expense section, the following data are available:

| | |
|---|-------------|
| Executive, Professional, and Technical Supervision Salaries | \$1,450,000 |
| Clerical and Other Salaries | 1,175,000 |

Total Indirect Labor

Total Allocation Base (total cost incurred, exclusive of G&A)

(a) Assume:

Depreciation included in the \$3,100,000 of Other Expenses is \$100,000.

The total incurred costs, exclusive of C&A, applicable to Product A-3 are \$4,940,000.

(b) Then the computation to determine the indirect labor and depreciation in G&A

applicable to product A-3 would be as follows: \$4,940,000/\$51,500,000=9.6%.
 Indirect Labor, \$2,625,000×9.6%=\$252,000.
 Depreciation, \$100,000×9.6%=\$9,600.

c. *Step 3.* Accumulate all the labor costs applicable to the product or service being estimated, as developed in Steps 1 and 2:
 Example:

| | | |
|--|------------------------------|-------------|
| Direct Labor (from Step 1) | Indirect labor (from Step 2) | |
| Material Overhead | Operations Overhead | G&A Expense |
| | \$1,000,000 | 62,500 |
| | 1,078,000 | 252,000 |
| Total Labor applicable to Product A-3... | | \$2,392,500 |

d. *Step 4.* Apply the fringe benefits rate(s) developed in accordance with section III.C.2. to the labor costs developed in Step 3, above.

Example: Assume a single fringe benefit rate of 38% has been developed. Then, \$2,392,500×38%=\$909,150.

e. *Step 5.* Combine the amounts developed in Steps 3 and 4 to arrive at total personnel-related costs.

Example: \$2,392,500+\$909,150=\$3,301,650.

f. *Step 6.* Compute 10% of the amount developed in Step 5 to determine the personnel-related cost margin.

Example: \$3,301,650×10%=\$330,165.

g. *Step 7.* Accumulate the depreciation applicable to the product or service being estimated as developed in Step 2.

Example: Depreciation from Step 2:

| | | |
|--|---------------------|------------------------------------|
| Material Overhead | Operations Overhead | General and Administrative Expense |
| \$12,500 | 328,000 | 9,600 |
| Total depreciation applicable to Product A-3 | | 350,100 |

h. *Step 8.* Determine the Cost of Capital that is applicable to the product or service being estimated. The Cost of Capital will be computed in accordance with section V.D. and entered on line 18 of the Cost Comparison Form. Assume the cost of capital applicable to the facilities and equipment required to provide Product A-3 is \$300,000.

i. *Step 9.* Combine the amounts of Depreciation and Cost of Capital developed in Steps 7 and 8 to arrive at the total ownership cost of the required facilities and equipment.

Example: Amounts Applicable to Product A-3:

| | |
|-----------------------|-----------------|
| Depreciation | Cost of Capital |
| \$350,100 | 300,000 |
| Total Ownership Costs | |
| | \$650,100 |

j. *Step 10.* Compute the ownership cost margin by applying 25% to total ownership costs.

Example: \$650,100×25%=\$162,525.

k. *Step 11.* Combine the personnel-related margin developed in Step 6 and the ownership margin developed in Step 10 to arrive at the total cost margin for a new start.

Example:

| | |
|---------------------------------|------------------|
| Personnel margin | Ownership margin |
| \$330,165 | 162,525 |
| Total cost margin for new start | |
| | \$492,690 |

l. *Step 12.* Enter the cost margin developed in Step 11 on line 31 of the Cost Comparison Form for each year of the analysis.

Appendix 1.—Tax Computation Table

[Tax rates are in relation to business receipts]

| Code No. | Industry | Tax Rate (%) |
|-----------------------|--|--------------|
| Extractive Industries | | |
| 10-01-0400 | Agriculture Production | 2 |
| 10-01-0600 | Agricultural Services | 1 |
| 20-02-1010 | Mining Iron Ores | 2 |
| 20-02-1070 | Mining Copper, Lead, Zinc, Gold and Silver Ores | 5 |
| 20-02-1098 | Mining Other Metals | 1 |
| 20-03-1150 | Coal Mining | 7 |
| 20-05-1430 | Sand, Gravel, Dimension, Crushed and broken Stone | 2 |
| Construction | | |
| 30-06-1510 | General building (construction) | 1 |
| 30-06-1531 | Operative builders (construction) | 1 |
| 30-07-1600 | Heavy construction | 2 |
| 30-08-1711 | Plumbing, heating, air-conditioning | 1 |
| 30-08-1731 | Electrical work | 1 |
| 30-08-1798 | Other special trades | 1 |
| Manufacturing | | |
| 40-09-2010 | Meat products | 1 |
| 40-09-2020 | Dairy products | 2 |
| 40-09-2030 | Preserved fruits and vegetables | 2 |
| 40-09-2040 | Grain mill products | 2 |
| 40-09-2050 | Bakery products | 1 |
| 40-09-2060 | Sugar and confectionary products | 4 |
| 40-09-2089 | Bottled soft drinks and flavorings | 3 |
| 40-09-2096 | Other food and kindred products | 2 |
| 40-12-2315 | Men's and Boy's clothing | 1 |
| 40-12-2345 | Women's and children's clothing | 1 |
| 40-12-2368 | Other apparel and accessories | 2 |
| 40-12-2390 | Other fabricated textile products | 2 |
| 40-13-2415 | Logging, sawmills, and planing mills | 3 |
| 40-13-2430 | Millwork, plywood, related products | 2 |
| 40-13-2498 | Other wood products | 1 |
| 40-14-2500 | Furniture and fixtures | 2 |
| 40-15-2625 | Pulp, paper and board mills | 4 |
| 40-15-2699 | Other paper products | 4 |
| 40-16-2710 | Newspapers (printing and publishing) | 4 |
| 40-16-2720 | Periodicals (printing and publishing) | 2 |
| 40-16-2735 | Books, greeting cards, and miscellaneous publishing | 3 |
| 40-16-2799 | Commercial and other printing and printing trade services | 2 |
| 40-17-2815 | Industrial chemicals, plastics materials and synthetics | 4 |
| 40-17-2830 | Drugs | 3 |
| 40-17-2840 | Soap, cleaners, and toilet goods | 4 |
| 40-17-2850 | Paints and allied products | 2 |
| 40-17-2898 | Agricultural and other chemical products | 5 |
| 40-18-2898 | Petroleum and coal products, not elsewhere classified | 3 |
| 40-19-3050 | Rubber products; plastics, footwear, hose and belting | 2 |
| 40-19-3070 | Miscellaneous plastics products | 2 |
| 40-20-3140 | Leather footwear | 1 |
| 40-20-3198 | Leather and leather products not elsewhere classified | 2 |
| 40-21-3225 | Glass products | 2 |
| 40-21-3240 | Cement, hydraulic | 2 |
| 40-21-3270 | Concrete, gypsum, and plaster products | 1 |
| 40-21-3298 | Other nonmetallic mineral products | 2 |
| 40-22-3370 | Ferrous metal industries; miscellaneous primary metal products | 3 |
| 40-22-3380 | Nonferrous metal industries | 2 |
| 40-23-3410 | Metal cans and shipping containers | 1 |
| 40-23-3428 | Cutlery, hand tools, and hardware, screw machine products, bolts, and similar products | 4 |
| 40-23-3430 | Plumbing and heating, except electric and warm air | 3 |
| 40-23-3440 | Fabricated structural metal products | 2 |
| 40-23-3460 | Metal forgings and stampings | 2 |
| 40-23-3470 | Casting, engraving, and allied services | 2 |
| 40-23-3480 | Ordnance and accessories, except vehicles and guided missiles | 1 |
| 40-23-3490 | Miscellaneous fabricated metal products | 3 |
| 40-24-3520 | Farm machinery | 2 |
| 40-24-3530 | Construction and related machinery | 3 |
| 40-24-3540 | Metallworking machinery | 3 |

| Manufacturing | | |
|------------------------------|--|---|
| 40-24-3550 | Special industry machinery | 2 |
| 40-24-3560 | General industrial machinery | 2 |
| 40-24-3570 | Office and computing machines | 8 |
| 40-24-3598 | Other machinery, except electrical | 2 |
| 40-25-3665 | Radio, television, communication equipment | 1 |
| 40-25-3670 | Electronic components and accessories | 2 |
| 40-25-3698 | Other electrical equipment | 2 |
| 40-26-3710 | Motor vehicles and equipment | 1 |
| 40-27-3725 | Aircraft, guided missiles and parts | 1 |
| 40-27-3730 | Ship and boat building and repairing | 2 |
| 40-27-3798 | Other transportation equipment, except motor vehicles | 2 |
| 40-28-3815 | Scientific instruments and measuring devices; watches and clocks | 2 |
| 40-28-3845 | Optical, medical, and ophthalmic goods | 4 |
| 40-28-3860 | Photographic equipment and supplies | 7 |
| 40-29-3998 | Miscellaneous manufacturing and manufacturing not allocable | 2 |
| Transportation And Utilities | | |
| 50-30-4000 | Railroad transportation | 2 |
| 50-30-4100 | Local and interurban passenger transit | 1 |
| 50-30-4200 | Trucking and warehousing | 1 |
| 50-30-4400 | Water transportation | 3 |
| 50-30-4500 | Transportation by air | 1 |
| 50-30-4600 | Pipe lines, except natural gas | 3 |
| 50-30-4700 | Transportation services, not elsewhere classified | 1 |
| 50-31-4825 | Telephone, telegraph, and other communication services | 3 |
| 50-31-4830 | Radio and television broadcasting | 5 |
| 50-32-4910 | Electric services | 2 |
| 50-32-4920 | Gas production and distribution | 3 |
| 50-32-4930 | Combination utility services | 1 |
| 50-32-4990 | Water supply and other sanitary services | 2 |
| Wholesale Trade | | |
| 61-33-5004 | Groceries and related products | 1 |
| 61-34-5008 | Machinery, equipment, and supplies | 2 |
| 61-35-5010 | Motor vehicles and automotive equipment | 1 |
| 61-35-5030 | Lumber and construction materials | 1 |
| 61-35-5050 | Metals and minerals, except petroleum and scrap | 2 |
| 61-35-5060 | Electrical goods | 1 |
| 61-35-5070 | Hardware; plumbing, and heating | 1 |
| 61-35-5098 | Other durable goods | 1 |
| 61-35-5110 | Paper and paper products | 1 |
| 61-35-5129 | Drugs, chemicals, and allied products | 2 |
| 61-35-5130 | Apparel, piece goods, and notions | 1 |
| 61-35-5150 | Farm-product raw materials | 1 |
| 61-35-5170 | Petroleum and petroleum products | 1 |
| 61-35-5180 | Alcoholic beverages | 1 |
| 61-35-5190 | Miscellaneous nondurable goods; wholesale trade not allocable | 1 |
| Retail Trade | | |
| 62-36-5220 | Building materials dealers | 1 |
| 62-36-5251 | Hardware stores | 1 |
| 62-38-5265 | Garden supplies and mobile home dealers | 1 |
| 62-37-5300 | General merchandise stores | 1 |
| 62-38-5400 | Food stores | 1 |
| 62-39-5541 | Gasoline service stations | 2 |
| 62-39-5598 | Other automotive dealers | 1 |
| 62-40-5600 | Apparel and accessory stores | 1 |
| 62-41-5700 | Furniture and home furnishings stores | 1 |
| 62-42-5800 | Eating and drinking places | 1 |
| 62-43-5912 | Drug stores and proprietary stores | 1 |
| 62-43-5921 | Liquor stores | 1 |
| 62-43-5995 | Other retail stores | 1 |
| 63-44-5997 | Wholesale and retail trade not allocable | 1 |
| Services | | |
| 80-52-7000 | Hotels and other lodging places | 1 |
| 80-53-7200 | Personal services | 2 |
| 80-54-7310 | Advertising services | 1 |
| 80-54-7389 | Business services, except advertising | 2 |
| 80-55-7500 | Auto repair and services | 1 |
| 80-55-7600 | Miscellaneous repair services | 1 |
| 80-56-7812 | Motion picture production, distribution, and services | 2 |
| 80-56-7830 | Motion picture theaters | 2 |

Services

| | |
|---|-----|
| 80-56-7900 Amusement and recreation services, except motion pictures..... | 3 |
| 80-57-8015 Physicians' services..... | 1 |
| 80-57-8021 Dentists' services..... | 0.4 |
| 80-57-8050 Nursing and personal care facilities..... | 1 |
| 80-57-8071 Medical laboratories..... | 2 |
| 80-57-8099 Other medical services..... | 1 |
| 80-57-8111 Legal services..... | 0.4 |
| 80-57-8200 Educational services..... | 1 |
| 80-57-8599 Miscellaneous services, not elsewhere classified..... | 1 |

Appendix 2—Glossary of Terms

The definitions presented below are taken from the text of this handbook, procurement regulations, and other authoritative publications.

Acquisition Cost. The amount paid to acquire an asset (Chapter III, Operations Overhead).

Actual Cost. An amount based on cost incurred as distinguished from estimated costs; includes standard cost properly adjusted for applicable variance (Chapter III, Fringe Benefits).

Allocate. To assign an item of cost or a group of items of cost to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool (Chapter III, Operations Overhead).

Allocation Base. The denominator in the fraction used to develop an overhead rate. It is either the total of some element of expense (or group thereof) or a quantitative measure that is common to all items or activities to which the indirect costs are to be allocated (Chapter III, Material Overhead, Operations Overhead, G & A Expenses).

Amortization. The gradual extinguishment of any amount over a period of time, such as the write-off of a portion or all the cost of an asset, or the retirement of a debt over a period of years (Chapter IV, Government-Furnished Facilities).

Award-Fee Contract. A cost reimbursement-type contract with special fee provisions. It provides a means of applying incentives in contracts which are not susceptible to finite measurements of performance necessary for structuring incentive contracts (Chapter IV, Contract Price).

Basic Labor Rate. For Wage Board employees, the basic labor rate is the hourly rate to be applied to all hours worked and to all hours of annual leave earned, and sick, holiday and other leave taken. The General Schedule (GS) basic rate is the published annual rate of pay for the particular GS grade and step level (Chapter III, Direct Labor).

Bill of material. A detailed listing of the material requirements for performing a service or providing a product (Chapter III, Direct Material).

Capitalized Cost. The cost of acquiring, installing and modifying a tangible capital asset that has been added to an asset account (Chapter V, One-Time Costs).

Cartage. Transportation from a freight terminal to the point of use or consumption (Chapter V, Transportation).

Contract Administration Costs. The costs incurred by the Government in assuring that

a contract is faithfully executed by both the Government and the contractor (Chapter IV, Contract Administration).

Conversion. The transfer of work from a Government commercial or industrial activity to performance by a contractor (Chapter V, One-Time Costs).

Cost Comparison (or Comparative Cost Analysis.) An accurate determination of whether it is more economical to acquire the needed products or services from the private sector or from an existing or proposed Government commercial or industrial activity (Chapter I, Policy).

Cost Differentials. The cost margins established by OMB Circular A-76 that must be exceeded before performing a "new-start" in-house and before converting an in-house activity to contract performance (Chapter VI, Cost Differentials).

Cost Element. A basic unit of cost, such as labor or material. The accumulation of all the basic units related to a given product or service provides the total cost of that product or service (Chapter III, General).

Cost Objective. A function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc. (Chapter III, General).

Cost of Capital. An imputed charge on the Government's investment in all of the plant facilities and other assets necessary for the work center to manufacture products or provide services (Chapter V, Cost of Capital).

Cost of Capital Committed to Facilities. An imputed cost determined by applying a cost of money rate to facilities' capital (Chapter V, Cost of Capital).

Cost Reimbursement Contract. A type of contract that provides for reimbursement to the contractor of allowable costs incurred in the performance of a contract, to the extent prescribed in the contract (Chapter IV, Contract Price).

Current Costs. Costs incurred in the current accounting period (Chapter III, Direct material).

Current market Value. The amount for which an item could be sold in today's market (Chapter V, Cost of Capital).

Demurrage. The compensation paid for the delaying of a ship, freight car, etc., as by the failure to load, unload, or dispatch within the time allowed (Chapter IV, Transportation Cost).

Depreciation. The method used to spread the cost of tangible capital assets (plant, machinery, etc.), less residual value, over their estimated useful lives in a systematic and logical manner (Chapter III, Operations Overhead).

Direct Cost. Any cost which can be identified specifically with a particular final cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs which can be identified specifically with a product/service are direct costs of that product/service. All costs identified specifically with other products/services are direct costs of those products/services. (Chapter III, General).

Direct Labor. That portion of salaries and wages which, as a practical matter, can be identified with and charged only to a specific product or service (Chapter III, Direct Labor).

Direct Material. The costs of such goods as raw material, parts, sub-assemblies, components and supplies which, as a practical matter, can be identified specifically with the product/service (the final objective) under review (Chapter III, Direct material).

Double-Counting. The treatment of certain costs as direct costs of the product/service, while similar costs related to other products/services are treated as indirect costs and a portion thereof is allocated to the product/service for which the estimate is being prepared (Chapter III, General).

Estimating Cost. The process of determining a future or past result in terms of costs, based upon information available at the time (Chapter III, General).

Final Cost Objective. A cost objective which has allocated to it both direct and indirect costs, and, in the cost accumulation system, is one of the final accumulation points (Chapter III, General).

Firm-Fixed-Price Contract. A contract which provides for a price which is not subject to any adjustment by reason of the cost experience of the contractor in performance of the contract (Chapter IV, Contract Price).

Fiscal Year. The accounting period for which annual financial statements are regularly prepared. The Government's Fiscal Year begins on October 1, and ends on September 30 (Chapter III, Operations Overhead).

Fixed Price Contract With Flexible Pricing Arrangements. This type of contract provides for either a firm-fixed-price for an initial period and for prospective price redetermination at stated times during the performance of the contract or a ceiling price and retroactive price redetermination after completion of the contract (Chapter IV, Contract Price).

Fringe Benefits. Allowances and services provided employees as compensation in addition to basic salaries and wages (Chapter III, Fringe Benefits).

Full Costs. The total of all direct and indirect costs allocable to a product or service (Chapter III, Direct Material).

General and Administrative (G&A) Expense. Any management, financial and other expense which is incurred by or allocated to an organizational unit and which is for the general management and administration of the unit as a whole. G&A expense does not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost input base representing the total activity of the unit during a cost accounting period. (Chapter III, General and Administrative Expense).

Government-Furnished Facilities and Equipment. Facilities and equipment in the possession of or acquired directly by the Government, and subsequently delivered or otherwise made available to the contractor

(Chapter IV, Government-Furnished Property).

Incremental Cost. The increases or decreases in total cost, or the changes in specific elements of cost, that result from variations in operations (Chapter III, Operations Overhead).

Indirect Costs. Any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective (Chapter III, General).

Indirect Cost (Overhead) Pool. A grouping of incurred (or projected) costs identified with two or more cost objectives but not identified specifically with any final cost objective (Chapter III, Operations Overhead).

Insurance Costs. The cost to the Government arising from liabilities and losses not covered by insurance. The costs are incurred in consonance with the Government's policy of acting as a self-insurer (Chapter III, Operations Overhead).

Interagency Support. Products or services furnished from the capacity of another Government agency or organization to the agency which will provide the product or service being estimated (Chapter III, Interagency Support).

Labor Hour Contract. A variant of the time and material-type contract, differing only in that materials are not supplied by the contractor (Chapter IV, Contract Price).

Labor-Time Standard. A preestablished measure expressed in temporal terms, of the quantity of labor required to perform a task (Chapter III, Direct Labor).

Maintenance and Repair. Cost incurred to keep buildings and equipment in normal operating condition (Chapter III, Operations Overhead).

Material Overhead Costs. Indirect costs related to an activity or group of activities for acquiring, handling, and/or controlling required materials, until the materials are used or consumed in the production of goods and services or are sold without processing (Chapter III, Material Overhead).

Material-Quantity Standard. A preestablished measure, expressed in physical terms, of the quantity of material required for a specific purpose (Chapter III, Direct Material).

New Book Value. The capitalized cost of an asset or group of assets shown in the accounting records, less accumulated depreciation or other applicable offset (Chapter V, Cost of Capital).

New Start. A newly established Government commercial or industrial activity, including a transfer of work from contract to in-house performance (Chapter V, One-Time Costs).

No-Cost Basis. The provision of a product or service without charge or remuneration (Chapter III, General and Administrative Expense).

Nominal Cost. Cost of a very minor amount (Chapter III, Direct Material).

One-Time Costs. The nonrecurring costs to the Government when it either starts or discontinues an in-house activity as a result of a decision to change the source of a product or service (Chapter V, One-Time Costs).

Operations Overhead Costs. The indirect costs which are necessarily incurred during a fiscal year to produce or deliver the products or services being provided by a particular organizational element (Chapter III, Operations Overhead).

Opportunity Costs. Other income, or expense avoidance, foregone by using limited resources for a particular purpose (Chapter V, Cost of Capital).

Other Direct Costs. All those direct costs (exclusive of direct labor and direct material) which are identified as having been incurred specifically for a particular product or service (Chapter III, Other Direct Costs).

Overhead Rate. A percentage, or monetary unit related to a quantitative measure, derived by dividing an indirect cost pool by an allocation base (Chapter III, General, Material Overhead, Operations Overhead).

Overtime and Other Premium Pay. Additional amounts added to basic salaries for working longer than the regularly scheduled hours or under unusual conditions (Chapter III, Operations Overhead).

Ownership Cost (or Cost of Ownership). A product's or service's prorata share of the depreciation and cost of capital applicable to the fixed assets required for performance (Chapter VI, New Start).

Pricing. The process of establishing the amount or amounts to be paid in return for goods or services (Chapter III, Direct Material).

Proposal. Any offer or other submission used as a basis for pricing a contract, contract modification or termination settlement, or for securing payments thereunder (Chapter IV, Contract Price).

Rent. The cost incurred for the use of another entity's tangible assets (land, plant and machinery, etc.) in providing the product/service being estimated (Chapter III, Operations Overhead).

Residual Value. The proceeds (less removal and disposal costs, if any) realized upon disposition of a tangible capital asset. It usually is measured by the net proceeds from the sale or other disposition of the asset, or its fair value if the asset is traded on another asset (Chapter III, Operations Overhead).

Standard Costs. Any cost computed with the use of preestablished measures (Chapter III, Direct Material, Direct Labor).

Standard Level User Charge (SLUC). The amount which the General Services Administration (GSA) assesses Federal agencies for their assigned space in GSA—controlled buildings. This SLUC rate is a composite of three ingredients:

- the fair annual rental appraisal rate for space, utilities and normal services;
- an escalation of this rate; and
- an added charge for standard protection.

Standby Maintenance Costs. The costs necessary for the upkeep of property held in a standby status to assure contract performance. This maintenance neither adds value to the property nor appreciably prolongs its useful life. Rather, the maintenance keeps the property in an efficient operating condition so that it will be available for possible use in case of nonperformance by the contractor (Chapter IV, Standby Costs).

Straight-Line Depreciation. A method of depreciating an asset by charging an equal amount of its depreciable cost (capitalized cost less residual value) to each accounting period covered by its useful life, or by charging an equal amount of its depreciable cost to each hour of use, each product produced, etc. (Chapter III, Operations Overhead).

Support Costs. Costs incurred by one organizational unit for the benefit of another (Chapter III, Operations Overhead).

Surcharge. An additional amount added to the basic charge to cover expenses incurred in providing the products or services (Chapter III, Direct Material, Material Overhead).

Tangible Capital Asset. An asset that has physical substance, more than minimal value, and is expected to be held for continued use or possession beyond the current accounting period (Chapter III, Depreciation).

Time and Material Contract. A type of contract which provides for the procurement of supplies and services on the basis of (i) direct labor hours at specified fixed hourly rates (which shall include wages, overhead, general and administrative expense, and profit) and (ii) material at cost, and where appropriate, material handling costs as a part of material cost (Chapter IV, Contract Price).

Work Center. The lowest organizational unit at which costs are accumulated (Chapter III, Operations Overhead).

Work Statement. A comprehensive description of what is to be done, including performance standards as appropriate. The work statement should describe all duties, tasks, responsibilities, frequency of performance of repetitive functions, and requirements for furnishing facilities and materials (Chapter II, Statement of Work).

Appendix 3—Chronological Outline of the Cost Comparison Process

Note.—The individual or group noted in the parentheses after each step is responsible for completing the action described in the step.

PRE-SOLICITATION PERIOD

Step and handbook reference

1. Establish a task group and designate a chairman (Approving Authority). II. B.1.
2. Establish an overall plan and schedule (Task Group). II. B.2.
3. Prepare a Statement of Work (Task Group). II. C.
4. Review the Statement of Work (Contracting Officer). II. C.3.

SOLICITATION PERIOD

Step and handbook reference

5. Issue and publicize a solicitation (Contracting Officer). II. D.1.
6. Prepare bids or proposals (Prospective Contractors). II. D.
7. Prepare the in-house cost estimate (Task Group).* II. D.2. III.

* A detailed checklist for completing this process is provided on pages 4-8 of this Appendix.

8. Determine additions to and deductions from the costs of in-house performance (Task Group).**II.D.3.V.

9. Submit bids or proposals (Prospective Contractors) and the in-house estimate (Task Group) to the contracting office by the time and at the place specified in the solicitation. II.D.3.

BID OPENING/CONCLUSION OF NEGOTIATIONS

Step and handbook reference

10. Determine the "contract price" to be entered in Line 10 of the Cost Comparison Form (Contracting Officer). II.D.4.

COST COMPARISON

Step and handbook reference

11. Complete the Cost Comparison Form (Task Group).***II.D.5.

12. Review the Cost Comparison Form and associated documentation for conformance to the applicable guidance (Qualified Independent Party). II.D.6.

13. Adjust the Cost Comparison Form and/or data, if necessary (Task Group). II.D.6.

14. Certify the Cost Comparison (Qualified Independent Party). II.D.6.

15. Originate the Decision Summary Form and send it to the Approving Authority with recommendation (Task Group). II.D.7.8.

16. Send the approved Decision Summary Form to the Contracting Officer (Approving Authority). II.D.9.

17. Announce the results of the cost study and allow time for interested parties to review them (Contracting Officer). II.D.9.

ACTION

Step and handbook reference

18. Act on the decision by awarding a contract or by cancelling the solicitation (Contracting Officer). II.D.9.10.

PREPARE THE IN-HOUSE COST ESTIMATE (Step 7)

Step and handbook reference

7.1. Estimate Direct Material Costs by preparing a spread sheet similar to Figure 1, and completing it in accordance with text references. Enter the Total Direct Material Costs in Line 1 of the Cost Comparison Form. III.B.2.

7.2. Estimate Direct Labor Costs, using a spread sheet similar to Figure 3 and the text references. Enter the Total Direct Labor Costs in line 3 of the Cost Comparison Form. III.C.1.

7.3. Estimate any other Direct Costs. Enter the Total amount in Line 6 of the Cost Comparison Form. III.F.

Note.— Steps 7.4 through 7.6 involve indirect costs (defined in III.A.1.d.). There are many types of indirect costs, the most common of which are indirect labor, indirect material and supplies, depreciation, rent maintenance and repair costs, support costs, utilities, insurance, and overtime and other premium pay. Each of these types of indirect costs is described in III.D.4. of the handbook, in the context of Operations Overhead expenses. However, each type is likely to be represented in *all three* overhead pools: Operations Overhead, Material Overhead (see Figure 2) and General and Administrative Expense (see III.G.11.).

7.4. Identify and accumulate Material Overhead costs. III.B.3. Figure 2.

7.5. Identify and accumulate Operations Overhead costs. III.D. Figure 5.

7.6. Identify and accumulate General and Administrative expenses. III.G.

7.7. Estimate the Cost of Fringe Benefits applicable to the product/service being analyzed. III.C.2.

7.7.1. Using the Total Direct Labor Costs (Step 7.1) and the indirect labor costs identified in Steps 7.4, 7.5 and 7.6, prepare and fill in a fringe benefits table similar to the example in Figure 4. Figure 4.

7.7.2. Apply the predetermined factors for retirement and insurance and other benefits to the appropriate total dollar amounts. III.C.2.d.

7.7.3. Apply the actual employer contribution rate for FICA to the applicable labor costs attributable to employees covered by social security. III.C.2.e. Figure 4.

7.7.4. Sum up the costs of retirement, FICA, and insurance and other benefits calculated in Steps 7.7.2 and 7.7.3 to determine total standard fringe benefits. Figure 4.

7.7.5. Estimate the Costs of any additional benefits. III. C.2.f.

7.7.6. Add total standard fringe benefits and additional benefits together to determine Total Fringe Benefits. Figure 4.

7.8. Calculate the Fringe Benefits Rate. III.C.2.g. Figure 4.

7.9. Determine Total Material Overhead Expense by developing a schedule similar to Figure 2 with data developed in Steps 7.4 and 7.8 Figure 2.

7.10. Compute the base for distributing Material Overhead Costs. (This will often be Total Material Costs, which would be the sum of: Direct Material

Costs calculated in Step 7.1; direct material costs associated with all other products/services (those not being reviewed); and indirect material and supplies costs identified in Steps 7.4, 7.5 and 7.6.). III.B.3.d-f.

7.11. Determine the Material Overhead costs applicable to the product/service being estimated. III.B.3.d.

7.11.1. Develop a Material Overhead Rate by dividing Material Overhead Costs (Step 7.9) by the appropriate base (Step 7.10). III.B.3.e.

7.11.2. Apply the Material Overhead Rate (Step 7.11.1.) to Direct Material Costs to determine the Material Overhead Costs allocable to the product/service being estimated. Enter this amount in Line 2 of the Cost Comparison Form. III.B.3.e.

7.12. Determine Operations Overhead costs applicable to the product/service being estimated. III.D.5.

7.12.1. Determine Total Operations Overhead costs by completing a schedule similar to Figure 5, with data developed in Steps 7.5, 7.8 and 7.11.1. III.D. Figure 5.

7.12.2. Establish an appropriate base or bases for the allocation of operations overhead costs to the product/service being estimated. III.D.5.a.

7.12.3. Develop an applicable operations overhead rate or rates by dividing total or the applicable portion of operations overhead dollars (Step 7.12.1) by the amount(s) of the applicable established allocation base(s) (Step 7.12.2). III.D.5.b.

7.12.4. Apply the operations overhead rate(s) to the part the allocation base(s) applicable to the product/service being estimated. This yields the dollar amount of operations overhead allocated to the product/service. If more than one rate/base is involved, sum up the resulting dollar amounts to obtain an overall total. Enter this amount in line 5 of the Cost Comparison Form. Figure 5.

7.13. Determine the General and Administrative expense applicable to the product/service being estimated.

7.13.1. Determine total G & A expense with data developed in Steps 7.6, 7.8 and 7.11.1. III.G.11.a.

7.13.2. Develop the appropriate allocation base (total costs incurred by mission functions of the organization, except for G & A expense). III.G.10, III.G.11.b.

7.13.3. Compute the G & A rate by dividing total G & A expenses (Step 7.13.1) by the allocation base (Step 7.13.2). III.G.11.c.

7.13.4. Apply the G & A rate to the cost of the product/service less G & A

** A detailed checklist for completing this process is provided on pages 9-12 of this Appendix.

*** A detailed checklist for completing this process is provided on pages 13-17 of this Appendix.

expense. Enter the amount in line 7 of the form. III.G.12.

7.14. Wrap up the Basic In-House Estimate

7.14.1. Sum up the entries in lines 1 through 7 of the form for the first year, and enter the total in line 9 under the "first year" column. Exhibit 1.

7.14.2. For each subsequent year, calculate the inflation amount to be entered in line 8. Then sum up lines 1 through 8 and enter the total in line 9. III.H. Exhibit 1.

DETERMINE ADDITIONS TO AND DEDUCTIONS FROM THE COSTS OF IN-HOUSE PERFORMANCE (Step 8)

Step and handbook reference

8.1. Estimate the cost of capital for assets related to in-house and/or contractor performance of the function(s) being reviewed. V.D.

8.1.1. Decide which of the six possible "use situations" the assets fall into to determine what calculations must be made and which Cost Comparison Form line numbers must be filled in. V.D.2.

8.1.2. For assets to be utilized:

8.1.2.1. Determine the net book value of each tangible capital asset related to performance. Sum these amounts up to calculate the Total Net Book Value of the assets. V.D.3.a.

8.1.2.2. Compute the cost of capital by multiplying the Total Net Book Value by .10. V.D.3.b.

8.1.2.3. Are the assets involved to be used solely to provide the product/service being estimated? V.D.3.b.

—If "Yes", enter the cost of capital computed in Step 8.1.2.2 in the appropriate line(s) of the Cost Comparison Form. V.D.3.b.

—If "No", prorate the cost of capital to determine the cost of capital applicable to the product/service being estimated. Enter this amount in the appropriate line(s) on the Cost Comparison Form. V.D.4.

8.1.3. For assets to be disposed of: V.D.5.

8.1.3.1. Ascertain the current market value of each asset. V.D.5.b.

8.1.3.2. Estimate the costs of disposing of each asset. V.D.5.c.

8.1.3.3. Determine the net value to the government of each asset by subtracting disposal expenses from its market value. Sum up the individual net values to compute Total Estimated Net Value. V.D.5.d.

8.1.3.4. Determine the net book value of each asset. Sum up individual values to compute the Total Net Book Value of the assets. V.D.5.d.

8.1.3.5. Calculate the net estimated gain or loss from the disposal of these

assets by deducting Total Net Book Value (Step 8.1.3.4) from Total Estimated Net Value (Step 8.1.3.3). V.D.5.d.

8.1.3.6. Multiply the gain or loss figure by .10 to ascertain the annual value to the Government of the gain or loss. V.D.5.d.

8.1.3.7. Enter the amount calculated in Step 8.1.3.6 in line 28 of the Cost Comparison Form. V.D.5.d.

8.2. Estimate one-time new-start costs (if applicable). V.E.3.

8.2.1. Estimate the cost of acquiring and installing new facilities and equipment. V.E.3.a.

8.2.2. Estimate the cost of office and plant rearrangements. V.E.3.a.

8.2.3. Estimate the cost of employee recruiting, training, and relocations. V.E.3.a.

8.2.4. Estimate the cost of other actions directly resulting from discontinuing an existing contract. V.F.3.a.

Note.—The costs of investment in new facilities and equipment should not be included in one-time new-start costs, but should be annualized in the context of cost of capital and depreciation (see V.E.3.a.).

8.2.5. Sum up the totals of estimates derived in Steps 8.2.1 through 8.2.4 to obtain Total New Start Costs. V.E.3.

8.2.6. Divide the Total New Start Costs by 5 and enter this amount in Line 19. V.E.3.b.

8.3. Estimate any other costs of in-house performance. Enter the aggregate amount of such costs in line 20 of the form. V.H.

8.4. Estimate any deductions from the cost of in-house performance which are not covered by any of the Handbook's cost classifications. Enter the total amount in line 21. V.H.

8.5. Total the additions and deductions to obtain the amount to be entered in line 22 of the form. Exhibit 1.

8.6. Determine the new-start cost differential (if applicable). (Follow steps 1 through 12 in the text, paragraph VI.C.3.) Enter the total cost margin in line 31 of the form. VI.C. Exhibit 1.

8.7. Calculate the adjusted cost of in-house performance. Enter the amount in line 33 of the form. Exhibit 1.

COMPLETE THE COST COMPARISON FORM (Step 11)

Step and Handbook reference

11.1. Determine the cost of transportation the Government will provide in connection with the product/service being obtained by contract. Enter this total in line 11. IV.C.

11.2. Determine the cost of Contract Administration by applying 4% to the

contract price. Enter this amount in line 12 of the Form. IV.D.

11.3. Determine the cost of Government furnished property. IV.E.

11.3.1. Determine the costs connected with the contractor's use of Government-furnished materials and supplies. IV.E.3.

11.3.2. Determine the cost connected with the contractor's use of Government-furnished facilities and equipment. IV.E.4

11.3.3. Sum up the totals derived in Steps 11.3.1 and 11.3.2 to determine the total cost of Government-Furnished Property. Enter this total in line 13. IV.E.2.

11.4. Determine standby maintenance costs (see Steps 11.9.2.1-5).

11.5. Determine the amount of any other costs which would result from contracting-out. Enter the total amount of such costs in line 15. IV.G.

11.6. Determine the in-house G&A expenses associated with contracting-out by applying the G&A rate developed in Step 7.13.3 to the total of lines 11 through 14 on the form. Enter this amount in line 16. IV.H.

11.7. Sum up lines 10 through 16 and enter the total in line 17 (after completing Steps 11.9.2.3 through 11.9.2.5, if applicable). Exhibit 1.

11.8. Determine Additions to and deductions from the Costs of Contracting.

11.8.1. The Cost of Capital to be entered in line 23 was determined in Step 8.1.

11.8.2. Estimate one-time conversion costs (if applicable). V.E.4.

11.8.2.1. Estimate material-related costs of conversion. V.E.4.b.

11.8.2.1.1. Determine how excess material will be disposed of. V.E.4.b.

11.8.2.1.2. Estimate the gain or loss on the sale of material expected to be sold. V.E.4.b.(3)

11.8.2.1.3. Determine the cost of transferring any material to the contractor by following Steps 11.3.1 through 11.3.3. V.E.4.b.(1)

11.8.2.1.4. Estimate the additional costs to be incurred in making any material available for other uses in the Government. V.E.4.b.(2)

11.8.2.1.5. Sum up totals derived in Steps 11.8.2.1.2 through 11.8.2.1.4.

11.8.2.2. Estimate labor-related costs of conversion. V.E.4.c.

11.8.2.3. Estimate other costs of conversion. V.E.4.d.

11.8.2.4. Sum up amounts calculated in Steps 11.8.2.1.5, 11.8.2.2, and 11.8.2.3 for a conversion cost subtotal.

11.8.2.5. Multiply the conversion cost subtotal (Step 11.8.2.4) by the G&A rate

developed in Step 7.13.3 to arrive at applicable G&A costs. V.E.4.e.

11.8.2.6 Add the conversion cost subtotal (Step 11.8.2.4) to applicable G&A costs (Step 11.8.2.5) for total one-time costs related to conversion. V.E.4.f.

11.8.2.7 Divide this total (Step 11.8.2.6) by 5. Enter the one-fifth figure in line 25.

11.9 Estimate the impact of Conversion on utilization of Government capacity.

11.9.1 Determine what will happen to the existing work center if a contract is awarded. V.F.

—Will it be completely idle? If so, go on to Step 11.9.2.

—Will it operate at reduced capacity? If so, go on to Step 11.9.3.

—Will it operate at the same or increased capacity? If so, go on to Step 11.9.4.1.

11.9.2 Determine whether work center facilities will be disposed of or placed in standby status. V.F.2.

11.9.2.1 For facilities which will be disposed of, calculate the opportunity cost to be added to the Government's in-house estimate. V.D.

11.9.2.2. For facilities that will be placed in standby status, estimate standby costs to be added to the costs of contracting out by following Steps 11.9.2.3 through 11.9.2.5. V.F.2.

11.9.2.3. Estimate the cost, if any, of preparing facilities and equipment for standby status. IV.F.3.

11.9.2.4. Estimate the cost of holding facilities and equipment in a standby status (standby maintenance cost). This should include depreciation. IV.F.

11.9.2.5 Add preparation cost (Step 11.9.2.3) to standby maintenance costs (Step 11.9.2.4) to determine total estimate standby costs. Enter this amount in line 14. IV.F.3.4.

11.9.3. Determine costs attributable to underutilized capacity. V.F.5.

11.9.4.1. Estimate the proceeds or costs of disposing of any government assets related to the replacement product/service. V.F.3.

11.9.4.2. Estimate the rental costs which will be avoided as a result of transferring the replacement product/service. V.F.3.

11.9.4.3. Add final totals derived in Steps 11.9.4.1 and 11.9.4.2 for total savings (or total additional cost) resulting from transferring the replacement product/service. Enter this total in line 24. V.F.3.

11.10. Estimate the amount of Federal tax payable on the contract price. Enter this amount in line 27 as a deduction from the cost of contracting. IV.G.

Appendix 1.

11.11. Estimate any other costs of contracting out. Enter the total amount of such costs in line 26. V.H.

11.12. Estimate any other costs which should be *deducted* from the cost of contracting out, but are not covered by any of the Handbook's classifications of costs. Enter the total amount in line 29. V.H.

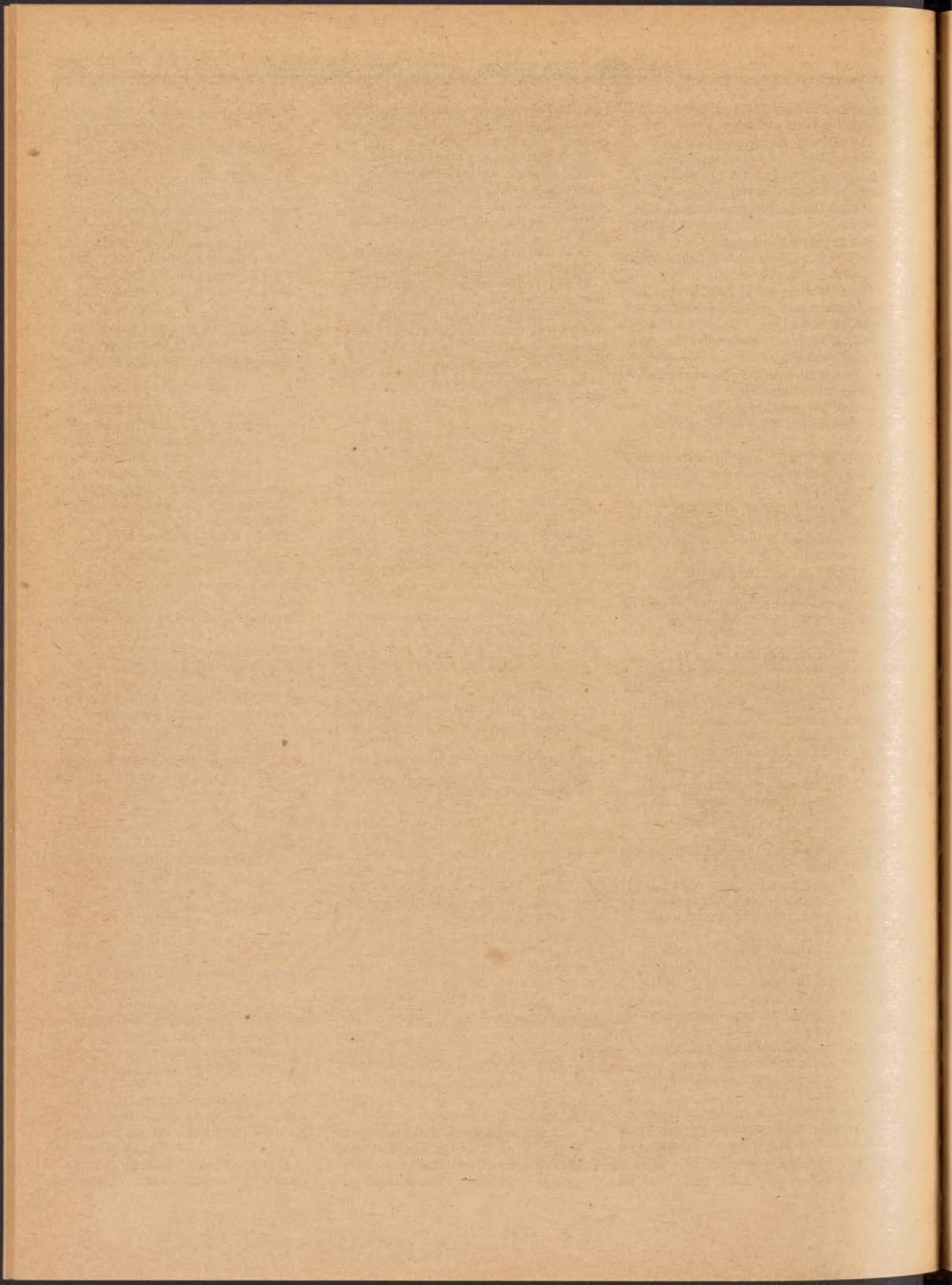
11.13. Determine the conversion cost differential (if applicable). VI.B.

11.13.1. Follow steps 1 through 6 in text paragraph VI. C.3. VI.C.3.

11.13.2. Enter the conversion cost margin (i.e., the personnel-related cost margin calculated in Step 6 of VI.C.3.) in line 32 of the Form. VI.B.2.

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Department of Energy

Assistance Regulations; Cooperative
Agreements

DEPARTMENT OF ENERGY

[10 CFR Part 600]

Assistance Regulations; Cooperative Agreements

AGENCY: Department of Energy.

ACTION: Proposed regulations.

SUMMARY: The Department of Energy proposes its Cooperative Agreement Regulations. This proposed Regulation provides the administrative mechanisms necessary for entering into Cooperative Agreements. On March 8, 1979, the Department of Energy published a final regulation covering Subpart A containing information about the regulatory structure, definitions, and general policies applicable to financial assistance agreements and Subpart B pertaining only to grants.

DATE: Comments on or before June 4, 1979.

ADDRESS: Send comments to Mr. James P. Beiriger, Procurement and Contracts Management Directorate, Financial Assistance Policy Branch, PR-212, U.S. Department of Energy, MS 400RB, Washington, D.C. 20545. Telephone: 202-376-1768.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:*I. Regulatory Requirements*

The Department of Energy Cooperative Agreement Regulations (Subpart C of DOE-AR) are published as proposed regulations in this issuance of the *Federal Register* in accordance with the requirement of Title V, Department of Energy Organization Act (Pub. L. 95-91); the Administrative Procedure Act, as amended, (5 USC 551 et. seq.) and DOE Order 2030.1 [44 FR 1040, 1-3-79, (Procedures for the Development and Analysis of Regulations, Standards, and Guidelines)]. Under Section 644 of the Department of Energy Organization Act, the Secretary of the Department is

authorized to prescribe such procedural and administrative rules and regulations as he may determine necessary or appropriate to administer and manage the functions now or hereinafter vested in him.

Title V provides for publication of these Cooperative Agreement Regulations in the *Federal Register*, and that if the Secretary determines that a substantial issue of fact or law exists or that the regulations are likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided. In addition, paragraph 9 of DOE Order 2030 provides that a regulatory analysis should be prepared for any regulation likely to have a major impact.

Our preliminary view is that the Cooperative Agreement Regulations do not involve substantial issues of fact or law and that the regulations are unlikely to have a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. Therefore, at this time, we do not propose to hold public hearings on Subpart C of the DOE-ARs or prepare a regulatory analysis. This preliminary conclusion is based on the fact that the proposed Cooperative Agreement Regulation implements policies already published by the Office of Management and Budget (see final OMB Guidance on Implementation of Federal Grant and Cooperative Act of 1977 [Pub. L. 95-224], August 18, 1978, 43 FR 36860). In addition, DOE Cooperative Agreements will be entered into pursuant to the authorities and restrictions in program statutes and DOE authorizations and appropriations acts. This regulation just provides the administrative mechanisms necessary for entering into Cooperative Agreements. However, a final determination of whether there should be an opportunity for the presentation of oral views or a regulatory analysis should be prepared will be made after an evaluation of the comments on the proposed regulation, and consideration of the views of those requesting an opportunity for oral presentation or preparation of a regulatory analysis.

NOTE: The Department of Energy has determined that this proposed regulation does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821, as amended, and OMB Circular A-107. The Department has also determined that the proposed regulation will not affect the quality of the environment and that the requirements of Section 7(c)(2) of the Federal Energy

Administration Act of 1974, Pub. L. 93-275, do not apply.

II. Effect on Existing Policies

DOE presently has no existing generic regulations governing cooperative agreements. This regulation, when issued in final form, will provide guidance for cooperative agreements entered into by the DOE, except as provided in section 600.5 Section 600.5 of Subpart A of the DOE-AR (See 44 FR 12920, March 8, 1979) which applies to Subpart C and all other subparts of the DOE-AR, provides that:

(The DOE-AR govern) the award and administration of all financial assistance matters, including resolutions and guidelines issued by DOE except:

- (a) As otherwise required by statute;
- (b) For final regulations issued before the effective date of this part;
- (c) As otherwise provided by specific program regulations;
- (d) Assistance instruments awarded by any Federal department, agency, or official thereof in the performance of functions transferred to DOE under the Department of Energy Organization Act (Public Law 95-91), which are in effect as of October 1, 1977, shall continue in effect according to their terms until renewed, continued, or otherwise extended. Such renewals, continuations, or extensions will then be subject to this part.

For the Department of Energy.

Issued in Washington, D. C. on March 29, 1979:

M. J. Tashjian, Director
Procurement and Contracts Management Directorate.

This part contains regulations governing the use of financial assistance instruments. Subpart C—Cooperative Agreements proposes to establish uniform requirements for the award and administration of Cooperative Agreements by the Department of Energy.

Subpart C is added to Part 600 to read as follows:

Subpart C—Cooperative Agreements

- Secs.
600.200 Scope of subpart.
600.201 Statutory authority to enter in cooperative agreements.

Administrative policies and procedures

- 600.210 Scope of section.
- 600.211 Selection of the cooperative agreement as award instrument.
- 600.212 Alternative uses of cooperative agreements.
- 600.213 Access to records.
- 600.214 DOE policy on cost participation.
- 600.215 Decision level for selection of cooperative agreement as award instrument.
- 600.230 Competitive award of cooperative agreements.

- 600.231 Solicitation for cooperative agreement proposals.
- 600.231-1 Issuance of solicitation.
- 600.231-2 Evaluation and selection of proposals.
- 600.232 Program opportunity notices.
- 600.233 Program research and development announcements.
- 600.234 Response to unsolicited proposals.
- 600.250 Statutory requirements for cooperative agreements.
- 600.251 Eligible recipients for DOE cooperative agreements.
- 600.252 Approval and execution of cooperative agreement instruments.
- 600.270 Cooperative agreement structure.
- 600.271 Administrative requirements for cooperative agreements.

Outline of cooperative agreement

- 600.280 Scope of section.
- 600.281 Contents.
- 600.282 Face page.
- 600.283 Schedule.
- 600.290 General and special provisions.

Authority: Sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91, 42 U.S.C. 7101.

Subpart C—Cooperative Agreements

§ 600.200 Scope of Subpart.

(a) This subpart establishes uniform requirements for the award and administration of Cooperative Agreements by the Department of Energy (DOE). Its major objective is to achieve uniform consistency in use of cooperative agreements as the legal instrument reflecting a relationship between the DOE and a participant whenever the principal purpose of the relationship in the transfer of money, property, services or anything of value to the participant in order to accomplish a public purpose of support or stimulation authorized by Federal statute and substantial involvement is anticipated between the Department of Energy, acting for the Federal Government, and the participant during performance of the contemplated activity.

(b) Subpart A of the DOE Assistance Regulation (44 FR 12920, March 8, 1979) contains information about the regulatory structure, definitions and general policies applicable to DOE financial assistance instruments including Cooperative Agreements.

(c) Except as otherwise provided under § 600.5, when proposals for Cooperative Agreements are obtained by DOE via a program solicitation or program regulation, this subpart shall be incorporated into such program solicitation or program regulation by reference to establish applicable administrative provisions for DOE

Cooperative Agreements. Program solicitations or program regulations may add administrative provisions only when such additional administrative provisions are required by applicable program legislation or program regulation.

(d) Except as otherwise provided under § 600.5, this subpart applies to all DOE organizations (except the Federal Energy Regulatory Commission and Bonneville Power Administration), to all programs which will result in Cooperative Agreement awards, and to all participants eligible for cooperative agreement awards, such as state and local governments, institutions of higher education, hospitals, other non-profit organizations, profit-making organizations and individuals but not to other Federal agencies.

(e) This subpart is divided into sections which include Authority to enter into Cooperative Agreements, Administrative Policies and Procedures, and an Outline of a Cooperative Agreement.

§ 600.201 Statutory Authority to Enter into Cooperative Agreements.

DOE is authorized to award cooperative agreements pursuant to section 646 of the Department of Energy Organization Act (Pub. L. 95-91) 42 U.S.C. 7101 et seq. and section 7(a) of the Federal Grant and Cooperative Agreement Act of 1977, 41 U.S.C. 501 et seq. In addition, numerous program statutes provide additional authority to enter into cooperative agreements.

Administrative Policies and Procedures

§ 600.210 Scope of section.

This section contains DOE Administrative policies and procedures applicable to DOE Cooperative Agreements.

§ 600.211 Selection of the cooperative agreement as award instrument.

(a) The basic statutory criterion for distinguishing between grants and cooperative agreements is that for the latter, "substantial involvement is anticipated between the executive agency and the recipient during performance of the contemplated activity" (emphasis added). To insure consistent determinations, this criterion should be used when deciding to use either a grant or a cooperative agreement.

(b) Anticipated substantial Federal involvement is a relative rather than an absolute concept. The examples that follow in "c" and "d" are not meant to

be a checklist or to be considered as individual determinants. Rather, they are to illustrate the general policy that:

(1) When the terms of an assistant instrument indicate the participant can expect to run the project without DOE collaboration, participation, or intervention as long as it is run in accordance with the terms of the assistance instrument, substantial involvement is not anticipated.

(2) When the instrument indicates the participant can expect DOE collaboration or participation in the management of the project, substantial Federal involvement is anticipated.

(c) As a guide to making these determinations, anticipated substantial involvement during performance does not include:

(1) DOE approval of recipient plans prior to award.

(2) Normal exercise of Federal stewardship responsibilities during the project period such as site visits, performance reporting, financial reporting, and audit to insure that the objectives, terms, and conditions of the award are accomplished.

(3) Unanticipated DOE involvement to correct deficiencies in programmatic or financial performance by the participant.

(4) General statutory requirements understood in advance of the award such as civil rights, environmental protection, and provisions for the handicapped.

(5) DOE review of performance after completion.

(6) General administrative requirements, such as those included in OMB Circulars A-21, A-95, A-102, >A-110, and FMC 74-4.

(d) Conversely, anticipated involvement during performance would exist and, depending on the circumstances, could be substantial, where the relationship includes, for example:

(1) DOE has option to immediately halt an activity if detailed performance specifications (e.g., construction specifications) are not met. These would be provisions that go beyond the suspension remedies of the Federal Government for nonperformance as in OMB Circulars A-102 and A-110.

(2) DOE review and approval of one stage before work can begin on a subsequent stage during the period covered by the assistance instrument.

(3) DOE review and approval of substantive provisions of proposed subgrants or contracts. These would be provisions that go beyond existing policies on Federal review of participant

procurement standards and sole source procurement.

(4) DOE involvement in the selection of key participant personnel. (This does not include assistance instrument provisions for the participation of a named principal investigator for research projects.)

(5) DOE and participant collaboration or joint participation in the performance of the assisted activity.

(6) DOE monitoring to permit specified kinds of direction or redirection of the work because of interrelationships with other projects.

(7) Substantial, direct DOE operational involvement or participation during the assisted activity is anticipated prior to award to insure compliance with such statutory requirements as civil rights, environmental protection, and provisions for the handicapped. Such participation would exceed that normally anticipated under c(4) above.

(8) Highly prescriptive DOE requirements prior to award limiting participant discretion with respect to scope of services offered, organizational structure, staffing, mode of operation, and other management processes, coupled with close DOE monitoring or operational involvement during performance over and above the normal exercise of Federal stewardship responsibilities to ensure compliance with these requirements.

(e) The practice of providing technical assistance, advice or guidance to participants in assistance awards does not constitute substantial involvement if:

(1) It is provided at the request of the participant, or

(2) The participant is not required to follow it, or

(3) The participant is required to follow it, but it is provided prior to the start of the assisted activity and the participant understood this prior to the assistance award.

(f) DOE should limit Federal involvement in Cooperative Agreements to the minimum consistent with program requirements. Nothing in this regulation should be construed as authorizing DOE to increase its involvement beyond that authorized by applicable legislation.

§ 600.212 Alternative uses of cooperative agreements.

In all cases, the determination of when to use cooperative agreements will be based on the need for substantial Federal involvement in the assisted activity.

(a) Some programs now using grants will require the use of cooperative

agreements exclusively. This determination should be based on statutory requirements or policy level determinations of substantial Federal involvement in the performance of the assisted project.

(b) Other programs may use grants or cooperative agreements, depending on the nature of the project or the ability of the recipients. For example:

(1) Some projects may start out as cooperative agreements in the first year and be converted to grants after recipient capacity has been established.

(2) Other projects, initially funded as grants, may have to be renewed or continued for subsequent budget periods as cooperative agreements if there is a need to revise the project, upgrade recipient capacity, or protect the Federal interest.

§ 600.213 Access to Records.

Each Cooperative Agreement must provide that the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Participant(s), and contractors or subcontractors to the Participant(s) which are pertinent to the agreement for the purpose of making audits, examination, excerpts, and transcripts.

§ 600.214 DOE policy on cost participation.

(a) *Scope of section.* (1) This section sets forth the DOE policy on cost participation by participants under DOE Cooperative Agreements.

(2) Cost participation is a generic term denoting any situation where the Government does not fully reimburse the participant for all allowable costs necessary to accomplish the project or effort. The term encompasses cost sharing, cost matching, cost limitation (direct or indirect), participation in kind, and similar concepts.

(3) In those instances where cost participation is established by statute, this section will apply only to the extent it is not inconsistent with the statute.

(b) *Policy.* (1) When DOE supports performance under a cooperative agreement, where the principal purpose is ultimate commercialization or utilization of technology(s) by the private sector, or present or future economic benefits beyond the instant award, as a result of performance of the effort, it is DOE policy to obtain cost participation.

(2) DOE will consider the technical feasibility, projected economic viability, societal and political acceptability of

commercial application, as well as possible effects of other DOE supported projects in completing technologies in determining the extent of cost participation.

(3) The manner and amount of cost participation must be decided on a case-by-case basis.

(4) Cost participation is required for demonstration projects. Demonstration projects, pursuant to this subpart, include demonstrating technological advances and field demonstrations of new methods and procedures, and demonstrations of prototype commercial applications for the exploration, development, production, transportation, conversion and utilization of energy resources.

(c) *Application.* The DOE cost participation policy set forth herein is applicable to all cooperative agreements within the following limitations:

(1) Potential benefits to a participant are less likely where basic research is involved and cost participation, if any, is expected to be less than in circumstances where advanced or engineering development is being undertaken. As projects or proposed efforts reach stages approaching commercial viability, cost participation should be based on the overall project risk.

(2) In those instances where it is determined by the cognizant program Assistant Secretary that payment by DOE of a substantial part of or the full allowable cost of the contemplated effort is in the best interest of the DOE program mission, cost participation may be minimized or waived (except as required under (b)(4) above).

(3) Cost participation may be provided by third party entities (other companies or associations). The fact that a project is jointly funded (e.g., where DOE and an industry association fund a third party participant) does not preclude cost participation by the participant.

(d) *Cost participation requirements.*

(1) The value of any non-cash contribution shall be established by DOE after consultation with the participant. Cost participation may be accomplished by a contribution to either direct or indirect costs provided such costs are otherwise allowable in accordance with the cost principles of the award. Allowable costs which are absorbed by the participant as its share of cost participation may not be charged directly or indirectly or may not have been charged in the past to the Federal Government under other contracts, agreements, or grants, nor may other Federal funds be used as cost

participation unless specifically authorized by statute.

(2) Participants should contribute a reasonable amount of the total project cost covered under the award. The ratio of cost participation should correlate to the apparent advantages available to participants and the proximity of implementing commercialization. In setting the levels of cost participation by the participant, the Contracting Officer, in consultation with the program office, should consider such factors as:

(i) The availability of the technology to the participant's competitors.

(ii) The risks involved in achieving commercial success.

(iii) The length of time before the project is likely to be commercially successful.

(iv) Improvements in the participant's future commercial competitive position.

(v) Disposition of property at project's end.

(vi) Whether the potential benefits will be lessened if the participant lacks production or other capabilities with which to capitalize the results of the project. However, if the results of the project are transferable to entities with production capabilities, and the performing participant would obtain patent or other property rights which could be sold or licensed, this should be considered.

(vii) Whether the performing organization lacks adequate non-Federal sources of funds from which to make cost participation.

(3) The manner of cost participation and how it is to be accomplished shall be set forth in the award.

(4) The handling of any return from sale of products from the project shall be set forth in the award.

(5) The solicitation document shall state whether any cost participation is required and may set forth a target level of cost participation. The extent of cost participation in unsolicited proposals will be considered on a case-by-case basis.

(6) The extent to which a participant contributes to the cost of a project will be taken into consideration in the allocation of patent rights under DOE's waiver policy.

(7) Fee or profit will not be paid the participant(s) under a cooperative agreement.

(e) *Records.* Participants in Cooperative Agreements shall be required to maintain records adequate to reflect the nature and extent of their costs and to insure that the required cost participation is achieved.

§ 600.215 Decision level for selection of cooperative agreement as award instrument.

The determination of whether a program is principally one of procurement or assistance and whether substantial Federal involvement in performance will normally occur are basic agency policy decisions which will be either made or reviewed at a DOE policy level in accordance with § 600.32(a).

§ 600.230 Competitive award of cooperative agreements.

(a) It is DOE policy to encourage and maximize open and fair competition in the awarding of Cooperative Agreements. DOE will award Cooperative Agreements on a competitive basis as a result of:

(1) Solicitation For Cooperative Agreements.

(2) Program Opportunity Notices (PONs).

(3) Program Research and Development Announcements (PRDAs).

(b) Issuance of a solicitation, PON and PRDA will be in accordance with § 600.35.

§ 600.231 Solicitation for cooperative agreement proposals.

This section contains guidance on the selection of cooperative agreement proposals through the issuance of a solicitation by DOE to fulfill a specific DOE program objective of support or stimulation.

§ 600.231.1 Issuance of the solicitation.

(a) The solicitation will be prepared jointly by the cognizant procurement operations office and the program office with the assistance of counsel. The program office will be responsible for development of the proposed effort, specifications, project objectives, and schedule while the procurement office will be responsible for the business aspects of the solicitation.

(b) The solicitation shall contain a covering letter transmitting the solicitation to prospective proposers, providing general instructions and shall have the following enclosures as appropriate:

- (1) Description of proposed project,
- (2) Qualification criteria,
- (3) Evaluation criteria,
- (4) Price/cost considerations,
- (5) Representations and certifications,
- (6) Proposal format,
- (7) Draft cooperative agreement, and
- (8) Other pertinent information

including DOE's technical data requirements.

(c) *Transmittal letter.* The transmittal letter of the solicitation should include the following areas:

(1) Briefly describe the proposed effort.

(2) Identify the point of contact for all questions or inquiries.

(3) State if one or more awards will be made in response to this solicitation.

(4) Provide an overview of the solicitation briefly describing each of the enclosures.

(5) Indicate that it is DOE's policy to discourage "brochuremanship" and unnecessarily costly proposal preparation. Proposals should be prepared with maximum economy consistent with the particular agreement under consideration, to ensure that the resources of both proposers and evaluators are efficiently utilized.

(6) State that information contained in proposals offered in response to the solicitation shall be handled in accordance with the policies and procedures set forth in 41 CFR 9-3.150.

(7) Provide a brief schedule of major milestones such as:

(i) Preproposal Conference Date (if one is to be held).

(ii) Proposal Due Date.

(iii) Tentative Site Visit Dates (if applicable).

(iv) Tentative Award Decision Date.

(8) State the exact time and place where proposals are due and the number of copies required.

(9) Request an acknowledgement of receipt of the solicitation, indicating whether or not the organization or individual intends to submit a proposal and attend any preproposal conference.

(10) State that proposers have the right to request in advance of or within 30 days after the effective date of the agreement a waiver of all or any part of the rights of the United States in subject inventions.

(11) In addition, an attachment to the transmittal letter should cover the following areas:

(i) Describe the technical, business and management evaluation criteria and clearly indicate their relative importance. It is not sufficient to merely rank the criteria in terms of "primary", "secondary", and next in importance. For example, if the first of five criteria represents 72% of the total score and six times the weight of the second most important criterion, the predominant value of that criterion should be indicated in the solicitation in some narrative manner. The criteria should also be listed in descending order of importance. The major evaluation criteria may be divided into subcriteria which should be described in terms of

their relative importance and also be listed in order of relative importance. The actual numerical weights assigned to the evaluation criteria will not be included in the solicitation.

(ii) Indicate the relative importance of cost in relation to the technical, business and management evaluation criteria.

(iii) State if a preproposal conference will be held; give details as to when, where and necessary limitations on the number of attendees. If security clearance or other special administrative arrangements are necessary to secure admittance to a conference, so state. Details of conference procedures should be determined and stated. If written questions are to be submitted by attendees for answers at the conference, proposers should be informed as how and when they will be submitted and to whom. Other administrative details should also be stated, if known at the time. Sufficient time must be permitted for potential proposers to review the solicitation prior to any preproposal conference.

(iv) Inform all prospective proposers that DOE may solicit, from available sources, relevant information concerning the proposer's record of past performance.

(v) State that each proposer should represent that the proposal will remain in effect for a specified period of time, e.g., 120 days from the date designated for receipt of proposals.

(vi) Indicate that the person signing the proposal must have the authority to commit the proposer to all the provisions of the proposal.

(vii) State that in order to receive proper handling and in consideration of the Freedom of Information Act, any information in the offeror's proposal which is considered to be trade secrets, commercial or financial information, privileged or confidential or of a personal nature should be specifically identified.

(viii) State that the solicitation does not commit the Government to pay any cost incurred in the preparation or submission of any proposal.

(ix) State that proposals should contain the most favorable terms to DOE which the proposer can submit and that DOE reserves the right, without qualification, to select any proposal(s) as a basis for negotiation or to reject any and all proposals.

(x) State that late proposals will be treated in accordance with 41 CFR 1-3.802-1, "Consideration of Late Proposals."

(xi) State that the Contracting Officer is the only individual who can legally

commit the Government to the expenditure of funds in connection with this proposed assistance award. Any other commitment, either explicit or implied, is invalid.

(d) *Description of proposed effort.* This enclosure to the solicitation should describe in detail the effort to be performed including technical data requirements. Wherever possible, it should also identify specific objectives, goals, and intermediate milestones that will be used to measure the participants performance in regard to technical, schedule and cost aspects.

(e) *Qualification criteria.* The qualification criteria, if any, will consist of those elements of special experience, capability, facilities or other factors which are essential to the program performance aspects of the assistance award. Qualification criteria must be clearly stated and restricted to elements which are essential to the successful completion of the proposed work effort. Stated another way, they are go/no go criteria which depict the minimum qualifications for a particular assistance award. The purpose of qualification criteria is to discourage unqualified organizations from incurring the time and expense associated with the submission of proposals when they clearly have no opportunity for selection.

(f) *Evaluation criteria.* (1) The evaluation criteria will consist of those elements which must be examined in each proposal to determine an offeror's:

- (i) Understanding of the project to be performed, including environmental and safety issues;
- (ii) Technical, business and management approach;
- (iii) Potential for completing the job as specified in the solicitation;
- (iv) Probable cost based upon proposer's approach;
- (v) Relative qualifications and experience of both the proposer and key individuals proposed;
- (vi) Comparative competitive status;
- (vii) Proposer's commitment and sharing of risk.

(2) Too many evaluation criteria are as detrimental to an effective evaluation of a proposal as are too few. The evaluation process should be aimed at ascertaining and assessing distinctions among significant aspects of the effort to be performed rather than identifying the relatively unimportant differences to be expected when multiple proposals are received. Evaluation criteria will be limited to the minimum number which will:

- (i) Allow for the above determinations to be made, and

(ii) Indicate significant differences or distinguishing features among proposals.

(3) There are no restrictions on the kinds of evaluation criteria which may be used, as long as they are disclosed in the solicitation and relate to the purposes of the assistance award. The specific criteria used will depend on the particular circumstances. However, they will generally fall into the following major categories: (i) technical; (ii) business and management; and (iii) cost.

(4) Each evaluation criterion should be stated clearly and concisely. The discipline of delineating criteria will highlight overlap or redundancy among the several criteria so that the descriptions can be reworked to eliminate overlapping or redundant concepts and double scoring. The criteria set out in the solicitation must be used in evaluation and will not be changed unless an amendment to the solicitation is issued stating the criteria change(s) and specific reason(s) for the change(s).

(g) *Price and cost considerations.* (1) This enclosure to the solicitation should indicate the relative importance of cost in the evaluation and describe the type of cost information and the format to be used by the proposers. Cost should be measured in terms of cost realism in addition to the lowest estimated cost. An unrealistic cost proposal may reflect adversely on an offeror's understanding of the project.

(2) If there is a lengthy performance period, it may be necessary to forecast general economic factors and the anticipated demand for essential materials. Because these forecasts could materially affect the estimated cooperative agreement costs and offerors may have little or no control over them, the solicitation should specify the estimating assumptions which are to be used.

For example, in estimating the cost of a program to be performed over a five-year period, proposers would find it necessary to project the rate of inflation and the national demand for a given fuel. Because neither of these factors is within the control of an offeror and because cost estimates would be materially affected by the projections, the solicitation should include the assumptions to be used in proposal preparation. Otherwise, there could be no assurance that the cost projections submitted would provide a valid basis for comparison.

(3) When detailed cost estimates are requested, the cost information should be presented in accordance with GSA Optional Form 60 (41 CFR 1-16.902-

OF60), including all instructions and footnotes.

Similar information should be furnished in regard to major contracts to be entered into by the participant in performance of the agreement. The proposer's proposed costs are to be related to the proposed period of performance, escalated, as necessary, to cover geographical differences, union agreements, personnel practices, and normal economic conditions peculiar to the proposer. For long term periods of performance (usually beyond 3 years) or for unusual economic conditions, the solicitation should state the additional economic escalation rates that are to be used by the proposers in projecting their costs.

(h) *Representations and certifications (When required)*. Include a representations and certifications form covering covenant against contingent fees, equal employment opportunity, and any other representations and certifications required by the Cooperative Agreement. The solicitation should state that additional representations and certifications may be required after negotiation of the final terms of the agreement.

(i) *Proposal format*. (1) This enclosure to the solicitation should prescribe the format that each offeror should follow in preparing his proposal in response to the solicitation. The proposal format should conform to the solicitation format and should be separated into sections.

Generally the following format is suitable:

Part I—General information covering such areas as: cognizant Government agencies, representations and certifications, information required for the Fact Sheet, etc.

Part II—Information related to qualification criteria.

Part III—Information related to technical evaluation criteria.

Part IV—Information related to business and management evaluation criteria.

Part V—Price and cost information.

Part VI—Comments on draft cooperative agreement.

Part VII—Other information.

(2) Supporting information should be keyed to the appropriate part and paragraph in the solicitation. For ease of evaluation, it may be desirable to prescribe the use of separate volumes addressing the technical evaluation criteria, business and management evaluation criteria, and price and cost information. To the extent practicable, specify the use of graphs, charts and tables which will facilitate the comparison of proposals.

(j) *Draft Cooperative Agreement*. The enclosure should contain the draft Cooperative Agreement or, as a minimum, all required and special clauses likely to affect a proposer's willingness to submit a proposal.

(k) *Other pertinent information*. In these instances where there may be other pertinent information concerning the proposed effort to be performed that may impact a proposer's participation, it should be stated in the solicitation.

§ 600.231-2 Evaluation and selection of proposals.

(a) When any individual proposal, together with later phases of the same project, is estimated to meet the Source Evaluation Board (SEB) Handbook (Procurement Regulation Handbook No. 1, 44 F.R. 6038, January 30, 1979) dollar threshold, comprehensive evaluation shall be conducted by a specially constituted board which shall follow the procedures and documentation requirements of the SEB Handbook modified as appropriate to conform to the solicitation process as set forth herein.

(b) When no individual proposal is expected to meet the SEB dollar threshold, proposals submitted in response to a solicitation will be evaluated by a panel which shall be appointed by the cognizant program office. The panel should utilize any of the procedures and documentation requirements of the SEB Handbook (as modified as appropriate to conform to the solicitation process as set forth herein) whenever necessary to insure the impartial, equitable and thorough evaluation of each proposal. The panel will be composed of program office and other personnel, including representatives of Procurement and Counsel, and, as deemed appropriate by the appointing official, supplemented by personnel from other Government agencies. The representative of Counsel will be a nonvoting member of the panel. Personnel from DOE prime management or operating contractors may be used as advisors to the panel when their services are necessary and available. Care is to be taken in the selection of these personnel so as to avoid any actual or apparent conflict of interest.

(c) The selection official will be the individual authorized to approve and execute cooperative agreements in accordance with § 600.252.

§ 600.232 Program opportunity notices.

(a) This subpart establishes procedures for the submission,

evaluation and selection of competitive concept proposals offered in response to program opportunity notices (PON's) issued by DOE to support and/or accelerate the demonstration of the technical, operational, economic, and commercial feasibility and environmental acceptability of particular energy technologies, systems, subsystems and components.

(b) For purposes of this subpart, commercial demonstration projects include demonstrating technological advances and field demonstrations of new methods and procedures and demonstrations of prototype commercial applications for the exploration, development, production, transportation, conversion and utilization of energy resources.

(1) It is DOE's intent to encourage the submission of proposals to accelerate the demonstration of the technical, operational, economic and commercial feasibility and environmental acceptability of particular energy technologies, systems, subsystems and components. Program opportunity notices will be used to provide information concerning scientific and technological areas encompassed by DOE's program. DOE shall, from time to time, issue program opportunity notices for proposals for demonstration of various forms of energy and technology utilization.

(2) Synopsis of the notice shall be published in the Commerce Business Daily and the Federal Register as appropriate prior to or concurrent with release. The notice will be circulated directly to potentially interested individuals, private and public entities (excluding Federal agencies) and associations thereof to the maximum extent feasible. Special attention in this regard should be given to small business concerns to insure that they are given every opportunity to participate in such cooperative agreements. Consideration should be given to distributing the announcement to all eligible entities which, during the preceding two years, have expressed an interest in participating in, or entering into arrangements for, commercial demonstration in the particular energy field.

(3) Determination to use: (i) Before the PON is selected by the program office as the appropriate solicitation procedure, a written program determination shall be made to show that the proposed undertaking meets Federal support criteria including but not limited to:

(A) The urgency of public need for the potential results of the research, development, or demonstration effort is

high, and it is unlikely that similar results would be achieved in a timely manner in the absence of Federal assistance.

(B) The potential opportunities for non-Federal interests to recapture the investment in the undertaking through the normal commercial utilization of proprietary knowledge appear inadequate to encourage timely results;

(C) The extent of the problems treated and the objectives sought by the undertaking are national or widespread in their significance;

(D) The opportunities to induce non-Federal support of the undertaking through regulatory actions, end-use controls, tax and price incentives, public education, or other alternatives to direct Federal financial assistance are limited;

(E) The degree of risk of loss of investment inherent in the research is high, and the availability of risk capital to the non-Federal entities which might otherwise engage in the field of the research is inadequate for the timely development of the technologies;

(F) The research, development, or application objectives anticipated by the activities or facilities proposed;

(G) The economic, environmental, and societal significance which a successful demonstration may have for the national fuels and energy system; and

(H) The availability of non-Federal participants to construct and operate the facilities or perform the activities associated with the proposal and to contribute to the financing of the proposal.

These conditions must exist at a minimum to support the conclusion that the use of the PON procedure is both necessary and appropriate. The determination must not be merely conclusory but shall be supported by specific facts and explanations.

(i) The senior program official or designee may approve the determination with the prior concurrence of the designee of the senior procurement official, Headquarters.

(iii) The approved determination shall accompany the PON file through the preparation, concurrence, approval and issuance phases.

(4) *Approval of Content.* (i) When the dollar amounts are less than SEB level a PON may be originated at whatever level is consistent with the program objectives established by the senior program official.

(ii) When an SEB is not required, notices may be approved by the senior program official or designee after prior concurrence by the designee of the

senior procurement official, Headquarters, and Counsel.

(iii) When a SEB is required, notices shall be reviewed and approved by the SEB after prior concurrence by the designee of the senior procurement official, Headquarters, Counsel, and the senior program official or designee.

(iv) All PONs will be issued by the cognizant head of the procuring activity or designee.

(5) *Information To Be Included In Program Opportunity Notices.*

Each program opportunity notice shall include:

(i) The goal of the intended demonstration effort;

(ii) A time schedule for submission of, and action on, proposals;

(iii) Evaluation criteria, including an indication, when determined practicable to do so, of the approximate cost and time duration contemplated for individual projects resulting from the notice;

(iv) Information to be provided in the proposals;

(v) Program policy factors;

(vi) An indication that additional information, consistent with the overall concepts and approaches developed in the proposal, may be required regarding the demonstration effort and the proposed budget (e.g., a notice that a detailed cost breakdown may be required from the proposers being considered);

(vii) If it is anticipated that one award or multiple awards will be made in response to the PON;

(viii) A statement notifying potential proposers that a PON does not commit DOE to pay any proposal preparation costs and the DOE reserves the right to select for award or support any, all or none of the proposals received in response to a PON;

(ix) Any other information, terms, or conditions that shall apply to the particular program opportunity notices;

(x) The place for and manner of submission;

(xi) An indication that late proposals, modifications of proposals, and withdrawals of proposals shall be handled in accordance with 41 CFR 1-3.802-1;

(xii) A statement that proposers have the right to request in advance of or within 30 days after the effective date of the agreement a waiver of all or any part of the rights of the United States in subject inventions; and

(xiii) Notification that information contained in proposals offered in response to PONs shall be handled in accordance with the policies and procedures set forth in 41 CFR 9-3.150.

(6) *Information To Be Provided In Proposals Offered Pursuant To Program Opportunity Notices.*

All proposals should be specific, and, include, the information set forth below:

(i) Name and address of the entity(ies) submitting the proposal;

(ii) Date of proposal submission;

(iii) Identification of the notice (by number and title) to which the proposal responds;

(iv) Type of entity(s) submitting the proposal, whether public (including state and local governments) and/or private (including individuals, profit and non-profit organizations and educational institutions);

(v) Concise title and abstract of the proposed demonstration project for which assistance or participation is being sought;

(vi) An outline and discussion of the proposed demonstration which shall, to the extent possible, specifically address and reference the evaluation criteria and include:

(A) Specification of the technology;

(B) Proposed demonstration effort to be performed;

(C) Description of prior plant operating experience with the technology;

(D) Preliminary design of the demonstration plant;

(E) Time tables containing proposed construction or fabrication and installation and operation plans;

(F) Budget-type estimates of construction or fabrication and operating costs;

(G) Description and proof of title to land for proposed site, natural resources, electricity and water supply and logistical information related to access to raw materials to construct and operate the plant and dispose of salable products from the plant;

(H) Assessment of the environmental impact of the proposed plant and plans for disposal of wastes resulting from the operation of the plant;

(I) Plans for commercial use of the technology if the demonstration is successful;

(J) Plans for continued use of the plant if the demonstration is successful;

(K) Plans for dismantling of the plant if the demonstration is unsuccessful or otherwise abandoned;

(L) Form and amount of assistance or participation being sought;

(M) Form and amount of funding, or other contribution to be provided by the proposer or others, including proposed disposition of revenues generated; and,

(N) The extent to which the proposed expenditures would constitute permanent (non-severable) improvement

to property now owned by the Government, and proposed plans for the disposal of any such improvements.

(vii) Resumes of key personnel to be involved, which includes a description of relevant experience and associated data.

(viii) A current financial statement;

(ix) Period for which proposal is valid;

(x) Names and telephone numbers of proposer's primary business and technical personnel who DOE may contact during evaluation;

(xi) Each proposal containing technical data or other data, including trade secrets or privileged or confidential or commercial or financial information, which the proposer intends to be used by DOE for evaluation purposes only, should be marked on the cover sheet with the notice prescribed in 41 CFR § 9-3.150-2(a);

(xii) If the proposer is a small business concern, it shall so certify in its proposal. Other representations, certifications and acknowledgments which may be required by law or regulation shall also be submitted as specified in the announcement.

(xiii) Signature and title of an official of the proposing organization authorized to obligate such organization.

The information called for under this section relates primarily to a demonstration project involving the construction and operation of a "plant". In instances where the proposed project concerns a demonstration that does not involve a plant (for example, the demonstration of a process, apparatus, or device), the program opportunity notice shall state what additional information is to be submitted with the proposal.

(7) *Method and criteria for evaluation and selection.*—(i) *Selection.* (A) When any individual proposal, together with later phases of the same project, is estimated to meet the SEB dollar threshold, comprehensive evaluation shall be conducted by a specially constituted board which shall follow procedures and documentation requirements of the SEB Handbook, modified as appropriate to conform to the solicitation process as set forth herein.

(B) When no individual proposal is expected to meet the SEB dollar threshold, proposals submitted in response to a PON will be evaluated by a panel which shall be appointed by the cognizant program office. The panel should utilize any of the procedures and documentation requirements of the SEB Handbook (as modified as appropriate to conform to the solicitation process as

set forth herein) whenever necessary to insure the impartial, equitable and thorough evaluation of each proposal. The panel will be composed of program office and other personnel including representatives of Procurement and Counsel, and, as deemed appropriate by the appointing official, supplemented by personnel from other Government agencies. The representative of Counsel will be a non-voting member of the panel. Personnel from DOE prime management or operating contractors may be used as advisors to the panel when their services are necessary and available. Care is to be taken in the selection of these personnel so as to avoid any actual or apparent conflict of interest.

(ii) *Evaluation criteria.* The evaluation criteria shall be specified in the notice. The criteria below, to the extent applicable, as well as any additional criteria stated in the program opportunity notice, shall consider:

(A) The overall technical feasibility of the proposed effort;

(B) The contribution which the proposed effort is expected to make to DOE in carrying out its program responsibilities, including, but not limited to solving energy extraction and storage, transportation, conversion, waste utilization, and conservation problems;

(C) The capabilities, related experience, facilities, instrumentation, or techniques which the proposer possesses and offers, and which are considered to be integral factors for achieving the objective(s) of the proposal;

(D) The qualifications, capabilities, and experience of the proposed key personnel;

(E) The ability of the proposer to furnish the required cost participation;

(F) The proposed cooperative arrangement among the participants, and the form of management of the activities; and

(G) Plans for involvement of the small and disadvantaged small business community.

(iii) *Program policy factors.* Program policy factors are those factors which, while not appropriate indicators of a proposal's individual merit (e.g., technical excellence, proposer's ability, cost, etc.), are relevant and essential to the process of choosing which of the proposals received and scored will, taken together, best achieve the program objectives. All such factors, to the degree it is practicable to do so, shall be specified in the notice so as to notify proposers that factors which are essentially beyond their control will

affect the selection process. The following are examples of possible program policy factors:

(A) It is desirable, because of the nature of the energy source, the type of projects envisioned, or limitations of past efforts to select for award or support a group of demonstration projects with a broad or specific geographic distribution;

(B) It is desirable to select for award or support projects from diverse types and sizes of proposing organizations;

(C) It is desirable to select for award or support a group of projects which represent a diversity of methods, approaches, applications, or kinds of work; or

(D) It is desirable due to the nature of certain projects or proposing organizations to select for award or support duplicative or complementary efforts or projects.

(iv) *Selection officials.* The selection official will be the Senior program official when the estimated value of any individual proposal, together with later phases of the project, is expected to be greater than the level required in an SEB, unless otherwise designated by the head of the agency. If the value of any individual proposal is not expected to exceed the level required by an SEB, the selection official may be either the Senior program official or designee.

(v) *Intermediate evaluation.* Prior to making a comprehensive evaluation of a proposal, the SEB, or the receiving office when an SEB is not required, shall determine that it:

(A) Contains sufficient technical, cost, and other required information to enable comprehensive evaluation; and

(B) Has been signed by a responsible official of the proposing organization(s) or a person authorized to obligate such organization(s).

If the proposal does not meet these requirements, a comprehensive evaluation shall not be made. In such a case a prompt reply shall be sent to the proposer, indicating the reason(s) for its not being selected for award or support under the PON.

(vi) *Comprehensive evaluation.* The basic task in the evaluation and selection of proposals for award or support is to assess their relative merit in order to determine which of them offer the greatest likelihood for achievement of the program objectives stated in the notice, considering technical quality, ability of the proposer, estimated cost, and other relevant factors. Proposals which survive intermediate review shall be evaluated by a SEB or a panel, as applicable, in accordance with the criteria stated in

the notice. The source selection official will select proposals for support or award from the findings established by a SEB or a panel, as applicable. In this latter process, the selection official will take into account the relevant program policy factors in order to determine the mix of proposed projects which will best further specific program goals. The relevant program policy factors, when reasonably ascertainable, shall be predetermined and specified in the notice. All findings and selections are to be documented, signed and maintained to provide an adequate record of the proceedings.

(8) *Award or support.* While only those proposals which best meet the needs of the program as specified in the announcement will be considered for award or support, DOE may accept for award or support all, none, or any number or part of the proposals submitted.

(9) *Optional Two-Step Method.* Where a large number of proposals are anticipated, proposals may be limited to technical considerations with cost proposals subsequently requested from those proposers whose technical proposals are evaluated as technically acceptable.

§ 600.233 Program research and development announcement.

(a) Except as otherwise provided under § 600.5, this section governs the submission, evaluation and selection for award or support of proposals offered in response to specific Program Research and Development Announcements (PRDAs) issued by DOE for conduct, support, participation and/or otherwise cooperate in projects for research, development, or related activities in the energy field.

(1) PRDAs are used to provide potential proposers with information concerning DOE's interest in entering into arrangements for research, development, and related projects in specified areas of interest. It is DOE's intent to solicit the submission of ideas which will serve as a basis for research, development, and related activities in the energy field. Furthermore, it is DOE's desire to encourage the involvement of small and minority business concerns in research and development undertaken pursuant to PRDAs.

(2) This mechanism is not to be used where a requirement can be sufficiently defined for solicitation under § 600.231. Similarly, it is not to inhibit or curtail submission of unsolicited proposals. However, a proposal which is submitted as though it were unsolicited but is in fact germane to an extent PRDA will be

treated as though submitted in response to the announcement or returned without action to the proposer, at the proposer's option. Further, this mechanism is not to be used in a competitive situation where it is appropriate to negotiate a study contract to obtain analysis and recommendations to be incorporated in the subsequent issuance of a request for proposals.

(3) The PRDA is to be used only where:

(i) Research and development is required within broadly defined areas of interest to support program goals, but it is difficult, if not impossible, to describe in any reasonable degree of detail the nature of the work contemplated because of:

(A) The multiplicity of possible approaches, within the current state of the art, available for solving the problems;

(B) The desirability of involving a broad spectrum of organizations in seeking out solutions to the problems posed;

(C) The expectation that many individual proposers will have unique qualifications or specialized capabilities which will enable them to perform portions of the research or development program (without necessarily possessing the qualifications to perform the entire program) so that the overall support may be broken into segments which cannot be ascertained in advance; and

(D) The desirability of fostering new and creative solutions.

(ii) Consistent with (i) above, it is anticipated that choices will have to be made among dissimilar concepts, ideas, or approaches; and

(iii) It is determined that a broad range of organizations exist that would be capable of contributing towards the overall research and development goals identified in (i) above.

(4) The announcement will be synopsized in the Commerce Business Daily and Federal Register as appropriate prior to or concurrent with release. In addition, the announcement shall be circulated directly to interested individuals, private and public entities (excluding Federal agencies), and associations thereof to the maximum extent feasible. Special attention in this regard should be given to small and minority business concerns to insure that they are given every opportunity to participate in such cooperative agreements. The originating program office should consider distributing the announcement to all eligible entities which, during the preceding two years, have expressed an interest in participating in, or entering into

arrangement for, research or development in the particular energy field.

(5) *Determination to use.* (i) Before the PRDA is selected by the program office as the appropriate solicitation procedure, a written program determination shall be made to show that the conditions in § 600.233(a)(3) exist to support the conclusion that the use of the PRDA procedure is both necessary and appropriate. The determination must not be merely conclusory but shall be supported by specific facts and explanations. If no individual award under the PRDA is anticipated to exceed \$2 million, the senior program official or designee may approve the determination with the prior concurrence of the designee of the senior procurement official, Headquarters.

(ii) If any individual award is anticipated to exceed \$2 million, the determination as required in (i) shall in addition explain why the PRDA procedure is more appropriate than existing Cooperative Agreement procedures for soliciting proposals. Determinations above \$2 million require recommendation by the senior program official or designee, concurrence by the designee of the senior procurement official, Headquarters, and approval by the Senior Procurement Official, Headquarters.

(iii) The approved determination shall accompany the PRDA file through the preparation, concurrence, approval, and issuance phases.

(6) *Approval of content.* (i) A PRDA may be originated at whatever level is consistent with the program objectives established by the senior program official.

(ii) The PRDA content may be approved by the senior program official or designee after prior concurrence by Counsel and the senior procurement official, Headquarters designee.

(iii) All PRDAs will be issued by the cognizant head of the procuring activity or designee.

(7) *Each PRDA shall include the following information:*

(i) A summary of the area(s) of program interest, expanded as appropriate, to include problems and objectives;

(ii) A time schedule for submission of, and action on, proposals;

(iii) Evaluation criteria;

(v) Program policy factors;

(vi) Any other information, terms and conditions which shall apply to the particular PRDA;

(vii) Place for, and manner of, submission;

(viii) A unique number for identification purposes;

(ix) A statement notifying potential proposers that an announcement does not commit DOE to pay any proposal preparation costs and that DOE reserves the right to select for award or support any, all, or none of the proposals received in response to an announcement;

(x) An indication that late proposals, modifications of proposals, and withdrawals of proposals shall be handled in accordance with 41 CFR 1-3.802-1;

(xi) A statement that proposers have the right to request in advance of or within 30 days after the effective date of the agreement a waiver of all or any part of the rights of the United States in subject inventions; and

(xii) Notification that information contained in proposals offered in response to PRDAs shall be handled in accordance with the policies and procedures set forth in 41 CFR 9-3.150.

(8) *Information to be provided in proposals.* (i) All proposals should be specific, concise, and, as a minimum, include, the information set forth below:

(A) Name and address of the entity(ies) submitting the proposal;

(B) Date of proposal submission;

(C) Identification of the announcement (by number and title) to which the proposal responds;

(D) Type of entity(ies) submitting the proposal, whether public (including state and local governments), and/or private (including individuals, profit and nonprofit organizations and educational institutions);

(E) Concise title and abstract of the proposed project or effort;

(F) An outline and discussion of the proposed effort which shall, specifically address and reference the evaluation criteria and include to the extent possible:

(1) Objectives of the proposed effort;

(2) Detailed plan of approach (procedures, concepts, limitations, timetables of key milestones, and expected accomplishments or research results);

(3) Internal management controls applicable to conduct of the work;

(4) Scope and methods of management support;

(5) Details concerning previous or ongoing work performed in the category(ies) of research proposed, or in related fields;

(6) Form and amount of funding, or other contribution, if any, to be provided by the proposer;

(7) Location where the work will be performed;

(8) Cost schedule detailing estimated costs for manpower and other resources (GSA Optional Form 60, or equivalent);

(9) Projected date of completion of the proposed effort.

(G) Resumes of key personnel to be involved which includes a description of relevant experience and associated dates;

(H) A current financial statement;

(I) Period for which the proposal is valid (if other than that stipulated in the announcement);

(J) Names and telephone numbers of proposer's primary business and technical personnel whom DOE may contact during evaluation; and

(K) Signature and title of an official of the proposing organization(s) authorized to obligate such organization.

(ii) Each proposal containing technical data or other data including trade secrets and/or privileged or confidential commercial or financial information which the proposer intends to be used by DOE for evaluation purposes only, should be marked on the cover sheet with the notice prescribed in 41 CFR 9-3.150-2.(a).

(iii) If the proposer is a small business concern it shall so certify in its proposal. Other representations, certifications and acknowledgements which may be required by law or regulation shall also be submitted as specified in the announcement.

(9) *Method and criteria for evaluation and selection—(i) Evaluation criteria.*

The evaluation criteria shall be specified in the announcement along with a narrative description of their relative importance. The following items are illustrative of the elements which may be considered as evaluation criteria:

(A) Overall technical feasibility of the proposed concept;

(B) Adequacy and relevance of the proposed research plan, including validity tests as related to the proposed goals;

(C) Availability, qualifications, and past performance of proposed staff and consultants;

(D) Resources, experience, flexibility, and commitment of the proposing organization;

(E) Adequacy of proposed project management plan;

(F) Adequacy of proposed financial management plan; and

(G) Estimated cost.

(ii) Program policy factors. These are factors which, while not indicators of a proposal's merit (e.g., technical excellence, proposer's ability, cost), may be essential to the process of selecting the proposals which, taken together, will

achieve the program objectives. Such factors, where they exist, are likely to be beyond the proposer's control. Accordingly, they shall be predetermined and specified in the PRDA announcement to notify proposers of their existence.

The following are examples:

(A) It is desirable, because of the nature of the energy source, the projects envisioned, or limitations of past efforts, to select or award or support a group of projects with a broad or specific geographic distribution;

(B) It is desirable to select for award or support a group of projects which represent a diversity of methods, approaches, or kinds of work;

(C) It is desirable for reasons which must be stated to select for award or support projects from diverse types and sizes or proposing organizations; or

(D) It is desirable due to the nature of certain projects or proposing organizations to select for award or support duplicative or complementary efforts.

(iii) *Selection panel.* A panel appointed by the cognizant program office will evaluate proposals submitted in response to a PRDA. The panel will be composed of program office and other DOE personnel, including representatives from procurement, counsel, and as deemed appropriate by the appointing official, supplemented by personnel from other Government agencies. The representative of counsel will be an ex-officio (nonvoting) member of the panel. Personnel from prime management or operating contractors may be used as advisors to the panel when their services are necessary and available. Care is to be taken in the selection of these personnel so as to avoid any actual or apparent conflicts of interests. Moreover, such advisors are expressly forbidden to use privileged information contained in proposals for personal gain or other improper purposes.

(iv) *Selection official.* The selection official shall be the senior program official unless such authority is delegated in writing on a case-by-case basis. A copy of each such delegation shall be sent concurrently to the senior procurement official, Headquarters.

(v) *Preliminary review.* Prior to making a comprehensive evaluation of a proposal, the receiving office shall determine that it:

(A) Contains sufficient technical, cost, and other information to enable comprehensive evaluation; and

(B) Has been signed by a responsible official of the proposing organization or

a person authorized to obligate such organization.

If the proposal does not meet these requirements, a comprehensive evaluation shall not be made. In such case a prompt reply shall be sent to the proposer, indicating the reason(s) for its not being selected for award or support under the PRDA.

(vi) *Comprehensive evaluation.* The basic task in the evaluation and selection of proposals for award or support is to assess their relative merit in order to determine which of them offer the greatest likelihood for achievement of the program objectives stated in the announcement, considering technical quality, ability of the proposer, estimated cost, and other relevant factors. Proposals which survive preliminary review shall be evaluated under a two-step process. In the first step, the panel will evaluate the proposals in accordance with the criteria stated in the announcement and rank in order of excellence. In the second step, the selection official will take into account the relevant program policy factors in order to determine the mix of proposed projects which will best further specific program goals.

(10) *Award or support.* While only those proposals which best further the needs of the program as specified in the announcement will be considered for award or support, DOE may accept for award or support, all, none, or any number or part of the proposals submitted.

§ 600.234 Response to unsolicited proposals.

DOE may award Cooperative Agreements on an unsolicited basis as a result of:

(a) *Unsolicited Proposals* in accordance with the criteria established in 600.34; "Unsolicited applications and proposals for financial assistance awards."

(b) Proposals received in response to:
(1) A *DOE Notice of Program Interest* in accordance with the criteria established in 600.36; "Notice of Program Interest."

(2) *Public Notice of Availability of Assistance Awards* in accordance with the criteria established in 600.37; "Public Notice of availability of assistance awards."

§ 600.250 Statutory requirements for Cooperative Agreements.

Program statutes and DOE Authorization and Appropriation Acts may contain specific requirements applicable to certain types of Cooperative Agreements [e.g., sections 5

and 8 of the Federal Non-nuclear Energy Research and Development Act of 1974, Pub. L. No. 93-577, 88 Stat. 1878 (1974) and Section 105 of the Geothermal Energy Research, Development, and Demonstration Act of 1974, Pub. L. No. 93-410, 88 Stat. 1079 (1974)]. All statutory requirements and restrictions shall be stated in all solicitations, PON's, PRDA's Notices of Program Interest and Public Notices of Availability of Assistance Awards and made a part of any Cooperative Agreements entered into by DOE.

§ 600.251 Eligible recipients for DOE Cooperative Agreements.

(a) DOE may enter into a Cooperative Agreement with:

- (1) State or local governments or elements thereof;
- (2) Institutions of higher education, hospitals and other nonprofit organizations;
- (3) Profit making organizations;
- (4) Individuals;
- (5) A combination of (1) through (4) above;

(b) For any of the above to be considered eligible and qualify for a Cooperative Agreement Award on a competitive basis in response to a Solicitation, PON, or PRDA, or the funding of an unsolicited proposal in accordance with 600.34, 600.36, and 600.37, proposer's must:

- (1) Insure that the proposed project is consistent with the policies and goals of the submitting organization;
- (2) Have adequate financial resources for performance, or the ability to obtain them as required;
- (3) Have available, can make available, or can obtain the necessary plant or facilities, equipment, services, personnel, etc. as necessary and/or required for the conduct of the project;
- (4) Be able to document that the organization has legal authority to enter into a Cooperative Agreement and the requisite policies, procedures, and personnel to insure proper stewardship of Federal funds utilized on the project.
- (5) Demonstrate that the budgeted costs estimated for the project are reasonable, allowable and consistent with Federal cost principles, policies of the submitting organization and all applicable Federal, State and local government requirements if any; and
- (6) Conform in all other respects to applicable Federal Statutes and program enabling legislation.

§ 600.252 Approval and Execution of Cooperative Agreement Instruments.

The individuals authorized to approve and execute Cooperative Agreement

instruments will be delegated by the Secretary.

§ 600.270 Cooperative Agreement Structure.

The Cooperative Agreement is structured in a manner which: (i) describes the business arrangement based upon the respective interest and investment of the parties; (ii) defines and allocates respective responsibilities, obligations, rights and accountability as appropriate to the particular project. The Cooperative Agreement sets forth the respective rights and obligations of the parties in such areas as project performance and management, partial or total termination of the work, changes in the scope of work, period of performance, application of funding and resources, title to property, insurance, liability, etc. Each Cooperative Agreement shall be clear and concise and shall include only those provisions necessary to implement terms agreed upon between the parties.

§ 600.271 Administrative Requirements for Cooperative Agreements.

(a) The basic administrative requirements applicable to individual cooperative agreements will be determined by class of participant of the Cooperative Agreement Award.

(1) For participants covered by OMB Circular A-102, Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments, or OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations, the administrative requirements specified in these circulars will apply. These classes of participants will also be subject to the requirements of §§ 600.77 and 600.78 to the extent the contemplated project falls within the scope of OMB Circulars A-95 (Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects) and A-111 (Joint Funded Assistance to State and Local Governments and Nonprofit Organizations).

(2) For classes of participants not covered by OMB Circular A-102 or A-110 [e.g., international organizations such as agencies of the United Nations; Government-owned contractor operated facilities or research centers providing continued support for mission oriented large scale programs that are government owned or controlled, or are designed as federally funded research and development centers; profit making organizations and individuals] § 600.290 will be followed in negotiating the

provisions of the Cooperative Agreement.

(b) The administrative requirements will always reflect the cooperative effort of the joint endeavor and the respective interests, investments, rights, etc., of the participants to the agreement.

Outline of a Cooperative Agreement

§ 600.280 Scope of Section.

This section contains an outline of a Cooperative Agreement.

§ 600.281 Contents.

The Cooperative Agreement should include at a minimum the following: A Face Page, a Schedule and General Provisions and Special Provisions.

§ 600.282 Face page.

The Face Page shall:

(a) Identify the Agreement by entering thereon a document number which will be compatible with the DOE Integrated Procurement Management Information System;

(b) Cite the appropriate statutory authority for the award;

(c) Provide the name and address of the participant in the Cooperative Agreement award; the names, titles, office address, and telephone numbers for the respective DOE and participant project managers should also be included;

(d) Identify the project by title, and provide a brief summary of the purpose and objectives of the project;

(e) Stipulate the funding sources, including Accounting and Appropriation Data and the amount of funds to be provided pursuant to the Agreement by DOE and the participant; the estimated cost ceiling for the project, and include, where appropriate, the funding amounts to be obligated by work phase or time period, indicating, where applicable, the percentage of funds to be provided at each phase by each of the participants in the Agreement. Identify specifically the amount obligated by this action.

(f) Identify the type of participant, i.e., State or local governments, institutions of higher learning, hospitals, other non-profit organizations, profit making organizations, individuals, or any combination of the above types of participants;

(g) Specify the effective date of the Agreement and the agreed completion date;

(h) Identify the DOE procurement office which has been assigned responsibility for execution and administration of the Agreement; and

(i) Provide for signatures of the DOE officer awarding the Cooperative

Agreement and the Office accepting the award on behalf of the participant.

§ 600.283 Schedule.

(a) The schedule of a Cooperative Agreement will clearly reflect the cooperative relationship intended and the respective interest and investment of the parties, including their respective rights, obligations and accountabilities. The Articles to the Cooperative Agreement Schedule will be negotiated and will, as a minimum, include:

(1) *Statement of joint objective.*— Identifies the purpose and objectives of the agreement as well as the benefits to be derived from the contemplated relationship which is to be established pursuant to the arrangement.

The statement must be in sufficient detail to demonstrate:

(i) The Agreement is in fact a mutual undertaking;

(ii) The basis for the endeavor is founded on support or stimulation of a public purpose authorized by Federal Statute;

(iii) The activity to be undertaken is in furtherance of the DOE mission; and,

(iv) The mutual benefits to be derived from performance of the project.

(2) *The Project Management Plan.* (i) Identifies the respective roles, responsibilities, obligations and accountability which each participant to the Agreement will assume in their respective efforts to achieve the stated joint objective(s). In this regard, the Government's role may range from providing project direction to merely project monitoring, dependent on the degree of government/industry investment, risk, involvement, commercialization potentials, etc.

(ii) Includes an explicit statement of the nature, character, and extent of anticipated DOE involvement. These statements must be developed with care to avoid unnecessarily increasing DOE liability under the cooperative agreement.

(iii) States how project program and performance will be measured to evaluate the meeting and/or achievement of specific milestones or agreed objectives;

(iv) Details the resources, such as services, facilities, equipment, materials, supplies, personnel, etc., that each participant will provide and when they will be provided.

Dependent upon the complexities of the project, the management plan may be a simple narrative included in the Schedule of the Cooperative Agreement, or it may be a detailed management plan that may be incorporated as an appendix to the Agreement and if so, should be referenced in the schedule.

(3) *Financial support.* (i) Financial support for the project will be detailed to specify the DOE and the participant's pro-rated share contribution to the project. Such financial support will identify the dollar costs assigned to each participant, acceptable, in-kind contributions (other than funds), and will specify when these contributions will be committed/delivered to support the proposed project.

(ii) The details of the planned financial support of the project must be as clearly defined as possible with regard to financial support ceilings, minimum contributions, percentage ratios, whether funds are to be committed or obligated at award or will be incrementally obligated at specified time/performance intervals. Details concerning alternative approaches and responsibilities as agreed to by the parties will be shown in the event of overruns or underruns of the project's budget, or in the event that changes in the scope of work, or changes in the period of performance occur, which may increase or decrease the project's estimated cost. This article will also provide for steps to be taken with respect to each participant's financial obligations in the event of termination of the Agreement.

(iii) Whenever revenue is derived as a result of the agreement, DOE should seek, whenever feasible, to recoup all DOE funds contributed to the cooperative agreement.

(iv) The guidelines governing allowability of costs shall be included in the project funding document. The Federal cost principles as stated in the regulations listed below will be used as guidelines to determine allowability of costs in performance of the project:

(A) FMC 74-4 (OMB Circular A-87) for State and local government participant.

(B) OMB Circular A-21 for Institutions of Higher Education participant.

(C) 41 CFR 1-15.2 as modified by 41 CFR 9-15 for participants that are profit making or non-profit organizations and individuals.

(D) 41 CFR 1-15.4 for participants performing under construction and architect/engineer cooperative agreements.

(4) *Method of payment.* The method of providing financial support pursuant to a Cooperative Agreement will be established in order to optimally meet the needs of the contemplated project. Financial support of the project will be so arranged that each participant to the Agreement will provide its prorata share in a timely manner so as not to cause undue hardship to the other

participant(s) and to avoid placing project performance in jeopardy. Federal funds obligated under Cooperative Agreement awards may be disbursed under a Letter of Credit or by U.S. Treasury check. Payments may be made as reimbursement for work performed and invoiced or as advance payments or as a combination thereof. The agreement shall require such adequate security for funds advanced as may be considered appropriate for the protection of the Government under the circumstances of each case, but in any event, the financial management system of the participant organization shall provide for effective control over and accountability for all Federal funds in accordance with governing regulations of the Treasury Department. See 31 CFR Part 205 (also appearing as Department of the Treasury Circular No. 1075, 4th Revision, 42 FR 62927, 12/14/77).

(5) *Term of the agreement.* Establishes the effective date of the Agreement and the date of the Agreement will end. Where appropriate, provisions with resultant conditions and/or restrictions which might occur and which may be used to extend or otherwise change the completion date of the Agreement, may be included pursuant to this article.

(6) *Project Information System.* Specifies the pertinent technical data requirements and administrative information and/or reports to be generated in performance of the project, the manner and times in which this information will be submitted by each participant to the Agreement, the reciprocal responsibilities of the participants in acting upon information generated, and the mutual support to be provided to the respective participant's management information systems. Appropriate standards for acceptability of reports to be generated and submitted will be established.

§ 600.290 General and special provisions.

(a) This section provides guidance on provisions for use in Cooperative Agreements with Participants other than those covered under OMB Circulars A-102 and A-110. Section 600.271(a)(1) contains the administrative requirements applicable to Participants covered by OMB Circulars A-102 and A-110.

(b) *The General and Special Provisions.*

(1) For Federal procurement, the basic need to require goods and services at fair value for the Government's sake has led to a set of highly developed procedures. The operational rules for guiding DOE procurement transactions

are contained in the Federal Procurement Regulations (FPRs/ 41 CFR Chapter 1) and the Energy Research and Development Administration Procurement Regulations (ERDA-PR/41 C.F.R. Chapter 9) for programs transferred from the Energy Research and Development Administration. These regulations contain a panoply of standard, optional, and special provisions which spell out rights and obligations of the parties in detail. Although the Federal Procurement Regulations and Energy Research and Development Administration Procurement Regulations are not applicable per se to Cooperative Agreements, some of the provisions contained in these regulations provide a good reference point for negotiating cooperative agreement provisions for all DOE programs. Use of these reference points should insure that the arrangement is considered in the light of the questions and issues handled in the provisions since litigation of many of the provisions has led to established legal precedent in the procurement field. Hopefully, by avoiding many of the problems that have arisen in the procurement field, the parties will be able to negotiate an agreement that reflects the true nature of the Cooperative Agreement.

(2) Some of the provisions in the FPR's and ERDA-PR's which express basic federal policies are equally applicable to procurement contracts and Cooperative Agreements. These provisions are contained in paragraph (c) of this section. Also included in paragraph (c) of this section are those patent and data provisions most likely to arise in cooperative agreements. These provisions as well as all other patent and data provisions for cooperative agreements shall be governed by the policy and procedures set forth in part 9-9 of the ERDA-PR. Many other provisions in the FPR's and ERDA-PR's are normally suitable for Cooperative Agreements and should be utilized unless the relationship being negotiated calls for a different type of arrangement. These provisions are specified in paragraph (d) of this section. Finally, many of the provisions in the FPR's and ERDA-PR's might be appropriate and as a minimum should be considered by DOE and the Participant to insure the issues raised by the provisions have been considered in negotiating the Cooperative Agreements. These provisions are found in paragraph (e) of this section. In paragraph (c), (d) and (e) the comparable Department of Energy Procurement Regulations (DOE-PRs) provisions when promulgated in final

form (See proposed regulations in 43 Fed. Reg. 15853, April 14, 1978) are to be used in lieu of the ERDA-PR provisions.

(3) When used, the procurement provisions in paragraphs (d) and (e) of this section must be modified to reflect the intent of the parties to the Cooperative Agreement. For example, the Government's rights of termination and change under paragraphs (d)(2) and (e)(21) of this section are clearly appropriate where the Government bears all the costs but when there is a joint undertaking on a cooperative basis, the Participant who has a direct financial interest should have some voice regarding the expenditure of project funds and decisions regarding termination (recognizing DOE may need to retain final decision authority in these areas). Similarly, the Government property provision in paragraph (d)(4) of this section will usually need to be modified to recognize property rights where title is not vested in the Government. The negotiation of the cooperative agreement property provisions should reflect the advantages and disadvantages to the Participant in the areas of taxation, depreciation, property ownership and disposal of the property at the termination of the Cooperative Agreement. In the area of liability and indemnifications, provisions in the Cooperative Agreement should reflect the hazards, and risks, and respective responsibilities of the Government and the Participant, especially in regard to liability to third parties. In summary, negotiation of the cooperative agreement provisions should reflect that the Government's role is not of a purchaser in traditional procurement relationships, but rather that of a joint participant with substantial involvement.

(4) Paragraph (c) of this section constitutes the General Provisions of a Cooperative Agreement. Paragraphs (d) and (e) of this section are the Special Provisions along with any other provisions negotiated between the parties. In paragraphs (c), (d) and (e) of this section, the provisions will be utilized under the conditions set forth in the FPR or ERDA-PR. For example, the patent rights clause of § 9-9.107-5(a) or, if a waiver is granted, a patent rights clause in accordance with 9-9.109-6 of the ERDA-PR, is required in all agreements having as a purpose of the conduct of research, development or demonstration. As another example, if for particular provisions there is a \$100,000 threshold for applicability, the provisions should not be used below that threshold. (NOTE: Any applicable threshold means cost of the total project,

not just the Government's contribution). The provisions must always be revised to change "contract" to "cooperative agreement" or "agreement", and "contractor" to "participant." The use of the term "subcontractor" in any of the provisions means contractor to the Participant and all tiers of subcontractor thereunder. The citations in paragraphs (c), (d) and (e) of this section are all to 41 C.F.R. unless indicated otherwise.

(c) *Standard provisions which are mandatory as to text.* These clauses are mandatory for use in accordance with paragraph (b)(40) of this section in all cooperative agreements and any deviations, exceptions, or waivers cannot be made unless approved in accordance with § 600.9 except for non-substantive changes reflecting that a cooperative agreement rather than a procurement contract is being entered into.

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| (1) Definitions..... | 9-7.102-1 |
| (2) Inspection..... | 1-7.402-5(c) |
| (3) Assignment of Claims..... | 9-30.703 |
| (4) Examination of Records by Comptroller General..... | 9-7.103-3 |
| (5) Convict Labor..... | 1-7.402-14 |
| (6) Officials Not to Benefit..... | 1-7.102-17 |
| (7) Covenant against Contingent Fees..... | 1-1.503 |
| (8) Notice and Assistance Regarding Patent and Copyright Infringement..... | 9-9.104 |
| (9) Competition in Subcontracting..... | 1-7.202-30 |
| (10) Audit and Records..... | 1-7.402-30 |
| (11) Clean Air and Water..... | 1-1.2302-2 |
| (12) Preference for U.S. Flag Air Carriers..... | 1-1.323-2 |
| (13) Use of U.S. Flag Commercial Vessels..... | 1-19.108-2 |
| (14) Flood Insurance..... | Exhibit #1 |
| (15) Permits and Licenses..... | 9-7.104-51 |
| (16) Reporting of Royalties..... | 9-9.110 |
| (17) Order of Precedence..... | 9-7.102-50 |
| (18) Authorization and Consent..... | 9-9.102-2 |
| (19) Nondiscrimination in Federally Assisted Programs..... | DOE-AR 600.39 |
| (20) Patent Rights..... | 9-7.402-53 |
| (21) Additional Technical Data Requirements..... | 9-7.402-54 |
| (22) Rights in Technical Data, Long-Form..... | 9-7.402-55 |
| (23) Patent Indemnity..... | 9-7.403-70 |
| (24) Contract Work Hours and Safety Standards Act..... | 1-7.402-16 |

(d) *Standard provisions with waiver, modification, and deviation allowed by justification in the cooperative agreement file.* These clauses may be waived, modified or deviated from in whole or in part by written justification being placed in the file by the Contracting Officer. The justification will contain the specific reasons the provision is not appropriate and why the provision must be waived or modified due to the circumstances of the Cooperative Agreement being negotiated.

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| (1) Subcontracts..... | 9-7.103-28 |
| (2) Termination for Convenience of the Government..... | 9-7.402-10 |
| (3) Disputes..... | 1-7.102-12 |
| (4) Government Property..... | 1-7.402-25 |
| (5) Reports of Work..... | 1-7.304-9 |
| (6) Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals..... | Exhibit #2 |

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| (7) Subcontracting Plan for Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals..... | Exhibit #2 9-7.402-59 |
| (8) Stop Work Order..... | 1-1.805-3(a) |
| (9) Utilization of Labor Surplus Concerns..... | 1-1.805-3(b) |
| (10) Labor Surplus Area Subcontracting Program..... | 1-1.327-5 |
| (11) Privacy Act..... | 1-7.402-2 |
| (12) Limitation of Cost or Funds..... | 9-7.402-3 |
| (13) Allowable Cost and Payment..... | 1-7.302-3 |
| (14) Standards of Work..... | 1-6.104-5 |
| (15) Buy American Act..... | 1-3.814-1(a) |
| (16) Price Reduction for Defective Cost or Pricing Data..... | 1-3.814-3 |
| (17) Subcontractor Cost or Pricing Data..... | 1-7.402-15 |
| (18) Walsh-Healy Public Contracts Act..... | |

(e) *Optional Provisions.* These provisions constitute optional provisions for use in DOE Cooperative Agreements. They may be modified in any manner and no deviations procedure is required. However, negotiators should insure that the principals inherent in these clauses are included in any agreement to the extent necessary to protect the Government's interest.

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| (1) Payment or Overtime Premiums..... | 1-7.402-28 |
| (2) Disabled Veterans and Veterans of the Vietnam Era..... | 1-12.1102-2 |
| (3) Clauses for Cost Reimbursement Type Research and Development Contracts Involving Construction..... | 1-7.403-1 |
| (4) Excusable Delays..... | 1-8.708 |
| (5) Negotiated Overhead Rates..... | 9-7.203-9 |
| (6) Notice to the Government of Labor Disputes..... | 1-7.203-3 |
| (7) Make or Buy Program..... | 1-3.902-3 |
| (8) Advance Payments..... | 1-7.403-20 |
| (9) Workmen's Compensation Insurance..... | 1-10.402 |
| (10) Required Source for Jewel Bearings..... | 1-1.319 |
| (11) General Services Administration Supply Sources..... | 1-7.403-23 |
| (12) Use of Interagency Motor Pool Vehicles and Related Services..... | 1-7.403-24 |
| (13) Interest..... | 1-7.203-15 |
| (14) United States Products and Services..... | 1-7.403-36 |
| (15) Care of Laboratory Animals..... | 1-7.303-44 |
| (16) Cost Accounting Standards..... | 1-7.403-50 |
| (17) Alterations in Contract..... | 1-7.204-1 |
| (18) Approval of Contract..... | 1-7.204-2 |
| (19) Date of Incurrence of Cost..... | 1-7.204-3 |
| (20) Notice Regarding Late Delivery..... | 1-7.204-4 |
| (21) Changes..... | 1-7.204-5 |
| (22) Key Personnel..... | 1-7.304-6 |
| (23) Disposition of Material..... | 1-7.304-8 |
| (24) Insurance—Liability to Third Parties..... | 9-7.204-5 |
| (25) Printing..... | 9-7.302-57 |
| (26) Federal Reports Act..... | 9-7.302-58 |
| (27) Foreign Travel..... | 9-7.402-60 |
| (28) Security..... | 9-7.403-71 |
| (29) Organizational Conflicts of Interest..... | 9-1.5408 (See 44 Fed. Reg., 2557 Jan. 11, 1979) |
| (30) Safety and Health..... | 9-7.403-73 |
| (31) Priorities, Allocations and Allotments..... | 9-7.104-50 |
| (32) Soviet-Bloc Controls..... | 9-7.304-52 |
| (33) Avoidance of Conflicts of Interest..... | 9-7.304-53 |
| (34) Nuclear Hazards Indemnity..... | 9-7.304-54 |

Exhibit #1—to § 600.290(c)(14)

Flood Insurance

Participant will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of

flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards and provisions prescribed by the Federal Insurance Administration in 24 CFR Chapter X, Subchapter B., will be complied with.

Exhibit #2—To 600.290(d)(6) and (7)

Public Law 95-507, Amendments to the Small Business Act and Small Business Investment Act of 1958¹

A. *"Best Efforts" Clause.* The "Best Efforts" clause (attachment A) sets forth the Department's policy that small business concerns (small) and small business concerns owned and controlled by socially and economically disadvantaged individuals (small disadvantaged) shall have the maximum practicable opportunity to participate in the performance of DOE's contracts. It shall be included in all contracts over \$10,000 except: (1) contracts for services which are personal in nature, and (2) contracts which will be performed entirely (including all subcontracts) outside of any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

B. *Solicitation and Contract Clauses.* The solicitation and contract clauses are intended to inform potential contractors of the requirement for a small and small disadvantaged business concerns subcontracting plan. The plan is required in contracts and subcontracting which: (1) offer subcontracting opportunities; (2) are expected to exceed \$500,000 or, in the case of construction of a public facility, \$1,000,000; and (3) are required to include the "Best Efforts" Clause.

These clauses may be modified for use in solicitations and contracts under the prescribed amounts when deemed appropriate by the Contracting Officer.

No contract or any modification to any contract shall be awarded any offeror unless the Contracting Officer determines that the subcontracting plan submitted by that offeror provides the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of the contract. Small businesses are exempted from

¹ Note.—The material in this exhibit is based upon material contained in DOE Procurement Letter 79-5 dated February 2, 1979.

this requirement at both the prime and subcontractor level.

Attachment B contains the solicitation clause for use in negotiated procurements (including those placed on a sole source basis). It requires submission of a subcontracting plan within 10 working days of notification that the offeror is the apparent successful offeror. Contracting Officers may alter this clause to:

(1) Provide for a longer or shorter period of time for the submission of the plan in cases where the amount of subcontracting justifies such change. The period of time allowed shall not exceed 30 days unless approved at a level higher than the Contracting Officer.

(2) Provide for submission of the plan with the proposal in the case of noncompetitive procurements.

If within the time limit prescribed, the apparent successful offeror fails to submit the plan or if he later fails to negotiate an acceptable plan, he shall be deemed ineligible for award.

The Contracting Officer shall, to the extent possible, set forth in the solicitation standards and criteria for subcontracting to both small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

Attachment C contains the solicitation clause for use in formally advertised procurements. It requires submission of a subcontracting plan within 10 working days of notification that the bidder has been selected for award. If the plan submitted is not acceptable to the Contracting Officer, the bidder is required to submit a satisfactory plan within ten working days or such other time as determined by the Contracting Officer.

Contracting Officers may alter this clause to provide for longer or shorter periods of time for the submission of the plan where the amount of subcontracting justifies such change. The period of time allowed shall not exceed 30 days unless approved at a level higher than the Contracting Officer.

If within the time limit prescribed for initial submission of the plan, the bidder fails to submit the plan, he shall be deemed ineligible for award. If within the time limit prescribed, the bidder fails to resubmit a satisfactory plan, he shall be deemed ineligible for award.

The Contracting Officer may, in a letter accompanying the invitation for bids, informally advise bidders of the goals the Department contemplates for subcontracting to both small and small

disadvantaged firms. The letter should also state that these goals are informational only and not legally binding.

Attachment D sets forth the contract clause to be used in connection with the subcontracting plans for small and small disadvantaged businesses.

C. Representations and Certifications. All solicitations and contracts, over \$10,000, shall include the representations contained in attachment E. These representations are intended to identify small and small disadvantaged business concerns.

The representations in Attachment F shall be used in all procurements exceeding \$1,000,000 if for construction of a public facility or \$500,000 if for other than construction of a public facility. These representations are intended to assist the Contracting Officer in determining the need for submittal of a small and small disadvantaged business concerns subcontracting plan.

Attachment A—"Best Efforts" Clause

Utilization of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

(a) It is the policy of the United States and the Department of Energy that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by the Department.

(b) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the Department of Energy as may be necessary to determine the extent of the contractor's compliance with this clause.

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act (15 U.S.C. 632) and relevant regulations promulgated pursuant thereto, including § 1-1.701 of the Federal Procurement Regulations. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern:

(1) Which is at least 51 per centum owned by one or more socially and economically disadvantaged

individuals; or in the case of any publicly-owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(2) Whose management and daily business operations are controlled by one or more of such individuals.

The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans and other specified minorities, or any other individual found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

Attachment B—Subcontracting Plan for use in Solicitations for Negotiated Procurements

Subcontracting Plan for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

(a) This requirement is applicable to procurements expected to result in the award of contracts exceeding \$1,000,000, for construction, or \$500,000 for all other contracts which offer subcontracting opportunities and are required to contain the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals."

Offerors who are notified that they are the apparent successful offeror shall, within 10 working days of such notice, furnish a subcontracting plan providing for the maximum practicable utilization of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. Such plan shall be included in and made part of any resulting contract. Submission of this plan will not be required of concerns which are themselves small businesses.

Should the offeror fail to submit such a plan within this time period or should subsequent negotiation fail to result in a plan that is acceptable, the offeror shall become ineligible for award. The determination of acceptability shall be based on whether the subcontracting

plan provides the maximum practicable opportunity for both small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of the contract. Each aspect of the plan will be judged independently of the other.

The offeror's prior compliance with other such subcontracting plans shall also be considered by DOE in evaluating the responsibility of the offeror.

(b) The subcontracting plan shall include:

(1) Percentage goals (expressed in terms of both percentage of value of prime contract award and total planned subcontracting) for the utilization as subcontractors of (i) small business concerns, and (ii) small business concerns owned and controlled by socially and economically disadvantaged individuals;

(2) The name of an individual within the employ of the offeror who will administer the subcontracting program of the offeror and a description of the duties of such individual;

(3) A description of the efforts the offeror will take to assure that small business concerns and small business concerns owned and controlled by the socially and economically disadvantaged individuals will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the offeror will include the "Utilization of Small and Disadvantaged Small Business Concerns" clause in all subcontracts which offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess \$1,000,000 in the case of a contract for the construction of any public facility, or in excess of \$500,000 in the case of all other contracts, to adopt a plan similar to the plan required hereunder;

(5) Assurances that the offeror will submit such periodic reports and cooperate in any studies or surveys as may be required by the Department of Energy or the Small Business Administration in order to determine the extent of compliance by the offeror with the subcontracting plan; and

(6) A recitation of the types of records the successful offeror will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in this plan, including the establishment of source lists of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; and efforts

to identify and award subcontracts to such small business concerns.

Attachment C—Subcontracting Plan for Use in Formally Advertised Solicitations

Subcontracting plan for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged Individuals.

(a) This requirement is applicable to procurements expected to result in the award of contracts exceeding \$1,000,000 for construction, or \$500,000 for all other contracts which offer subcontracting opportunities and are required to contain the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged individuals."

Bidders who are notified that they have been selected for award shall, within 10 working days of such notice, furnish a subcontracting plan providing for the maximum practicable utilization of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. Such plan shall be included in and made part of any resulting contract. Submission of this plan will not be required of concerns which are themselves small businesses.

Should the bidder fail to submit such a plan within this time period, he shall be deemed ineligible for award. If the Contracting Officer determines that the plan, as submitted, is not satisfactory, the bidder shall be requested to submit, within ten working days (or such other time as may be determined by the Contracting Officer), a plan that is satisfactory to the Contracting Officer. If such a plan is not so submitted, the bidder shall be considered nonresponsible and ineligible for award of the contract.

The bidder's prior compliance with other such subcontracting plans shall be considered by DOE in evaluating the responsibility of the bidder for award.

(b) The subcontracting plan shall include:

(1) Percentage goals (expressed in terms of both percentage of value of prime contract award and total planned subcontracting) for the utilization as subcontractors of (i) small business concerns, and (ii) small business concerns owned and controlled by socially and economically disadvantaged individuals;

(2) The name of an individual within the employ of the bidder who will administer the subcontracting program

of the bidder and a description of the duties of such individual;

(3) A description of the efforts the bidder will take to assure that small business concerns and small business concerns owned and controlled by the socially and economically disadvantaged individuals will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the bidder will include the "Utilization of Small and Disadvantaged Small Business Concerns" clause in all subcontracts which offer further subcontracting opportunities, and that the bidder will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$1,000,000 in the case of a contract for the construction of any public facility, or in excess of \$500,000 in the case of all other contracts, to adopt a plan similar to the plan required hereunder;

(5) Assurances that the bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the Department of Energy or the Small Business Administration in order to determine the extent of compliance by the bidder with the subcontracting plan; and

(6) A recitation of the types of records the bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in this plan, including the establishment of source lists of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; and efforts to identify and award subcontracts to such small business concerns.

Attachment D—Contract Clause

Subcontracting plan for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

(a) The contractor agrees to comply in good faith with the small and small disadvantaged business concerns subcontracting plan approved by the Contracting Officer which is hereby incorporated in and made a part of this contract. In this connection, the contractor shall:

(1) Use his best effort to attain such percentage goals as may be set forth in the plan.

(2) Designate an individual who will: (i) maintain liaison with the Government on matters relating to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged

individuals; (ii) supervise compliance with the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals"; and (iii) administer the contractor's plan.

(3) Provide adequate and timely consideration of the potentialities of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals in all "make-or-buy" decisions.

(4) Assure that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of such concerns. Where the Contractor's lists of potential subcontracting which are small business and small business concerns owned and controlled by socially and economically disadvantaged individuals are excessively long, reasonable effort shall be made to give all such concerns an opportunity to compete over a period of time.

(5) Maintain records showing: (i) whether each prospective subcontractor is a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals; (ii) procedures which have been adopted to comply with the plan and the policies set forth in this clause; and (iii) with respect to the letting of any subcontract (including purchase orders) exceeding \$10,000, information substantially as follows:

(A) Whether the award went to large business, small business, or small business owned and controlled by socially and economically disadvantaged individuals.

(B) Whether small business concerns or small business concerns owned and controlled by socially and economically disadvantaged individuals were solicited.

(C) The reason for nonsolicitation of small business concerns or small business concerns owned and controlled by socially and economically disadvantaged individuals if such was the case.

(D) The reason for failure of small business concerns or small business concerns owned and controlled by socially and economically disadvantaged individuals to receive the

award if such was the case when such firms were solicited.

The records maintained in accordance with (5)(iii) above may be in such form as the contractor may determine, and the information shall be summarized quarterly and submitted by the purchasing department of each individual plant or division to the contractor's cognizant liaison officer for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. Such quarterly summaries will be considered to be management records only and need not be submitted routinely to the Government; however, records maintained pursuant to this clause will be kept available for review by the Government until the expiration of one year after the expiration of this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulation.

(6) Notify the Contracting Officer before soliciting bids or quotations on any subcontract (including purchase orders) in excess of \$10,000 if (i) no small business concern or small business concern owned and controlled by socially and economically disadvantaged individuals is to be solicited, and (ii) the Contracting Officer's consent to the subcontract (or ratification) is required by a "Subcontracts" clause in this contract. Such notice will state the contractor's reasons for non-solicitation of small business concerns or small business concerns owned and controlled by socially and economically disadvantaged individuals and will be given as early in the procurement cycle as possible so that the Contracting Officer may give Small Business Administration (SBA) timely notice to permit SBA a reasonable period to suggest potentially qualified small business concerns or small business concerns owned and controlled by socially and economically disadvantaged individuals through the Contracting Officer. In no case will the procurement action be held up when to do so would, in the contractor's judgment, delay performance under the contract.

(7) Include the "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" clause in all subcontracts which offer further subcontracting opportunities.

(8) Cooperate in any studies or surveys of the Contractor's

subcontracting procedures and practices as may be required by the Department of Energy or the Small Business Administration.

(9) Submit quarterly reports of subcontracting to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals on such forms as may be specified elsewhere in this contract.

(b) The Contractor agrees that, in the event he fails to comply in good faith with his contractual obligations concerning the plan or the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" this contract may be terminated, in whole or in part, for default.

(c) The Contractor further agrees to insert in all subcontracts hereunder (except those with small business concerns) which contain the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" and which may exceed \$1,000,000 in the case of a subcontract for the construction of any public facility or in excess of \$500,000 in the case of all other subcontracts provisions which shall conform substantially to the language of this clause, including this paragraph (c), and to notify the Contracting Officer of the names of such subcontractors.

(d) The provisions of this clause shall not apply to small business concerns.

Attachment E—Small and Small Disadvantaged Business Certification

(A) The offeror () contractor () certifies that he is () is not () a small business concern as defined in accordance with Section 3 of the Small Business Act (15 U.S.C. 632).

(B) The offeror () contractor () certifies that he is a small business (as set forth in (A) above) and is () is not () owned and controlled by socially and economically disadvantaged individuals. Such a firm is defined as one—

(i) Which is at least 51 per centum owned by one or more such individuals or, in the case of publicly owned business, at least 51 per centum of the stock is owned by such individuals,

(ii) Whose management and daily business operations are controlled by one or more such individuals, and

(iii) Which certifies concerning said ownership and control in accordance with section (C) below.

(C) The offeror () contractor () certifies that he is () is not () a minority individual(s) in accordance with (C)(i) below or that he is () is not () socially and economically disadvantaged in accord with section (C)(ii) or (C)(iii). Socially and economically disadvantaged individuals are defined as:

(i) United States citizens who are Black Americans, Hispanic Americans, Native Americans, or other specified minorities;

(ii) Any other individual found to be disadvantaged pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637); or

(iii) Any other individual defined as socially, and economically disadvantaged, for purposes relating to other sections of the Small Business Act.

No solicitation may be properly considered without this certification and no award may be made without it being executed.

Attachment F—Certification Regarding Subcontracting and Plans

Subcontracting Representation

(A) The offeror () contractor () represents that the following conditions prevail which determine whether the firm shall be required to submit a subcontracting plan for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

(i) He is () a small business as defined in accordance with Section 3 of the Small Business Act (15 U.S.C. 632);

(ii) Subcontracting possibilities are not () offered with respect to this contract;

(iii) The contract, including all subcontracts thereunder, will be performed entirely outside of the United States, its territories and possessions, the District of Columbia and the Commonwealth of Puerto Rico and is therefore not covered ();

(iv) The contract, including all prior modifications and/or extensions of which this award is a part and all projected future actions, shall not () exceed \$1,000,000 (if solely for construction of a public facility) or \$500,000 otherwise; and

(v) The contract is for services which are personal in nature and is therefore not covered ().

(B) The offeror () contractor () represents that he is () is not () required to submit plans for subcontracting with small and small disadvantaged businesses because he

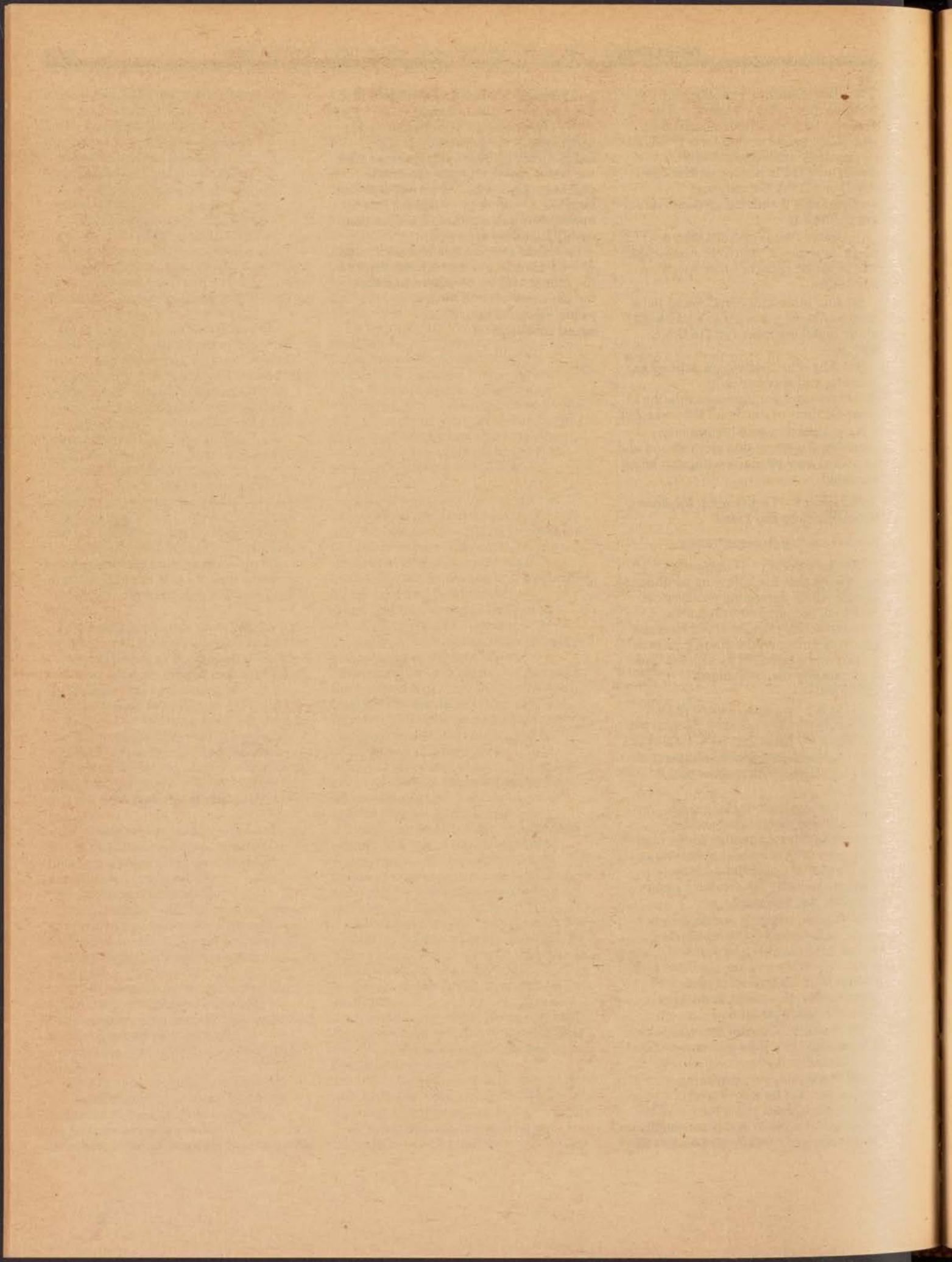
has properly executed one or more of the above representations.

(C) The offeror () contractor () certifies that he will submit () a Subcontracting Plan in accordance with the terms and conditions specified unless exempted by (A) above, and that he will () will not () require it of all appropriate subcontractors unless they certify that they are exempt.

Failure to execute this representation will be deemed a minor informality and the offeror will be permitted to correct the omission prior to award.

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Part V

Securities and Exchange Commission

Lost and Stolen Securities Program

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 240, 249]

Proposal of Amendments with Respect to the Lost and Stolen Securities Program

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments.

SUMMARY: This action proposes amendments to the Lost and Stolen Securities Program which would establish registration provisions under the section for all reporting institutions subject to Section 17(f)(1) of the Act, except for (a) brokers and dealers whose only business is conducted on a national securities exchange and who do not conduct a public business, and (b) brokers and dealers who limit their business to sales of variable contracts or limited partnerships, establish a unified, central data base of reported securities thefts and losses, incorporate the temporary pilot period exemptions from reporting and inquiry, establish an exemption from required inquiry for bearer securities received by a reporting institution directly from a customer to whom it had previously sold the securities, provide modified reporting and inquiry requirements, and incorporate two staff interpretations extending the exemption from required inquiry to securities received from a "certificate drop" and from a Federal Reserve Bank or Branch from a safekeeping account. In addition, this release includes proposed modifications to the Commission's reporting form, Form X-17F-1A.

DATE: Comments must be received on or before May 4, 1979.

ADDRESS: Persons wishing to submit written views, data, and comments should file three copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. All submissions should refer to File No. S7-811 and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Gregory C. Yadley, Branch Chief, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, telephone 202-376-8129.

SUPPLEMENTARY INFORMATION: With a view towards having the final, amended version of § 240.17f-1 in place by June 30, 1979, the end of the Lost and Stolen Securities Program's (the "Program") pilot period, the Commission herein

proposes various amendments and modifications to § 240.17f-1 and the Program based on the public comments received in response to the solicitation of views contained in Securities Exchange Act Release No. 15015.¹

Background

On August 5, 1977, the Commission published the final, amended version of § 240.17f-1², implementing Section 17(f)(1) of the Act, which mandated the establishment of a securities reporting and validation system. On January 2, 1978, the system for the processing of reports and inquiries became fully operational.³

In order to monitor the effectiveness of the section and the System designed to carry out the Program,⁴ the Commission determined that the Program should be instituted initially on a pilot basis, through December 31, 1978.

On July 31, 1978, the commission issued Release No. 34-15015, soliciting public comments concerning the operation of the Program and redesignation of SIC as the Commission's designee. Thereafter, in response to numerous requests for additional time in which to submit comments, the Commission extended the close of the comment period from September 8, 1978, to October 15, 1978.⁵

The Commission subsequently adopted a release⁶ which extended the expiration of the Program's pilot period from December 31, 1978, to June 30, 1979, redesignated SIC as its designee to maintain and operate the data base of

missing, lost, counterfeit or stolen securities for a two-year term ending December 31, 1980, and required certain institutions subject to § 240.17f-1 to register with SIC for the 1979 calendar year.⁷ After analyzing the approximately 120 comment letters submitted by members of the public in response to its solicitation release, the Commission has determined to issue for public comment certain proposed amendments to the section and other modifications to the Program, as discussed below.

Institutions Subject to § 240.17f-1

The financial institutions required to make reports and inquiries with respect to missing, lost, counterfeit or stolen securities pursuant to § 240.17f-1 include a cross-section of nearly 20,000 securities, banking and corporate entities.⁸ Preliminary review of the comments received in response to Release No. 15015 indicated that it may be appropriate to exempt from the operation of the section certain classes or subclasses of these institutions or to limit the applicability of the section with respect to such institutions. Similarly, it was felt that it may be appropriate to broaden the scope of the section to include additional classes of financial institutions or to impose greater requirements on certain classes or subclasses of institutions.

In response to the Commission's solicitation of public views, some commentators suggested increased participation in the Program through recommendations that all financial institutions which deal in securities be included in the section. In particular, it was suggested that savings and loan associations, Federal credit unions, the Federal Reserve Banks, insurance companies, paying agents for bonds, trustees for municipal issues, and domestic branches of foreign banks be made subject to the provisions of the section. Paying agents for bond interest and trustees for municipal issues, registered as transfer agents, are already covered by § 240.17f-1.

⁷ As of December 31, 1978, SIC has received a total of 370,909 reports representing \$1,730,808,150.00 in missing, lost, counterfeit or stolen securities and 1,1791,658 inquiries. Since January 1, 1978, a total of 445 inquiries resulted in "hits." The securities involved in these "hits" are valued at \$13,109,960.00.

⁸ Every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System, and bank whose deposits insured by the Federal Deposit Insurance Corporation * * * Securities Exchange Act of 1934 § 17(f)(1), 15 U.S.C. § 78q(f)(1) (supp. 1978).

¹ 43 FR 34790 (August 7, 1978), hereinafter cited as "Release No. 34-15015."

² Securities Exchange Act Release No. 13832, 42 FR 41022 (August 12, 1977), hereinafter cited as "Release No. 34-13832."

³ The Commission determined that it would be appropriate to designate another person, as provided for by the statute, to receive and process reports and inquiries made pursuant to the section on behalf of the Commission. Accordingly, the Commission solicited plans from persons interested in acting as the Commission's designee and, after analysis of the submissions, designated Securities Information Center, Inc. ("SIC") to maintain and operate the data base of missing, lost, counterfeit or stolen securities on its behalf, through the pilot period ending December 31, 1978. Securities Exchange Act Release No. 13538, 42 FR 26495 (May 12, 1977). AutEx, Inc., was originally named as the designee. Subsequently, as a result of the acquisition of AutEx by ITEL Corp., SIC was created as a wholly-owned subsidiary of ITEL Corp.

⁴ The Lost and Stolen Securities "Program" encompasses both the computerized data bank maintained by SIC for corporate and municipal securities and the Lost and Stolen Securities Checklist maintained by the Federal Reserve Banks for United States Government and agency securities. The Lost and Stolen Securities "System" refers only to the SIC data base and procedures.

⁵ Securities Exchange Act Release No. 15159, 43 FR 43035 (September 22, 1978).

⁶ Securities Exchange Act Release No. 15289, 43 FR 52418 (November 9, 1978).

Some insurance companies and subsidiaries of insurance companies, by virtue of their registration as broker-dealers, are already subject to Section 17(f)(1) of the Act. Additional legislation, however, would be required to achieve mandatory participation by such other entities as savings and loan associations, Federal credit unions, and the Federal Reserve Banks.⁹

By far the largest number of comment letters addressing the issue of the scope of the program recommended that exemptions be provided by § 240.17f-1. As expected, the suggestions came from all sectors of the industry and may be broadly gathered into four large groupings: (1) "Small" financial institutions; (2) brokerage firms which do not deal with the public; (3) firms engaged in a specialized business; and (4) all other banks, broker-dealers, and transfer agents whose handling of securities certificates is minimal.

During the pilot phase of the Program, no exceptions from registration in the Program were granted,¹⁰ and all financial institutions listed in Section 17(f) of the Act were required to participate. Congress, on the basis of a series of public hearings¹¹ had determined that certain classes of institutions were required to participate, and the Commission had no independent additional information which would justify a departure from the Congressional approach. Now, however, one year after § 240.17f-1 became fully effective, the Commission has analyzed the vulnerability to the public if exceptions are provided and assessed the burdens on the industry if they are not.

⁹The staff of the Commission intends to monitor, where possible, the operation of the Program to determine whether legislation mandating the inclusion of additional classes of institutions in the Program seems appropriate. Paragraph (d) of § 240.17f-1, which is redesignated proposed paragraph (e), does provide for voluntary participation in the Program for financial institutions not included in Section 17(f) of the Act. In this regard, the Commission encourages financial institutions not within the jurisdiction of this section to apply under paragraph (d) to become so included. The Commission, as a condition to granting such a status, will require those institutions to undertake to comply with § 240.17f-1 on the same basis as a reporting institution. Letters requesting participation in the Program should be denominated "Application for Designation as a Reporting Institution Pursuant to § 240.17f-1" and should be addressed to the Division of Market Regulation.

¹⁰Of course, § 240.17f-1 does include certain exceptions from required inquiry, and additional reporting and inquiry exceptions were provided during the pilot, implementing, phase of the Program. See discussion *infra*.

¹¹Organized Crime—Stolen Securities, Hearings before the Permanent Subcommittee on Investigations, Senate Committee on Government Operations, 92nd Cong., 1st Sess. (1971); 93rd Cong., 1st Sess. (1973); 93rd Cong., 2nd Sess. (1974), hereinafter cited as "Hearings."

The Commission has determined that there are two general classes of broker and dealers whose securities activity is so limited that they may be appropriately exempted from the registration provisions of the Program, namely (a) brokers and dealers whose only business is conducted on the floor of a national securities exchange and who do not conduct a public business, and (b) brokers and dealers whose business is limited to sales of variable contracts or limited partnerships and who do not hold or receive securities subject to the reporting and inquiry provisions of the section.

Since such persons do not deal in or handle securities certificates, the Commission proposes that the amendment to § 240.17f-1 incorporating the registration requirements of the Program into the section and discussed *infra* include exemptions for brokers and dealers engaged solely in the sale of variable contracts or limited partnerships and for floor traders, floor brokers, and specialists who do no public business.¹²

Securities Encompassed by § 240.17f-1

In Securities Exchange Act Release No. 13280,¹³ the Commission announced that to ease implementation of the Program and to focus on the most heavily traded securities, corporate and municipal issues not assigned CUSIP numbers would be exempt from required reporting and inquiry for the duration of the pilot program (the "non-CUSIP exemption").

Thereafter, in Release No. 34-15015, the Commission solicited comments from interested members of the public on whether the non-CUSIP exemption should be continued, modified, incorporated in the section or terminated, and whether other types of securities should be exempted from, or included in, the section's coverage.

A majority of the comments received by the Commission urged that the non-CUSIP exemption be continued and/or made permanent. The balance of the comments recommended the inclusion and deletion of certain types of securities.

When the Commission initially adopted the non-CUSIP exemption in connection with the implementation of the Program, it recognized that the Program's purposes would be better served if its focus was on those securities which were commonly held by the investing public, most readily negotiable, and most often subject to

loss, theft or counterfeiting. The CUSIP system offered a pre-existing, convenient, efficient method for concentrating on those securities that would be most appropriate for inclusion in the Program.¹⁴

Certain specific non-CUSIP securities were mentioned for inclusion within the section by some commentators. A few commentators urged that bond coupons, certificates of deposit, and money-market instruments be subject to the section's required reporting and inquiry provisions. The Commission, however, is of the view that to require reporting and inquiry with respect to bond coupons would be unnecessary and would prove to be intolerably burdensome on paying agents for corporate and municipal bond issuers. In addition, inclusion of bond coupons, certificates of deposit, and money-market instruments would necessarily increase system costs to reporting institutions since SIC would process more inquiries and reports. Moreover, inclusion of these securities would necessitate significant, expensive, and impracticable modifications to SIC's system.

Therefore, the Commission proposes that the present temporary exemption for non-CUSIP securities and bond coupons be continued without change and solicits comment on whether it should be incorporated in § 240.17f-1.

Dual Appropriate Instrumentalities

Section 240.17f-1 specifies that reports and inquiries shall be made to the "appropriate instrumentality." For securities issued by the U.S. Government, an Agency or instrumentality of the U.S. Government, the International Bank for Reconstruction and Development, the InterAmerican Bank, or the Asian Development, the appropriate instrumentality is any Federal Reserve

¹⁴The CUSIP system utilizes such factors as whether the security is traded on a national securities exchange, listed in the National Quotation Bureau's "pink sheets," traded on a national basis or is of general interest to determine whether assignment of a CUSIP number is appropriate. Approximately 1,200,000 securities issues are presently assigned CUSIP numbers. These factors operate to limit non-CUSIP securities to those that are of "local interest" or are short term commercial paper or money-market instruments such as certificates of deposit, among others. In addition, non-certificated securities are not assigned CUSIP numbers. It is worthy of note, however, that even though a securities issue may be initially of "local interest," it may subsequently be assigned a CUSIP number due to increased investor interest, or trading or listing on an exchange. Consequently, in most instances, there is a correlation between the lack of an assigned CUSIP number and the lack of a general market for the particular security.

¹²These brokers and dealers would continue to be "reporting institutions" under the section.

¹³42 FR 11829 (March 1, 1977).

Bank or Branch (the "FRB").¹⁵ For reports and inquiries regarding all other securities, the appropriate instrumentality is the Commission or its designee.

In Release No. 34-15015, the Commission solicited comments from interested members of the public as to whether the framework of dual appropriate instrumentalities provided by the section should be retained or whether a unified central data base would be preferable. In addition, comments as to any difficulties experienced due to the concept or operation of the two appropriate instrumentalities were invited.

In response to the Commission's solicitation, almost two-thirds of the comments received recommended merger of the SIC and FRB data bases. The comments also revealed that there may be some significant systemic difficulties inherent in the continuation of the framework of dual appropriate instrumentalities. For example, some confusion has been experienced by reporting institutions with regard to which Federal Reserve Bank or Branch would be appropriate to receive their reports and inquiries. Moreover, some reporting institutions have forwarded reports and inquiries to the incorrect appropriate instrumentality, thereby causing delays in the inclusion of relevant information in the data base.

In view of the comments received and the systemic problems presented by the current framework of dual appropriate instrumentalities, the Commission has determined that a unified data base of missing, lost, counterfeit, and stolen securities be established. Since SIC has been redesignated by the Commission to maintain and operate the data base of missing, lost, counterfeit, and stolen securities for a two year term ending December 31, 1980, has the computer capacity to assimilate the reports already in the FRB data base, and has expressed a willingness to take on this area of responsibility, the Commission is issuing for public comment a proposed amendment to paragraph (a) of § 240.17f-1 deleting the definition of the term "appropriate instrumentality" and other conforming, technical amendments, the effect of which would be to create a unified central data base.

Reporting Time Requirements

In order to ascertain whether the section's reporting time requirements are appropriate and consistent with securities industry and banking practices, and with a view towards proposing modifications where

necessary, the Commission, in Release No. 34-15015, solicited comments from interested members of the public.

Two-thirds of the comments received recommended no change from the reporting time requirements currently contained in the section.¹⁶ In response to comments recommending that the reporting time requirements be extended, the Commission is of the view that to do so would be contrary to the purposes of Section 17(f)(1) of the Act. Clearly, expeditious reporting of losses is necessary to achieve the objectives of the Program—the detection and recovery of missing, lost, stolen or counterfeit securities.¹⁷ Section 240.17f-1 recognizes, however, the potential compliance burdens and operational difficulties that unnecessarily strict reporting time frames would cause. Therefore, flexibility is provided by typing the reporting provisions to the type of loss involved and avoiding burdensome reporting requirements where essential information is not available.

In fact, with respect to most of the section's reporting time requirements, reporting institutions are given additional time to make reports when losses are discovered in special circumstances or when certificate numbers are unknown. The only instance where a report is required without exception to be made within one business day after discovery of the loss notwithstanding any lack of certificate numbers is when criminality is suspected.¹⁸

In response to those comments recommending that a single uniform reporting time requirement be proposed, the Commission has determined that such a change would be inappropriate since the reporting time frames for

¹⁵ One commentator recommended that the reporting time requirements be made more flexible in periods of high trading volume. The Commission, however, believes that it is precisely during periods of higher than normal trading volume that relatively short reporting time requirements are appropriate to help prevent and halt the further negotiation of missing, lost, counterfeit or stolen certificates. Periods of high trading volume, together with a volatile market situation, give the holders of such securities a greater opportunity for further negotiation.

¹⁶ Testimony elicited during the 1971 Senate Hearings showed that stolen securities may be easily moved throughout the country for illegal negotiation within matter of hours. Hearings, 92d Cong., 1st Sess. (1971), at 107-118.

¹⁷ Because of the criminality involved, a report regarding the discovery of a counterfeit security must also be filed within one business day of discovery. In this case, however, the reporting institution would have the certificate in its possession or keeping and, therefore, would have all the relevant information to make the report. Expeditious reporting of a counterfeit security is particularly appropriate since there are often duplicate counterfeit securities in circulation.

missing or lost securities would have to be reduced to conform to the one business day required in the case of stolen or counterfeit securities. This modification would result in an unnecessary reporting burden.

After considering the public commentary and the policies underlying the reporting time requirements, the Commission has resolved to continue the current reporting time requirements without modification.

Form X-17F-1A

Paragraph (b)(6) of § 240.17f-1 requires that all reports made pursuant to this section be submitted on SEC Form X-17F-1A. In Release No. 34-15015, the Commission solicited comments as to whether Form X-17F-1A should be modified in terms of its format, graphics, or the information required, and whether the form has been useful in identifying and tracing missing, lost, counterfeit, and stolen securities.

The majority of the comments received generally endorsed the reporting form. There were, however, a number of suggestions which the Commission believes should be incorporated into the form.

Several commentators urged a designation on the form of the type of loss being reported. The Commission agrees that if additional measures are to be taken to prevent losses, it is necessary to learn as much as possible about losses actually suffered by reporting institutions. Therefore, the Commission proposes that the form be modified to include a designation for the type of loss reported.¹⁹

In response to other comments received the Commission proposes the following modifications to Form X-17F-1A: inclusion of the telephone number of the reporting institution,²⁰ specific designation of the Federal Reserve Banks, the FBI, and Local Police as parties to whom reports may be required to be sent,²¹ and the names and addresses of transfer or paying agents and insurance companies who receive copies of filed reports.²² More space has also been provided under Item 11 for the name of the registered holder or bearer, and under item 12, for "certificate/serial numbers." Under item 5, "Type of Security," certain designations have been removed, while "Government or Agency" security has been added.

The Commission has been advised that there is some confusion regarding

¹⁹ See item number 4 of the appendix (Proposed Form X-17F-1A).

²⁰ See item 1 of the appendix.

²¹ See items 17, 18 and 19 of the appendix.

²² See items 20 and 21 of the appendix.

¹⁵ 17 CFR 240.17f-1(a)(2)(i).

the requirement to include the alphabetical prefix or suffix with the certificate number when making reports. Section 240.17f-1 requires the inclusion of prefixes or suffixes on reports wherever they are available. It should be noted that SIC computer software is capable of searching the data base without prefixes or suffixes. Accordingly, if a reporting institution is unable to determine the prefix or suffix of the subject security, it should nevertheless proceed with the report. However, SIC may indicate as a "hit"²³ any security with the same certificate number, although, in fact, it may not be a true match because the reported security may have a prefix or suffix unknown at the time it was reported.²⁴

Inquiry Time Frames

Section 240.17f-1 does not dictate time frames within which reporting institutions must make inquiries with respect to securities coming into their possession or keeping to ascertain whether such securities have been previously reported as missing, lost, counterfeit or stolen.²⁵ In Release No. 34-15015, the Commission solicited comments from interested members of the public regarding whether inquiries should be made within certain time periods and, if so, within what time periods.

The great majority of comments received recommended that the Commission continue the current rule provision.²⁶

Since the flexibility provided by the section apparently has been accepted by reporting institutions, the Commission recommends no change from the present rule, which leaves the time within which inquiries are made to the business judgment of the individual reporting institutions.

Inquiry Pilot Period Exemptions

A. The Registered Transfer Agent Exemption. During the pilot program, registered transfer agents are exempt from the inquiry provisions of § 240.17f-

²³ A "hit" results when an inquiry matches a previously submitted report.

²⁴ Of course, institutions filing reports in these circumstances should diligently search for the unknown prefixes or suffixes and submit an update on Form X-17F-1A with the information to SIC as quickly as possible after discovery.

²⁵ See 17 CFR 240.17f-1(c).

²⁶ The Commission, in Release No. 34-13832, stated that economic realities would, in most cases, dictate that a reporting institution "make inquiry prior to giving value, particularly if the securities or circumstances appear to be suspicious * * *". The Commission continues to believe that this statement of expected conduct is appropriate, since business relationships between customers and institutions are infinitely variable in nature and circumstances.

1.²⁷ Release No. 34-15015 solicited comments from interested members of the public with regard to whether the temporary transfer agent exemption from required inquiry should be continued, modified, incorporated into the section, or allowed to lapse.²⁸ The overwhelming majority of the comments received by the Commission urged that this temporary exemption be continued and/or incorporated into the section.

Traditionally, transfer agents have had a pivotal role, through their "stop transfer lists," in maintaining information regarding securities deemed to be missing, lost or stolen. A transfer agent will not effect registration of a transfer unless it is satisfied from its own records and a review of its stops that the particular transfer is in all respects proper.

Despite the adoption of § 240.17f-1, the traditional practice by which persons who suffer loss or theft of securities notify the transfer agent of such loss or theft has continued in order to protect such persons' interest in the particular securities.²⁹ The continued filing of "stops" with the transfer agent, accordingly, has meant that the transfer agent has had substantially the same information regarding the securities of an issuer as has the appropriate instrumentality. Consequently, requiring the transfer agent to inquire with the appropriate instrumentality, as well as its own stop files, would be duplicative in most instances.

²⁷ In Securities Exchange Act Release No. 13281, 42 FR 11844, (March 1, 1977), the Commission proposed an amendment to § 240.17f-1 which, if adopted, would have exempted registered transfer agents from required inquiry. Subsequently, with a view towards obtaining more information with respect to the impact of such an amendment on the costs of the System to institutions subject to the section and the effectiveness of the system in preventing and halting the further negotiation of missing, lost, counterfeit or stolen securities, the proposed amendment was withdrawn. The Commission, thereafter, issued Release No. 34-13832 which included the current temporary exemption, and in Securities Exchange Act Release No. 15289 (November 9, 1978), extended the duration of the pilot program and the exemption from December 31, 1978, to June 30, 1979.

²⁸ The release also solicited public commentary with regard to a staff interpretation which makes the transfer agent exemption applicable to a transfer agent engaged as an exchange, conversion, or redemption agent or depository, or tender agent (whether such transfer agent is acting as the issuer's transfer agent or as a depository or tender agent in connection with a so-called "unfriendly tender offer"), as long as such transfer agent maintains or is provided with current and accurate records of stop transfer instructions and inquiry of such records is made for each item received prior to issuing a new certificate, transferring record ownership, disbursing funds, or otherwise completing the transaction. Letter to the Stock Transfer Association, Inc., dated March 8, 1978.

²⁹ See UCC §§ 8-311 and 8-405. See also *Exxon v. Raetzer*, 533 SW2d 842 (Ct. Civ. App. Tex. 1976).

In order to eliminate some of this duplication, and to ensure that the transfer agent has identical records to those included in the appropriate instrumentality's data base, the section requires that a reporting institution not only submit a report of loss to the appropriate instrumentality but, also contemporaneously, forward a copy of the report to a registered transfer agent for the issue.³⁰

If the transfer agent exemption were allowed to lapse at the end of the pilot period, the resultant duplication would necessarily increase the costs of the System to those institutions subject to the section since the total number of inquiries processed by SIC would increase markedly. Most importantly, termination of the exemption would not afford investors increased protection, since the information in transfer agent stop files is substantially similar to the information contained in the data base of the appropriate instrumentality.

In light of the discussion above, the Commission proposes incorporation of the transfer agent exemption into the section.³¹

B. The *De Minimus* Exemption. In Securities Exchange Act Release No. 13280,³² the Commission announced an interpretive clarification of § 240.17f-1 which exempted from required inquiry securities transactions valued at less than \$10,000 for the duration of the pilot program to ease the Program's implementation (the "*De minimus* exemption").

In addition, during the pilot program, the staff of the Commission issued two interpretive letters regarding this temporary exemption. The first stated that a reporting institution must view a securities transaction in its entirety and not on a piecemeal basis when determining whether the exemption is applicable.³³ The second interpretation

³⁰ To further these goals, the Commission proposes an amendment to the section which would require reporting institutions to submit a copy of Form X-17F-1A to a transfer agent for the issue one day after discovery of a counterfeit security.

³¹ With respect to the staff's interpretation of the transfer agent exemption, discussed in footnote 28 *supra*, the Commission has determined that it is based on sound policy and practical business considerations, but is of the view that since the *proviso*, in reality, does not obligate the transfer agent to perform his functions in any manner different than that dictated by state law and sound business practices, its incorporation into the section would not serve any useful purpose.

³² 42 FR 11829 (March 1, 1977).

³³ Letter to La Salle National Bank, dated December 7, 1977. For example, where for \$5,000 bonds are used as collateral for a single loan, the total transaction exceeds \$10,000, and the *de minimus* exemption from inquiry may not be claimed. If each certificate were analyzed with respect to the exemption's applicability, relatively few transactions would require inquiry.

extended the exemption to include securities transactions of exactly \$10,000 in recognition of the fact that most debt securities are issued in \$5,000 face value denominations, and in the interest of reducing the burden imposed by the rule on municipal securities brokers and dealers.³⁴

In Release No. 34-15015, the Commission solicited comments from interested members of the public with regard to whether the exemption and its accompanying interpretations should be continued, modified, incorporated in the section, or allowed to lapse.

More than one-half of the comments submitted in response to the solicitation release recommended that the exemption be continued. In addition, the great majority of the commentators recommended continuance and/or incorporation into the section of the "whole transaction" interpretation, and the "exactly \$10,000" interpretation.

The determination by the Commission to exempt transactions under \$10,000 was based, in part, on an impact study which indicated that the greatest number of inquiries to be made by banks and registered transfer agents would involve transactions of less than \$10,000.³⁵

In addition, the Commission has analyzed data contained in surveys conducted by several transfer agent associations and has concluded that the exemption has been instrumental in establishing a securities validation system which is both cost efficient and effective. The surveys show, for example, that of 776 "hits" received on inquiries by a selected sample of transfer agents during the first six months of the pilot period, only 9.7% (75) had a face value or market value greater than \$10,000. The face value or market value of these hits, however, totaled 90.6% (\$12,684,080.22) of the aggregate value of the 776 hits (\$13,994,212.07). From these figures and the fact that a necessary component of each hit is an inquiry, the Commission believes that the operation of the exemption minimizes the number of inquiries required to be made of the System and the cost of the System occasioned thereby, while maximizing the desired benefit—the discovery of the great majority of missing, lost, counterfeit or stolen securities.

The Commission, therefore, is of the view that the *de minimus* exemption, as modified by the staff interpretations, be proposed as an amendment to the section.

Inquiry Rule Exemptions

Section 240.17f-1 requires reporting institutions to make inquiry whenever securities come into their possession or keeping unless an exemption applies. Presently, the section provides an exemption from inquiry if the security is received: (1) Directly from the issuer or issuing agent at issuance; (2) from another reporting institution or a Federal Reserve Bank in its capacity as fiscal agent; or (3) from a customer of the reporting institution where the certificate is registered in the name of such customer or its nominee.³⁶

In response to the question of whether additional exemptions from inquiry should be permitted, the majority of the commentators suggested that inquiry should not be required in the case of bearer securities where the reporting institution taking such securities into its possession previously sold such securities to the person delivering them and can verify through its internal records that it sold such securities to the presenter.

The argument given in support of this additional exemption is that it is an unnecessary expense for the reporting institution and a needless burden on the facilities of the Program to require inquiries to be made on bearer securities which the broker or dealer knows to be legitimately owned by his customer. It is argued that the inquiry is especially unnecessary since the reporting institution can verify from its own internal records the authenticity of such bearer securities.³⁷

The Commission agrees that in the situation where the accepting reporting institution "knows its customer" and can verify from its own internal records that the securities presented were those previously sold to its customer, the reporting institution is in a position comparable in terms of safety to that in which it accepts a registered security.

Therefore, the Commission proposes an amendment to the section providing for an additional exemption from inquiry in the situation discussed above.

³⁴ See § 240.17f-1(c)(1) (i), (ii), and (iii).

³⁵ A reporting institution coming into possession or keeping of a bearer certificate in these circumstances would be expected to verify this fact by an examination of prior confirmations of securities transactions issued to the customer, delivery receipts, and other relevant internal records which would document, to the satisfaction of the firm, that the bearer security is legitimately held by the customer.

Direct/Indirect Inquiry

In Release No. 34-15015, the Commission solicited comments on whether or not the present program allowing for an election of participation status as either a direct or an indirect inquirer is appropriate. The great majority of the comments received endorsed the program. The Commission agrees that an election of participation status is desirable as it provides for institutions which may not have sufficient volume of securities transactions to otherwise justify the expense of participating as a direct inquirer. Such institutions may include those that wish to participate voluntarily, pursuant to paragraph (d) of § 240.17f-1, and those required to participate by the Act. Therefore, the Commission proposes no modification to the Program providing for an election of participation status.

However, in response to comments indicating problems regarding communication between indirect inquirers and their designated direct inquirers, the Commission proposes an amendment to the section requiring reporting institutions to maintain as part of the recordkeeping requirements of proposed paragraph (g) of the section copies of agreements designating other institutions as direct inquirers for processing of inquiries. Furthermore, indirect inquirers should not designate another reporting institution as a direct inquirer prior to an agreement with that institution.³⁸

Finally, the Commission has stated that, in order to make reports and inquiries and to generally participate in the Program, it is necessary for reporting institutions to register with the Commission's designee. Some institutions, however, have argued that since there is no provision in the section requiring registration with SIC, they may forego registration and, as a result, be free from the requirements of the section.

Therefore, to remedy this perceived gap in regulation, the Commission proposes a technical amendment to the section requiring all "reporting institutions," as defined in paragraph (a)(1) of § 240.17f-1, to register with the Commission or its designee pursuant to instructions issued by the Commission.

Fee Structure

In Release No. 34-15015, the Commission solicited comments on whether the present pricing structure is

³⁸ The Commission also encourages each direct inquirer to share with its indirect inquirers all information obtained in response to inquiries made on their behalf (e.g., pertinent information concerning hits).

³⁴ Letter to Federal Reserve Bank of St. Louis, dated January 12, 1978. Although the interpretation's rationale was based on the situation presented by debt security transactions, in order to avoid confusion, it was designed to apply to equity securities as well.

³⁵ The study projected that, on an annual basis, 59.7% and 86% of all inquiries by banks and registered transfer agents, respectively, would involve transactions of less than \$10,000.

just and workable, and whether reasonable alternatives to this system exist.³⁹

As discussed above, the Program presently provides for two levels of user access with respect to inquiries, direct or indirect. The scheme of classification by type of participation was created with a view towards minimizing the monetary and administrative costs of the Program. This interest also guided the Commission in its formulation of the pricing schedule for reporting institutions.⁴⁰

Under the plan approved by the Commission, the usage fees are based on two variables, the aggregate number of items processed by SIC and the number of direct inquirers participating in the System. The aggregate usage cost of the Program is assumed by all direct inquirers, according to the type and size of institution involved.⁴¹ Thus, within a given classification of institution, all entities pay the same fee regardless of the actual number of inquiries or reports made.

Although the majority of the comments recommended that the cost to the reporting institutions should be on a usage or "per item" basis, the Commission believes that such a plan would create a disincentive to making permissive inquiries, and thus outweigh any positive aspects. Most importantly, since the System serves all financial institutions which deal in securities, and particularly in light of the exemption from inquiry provided by the section when one reporting institution takes certificates from another, the benefit, and similarly the cost, of any particular inquiry inures to the entire financial community.

In the Commission's view, the present fee structure is fair, efficient, easy to administer, and encourages the making of inquiries. Therefore, the Commission recommends that no changes be made but would welcome constructive suggestions for further consideration.

³⁹ SIC's operational costs for the first year totalled \$757,000.00, and it is estimated that for 1979 operational costs will total \$807,000.00.

⁴⁰ Direct inquirers shoulder the costs of the System. Indirect inquirers are charged no fees by SIC but are subject to whatever fees they agree to pay their direct inquirer. One benefit of this approach is that it significantly alleviates problems relating to the frequent collection of small bills from large numbers of persons, a problem which the Securities Investors Protection Corporation ("SIPC") experienced to a great extent in its collection of assessment fees.

⁴¹ Billing classifications are based on the amount of deposits for banks, annual revenue for securities organizations, and number of shares issued in the case of non-bank transfer agents.

Staff Interpretations

In Release No. 34-15015, the Commission solicited comments as to whether staff interpretations of § 240.17f-1 should be modified and/or incorporated into the section.

1. *Warrants.* The staff declined a request that warrant cards, representing rights, be exempted from the reporting provisions of § 240.17f-1. The rationale for this position is that, although individual rights are generally of minimal value, the number of rights represented by a warrant card is correlated to the number of shares a stockholder owns and, thus aggregated, can have a considerable value.⁴²

The majority of the comments received on the subject endorsed the staff's treatment of warrants. However, four institutions suggested that warrants be exempted from the reporting provisions of the section, and one bank suggested that "short term" warrants—those expiring in less than 90 days—be exempted.

For purposes of the pilot period, exemptions based on the minimal value of the securities involved has been provided only with regard to required inquiry (the "de minimus" exemption). However, there have been no exemptions from reporting losses based on the minimal value of the securities involved, and the Commission sees no reason to provide a special exemption for warrant cards. Accordingly, the Commission maintains its initial position and recommends no changes in the treatment of warrants under the section.

2. *Losses During Completion of Delivery, Deposit or Withdrawal.* With regard to subparagraphs (b)(2)(iii)(B) and (b)(2)(iii)(C) of § 240.17f-1, specifying the appropriate time and party to report losses when securities are delivered "over the window," the staff published an interpretation stating that copies of delivery bills, stamped by receiving institutions "Received Subject to Count and Examination" and returned to delivering institutions, are "receipts" under the section and thereby create an obligation on the part of the receiving institution to report any losses to the appropriate instrumentality.⁴³

Of the eleven comments that dealt with this interpretation, only four disagreed with the staff's view. They argued that it is contrary to normal business practice to obligate the receiving institution to make reports when it receives securities over the

window and stamps delivery bills and receipts as "Received Subject to Count and Examination." The remainder of the comments supported the staff's interpretation and did not consider the requirement contrary to normal business practice.

Subparagraph (b)(2)(iii)(B) of § 240.17f-1 states that in an over the window transaction, where the delivering institution has a receipt, the delivering institution must supply the receiving institution with the certificate numbers, and the receiving institution must report losses within one business day of notification of the certificate number. When this rule was written, the staff intended that a receipt or delivery bill stamped "Received Subject to Count and Examination" would be within the meaning of the word "receipt" as used in subparagraph (b)(2)(iii)(B). Thus, the obligation to report missing or lost securities in these situations lies with the receiving institution.

The primary objective was to provide clarity so that the obligation to report losses lies clearly with one party or the other. The Commission believes that the rule, as written, is equitable in most instances and that the certainty it provides justifies its continuation.

Accordingly, the commission recommends no revision of this interpretation.

3. *Timely Submission of Report.* As a result of the difficulties certain institutions have faced in researching the data to be submitted in a report of loss, the staff has published interpretations of the reporting requirements of the section stating that in instances where no criminal activity is suspected, a report must be made under subparagraph (b)(2) of the section as soon as the reporting institution has available to it the CUSIP and certificate numbers of the security, provided, that the institution acts in good faith in promptly researching this data. This extension of time is not available where the circumstances surrounding the loss suggest possible criminal activity.⁴⁴

The Commission maintains the position taken in its interpretative letter and notes that if no criminal activity is suspected, a reporting institution may wait until it obtains the certificate and CUSIP numbers of the missing security before making its report, provided that the institution acts in good faith in attempting to obtain the missing data

⁴⁴ Due to the overriding interest in disseminating information on thefts as quickly as possible, reports are required within one business day in this instance, even when certificate numbers are not available. Letter to First Trust Co. of St. Paul, dated March 20, 1978.

⁴² Letter to Morgan Guaranty Trust Co., dated March 13, 1978.

⁴³ Letter to Northwestern Trust Co., dated February 28, 1978.

promptly.⁴⁵ There is, however, no extension of time for submission of reports where the number of shares, issue or maturity, type of loss, or other nonessential information is known. So long as the certificate and CUSIP numbers of missing CUSIP numbers of missing certificates are known, reports must be made within the time periods presented by the section.

4. Report to Law Enforcement.

Subparagraph (b)(1)(ii) of § 240.17f-1 provides that all reporting institutions shall promptly report to the appropriate law enforcement agency upon the discovery of a theft or a loss where there is a substantial basis for believing that criminal activity was involved. To clarify those instances where such reports could be submitted to law enforcement, the staff issued an interpretation stating that an institution does not necessarily have a "substantial basis" for such belief in those instances where the institution's knowledge of the loss or theft is based on unsubstantiated information given to it by another party.⁴⁶

The majority of the letters commenting on the subject endorsed the staff's interpretation. However, a substantial number of commentators requested clarification on two issues: (1) What constitutes a "substantial basis" for believing that criminal activity was involved, and (2) what is the "appropriate law enforcement agency."

The Commission recognizes that it is difficult for a reporting institution to determine when there is a "substantial basis" for believing that criminal activity is involved. Due to innumerable fact situations which may arise, however, the reporting institution must consider the totality of the facts and circumstances to make an informed judgment as to the likelihood that criminality is involved.

Because of the importance of assuring that appropriate law enforcement organizations are notified of potential crimes within their jurisdiction, certain guidelines may be helpful.⁴⁷ A good faith

⁴⁵ There is no outside time limit on research to determine the certificate and CUSIP numbers.

⁴⁶ Letter to Continental Stock Transfer and Trust Co., dated January 12, 1978.

⁴⁷ The following general guidelines may be useful in deciding which law enforcement agencies to notify in certain instances.

(1) Local Police Department—All cases involving thefts or mysterious disappearances of securities or discoveries of securities reported stolen. (2) Federal Bureau of Investigation—All cases involving securities thefts of \$5,000 or over, all theft from banks, all theft of Government securities, all counterfeitings of non-Government securities, all counterfeitings presented as collateral for a bank loan, all stolen or counterfeit securities involved in interstate commerce, and all counterfeit securities used in a violation of Federal Law. (3) U.S. Secret

determination as to whether criminality is involved in a loss and timely notification to any of the above agencies by reporting institutions shall generally be deemed compliance with paragraph (b)(1) of § 240.17f-1.

5. *Exemption Upon Receipt From Another Reporting Institution.* In an interpretative letter, the staff expressed the opinion that the exemption from inquiry available upon receipt of securities from another reporting institution is also available in those instances where the delivering institution is affiliated with and under the common control of a reporting institution and acts solely as a "certificate drop."⁴⁸

The Commission believes that the exemption from inquiry permitted by the staff interpretation is a logical development of the exemption provided for in paragraph (c)(1)(ii) of the section. In view of the comments received, the Commission proposes that the section be amended to incorporate the exemption as provided for in the staff interpretation.

6. *Exemption Upon Receipt From a Federal Reserve Bank.* Under paragraph (c)(1)(ii) of § 240.17f-1, inquiry is not required where a reporting institution receives securities from a Federal Reserve Bank in its capacity as fiscal agent. This exemption is not available under the section, therefore, when securities are delivered by the FRB from a safekeeping account. The staff has issued an interpretation providing that when securities are delivered to a reporting institution by the FRB out of the safekeeping account of another reporting institution and such securities had been delivered to the FRB by a reporting institution, inquiry is not required.⁴⁹

The comments received regarding this interpretation were almost entirely favorable. Since, in the vast majority of cases, Federal Reserve Banks and Branches receive securities in either the capacity of fiscal agent or safekeeping agent, the Commission proposes an amendment to the section to incorporate the interpretation by deleting any reference to the capacity in which the Federal Reserve Bank or Branch received the securities in question.⁵⁰

Service—All cases involving counterfeitings of securities which are direct obligations of the United States Government or are issued with Government backing. The Secret Service reportedly has a general interest in all counterfeiting activity.

⁴⁸ Letter to First National Bank of Boston, dated January 12, 1978.

⁴⁹ Letter to Bankers Trust Co., dated March 21, 1978.

⁵⁰ Regardless of the capacity in which it acts, in most instances, a Federal Reserve Bank or Branch receives securities from member banks or other

7. *Miscellaneous Comments.* In addition to the specific areas noted above, the Commission also solicited general comments on the Lost and Stolen Securities Program. A discussion of some of these comments follows.⁵¹

A few of the commentators suggested that the Commission provide guidance to the reporting institutions as to what action should be taken when an inquiry results in a "hit."

The Commission has previously stated that the section does not set forth what action should be taken by reporting institutions in event of a hit. Inquiring institutions are expected to follow current business practices in dealing with securities which it knows to be lost or stolen.⁵²

Another commentator suggested that SIC update or revalidate reports periodically. Specifically, it was asked that SIC send out to reporting institutions, on a quarterly basis, a listing of all open losses reported by the institution for verification. It is argued that this would assist in purging the open file of extraneous information, as well as reduce the risk of liability if a recovery report was not processed properly by either the SIC or the reporting institution.

The Commission is of the opinion that this is unnecessary. Section 240.17f-1 requires a report to the appropriate instrumentality when previously reported certificates are recovered. So long as reporting institutions comply with the section, the data base will be current. While it may be desirable to enforce paragraph (b)(4) of the section through periodic verification or purging, the Commission believes that the cost to the Program of such an undertaking would outweigh the benefit received.

One comment received by the Commission asked that confirmations on inquiries contain more information, such as the date of report, CUSIP number, names of registered holder, etc. With the exception of CUSIP numbers, which are currently included in inquiry

reporting institutions under the section. Accordingly, inquiry will have previously been made on the subject securities where required. It is only in rare circumstances that securities are received by a Federal Reserve Bank or Branch from a non-reporting institution. In such cases, the Federal Reserve Bank or Branch attempts to validate the authenticity of the certificate.

⁵¹ Out of the approximately 120 comments received by the Commission, ten suggested that the Program be discontinued due to the costs to the industry and the minimal benefits to be gained.

⁵² Release No. 34-13832, 42 FR 41023. When a hit occurs SIC notifies the inquiring institution immediately and telephones the reporting institution which previously filed the report concerning the loss. Further procedures may be included in SIC's forthcoming "fact sheet" which will contain general information and guidelines regarding the structure and use of the System.

confirmations, additional information cannot be provided routinely because information released by SIC is computer generated. Therefore, confirmations on inquiries can contain only that information that has been keyed into the computer, namely FINS number, CUSIP number, and certificate number.

One reporting institution suggested that a form be adopted for making inquiries. Although such a form may provide some degree of consistency and uniformity, it is not clear that a special form is necessary.⁵³ However, this suggestion, along with those recommending updates of reports and more thorough confirmations on inquiries, will be discussed with SIC to determine the feasibility of incorporating them into the Program.

A few commentators suggested that reports of counterfeit securities should be sent to transfer agents in addition to the appropriate instrumentality. The Commission agrees with this suggestion and proposes an amendment to paragraph (b)(3) of the section to include this provision.

Statutory Basis and Competitive Considerations

The Commission proposes amendments to § 240.17f-1 and modifications to the Lost and Stolen Securities Program pursuant to Sections 2, 17(f), and 23 of the Securities Exchange Act of 1934, as amended.

The Commission further finds that the solicitation of comments in connection with the proposed amendments to § 240.17f-1 and the Lost and Stolen Securities Program contained herein is necessary and appropriate in the public interest and for the protection of investors.

Request for Comments

The Commission invites comments on any of the matters raised below. Comments should be addressed to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549. All comments should refer to File No. S7-611 and will be available for public inspection.

1. Pursuant to Sections 2, 17(f), and 23 of the Securities Exchange Act of 1934, the Securities and Exchange Commission proposes the following amendments to § 240.17f-1 in Chapter II of Title 17 of the Code of Federal Regulations:

ATTENTION

The text of the following proposed amendments uses arrows ►◄ to indicate additions and brackets [] to indicate deletions.

§ 240.17f-1 Requirements for reporting and inquiry with respect to missing, lost, counterfeit or stolen securities.

(a) *Definition[s]*— [1] *Reporting institution.* For purposes of this section, the term "reporting institution" shall include every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System and bank whose deposits are insured by the Federal Deposit Insurance Corporation.

[(2) *Appropriate instrumentality.* For purposes of this section the term "appropriate instrumentality" shall mean:

(i) Any Federal Reserve Bank or branch thereof with respect to securities issued by:

- (A) The United States Government,
- (B) Any agency or instrumentality of the United States Government,
- (C) The International Bank for Reconstruction and Development,
- (D) The Inter-American Bank, or
- (E) The Asian Development Bank; and
- (ii) The Securities and Exchange Commission with respect to all other securities.]

(b) ► Every reporting institution shall register with the Commission or its designee in accordance with instructions issued by the Commission *except*

(1) A member of a national securities exchange who effects securities transactions exclusively on the floor of such national securities exchange solely for other members and does not receive or hold customer securities; and

(2) A registered broker or dealer who is engaged exclusively in the sale of variable contracts and/or limited partnership interests and does not receive or hold securities that are subject to the provisions of paragraphs (c) and (d) herein. ◄

[(b)] ►(c)◄ *Reporting requirements—*
(1) *Stolen Securities.* (i) Every reporting institution shall report to the [appropriate instrumentality] ►Commission or its designee◄ and to a registered transfer agent for the issue the discovery of the theft or loss of any security where there is substantial basis for believing that criminal activity was

involved. Such report shall be made within one business day of the discovery and, if the certificate numbers of the securities cannot be ascertained at that time, they shall be reported as soon thereafter as possible.

(2) *Missing or lost securities.* Every reporting institution shall report to the [appropriate instrumentality] ► Commission or its designee ◄ and to a registered transfer agent for the issue the discovery of the loss of any security where criminal actions are not suspected when the security has been missing or lost for a period of two business days. Such report shall be made within one business day of the end of such period except that:

(3) *Counterfeit securities.* Every reporting institution shall report the discovery of any counterfeit security to the [appropriate instrumentality] ► Commission or its designee, to a registered transfer agent for the issue, ◄ and to the appropriate law enforcement agency within one business day.

(4) *Recovery.* Every reporting institution shall report the recovery or finding of any security previously reported missing, lost, or stolen pursuant to this section to the [appropriate instrumentality] ► Commission or its designee ◄ and to a registered transfer agent for the issue within one business day of such recovery or finding. If a report of stolen securities was made to the appropriate law enforcement agency, a report of such recovery shall also be made to such agency. Recovery may only be reported by the institution which reported the security as missing, lost or stolen.

[(c)] ►(d)◄ *Required inquiries.* (1) Every reporting institution ► except a registered transfer agent ◄ shall inquire of the [appropriate instrumentality] ► Commission or its designee ◄ with respect to every security which comes into its possession or keeping, whether by pledge, transfer, or otherwise, to ascertain whether such security has been reported as missing, lost, counterfeit, or stolen, unless

- (i) * * *
- (ii) The security is received from another reporting institution or from a Federal Reserve Bank or Branch [in its capacity as fiscal agent];
- (iii) The security is received from a customer of the reporting institution and ►(A)◄ is registered in the name of such customer or its nominee[.] ► or

⁵³ Comments from other reporting institutions indicated a special form for inquiries is unnecessary.

(B) was previously sold to such customer, as verified by the internal records of the reporting institution;

(iv) The security is part of a transaction which has an aggregate face value of \$10,000 or less in the case of bonds or market value of \$10,000 or less in the case of stocks; or

(v) The security is received directly from a drop which is affiliated with a reporting institution for the purposes of receiving and delivering certificates on behalf of the reporting institution.◀

* * * * *

[[d]]▶(e)◀ Every reporting institution may report to or inquire of the [appropriate instrumentality] ▶ Commission or its designee ◀ with respect to any security not otherwise required by this section to be the subject of a report or inquiry. The Commission on written request or upon its own motion may permit reports to and inquiries of the system by any other person or entity upon such terms and conditions as it deems appropriate and necessary in the public interest and for the protection of investors.

[[e]]▶(f)◀ *Exemptions.* ▶ The following types of securities are not subject to paragraphs (c) and (d), above:

(1)◀ Registered securities of the United States Government, any agency or instrumentality of the United States Government, the International Bank for Reconstruction and Development, the Inter-American Development Bank, or the Asian Development Bank, and counterfeit securities of such entities; [are not subject to the provisions of this section relating to reporting and inquiry with the appropriate instrumentality.]

▶(2) Security issues not assigned CUSIP numbers;

(3) Bond coupons.◀

[[f]]▶(g)◀ *Recordkeeping.* Every reporting institution shall maintain and preserve in an easily accessible place for three years copies of all Forms X-17F-1A filed pursuant to this section▶, all agreements between reporting institutions regarding registration or other aspects of this section,◀ and all confirmations or other information received from the [appropriate instrumentality] ▶ Commission or its designee ◀ as a result of inquiry.

* * * * *

§ 249.1200 [Amended]

2. The Securities and Exchange Commission, pursuant to Section 17(f) of the Securities Exchange Act of 1934, proposes the following modifications to Form X-17F-1A, § 249.1200 in Chapter II of Title 17 of the Code of Federal Regulations as appended hereto.

By the Commission.

George A. Fitzsimmons,

Secretary.

March 29, 1979.

BILLING CODE 8010-01-M

APPENDIX

Subpart M -- Forms for Reporting and Inquiry with respect to Missing, Lost, Stolen, or Counterfeit Securities.
 §249.1200 -- Form X-17F-1A Report for Missing, Lost, Stolen or Counterfeit Securities.

| | | |
|--|--|---|
| PLEASE TYPE OR PRINT CLEARLY | FORM X-17F-1A MISSING/LOST/STOLEN/COUNTERFEIT SECURITIES REPORT | DESIGNEE'S USE ONLY <div style="border: 1px solid black; width: 100%; height: 20px; margin-bottom: 5px;"></div> DATE/FILE NUMBER |
| 1. REPORTING INSTITUTION: NAME _____ | | |
| ADDRESS _____ | | |
| ZIP CODE _____ | | |
| ATTENTION _____ | | |
| TELEPHONE NO. _____ | FINS/SIC IDENTIFIER NUMBER _____ | / () () () |
| 2. TYPE OF REPORT: <input type="checkbox"/> LOSS <input type="checkbox"/> RECOVERY <input type="checkbox"/> UPDATE <input type="checkbox"/> CONFIRMATION | | |
| 3. DATE OF LOSS/RECOVERY _____ | | |
| 4. TYPE OF LOSS: <input type="checkbox"/> MAIL <input type="checkbox"/> DELIVERY <input type="checkbox"/> ON PREMISES <input type="checkbox"/> CLEARING <input type="checkbox"/> OTHER _____ | | |
| 5. TYPE OF SECURITY: <input type="checkbox"/> COMMON STOCK <input type="checkbox"/> PREFERRED STOCK <input type="checkbox"/> CORPORATE BOND <input type="checkbox"/> MUNICIPAL BOND | | |
| <input type="checkbox"/> GOVERNMENT/AGENCY <input type="checkbox"/> OTHER _____ | | |
| 6. NAME OF ISSUER _____ | | |
| 7. INTEREST RATE _____ | 8. MATURITY DATE _____ | 9. ISSUE DATE _____ |
| 10. CUSIP NUMBER _____ | | |
| 11. NAME OF REGISTERED HOLDER (BEARER) _____ | | |
| 12. CERTIFICATE/SERIAL NUMBERS _____ | | |
| <input type="checkbox"/> ADDITIONAL PAGES ATTACHED | | 13. DENOMINATION/SHARES _____ |
| 14. <input type="checkbox"/> CRIMINALITY INDICATED | | |
| 15. TOTAL CURRENT MARKET OR FACE VALUE \$ _____ | | |
| 16. <input type="checkbox"/> COUNTERFEIT _____ | | |
| If Counterfeit - Distinguishing Characteristics | | |
| REPORTS FILED WITH: | 17. <input type="checkbox"/> FEDERAL RESERVE | 18. <input type="checkbox"/> FBI |
| | | 19. <input type="checkbox"/> LOCAL POLICE |
| 20. <input type="checkbox"/> TRANSFER/PAY AGENT _____ | | |
| 21. <input type="checkbox"/> INSURANCE CO. _____ | | |
| 22. _____ | 23. _____ | |
| Authorized Signature | Date | SEC 1400 (2-79) |

INSTRUCTIONS

Note—Section 240.17f-1 does not require reporting coupons. Municipal or corporate securities not assigned CUSIP Numbers are not the subject of reporting and inquiry.

Forms should be mailed to the Commission's designee:

Securities Information Center, Inc.
Post Office Box 421
Wellesley Hills, Massachusetts 02181

1. **Reporting Information**— Enter reporting institution name, address and FINS number, with Securities Information Center-assigned suffix, if any.
2. **Type of Report**— Check whether report is a new report ("Loss"), report of recovery of previously reported loss ("Recovery"), or update or correction of report other than recovery ("Update"). Additionally, if the report is a confirmation of a loss, recovery, or update made by telex or telephone, also check the box marked "Confirmation."
3. **Date**— Enter date when loss was noticed, theft occurred, when counterfeit was discovered or suspected, or when security was found or recovered. When submitting updates, corrections or confirmations, enter date of loss or recovery.
4. **Type of Loss**— Check the box which most nearly describes the loss. If none of the classifications adequately describes the loss, check "OTHER" and describe the loss in the space provided.
5. **Type of Securities**— Check the box which most nearly describes the type of security. If none of the classifications adequately describes the security check "OTHER" and describe the security in the space provided.
6. **Issuer**— Print or type the name of issuing company, agency or organization as set out on the security even though the security may have been lost, stolen, or missing prior to being "issued" by the appropriate authority.
7. **Interest Rate**— If interest rate was indicated, enter this information.
8. **Maturity Date**— Enter maturity date where applicable.
9. **Issue Date**— Enter issue date of security. If certificates have not yet been issued, indicate this fact.
10. **CUSIP Number**— Enter entire CUSIP Number.
11. **Name of Registered Holder**— Clearly print or type the full name of person (*individual, company, bank brokerage house, etc.*) to whom the security is registered exactly as it appears on the security. Enter the word "Bearer" when document is a bearer security.
12. **Certificate/Serial Numbers**— Enter certificate or serial number(s) including all suffixes and prefixes. If certificates have not been issued, enter the control number. Series may be indicated by the first and last numbers separated by a dash and followed by the word "Series". Certificate or serial numbers of certificates of the same CUSIP number which are not in sequential order should be listed separately on each line. For a nonsequential series of certificates having the same CUSIP number, additional pages listing securities to be reported may be attached. If additional pages are attached, check the box.
13. **Denomination/Shares**— Enter in numerical form the amount of money represented by bonds, debentures, notes and other securities (*except stock warrants and rights*) as indicated on the certificates. If amount was not indicated on the certificate, enter the word "Blank."
For stocks, enter the number of shares represented by the certificates, not the par value of the stock. If number of shares is not represented, enter the word "Blank."
For warrants and rights, enter in numerical form the number of shares which the document entitles the owner to purchase.
14. **Criminality Indicated**— If reporting a loss, check when a substantial belief of criminality is indicated.
15. **Total Current Market or Face Value**— For stocks, rights and warrants, enter the approximate total current market value. For bonds, enter the face value of the certificate.
16. **Counterfeit**— Describe distinguishing characteristics of suspected counterfeit securities.
17. **Filed with Federal Reserve Bank**— Check if report on a Government or Agency security is filed with a Federal Reserve Bank or Branch.
18. **Filed with Federal Bureau of Investigation**— Check if you sent a copy of this report to the FBI when required.
19. **Filed with Local Police**— Check if you sent a copy of this report to the local police when required.
20. **Transfer/Pay Agent**— Check to indicate that you have sent a copy of this report to a Transfer or Paying Agent for the issue, and enter the name and address.
21. **Insurance Co.**— Check to indicate that you have sent a copy of this report to your insurance company, and enter the name and address.
22. **Authorized Signature**— Form X-17f-1A must have an authorized signature to be accepted by the System. With respect to those reports filed with the Commission's designee, such signatures must be on file with the designee. Copies of reports sent to the transfer agent and the appropriate law enforcement agency should contain an original signature.
23. **Date**— Enter date when form is signed.

NOTE: This form may be reproduced in any manner so long as the graphics and format are not altered and 8½" x 11" paper is used.

[Release No. 34-15683; File No. 57-611]

[FR Doc. 79-10525 Filed 4-4-79; 8:45 am]

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Federal Register

Vol. 44, No. 67

Thursday, April 5, 1979

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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 FR 32914, August 6, 1976.)

| Monday | Tuesday | Wednesday | Thursday | Friday |
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| DOT/COAST GUARD | USDA/ASCS | | DOT/COAST GUARD | USDA/ASCS |
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| CSA | MSPB*/OPM* | | CSA | MSPB*/OPM* |
| | LABOR | | | LABOR |
| | HEW/FDA | | | HEW/FDA |

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

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

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

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

- 12031 3-5-79 / DOT/CG—Drawbridge operation regulations; Matanzas River, Fla.
- 12358 3-6-79 / HUD—Obligations of public housing agencies; tax exemption
- 12191 3-6-79 / Interior/BIA—Fort Hall and Wapato Irrigation Projects; removal of unnecessary operation and maintenance assessment provisions
- 12192 3-6-79 / Interior/BIA—Klamath Irrigation Project, Modoc Point Unit, Oregon; removal of unnecessary operation and maintenance charge provisions
- 12156 3-6-79 / USDA/AMS—Nectarines, fresh pears, plums, and peaches grown in California; findings and determination on continuation of amended marketing orders

List of Public Laws

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-375-3030).

[Last Listing Apr. 3, 1979]

- H.R. 2534 / Pub. L. 96-5 To provide for a temporary increase in the public debt limit, and for other purposes. (Apr. 2, 1979; 93 Stat. 8) Price \$.60.

Advance Orders are now Being Accepted for Delivery in About 6 Weeks

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(Revised as of October 1, 1978)

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| _____ | Title 43—Public Lands: Interior (Parts 1 to 999) | 4.25 | _____ |
| _____ | Title 43—Public Lands: Interior (Parts 1000 to End) | 6.50 | _____ |
| _____ | Title 45—Public Welfare (Parts 500 to End) | 8.25 | _____ |
| _____ | Title 46—Shipping (Parts 70 to 89) | 3.50 | _____ |
| | | Total Order | \$ _____ |

[A Cumulative checklist of CFR issuances for 1978 appears in the first issue of the Federal Register each month under Title 1. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).]

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